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A Complete Collection

OF THE

STATE-TRIALS

AND

PROCEEDINGS

FOR

HIGH-TREASON

AND

CRIMES and MISDEMEANOURS,

FROM THE

THE FOURTH EDITION,

Corrected and Improved.

The Eleventh Year of the Reign of King RICHARD II.

To the beginning of the Reign of King GEORGE III.

WITH

TWO ALPHABETICAL TABLES TO THE WHOLE.

IN

A NEW WORK

BY FRANCIS HARGRAVE, Esq.

VOLUME I.

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MDCCLXVIII.

A

Complete Collection

OF

STATE-TRIALS,

AND

PROCEEDINGS

FOR

HIGH-TREASON,

AND OTHER

CRIMES and MISDEMEANOURS;

THE FOURTH EDITION;

COMMENCING WITH

The Eleventh Year of the Reign of KING RICHARD II.

AND ENDING WITH

The Sixteenth Year of the Reign of KING GEORGE III.

WITH

TWO ALPHABETICAL TABLES TO THE WHOLE.

TO WHICH IS PREFIXED,

A NEW PREFACE,

By FRANCIS HARGRAVE, ESQUIRE.

VOLUME THE NINTH.

LONDON:

Printed by T. WRIGHT, Eſſex-Street, Strand;

For C. BATHURST, WILSON and NICHOLL, J. F. and C. RIVINGTON, L. DAVIS, T. LONGMAN, W. OWEN, T. CADELL, M. FOLINGSBY, T. LOWNDES, B. LAW, J. WILKIE, R. HORSFIELD, M. HINGESTON, S. BLADON, T. CARNAN, H. GARDNER, W. OTRIDGE, S. LEACROFT, T. EVANS, and the reſt of the Proprietors:

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THE PREFACE.

THE Public may be ſurprized at finding a Ninth and Tenth Volume of STATE TRIALS publiſh'd, after ſo voluminous a Collection already ſet forth; yet, if they conſider, it is above thirty Years ſince the Seventh and Eighth Volumes were printed, and the great Number of Trials for *Treaſon*, *Murder*, *Perjury*, *Forgery*, &c. which have happened ſince that time, likewiſe a Rebellion within that Period (always productive of many Trials) their Admiration muſt ceaſe.

Beſides, Gentlemen muſt have obſerved, in the Courſe of their Reading, a great many Trials have happened for different Crimes and Offences, which have never yet appeared in Print, but have been locked up in the Studies of thoſe who either took them, or had them taken in Short hand: Thoſe falling into other Hands, by Deaths or otherways, have either been purchaſed, procured, or generouſly ſent in towards compleating this uſeful Work;———ſuch as *Matthews*'s Trial for High Treaſon, in printing *Vox Populi, Vox Dei*, in 1719, which has lain dormant near fifty Years;——*Hales* and *Kinnerſley*'s Trials in 1728, for forging promiſſory Notes, in the Names of *Robert Gibſon* and *Samuel Edwards*, Eſquires (both Members of Parliament), and publiſhing them as true ones, for large Sums of Money, wrote on frank'd Covers given them to ſend into the Country;—*Huggins* and *Bambridge*'s Trials, who were Wardens of the Fleet, with *Corbett* the Tipſtaff, and *Acton* the Keeper of the Marſhalſea Priſon, who were all proſecuted in 1729, for Murder, by Order of his Majeſty, on an Addreſs from the Houſe of Commons for that Purpoſe;—Mr. *Franklin*'s Trial, in 1730, for printing and publiſhing a Libel entitled, *A Letter from the* Hague; with ſeveral other Trials which were taken at large, with the Speeches of the Court and Counſel, are now firſt printed from Manuſcripts, and inſerted in this Collection.

All the printed Trials, at full length, that we could hear of (and we have frequently advertiſed to procure them) publiſhed ſince the Seventh and Eighth Volumes, are brought into this Work, with great Additions to moſt of them, either by *Arguments on the ſpecial Verdicts*, *Counſel's Opinion on ſome of the Caſes*, or *Accounts of the Priſoners Behaviour and dying Speeches*, &c. and though ſeveral ſmall Trials, or Parts of Trials and Proceedings, have been printed or procured in Manuſcript, and were too minute to be inſerted in the Body of it; yet, in order to preſerve even them from being buried in Oblivion, we have given them a Place in the Appendix; for theſe ſcarce Pieces are of Value, and not to be collected but with great Difficulty and Expence; and it is hoped ſome Gentlemen of the Law, on reading them, will furniſh ſome Speeches or Arguments towards compleating them, in caſe this Work comes to another Edition.—In this Appendix are likewiſe inſerted two Trials in Corporation Cauſes, now firſt printed from Manuſcript, viz. *New-Romney* and the Port of *Haſtings*, which were argued by ſome of the moſt eminent Counſel then at the Bar; the firſt before the Lord Chief-Juſtice *Eyre*, and the latter before Lord *Hardwicke*; which were not procured time enough to be inſerted in the Body of the Work.

Some Trials in this Collection cannot (properly ſpeaking) be called *State Trials*, yet may be deemed good Precedents, and determine many Points of Law; therefore have their Uſe, and were thought too material to be omitted; and it would be confining the Collection in too narrow a Compaſs, to inſert only STATE TRIALS. But as the former Collection, in Six Volumes, publiſhed by *Sollom Emlyn*, Eſq. (who wrote that admirable Preface prefixed to the firſt Volume, and publiſhed *Hale*'s Pleas of the Crown in Folio) met with general Approbation, we have endeavoured to follow his Steps, and take in ſuch Trials, for *Murder*, *Perjury*, *Forgery*, &c. as have been publiſhed at large; for all Trials (even in theſe Caſes) are Helps to Hiſtory, ſetting forth the true State of the Caſe on both Sides, and are uſeful to the Gentlemen of the Law as well as Hiſtorians, as they give the Opinions of the greateſt Lawyers on the different Points brought before them.

This Work will receive conſiderable Addition from that upright Judge Mr. Juſtice *Foſter*, who, in his *Caſes on the Crown Law*, has given the Public ſeveral Reſolutions and Determinations of the Court on ſome of the Trials of the Rebels, which are added after each of their Trials; but the greateſt Uſe made of that judicious Author, is his Speech on pronouncing the Judgment of the Court, in the Caſe of the King and *Macdaniel*, and his Gang of Thief-takers (which is inſerted after the Arguments of Mr. *Hume* and others on their ſpecial Verdict, which Arguments were never before printed); and alſo on the Queſtion put to the Judges, by the Houſe of Lords in Earl *Ferrers*'s Caſe,

" 1. Whether a Peer, indicted of Felony and Murder, and tried and convicted thereof before the Lords in Parliament, ought to " receive Judgment for the ſame, according to the Proviſions of the Act of Parliament of the Twenty-fifth Year of his Majeſty's " Reign, intituled, *An Act for better preventing the horrid Crime of Murder?*"

" 2. Suppoſing a Peer, ſo indicted and convicted, ought by Law to receive ſuch Judgment as aforeſaid, and the Day appointed " by the Judgment for Execution ſhould lapſe before ſuch Execution done, whether a new Time may be appointed for the Exe- " cution, and by whom?"

As the Affair of Mr. *Anneſley* and Lord *Angleſea* made a great Noiſe, ſome Years ago, and occaſioned four Trials, carried on at a vaſt Expence, we have inſerted them here. Firſt, Mr. *Anneſley*'s for the Murder of Mr. *Eggleſtone* at *Staines* in *Middleſex*; Second, that of Lord *Angleſea*, and others, tried in *Ireland*, for an Aſſault on Mr. *Anneſley*, Mr. *Mac Kercher*, and others; Third, ſo much of the Trial in Ejectment, in *Ireland*, between Mr. *Anneſley* and Lord *Angleſea* (which Trial at large is in almoſt every Hand) as will make the Reader entire Maſter of the whole Affair; with the Speeches and Opinions of the Lord Chief Baron *Bowes*, and the other Judges, at full Length, in that remarkable Cauſe; which will ſerve for an Introduction to the Trial of Mrs. *Mary Heath* (Lady *Altham*'s Woman) who was tried for Perjury, for the Evidence ſhe gave on that Trial in Ejectment. The Acquittal of this Woman ſeems to have put a ſtop to the further Proceedings at that time; and ſince Mr. *Anneſley*'s Death, we do not hear they are as yet revived.—The Trial of *Elizabeth Canning*, for Perjury, is here printed, though in a much fuller and larger Manner than it ever appeared in before this Publication.

As *Scotland* is Part of the united Kingdoms, and their Trials are conducted in a very ſenſible Manner, though their Method of Proceedings are different from ours, (in not bringing their Witneſſes into Court to be examined, only reading their Depoſitions taken in Writing on Oath) yet we ſhall inſert three or four of the moſt principal of them, to ſhew their Method of proceeding, and the Reaſoning and Learning of their Advocates.

Some People may wonder we have not obtained ſome of the modern Trials, as Dr. *Henzie* for High Treaſon; the *Cock-Lane* Ghoſt, *&c.* Our Anſwer is, we ſhould have been very glad to have obtained them; they would have been a great Addition to the Work, from the great Learning of the Judge that tried them; but we never could hear they were ever printed or taken in Short-hand; and as to the former, he made *no Defence* or *called* any Evidences; ſo it could not be a Trial of any Conſequence; but if any one has a mind to peruſe the Law Proceedings againſt him, in the Court of King's Bench, he may find them in Mr. *Burrow*'s Reports, Vol. I. part iv. p. 642.

We hope the candid Reader will excuſe ſuch Errors as he may find in this Work occaſioned by the Editor's Diſtance from the Preſs, and judge favourably of this Collection (made more for Amuſement than Profit), which, in all Probability, had never ſeen the Light, if the Editor had not, at great Trouble and Expence, undertaken it.

S. N.

The several TRIALS, &c. contained in the NINTH VOLUME.

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A COMPLETE

A COMPLETE

COLLECTION

OF

TRIALS, &c.

I.

The Trial of RICHARD NOBLE *, Gent. for the Murder of JOHN SAYER †, Esq. and of Mrs. MARY SAYER, for Petty Treason, and Mrs. MARY SALISBURY, for aiding and abetting the said Murder; at the Assizes held at *Kingston upon Thames*, in *Surry*, before the Right Hon. the Lord Chief Justice *Parker*, *March* 12, 13, 1712-13.

ON *Thursday* Evening, *March* 12, *Richard Noble*, *Mary Sayer*, and *Mary Salisbury*, were arraigned for the Murder of *John Sayer*, Esq. upon their several Indictments; and pleaded Not Guilty; and were told by the Court, to prepare for their Trials next Morning at six o'Clock.

On *Friday* Morning at Six, the Court sat, and the Prisoners were set to the Bar; when Mr. *Noble* moved to put off their Trials, for that Mr. *Bull*, a very material Evidence for them, was not come down.

Court. That must be proved by the Oath of somebody, and that he was served with a Subpœna to attend here. Upon which Mr. *Lindsey*, one of the Attornies, concerned for the Prisoners (for they had many) deposed, That he filled up a Subpœna for serving Mr. *Bull*, but did not serve it himself; that a Messenger was sent at twelve o'Clock, Yesterday, to *London*, to serve it, but was not returned. Mr. *Noble* also alledged, That Mr. *Page*, the Counsel, another material Witness, was not come, and that he was served with a Subpœna, and they looked for him every Hour; and called Mr. *Lindsey* to prove this.

Mr. *Lindsey* deposed, He served Mr. *Page* with a Subpœna last *Sunday*, and that he thought he would have been down at the Trial.

The Court told *Lindsey* he should have taken care to have had his Witnesses ready, and that there was no Affidavit made of their being material Witnesses; and reprimanded *Lindsey* for his Neglect, and ordered the Trial to go on.

The Queen's Counsel, Mr. Serj. *Commyns*, with Mr. *Nott*, set forth how heinous the Crimes of the Prisoners would appear to be, but what aggravated their Crimes, was their endeavouring to procure Witnesses to perjure themselves; and called ‡

Daniel Reeves, who being sworn, proved, That one *James Hannon*, an *Irishman*, (who stands committed for this Offence) on *Thursday* before the Trial, came to him, and shewed him Copies of the Examinations taken before the Coroner, of *Samuel Derham*, *Thomas Gardner*, and *John Cox*, three of the most material Witnesses, to prove the Murder. *Hannon* then gave him Half-a-Crown, and desired him to procure, or hire two other Men to swear with him, against those Examinations, and promised him two Guineas for himself; and the other two Men were to have what *Reeves* could agree with them for, and that Mr. *Noble* would give *Reeves* a larger Satisfaction than what he thought he would, or could expect.

Friday Evening following, *Hannon* came to him again, and gave him another Half Crown, to spend upon *Derham*, *Gardner*, and *Cox*, and ordered him to make what Agreement he could with them, to stifle and buy off their Evidence; and the next Day, *Saturday*, *Hannon* came to *Reeves* again, to know what Progress he had made, and invited him to Dinner on *Monday*, and to bring the other two Men he was to hire with him; *Hannon* gave him a Note, of his own Hand-writing, where he lived, which was at Number 10. in *College-street*, *Westminster*. On *Monday* Morning *Hannon* came to *Reeves* again, and gave him a Writing in the Nature of an Affidavit, drawn up on Stamp Paper (by the Prisoners he said), which he, and the two Men he pretended he had hired, were to swear before a Judge, and gave him nine Shillings more in Money; whilst *Hannon* was thus tampering with this Witness *(Reeves)*, he intimates it to the Prosecutor's Attorney, and after having got this Affidavit from *Hannon*, he shuffles off from dining with him, but promises to meet him in the Afternoon; and carries the Affidavit to the Prosecutor's Attorney; when it was settled between them, that when *Hannon* came again, *Reeves* should appear steady and zealous in the Affair, and a Warrant should be procured to apprehend him. Accordingly *Hannon* came, and a Warrant having been procured from Justice *Hartley*, instead of the two Persons, *Reeves* was to procure to forswear themselves, two Constables appeared; and *Reeves* said to *Hannon*, These are my two Friends. *Hannon* embraced them very civilly. When a third Constable entered, *Reeves* seized *Hannon*'s Sword, and asked the other Constables, if they charged him with *Hannon?* They replying, Yes, he was seized, and carried directly before Justice *Lade* in *Southwark*; where, upon his Examination, he denied the Fact, and prevaricated greatly; was kept in Custody that Night, and next Morning committed to the *Marshalsea* for want of Bail.

The Words of the pretended Affidavit were as followeth:

"*George Smith* and *Samuel Shipman*, both of the Parish of *St. Buttolphs*, "House-keepers, and *Daniel Reeves*, of the Parish of *St. George's*, *South-*"*wark*, maketh Oath, That on or about the 29th Day of *January* last, "these Deponents saw Mr. *Cox*, and Mr. *Hill*, the Constables, with se-"veral other Persons in Company with Mr. *Sayer*, the deceased, to go "from Mr. *Sherlock*'s House in the *Mint*, a Brandy-Shop, to one Mr. "*Twyford*'s House, wherein they entered; and on their being asked, What "their Business was? Refused to tell; and these Deponents heard the de-"ceased Mr. *Sayer*, as he went into the said *Twyford*'s House, threaten, "or say, that he would be revenged on that Villain *Noble*, and on his "Wife, and that he would kill them, or be killed; and these Deponents saw "the Deceased go up Stairs, and come down again, leaving both the Con-"stables above Stairs; and on his coming to the Parlour-Door, where "Mr. *Noble* was, drew his Sword partly out, and said, Damn you, you "Villain, now I ave found you out; and instantly pulled at the Door, "and broke off the Bolt that was within side the Door, and thereupon the "deceased after his Sword was almost wholly drawn out, stept backwards, "and, in about a Minute, went to go down the two Steps into the Par-"lour, and seemed to be pushed down; and then some said, he was in a "Fit, fetch him some Water; but these Deponents say, that they stood "very near the Deceased, yet could not see, nor could they believe, that "any other Person, considering the Situation of the Place, and the little "Door being but part open, could see who gave the said Wound: And "these Deponents farther say, they know Mr. *Derham* to be a poor, ne-"cessitous Taylor in the *Mint*, of a most infamous Character, and are "certain he was not in the House till after the Deceased was wounded; "and the Sword which *James Terry*, the Deceased's Footman, and others "there, said gave the said Wound, was taken up in the Kitchen; and "further say, That before the Deceased broke open the said Door, they "saw the said *Terry*, with a Cane in one Hand, and a Brass-hilted Sword, "undrawn, in the other Hand.

"And *lastly*, These Deponents heard the said *James Terry* abuse the "said Mrs. *Sayer*, giving her very bad Words; he also told her, That "rather than fail, he would offer his Service to the Sheriff to hang her, "and that he would soon see the End of her; and she answered, *Sirrah!* "It is hard to be abused by the Master and the Man too; and these De-"ponents being in the Room when the Deceased fell down, heard Mrs. "*Sayer* say no other Words; but believe they should, if she had said any."

Jeremiah Barnard deposed, That he was summoned to *Kingston* Assizes, on the Jury on Life and Death; and that one *Luke Jones*, a Waterman, carrying Mr. *Stagg*, an Attorney, by Water, on *Friday* the 6th of *March*, and telling him, *Jerry Barnard* was summoned on the Jury; Mr. *Stagg* ordered him to tell *Barnard*, if he was not got off the Jury, *Stagg* could help him to 20*l*. *Jones* asked *Stagg* on what Account? *Stagg* answered, If he would bring in the Gentleman who killed the Man in the *Mint*, Not Guilty; all which *Jones* told this Witness by *Stagg*'s Order; *Stagg* farther said,

* This Mr. *Noble* was the Son of Mr. *Noble*, who kept a well-frequented Coffee-House at *Bath*, and had an Estate of about 60*l*. *per Ann.* gave his Son a liberal Education, and put him Clerk to an Attorney at the *Devizes*, in *Wilts*; when *Noble* was out of his Clerkship, he took Chambers in *New-Inn*, *London*, and there practised as an Attorney; he was introduced by a Gentleman of Honour, to transact Mr. and Mrs. *Sayer*'s Affairs, (for they had various Disputes) the Gentleman little thinking he would have made so ill an Use of his Recommendation: But Mr. *Noble* was a gay, amorous, young Fellow, about twenty-eight Years of Age, and what any Woman would have liked, and he soon found out Mrs. *Sayer*'s Disposition, went off with her, and lived with her in various Lodgings in a scandalous Way.

† This *John Sayer*, Esq. was Lord of the Manor of *Biddlesden*, in *Bucks*, a Gentleman of about 1000*l*. *per Ann.* Married in 1699 *Mary*, Daughter and Co-heir to Admiral *Nevil*, (whose Relict married Col. *Salisbury*) and had 3000*l*. to her Fortune. Mr. *Sayer*, on the Receipt of 1000*l*. was to settle 50*l*. *per Ann.* Pin-Money, and for every 1000*l*. was to settle 100*l*. *per Ann.* in Trustees. She was a very agreeable, sensible Woman, had some Wit, but too much Spirit; they had not been married long, before she quarrelled with him, and parted Beds; then by Intercession of Friends came together, and parted again. In short, she carried on a Criminal Conversation with two or three others, before she came acquainted with Mr. *Noble*.—Though Mrs. *Sayer* will appear so vicious and wicked in the ensuing Trial, yet some few Years after the Murder of her Husband, and the Execution of her Gallant, she married again an eminent Physician in *London*.

‡ This Trial is printed from what was published at that Time, (1713) and though not so perfect as it would have been, if it had been taken in Short-hand, yet it will receive considerable Additions from *the Case of Mr.* Noble, *By a Barrister at Law*, and *Mr.* Noble's *Speeches*; printed afterwards.

they having a £ 1000 and upwards, and would ſpend it all on the Jury to ſave his Life; for it lay in the Breaſt of the Jury only; becauſe they had been with the Queen to get a Pardon, and they could not get one. This Evidence was objected to by *Noble*, as being only hear-ſay Evidence.

Luke Jones being ſworn, proved Mr. *Stagg*'s talking to him, as above, and his telling *Barnard* what *Stagg* offered him, &c. Upon this the Tipſtaff was ſent for Mr. *Stagg*, but he was not to be found, ſo a Summons was ordered to be taken out againſt him, to attend the Lord Chief-Juſtice, at his Chambers in *London*.

Theſe bad Practices being diſcovered, the Court ordered the Jury, ſummoned on this Trial, to be all ſet aſide; and a Jury ſent for from the *Niſi prius* Bar; when each Perſon called over was ſworn, and aſked, Whether they had been wrote to, or in any manner applied to, on behalf of the Priſoners at the Bar, or either of them? When they all declared in the Negative; and on calling over the Jury, the Priſoners challenged peremptorily to the Number of Seventy-five, *viz.* Mr. *Noble*, 20; Mrs. *Saliſbury*, 20; and Mrs. *Sayer*, 35. Mr. *Noble*, and the other Priſoners, declared they knew nothing of *Hannon*, and that he was not employed by them; and that they deteſted ſuch vile Practices, and hoped it would make no Impreſſion on the Court to their Prejudice.

The Jury being ſworn, were

James Comber, Eſq.	*Jonathan Wiltſhire*,	*Philip Becham*,
Edward Chalkhill,	*Edward Exall*,	*John Hind*,
Henry Wakeford,	*Thomas Fox*,	*Robert Wood*,
Edward Parkhurſt,	*John Bandford*,	*John Potterton.*

Mr. *Noble* moved the Court, that he might be tried ſeparately and a-part from the Ladies, for that his Crime, and theirs, were diſtinct Things; but the ſame was over-ruled. Then their Indictments were read, *Richard Noble*, Gent. *Mary Saliſbury*, and *Mary Sayer*, Widow, were indicted; He, for the Murder of *John Sayer*, Eſq. on the Twenty-ninth Day of *January*, *Anno* 12, *Annæ*; *Mary Saliſbury* as preſent, aiding, aſſiſting, and abetting the ſame; and *Mary Sayer*, Widow of the Deceaſed, for Petty Treaſon, as being preſent, aiding, aſſiſting, and abetting the Murder of her ſaid Huſband; and the ſaid *Richard Noble* was alſo indicted on the Coroner's Inqueſt for the ſaid Murder of *John Sayer*, Eſq. and alſo on the Statute of Stabbing; and being ſeverally arraign'd, pleaded Not Guilty, and the Jury charged with them all jointly.——Then the Witneſſes were called.

John Farrington ſwore, That he was an Officer to the Sheriff of *Middleſex*, and had a Warrant delivered to him at the Suit of the Deceaſed, againſt the Priſoner at the Bar; that he arreſted Mr. *Noble*, at his Chambers in *New-Inn*, and when he was arreſted, *Noble* declared, and ſaid, God damn him, if he had Mr. *Sayer* the Plaintiff there, he would ſtick his Sword through his Body; and he would do ſo, whenever he ſaw him again. When he arreſted the Priſoner, he was ill, and the Deceaſed (the Plaintiff) ordered him not to take him out of his Chambers, but to treat him civilly; that whilſt he had him under Arreſt, *Noble* ſaid, He would ſend *Sayer* out of the World the firſt Opportunity; and the Witneſs could not help ſaying, You have had much of his Goods, and lain with his Wife, and why would you do ſo? And *Noble* anſwered, Damn him, he would.

Mr. *Noble* objected to *Farrington*'s Evidence, for that he ſwore againſt him out of Malice; becauſe when he had him under Arreſt, he extorted Ten Guineas from him, under pretence of Civility-Money, for which the next Term after, he moved the Court of King's-Bench againſt him, who made him refund the Money.

The Court ſaid, It muſt be left to the Jury, what Credit they would give to his Evidence.

Juſtice *Peters* ſwore, that in 1709, a Duel was ſtirred up by the Contrivance of Mrs. *Saliſbury* and Mrs. *Sayer*, between their two Huſbands, the Deceaſed and Colonel *Saliſbury*, and the Challenge wrote by Mrs. *Sayer* (though ſent by Mr. *Sayer*). But when they met, the Colonel told his Son-in-Law (*Sayer*), as they were going in a Coach behind *Montague Houſe* to fight, *Jack Sayer, I ſhould get no Honour by killing of you; but thou ſhouldſt know, what all the World knows; Thy Wife and my Wife are two damn'd Whores, and they want to get rid of us both.* The Colonel, being a good Swordſman, might kill *Sayer*, and afterwards be hanged for it: This Colonel *Saliſbury* told me ſoon after. Mr. *Noble* objected to this Evidence, as being only Hear-ſay, and therefore could not affect either of them.

Joanna Manly (Servant to Mr. *Sayer*), That in *Auguſt* 1709, after Mr. *Noble*'s Acquaintance with Mrs. *Sayer*, the Deceaſed went to *Holland*, and returned about *Lady-day*, during which time, Mrs. *Sayer* was big with Child, and her Mother, and her Siſter Mrs. *Nevil*, were privy to it; and during Mr. *Sayer*'s Abſence; that Mrs. *Sayer* carried off her Maſter's Effects and Money, to a great Value, and that this Witneſs, ſeveral times ſaw the two Priſoners, Mr. *Noble* and Mrs. *Sayer*, in Bed together; and after her Maſter's Return, her Miſtreſs, Mrs. *Sayer*, deſired her to give her Maſter ſome Poiſon, and ſaid, that if this Witneſs would not get it, ſhe would get it herſelf.

Penelope Howell, another Servant, ſwore, That ſhe was ſent, by the Priſoners, for Two-penny worth of *Laudanum*, to make the Deceaſed ſleep, and bringing word, that the Apothecary ſaid, that Quantity was enough to make any-body ſleep their laſt Sleep, the Priſoners bid her hold her Tongue, a Slut, and give it as directed.

Anne Sceffin, the Midwife, ſwore, That on the 5th of *March* 1711-12, Mrs. *Sayer* was delivered of a Male Child by Dr. *Douglaſs*; that ſhe paſſed for a Widow, and that *Noble* and ſhe were Brother and Siſter: This Child was nurſed at *Hoxton*, died and was buried there. Mrs. *Sayer* was delivered in a Court in *Brooke-ſtreet*, *Holborn*; that there was great Familiarity between Mr. *Noble* and Mrs. *Sayer*, and that the Child was like Mr. *Noble*, and ſhe believed him to be the Father of it.

Mr. *Martin* ſwore, That he knew the Priſoners Mr. *Noble* and Mrs. *Sayer*; Mr. *Noble* deſired him to take a convenient Lodging for her to lie in at; which he did, and ſhe was delivered of a Male Child, about the 5th of *March* 1711-12, by Dr. *Douglaſs*, in the Preſence of Mrs. *Sceffin* the Midwife, at a Houſe in a Court in *Brooke-ſtreet Holborn*.

Francis Cox, That he is one of the Conſtables of the Pariſh of *St. George* the Martyr, in the *Borough* of *Southwark*; that on the 29th of *January* laſt, the Deceaſed, *John Sayer*, Eſq. with two other Gentlemen, came to his Houſe with a Warrant from Sir *Charles Cox*, for taking into Cuſtody he Body of *Mary Sayer* his Wife, who, Mr. *Sayer* ſaid, was gone from him without his Conſent, and lived in a looſe, ſcandalous Manner. That as he went to execute the Warrant, he called on *Thomas Hill*, another Conſtable, to aſſiſt him, after which they both went into the *Mint*; and this Witneſs being informed by Mr. *Sayer*, that he believed his Wife was at *Twyford*'s Houſe, in *George-ſtreet*, in the *Mint*; this Witneſs, having found out *Twyford*'s Houſe, he knocked at the Door, and *Twyford* refuſed opening the Door at firſt, till he ſaid, he was a Conſtable, and had a Warrant to ſearch for a ſuſpected Perſon in his Houſe, and that he would not hurt a Hair of his Head; then *Twyford* opened the Door to the Conſtables, and they beckoned to their Aſſiſtants, and all went in, Mr. *Sayer* running in after the two Conſtables; when Mr. *Sayer* went up Stairs, and there the Deceaſed ſaid, he ſaw ſome of his Wife's Cloaths, and that he believed ſhe was in the Houſe; and whilſt this Witneſs went into another little Room, Mr. *Sayer*, and the other Conſtable and Aſſiſtants went down Stairs; and before this Witneſs got down, he heard a great Noiſe and Screaming out, in a Room below, whereupon he made great Haſte down, when the other Conſtable and others, cried out to him, Mr. *Sayer* is dead, and the Gentleman that killed him was breaking out backwards to make his Eſcape; whereupon this Witneſs went round the Houſe into the Garden to ſecure him, where he found a naked Sword in the Hand of Mr. *Sayer's* Footman, eight or nine Inches bloody, and Mr. *Noble*, Mrs. *Sayer*, and Mrs. *Saliſbury*, being in the Room together, he apprehended them all, and carried them before *Ralph Hartley*, Eſq. Juſtice of the Peace, who committed them to the *Marſhalſea*.

Thomas Hill, the other Conſtable, ſwore much to the ſame Purpoſe; That he went with *Cox* the other Conſtable, with a Warrant to *Twyford*'s Houſe; that Mr. *Sayer* went up Stairs firſt, and then came down, and he followed him; and at the Foot of the Stairs, there being a Door leading into the Back-Room, Mr. *Sayer* laid hold of the Door, and pulled it open, and immediately the Deceaſed fell a little back, and laid his Hand on his own Sword, but did not draw it above a Foot, for want of Strength. This Witneſs then puſhing into the Room before Mr. *Sayer*, Mrs. *Saliſbury* faſtened on his Collar, and endeavoured with all her Might, to keep him out of the Room; and as ſoon as he got in, Mr. *Sayer* endeavoured to follow him immediately, but could not, fell down, and never ſpoke more. There was only Mr. *Noble*, Mrs. *Sayer*, and Mrs. *Saliſbury* in the Room; and *Noble* was breaking open the Glaſs-Door to make his Eſcape: The Deceaſed being on the Ground, this Witneſs at firſt thought him in a Fit only, and Mrs. *Sayer* ſaid, It was only a Sham, and he was not hurt; but he preſently ſaw the Wound on Mr. *Sayer*'s Left-ſide, whereof he immediately died, and believes *Noble* gave the Wound with his own Sword, which was bloody, and no other Sword drawn at that Time; that Mrs. *Sayer* deſired him to be civil to Mr. *Noble*, whom he had then apprehended; but ſhe took no Care of her Huſband.

James Terry (Servant to the Deceaſed about eight Years) ſwore, That ſtaying below in the Kitchen, he ſaw Mr. *Sayer* come down firſt, and laid his Hands on the Top of the Door at the Stairs-Foot, going into the Parlour, and endeavoured to pull it open; but as ſoon as it was a little Way open, he ſaw a naked Sword come through againſt his Maſter's Body, and he ran to his Maſter, and his Maſter fell back into this Witneſs's Arms, and clapping his Hand on this Left-ſide, ſaid, I am dead, or killed, or ſuch like Words. The Sword was left in his Maſter's Body, and fell out on the Ground, and verily believes his Maſter received a Wound on the Left-ſide of his Body from Mr. *Noble*, at the Time his Maſter opened the Door a little Way, of which he inſtantly died. This Witneſs took up the Sword, which had a mourning Hilt; and ſeeing *Twyford* go round the Houſe into the Garden, followed him, when he heard the Glaſs Windows break, and ſaw the back Door open, Mrs. *Sayer* in the Garden, Mrs. *Saliſbury* ſtanding on the Door Step, and his Maſter lying on the Ground; he then ſaid to his Miſtreſs, Lord Madam, What have you done to my Maſter? He's dead; and you have killed him. His Miſtreſs ſaid, O you Rogue, I'll be reveng'd on you too. Afterwards, he ſaw the Wound on his Maſter's Left Pap, which he ſaw probed, and was four or five Inches deep. This Witneſs farther depoſed, That his Maſter had no Sword drawn, at the Time he received the Wound, nor afterwards; and that no Words paſſed between him and the Party who gave the Wound.

Thomas Gardner, the Conſtable's Aſſiſtant, ſwore, That there being a Door at the Foot of the Stairs in *Twyford*'s Houſe, he ſaw Mr. *Sayer* lay his Hand on the Door, and endeavour to pull it open; and as the Door was a little open, he ſaw Mr. *Noble* in grey Cloaths within the Room, and with a naked Sword in his Hand thruſt at the Deceaſed, through the Part of the Door that was open, and gave him a Wound on the Left-ſide of his Body; and that Mr. *Sayer* had no Sword drawn, neither did any Words paſs between the Deceaſed and Mr. *Noble*, that gave the Wound; but the Deceaſed afterwards endeavoured to draw his own Sword, then by his Side in the Scabbard, but could not pull it above half Way out, for want of Strength, and immediately fell down; and as he was falling, the Witneſs heard Mrs. *Sayer* ſay, that the Deceaſed had a great many ſham Fits, and that this was one of them, or ſuch like Words; and when the Conſtables were taking the Priſoners away, Mrs. *Sayer* aſked *Noble*, My Dear, have you got my Watch? He anſwered, My Dear, I have it in my Pocket.

Thomas Derham depoſed much to the ſame Purpoſe; and ſeveral other Witneſſes ſwore to the ſame Effect, particularly Captain *Alkern*, and Mr. *Anthony Sherlock*; who likewiſe ſwore, that *Twyford* ſhould tell them, that he told the Priſoner, the Conſtables were come either for him (*Noble*) or himſelf; and that he told *Noble*, he might go away if he pleaſed.

The Coroner appeared, and produced the bloody Sword, which was ſtained with Blood about five Inches, and appeared to be Mr. *Noble*'s Sword, with which he killed the Deceaſed. A Surgeon alſo ſwore, that the Wound was the Occaſion of his Death, and gave a Deſcription of it to the Jury; and the Coroner's Inqueſt found it Wilful Murder againſt all three.

The Evidence for the Crown being all examined, the Priſoners were called upon to make their Defence.

Mrs. *Sayer* ſaid, She was parted from her Huſband, on account of his Ill-uſage of her; that he gave her the foul Diſeaſe, and that they parted by mutual Conſent, and ſhe had a ſeparate Allowance, and Articles of Separation were drawn and ſigned by each of them; that ſhe knew nothing of any Conſtables coming to *Twyford*'s Houſe, or that there was any Warrant againſt her; that Mr. *Noble* being there was merely accidental, and that he came to her about her own private Buſineſs, being her Attorney; and that the Wound giving the Deceaſed, was done in an Inſtant, and ſhe knew

knew nothing of it, till Mr. *Sayer* fell down; that ſeveral of the People had ſworn againſt her out of Malice and Spite; but utterly denied her telling the Maid to get Poiſon to give to her Huſband; and ſo far from aiding or abetting Mr. *Noble*, if ſhe had ſeen his Sword drawn, or known his Intentions, ſhe would have done her utmoſt to have prevented his killing Mr. *Sayer*.

Mrs. *Saliſbury* ſaid, She attended her Daughter, in the *Mint*, which ſhe thought a private Place, from the Reſentment of Mr. *Sayer*, who threatened her Daughter's Life; That ſhe had no Malice or Ill-will againſt Mr. *Sayer*, and wiſhed they would have lived happily together; but he uſed her exceſſive ill, and gave her the foul Diſeaſe, which obliged her Daughter to go from him; that ſhe knew nothing of any Conſtables being in the Houſe, or any Warrant out againſt her Daughter; that Mr. *Noble* came there that Day to dine with them, and to endeavour a Reconciliation between Mr. *Sayer* and his Wife; that ſhe knew nothing of the Wound being given, ſhe being at the Window; that it was done in an Inſtant, and ſhe did not know it, till ſhe heard Mr. *Sayer* fall.

Mr. *Noble* declared, He had no Ill-will or Malice againſt the Deceaſed; that Mr. *Sayer* had uſed his Wife barbarouſly, had beat her, and gave her the foul Diſeaſe; and aggravated the Deceaſed's Carriage towards his Wife. He ſet forth the Deed of Separation, and the Marriage Articles, arguing, That upon that Deed, he did not queſtion Mrs. *Sayer* would be thought a Perſon ſole and apart from her Huſband at the time of his Death; that Mr. *Sayer* could not, with any Juſtice, pretend his Wife had robbed him, or run away with his Jewels, &c. ſhe having a Right to them, they being reſerved to her by the Marriage Articles, and that the Deceaſed could have no Pretence to retake either them, or his Wife; as to her, ſhe was forced to go from him, on account of his Ill-uſage of her, and was lawfully ſeparated from him; he juſtified his being in Mrs. *Sayer*'s Company, as being her Attorney, and Truſtee; that he was with her at the Time of the fatal Accident in private, about Buſineſs with her and Mrs. *Saliſbury*; that he then heard an extraordinary Noiſe in the Houſe, and there ſeemed a Confuſion, and Crowd of People aſſembled together in the Houſe, but he could not tell for what; he owned, he knew Mr. *Sayer* was in the Houſe, for he heard his Voice before the Door was broke open; the Deceaſed breaking open the Door by pulling off the Bolt, and one Hinge, ſurprized him, and the Priſoners; that they all retired to the Back-Door thinking to eſcape, but were not able to get it open; and hearing ſuch a Clamour and Noiſe without, he was flung into a Terror and Confuſion, ariſing from ſuch a deſperate Place as the Mint; that he then drew his Sword, and ſtabbed the Deceaſed as he was entering the Door of the Room; where he, Mrs. *Sayer*, and Mrs. *Saliſbury* were; that he did not doubt juſtifying what he had done, notwithſtanding the aggravating Circumſtances alledged by the Counſel, for that the Deceaſed came with an illegal and ill-grounded Warrant, and that *Twyford* the Landlord never told him Conſtables were at the Door; that he knew the Deceaſed ſought his Life, he having before drawn his ſword on him, and once brought a Piſtol to his Chambers, on purpoſe to ſhoot him. He ſet forth, That he was recommended to do Mrs. *Sayer*'s Buſineſs by a Gentleman of Honour, and that he had often endeavoured and ſollicited an Accommodation between Mr. *Sayer* and his Wife; that the Articles of Separation were drawn and executed before he was employed as Mrs. *Sayer*'s Attorney; and that Mrs. *Saliſbury* had engaged him to come over that very Day, to ſollicit a Reconciliation; and that he never declared, he would ſtick Mr. *Sayer* whenever he ſaw him; and that *Farrington*, the Officer, ſwore out of Malice againſt him.

The Priſoners then called ſome Witneſſes, proving the Marriage Articles, and Deed of Separation.

Then Mr. *Noble* called a Witneſs, who depoſed, That the Deceaſed, ſome time ago, broke open the Door upon the Priſoner, Mrs. *Sayer*, to kill her with his Penknife; that this Witneſs was well acquainted with Mrs. *Sayer*, during *Noble*'s Converſation and Acquaintance with her, and never knew her to be with Child, or that ſhe was bigger than uſual; that the Priſoner, Mrs. *Sayer*, before her Acquaintance with Mr. *Noble*, was endeavouring for a Divorce, in *Doctors-Commons*; and that the Deceaſed ſeveral times beat his Wife, and ſome time ſince went to Mr. *Noble*'s Chambers, with a Piſtol in his Hand, to kill him; and that this Witneſs met the Deceaſed upon the Stairs, going up to Mr. *Noble*'s Chambers, which Paſſage he had told to ſeveral others; and he proved *Noble*'s wreſting the Deceaſed's naked Sword from him, when he offered to ſtab him, or run him through the Back; and that the Deceaſed was cured of the foul Diſeaſe.

Eliz. Saunders, Servant at the *Red-Lyon*, in *George Street*, in the *Mint*, ſwore, ſhe was in the Backſide of her Maſter's Houſe a-waſhing, when the two Conſtables came to *Twyford*'s Houſe; that they knocked at the Door, and refuſed to tell their Buſineſs, or whom or what they wanted; that ſhe went in with the Conſtables, and Mr. *Sayer*, to Mr. *Twyford*'s Houſe, and nobody elſe with them; that the Deceaſed came into the Houſe, with his Sword drawn about three Inches out, went up Stairs with the Conſtable, and came down again by himſelf, had his Sword then drawn, ſwore he would make an end of the Priſoner, Mr. *Noble*, broke open the Door and went into the Room, and fell down dead; all which ſhe ſaw, ſhe being in the Kitchen; but did not know how he died.

Two Men ſwore, That Mr. *Sayer* ran into the Houſe, with his Sword drawn about four Inches, ſwearing he would kill the Priſoner, *Noble*; and in other Points, agreeing with thoſe Particulars mentioned in the Affidavit which Mr. *James Hannon* endeavoured to ſuborn *Reeves* to ſwear to.

Others were called to invalidate the Evidence given by *Farrington*, of the Priſoner *Noble*'s ſwearing to ſtick the Deceaſed whenever he met him.

Others ſwore, they were frequently in Company with the Priſoner *Noble*, and Mrs. *Sayer*, and never knew any diſorderly, or unbecoming Behaviour between them, but thought the Priſoner *Noble* attended her only as her Attorney.

Several were called to the Character of Mr. *Noble*, and gave him a very good one, and that they never heard any Ill of him.

Others were called to the Characters of Mrs. *Saliſbury*, and Mrs. *Sayer*, who ſaid, they never knew any Ill of them, particularly a Lady, a Neighbour to Mrs. *Sayer*, in *Liſle-ſtreet*, who ſaid, ſhe thought her a decent, well-behaved Woman.

The Evidence on both Sides being gone thro', Mr. *Noble*, the Priſoner at the Bar, deſired he might have Counſel as to a Point of Law; Whether the Warrant to apprehend Mrs. *Sayer* was not illegal; and whether by that Warrant, they could enter and break open the Door upon the Priſoners in another's Houſe; and whether what he did was not in his own Defence? Counſel being granted him, they inſiſted, "That this War-
"rant was illegal, though from a Juſtice of the Peace; that it was ill-
"grounded, and made without legal Authority; that without any legal
"Authority, a Multitude came into the Houſe; that the Priſoners had
"no Notice they were Conſtables, or had any legal Warrant to apprehend
"Mrs. *Sayer*; that the Deceaſed broke open the Door upon the Priſoners,
"which was an Aſſault upon them; and the Priſoner, *Noble*, hearing ſuch
"a Tumult and Noiſe, and Numbers breaking in upon him, he drew his
"Sword in his own Defence, and unfortunately ſtabbed the Deceaſed."

Therefore hoped his Lordſhip would direct the Jury to find *a Special Verdict*.

There were ſome Debates between the Counſel, whether the Priſoners knew the Conſtables were at *Twyford*'s Houſe? Upon which the Queen's Counſel called up again other Witneſſes, ſome of which were examined before; one proved that *Twyford*, the Man of the Houſe where the Priſoners were, told him ſome Days after the Murder, That immediately upon the coming in of the Conſtables, he ran through his Garden round the Houſe to the Back-Door, and told Mr. *Noble*, *the Conſtables were come, and wanted either him, or himſelf; that he opened the Back-Door to the Priſoner*, Noble, *and ſaid to him, Sir, you may go your way if you pleaſe.*

Upon this, *Twyford*'s Examination taken before *John Lade* Eſq. a Juſtice of the Peace, was read; "That he told Mr. *Noble* the Conſtables were at
"the Door, and wanted either him (Mr. *Noble*) or himſelf; and that he
"opened the back Door to him, and ſaid, (loud enough for him to hear)
"Sir, you may go out, or go your way, if you pleaſe, or Words to that
"Effect."

Others ſwore, they heard *Twyford* ſay the ſame thing, when he was before the Juſtice.

John Janeway, of *Suffolk-Place* in the *Mint*, *Thomas Auſten*, *Francis Cox*, and *John Wadſworth*, all of *St. George*'s Pariſh, all ſwore, they heard *Twyford* ſay the ſame, before the Coroner.

The Evidence being finiſhed, the Court ſaid, that the Warrant being *ill-grounded* was not material, illegal it could not be, for it was granted by a Juſtice of the Peace, on the Oath of a Perſon, that Mr. *Sayer* had been robbed of Goods, &c. to a conſiderable Value, and Mr. *Sayer* could juſtify ſearching for and taking his Goods, and apprehending his Wife, wherever he could find them; that it is plain by the Evidence, that the Landlord, *Twyford*, told the Priſoner, *Noble*, the Conſtables * were come either for him *(Noble)* or himſelf, and told

* As to the *Legality of the Warrant*, or whether *proper Notice was given by the Conſtables*, ſeems determined in *Curtis*'s Caſe, taken from Mr. Juſtice *Foſter*'s Reports, Page 135, which is cited at large, as being applicable (in part) to this Caſe of *Noble*'s.

The Caſe of Richard Curtis.

'HE was indicted at the Summer Aſſizes 1756, for the Town and County of *Newcaſtle* upon *Tyne*, for the Murder of *William Atkinſon*.

'Upon the Trial the Caſe appeared to be, that a Proceſs in the Nature of a *Capias ad Satisfaciendum* iſſued againſt one *Charles Cowling* out of the Town Court, 'directed to *Joſeph Dixon*, a Serjeant at Mace belonging to the Court; who got *John Suretees*, another Serjeant at Mace, to go and execute it for him. *Suretees* accordingly 'went to *Cowling*'s Work-ſhop adjoining to his Houſe, and taking hold of him told him that he had an Execution againſt him. *Cowling* demanded a ſight of the Proceſs; 'which being refuſed, *Cowling*, with the aſſiſtance of the Priſoner, by force and violence reſcued himſelf.

'*Suretees* immediately acquainted *Dixon* with what had happened; and thereupon *Dixon* prevailed upon the Mayor's Officer to *inſert the Name of Suretees* in the Proceſs: 'and *Suretees* then went before a Juſtice of the Peace for the Town and County, and made Information on Oath, that he did by virtue of the ſaid Proceſs to him and *Joſeph* 'Dixon directed, apprehend the ſaid *Cowling*, who by Wreſtling and Strokes got out of his Hands and made his Eſcape.

'The Juſtice thereupon granted a Warrant, directed to all Serjeants at Mace, Conſtables, and other Officers within the ſaid Town and County, reciting the Proceſs 'already mentioned; that *Suretees* had that Day arreſted *Cowling* by virtue thereof, and that *Cowling* had by Wreſtling and Strokes reſcued himſelf, and commanding all 'Officers, &c. to apprehend the ſaid *Cowling*, and to bring him before the Juſtice who granted the Warrant, or any other Juſtice of the Peace of the Town and County, 'to be dealt with in the Primiſes as the Law directeth.

'Upon the receipt of this Warrant, *Dixon* and *Suretees* (who were both Serjeants at Mace) went back to *Cowling*'s Work-ſhop, taking with them the Deceaſed and 'one *Coulſon* as their Aſſiſtants. They found the Shop Doors ſhut; and calling to *Cowling*, who was there with the Priſoner, informed him that they had an Eſcape War-'rant againſt him, and required him to ſurrender; otherwiſe they ſaid they would break open the Door.

'*Cowling* refuſed to ſurrender; and the Priſoner looking out at the Window with an Ax in his Hand, ſwore that the firſt Man that entered ſhould be a dead Man. *Dixon*, 'however, with *Coulſon* and the Deceaſed, broke open the Shop Door; and the Deceaſed, being foremoſt in entering the Shop, the Priſoner at one Blow with the Ax, on the 'left ſide of the Head, killed him on the Spot.

'Upon this Evidence the Priſoner was found Guilty of Wilful Murder. But ſome Gentlemen of the Profeſſion, expreſſing their Doubts to the Judge who tried him, he 'reſpited Execution 'till the Opinion of the other Judges could be had on the Caſe.

'In *Trinity* Term 1757, Eleven of the Judges had a Conference on the Caſe, and Nine of them, with whom Juſtice *Wilmot*, who was abſent, concurred, were clearly of 'Opinion that the Defendant is Guilty of Murder. Two of the Judges held it to be Manſlaughter. All the Judges preſent at the Conference agreed that the Juſtice's War-'rant, though obtained by very unwarrantable Practice on the part of *Dixon*, and by Perjury on the part of *Suretees*, was a legal Warrant for the Arreſting *Cowling* for a 'Breach of the Peace. For in Caſes wherein the Juſtice of the Peace hath Juriſdiction, and in this he undoubtedly had, the Legality of his Warrant will never depend on 'the Truth of the Information whereon it is grounded.

'They likewiſe agreed, that Peace-Officers, having a legal Warrant to arreſt for a Breach of the Peace, may break open Doors after having demanded Admittance, and 'given due Notice of their Warrant.

'The Point on which they divided was, Whether in this Caſe ſuch due Notice had been given?

'The Nine Judges were of Opinion, that no preciſe Form of Words is required in a Caſe of this kind. It is ſufficient that the Party hath Notice that the Officer cometh 'not as a mere Treſpaſſor, but claiming to act under a proper Authority. And if after this notice, he be reſiſted, and he or any of his Aſſiſtants killed in conſequence 'of ſuch Reſiſtance, it will be Murder; provided it cometh out in Evidence *that the Officer had a Legal Warrant.*

'The

told him he might go away if he pleaſed; therefore he might pretty well tell what they came about, conſidering how ſcandalouſly he had lived for ſome Time paſt with the Deceaſed's Wife.—If he had been there innocently, or with a good Intention, as he pretends, why did not he voluntarily ſurrender himſelf to the Conſtables; but the many Declarations the Priſoner had made againſt the Deceaſed, ſeemed to carry Rancour and Malice againſt him; that it was certain the Priſoner, *Noble*, knew *Sayer* was in the Houſe, for he has owned he heard his Voice before the Door was broke open; therefore it ſeemed a determined Thing in him to deſtroy Mr. *Sayer*, who was killed, and if you believe the Evidence, by the Priſoner, *Noble*'s own Hand.

The Chief-Juſtice ſummed up the Evidence with great Clearneſs and Impartiality, and ſeemed to direct the Jury to find *Noble* Guilty; and there being not ſufficient Evidence to convict the other Priſoners, for the Shortneſs of Time would not allow of any conſulting or confederating together to deſtroy the Deceaſed, directed them to be acquitted. The Judge behaved with great Patience and Temper during this whole Trial, which laſted from ſix o'Clock in the Morning, until one next Morning; when the Jury were admitted to have ſome Refreſhment at the Bar, while the Court was ſitting; then an Officer was ſworn to keep the Jury, who went out between One and Two on *Saturday* Morning, but did not agree on their Verdict till the ſame Morning about Ten o'Clock; which was, that *Richard Noble* was Guilty on all three Indictments; *Mary Sayer*, and *Mary Saliſbury*, Not Guilty.

On the Acquittal of the two Ladies, they behaved ſo overjoyed, as to be taken Notice of by the Court, who reprimanded them for their indecent Behaviour.

Counſel then moved that Mrs. *Saliſbury* and Mrs. *Sayer* might not be diſcharged, without giving ſufficient Bail to appear at any Time within Twelve Months, to anſwer to any other Indictment, or an Appeal. The Court ordered they ſhould give ſufficient Bail for their Appearance, themſelves in £1000 a-piece, and their Sureties in £500 each, who were Mr. *Stephen Hodges*, Mr. *Joſeph Stocker*, Mr. *Thomas Arne*, and Mr. *John Hodges*. Upon their being diſcharged, the two Ladies returned to *London* in a Coach, taking with them the Turnkey, to prevent any Inſult from the Mob, which was pretty numerous. Whilſt in the Coach, the Ladies ſeemed overjoyed at their Deliverance, and told the Turnkey, *That the Affair turned out juſt as they would have had it.*

Monday, *March* 16th, the Priſoner *Noble* was brought to the Bar, and aſked what he had to ſay why Judgment ſhould not be given, and Execution awarded? On which he moved in Arreſt of Judgment,

'My Lord, I humbly move in Arreſt of Judgment, for that I apprehend I have had a Miſ-trial, and that my Trial has been contrary to the Law of *England*, in that we were ſevered in our Challenges, and yet were tried together by the ſame Jury;' and ſaid, that in *Charnock*, *King*, and *Keys*'s Trial, [Vide *State Trials*, Vol. IV.] Lord Chief-Juſtice *Holt* ſaid, 'You may challenge Thirty-five peremptorily, without Cauſe; but if you do not all agree in the ſame Challenge, ye cannot be tried together by the ſame Jury, but the Court muſt ſeparate you, and try you every one ſingly.' And quoted other Parts of the Trial, and deſired that his Counſel might ſpeak to it.

But the Court over-ruled the Motion, alledging, that the Lord Chief-Juſtice *Holt*'s Reaſon, in the Caſe of *Charnock*, *King*, and *Keys*, was, that in caſe each of them ſeverally challenged Thirty five, three Times thirty-five would amount to One Hundred and Five, and then they muſt be obliged to ſever them, (as the Court were near obliged to have done in the preſent Caſe) for default of Jurors.

Then Mr. *Noble* made the following Speech to the Court.

My Lord,

'I AM ſoon to appear, and render an Account of my Sins to God Almighty; If your Lordſhip ſhould think me guilty of thoſe Crimes I have been accuſed, and convicted by my Jury, I am ſure, then, your Lordſhip will think that I ſtand in need of ſuch a Preparation, ſuch a Humiliation for my great Offences, ſuch an Abhorrence of my paſt Life, to give me Hopes of a future one; that I am not without Hopes that it will be a Motive to your Lordſhip's Goodneſs, that after you have judged and ſentenced my Body to Execution, you will charitably aſſiſt me with a little Time for the Preſervation of my Soul.

'If I had nothing to anſwer for, but killing Mr. *Sayer* with precedent Malice, I ſhould have no Need to addreſs myſelf to your Lordſhip in this Manner. It is now too late to take Advantage by denying it to your Lordſhip, and too near my End to diſſemble it before God. I know, my Lord, the Danger, the Hell, that I ſhould plunge myſelf headlong into; I know I ſhall ſoon anſwer for the Truth I am now about to ſay, before a higher Tribunal, and a more diſcerning Judge than your Lordſhip, which is only in Heaven; that I did not take that Advantage to kill Mr. *Sayer*, by a Thought or Apprehenſion, that I could do it under Umbrage of the Law, or with Impunity; and nothing was more diſtant from my Thoughts, than to remove him out of the World to enjoy his Wife (as was ſuggeſted) without Moleſtation: Nor could any one have greater Reluctance, or Remorſe, from the Time of the Fact to the Hour of my Trial, than I have had, though the Proſecutors reported to the contrary; for which I heartily forgive them.

'My Counſel obliged me to ſay on my Trial, *That I heard Mr. Sayer's Voice before he broke open the Door*; I told them, as I now tell your Lordſhip, That I did not know it was him, 'till he was breaking in at the Door, and then, and not before, was my Sword drawn, and the Wound given, which Wound, as Dr. *Garth* informed me, was ſo very ſlight, that it was a thouſand to one he died of it.

'When I gave the Wound, I inſenſibly quitted the Sword; by which Means I left myſelf open for him to have done what was proved, and was ſo likely for him to have effected, *viz.* to have ſtabbed me, which are Circumſtances that manifeſt the Greatneſs of my Surprize.

'When I heard the Company run up Stairs, I was alarmed, and in fear; the Landlord telling me, inſtantly thereupon, *that the Houſe was beſet either for me or himſelf*, added to my Confuſion: I then never thought or intended to do miſchief; but firſt bolted the Fore-Door, and then bolted and padlocked the Back-Door, (which was half glazed) and began to faſten the Shutters belonging to it, deſigning only to ſcreen myſelf from the Violence of the Tumult. When he broke open the Door, and not till then, I perceived and knew he was preſent: And his former Threats and Attempts, which I ſo fully proved on my Trial (and could have proved much fuller, had not Madam *Saliſbury*'s Evidence been taken from me), made my Fear ſo great, and the Apprehenſion of my Danger ſo near, that what I did was the natural Motion of Self-Defence, and was too ſudden to be the Reſult of precedent Malice; and I ſolemnly declare, that I did not hear or know from *Twyford* the Landlord, or otherwiſe, *that any Conſtable was attending the Deceaſed*, till after the Misfortune happened.

'It was my Misfortune, that what I ſaid, as to hearing the Deceaſed's Voice, was turned to my Diſadvantage by the Counſel againſt me; and that I was not intitled to any Aſſiſtance of Counſel to enforce the Evidence given for me, or to remark upon the Evidence given againſt me, which, I do not doubt, would have fully ſatisfied your Lordſhip and the Jury, that what happened was more my Misfortune than my Deſign or Intention.

'If I had been able, under that Concern, to remark upon the Evidence againſt me, that Mr. *Sayer* was but the tenth Part of a Minute in breaking open the Door, it could not then be well ſuppoſed by the Jury, that I was preparing myſelf, or putting myſelf in Order to do Miſchief, which are Acts of Fore-thought and Conſideration, which require much more Time than is pretended I could have had, from the Time I diſcovered Mr. *Sayer*; for even from his Entry into the Houſe, to the Time of the Accident, did not amount, as I am informed, to more than the Space of three Minutes. But I did not diſcover him before the Door gave Way.

'I wiſh it had been my good Fortune, that the Jury had applied that to me, which your Lordſhip remarked in Favour of the Ladies, *That the Matter was ſo very ſudden, ſo very accidental, and unexpected, that it was impoſſible to be a Contrivance and Confederacy, and unlikely that they could come to a Reſolution in ſo ſhort a Time:* I do not remember your Lordſhip *diſtinguiſhed my Caſe*, as to that Particular, to be different from theirs, nor was there Room left for it; for it is impoſſible for your Lordſhip to believe, that I dreamt of Mr. *Sayer*'s coming there at that Time; but, on the contrary, I fully proved to your Lordſhip, that I went there upon another Occaſion, that was lawful and beneficial for the Deceaſed; and I had no more Time to think or contrive, than the Ladies had to agree, or conſent.

'If any Thing could be conſtrued favourably on the Behalf of ſuch an unfortunate Wretch as myſelf, I think the Deſign I had ſome Time before begun, and was about finiſhing that Day, might have taken away all Suſpicion of Malice againſt Mr. *Sayer*.

'Muſt it be thought, my Lord, that I only am ſuch a Sinner that I cannot repent, and make Reparation to the Perſons I have injured? It was not denied, but I ſtrongly ſolicited a Reconciliation between Mr. *Sayer* and his Lady; and if this had tended to procure me an eaſier Acceſs to Mrs. *Sayer*, it would have been ſuch a Matter of Aggravation againſt me, that it could not have eſcaped the Remark of the Counſel againſt me, nor the Sharpneſs of the Proſecutors preſent in Court; with both I tranſacted, and to both I appealed, particularly to Mr. *Nott*, to whom, but the Day before the Accident, I manifeſted my Deſire of having them live together again: And therefore, my Lord, it ſhould be preſumed I laboured to be reconciled, and not to revenge myſelf on Mr. *Sayer*.

'Your Lordſhip, I hope, will obſerve ſo much in my Favour, that it was ſo far from being a clear Fact in the Opinion of the Jury, that they ſate up all Night, and, believing there was no Malice at that Time, told your Lordſhip, they intended, and were inclinable to find it *Manſlaughter*; and doubting the Legality of the Warrant to find it *Special*.

'I hope this will touch your Lordſhip's Heart ſo far, as not to think me ſo ill a Man, as to deſerve what the beſt of Chriſtians are taught to pray againſt, a ſudden Death.

'I confeſs I am unprepared; the Hopes of my being able to make a legal Defence, and my Endeavours therein, having taken up my Time, which I wiſh I had better employed, I beg Leave to aſſure your Lordſhip, upon the Words of a dying Man, that as none of the indirect Practices to get or ſuppreſs Evidence were proved upon me, ſo they never ſprang from me; and I can ſafely ſay, that my Blood, in a great meaſure,

'The Perſon making ſuch Reſiſtance after ſuch Notice, doth it at his own Peril. He acteth avowedly and deliberately in Defiance of the ordinary Courſe of Juſtice. And therefore it will be no Excuſe on his Part to ſay, that he did not know or believe that the Officer came armed with a proper Authority. This Rule is founded on the Policy of the Law, and upon every Principle of Government.

'The Judges who differed thought that the Officers ought to have declared in an explicit Manner what Sort of Warrant they had.

'They ſaid that an Eſcape doth not *ex Vi termini*, nor in the Notion of Law, imply any Degree of Force or Breach of the Peace; and conſequently the Priſoner had not due Notice that they came under the Authority of a Warrant grounded on a Breach of the Peace. And for Want of this due Notice the Officers are not to be conſidered as acting in Diſcharge of their Duty, but as mere Treſpaſſors.

'On this Queſtion alone the Caſe turned.

'But a few of the Judges who conceived the Fact to be Murder, were of Opinion that it would have been ſo, even admitting that the Officers could not have juſtified the breaking open the Door. Here was no Arreſt actually made; the Officers, even admitting that due Notice had not been given, had committed a bare Treſpaſs in the Houſe of *Cowling*, where the Priſoner happened to be; no Treſpaſs done to the Property of the Priſoner, no Attempt on his Perſon.

'But admitting that a Treſpaſs in the Houſe with an Intent to make an unjuſtifiable Arreſt on the Owner, could be conſidered as ſome Provocation to a Stander-by; yet ſurely the knocking a Man's Brains out, or cleaving him down with an Ax on ſo ſlight a Provocation, ſavoureth rather of brutal Rage, or, to ſpeak more properly, of Diabolical Miſchief, than of Human Frailty. And it ought always to be remembered, that, in all Caſes of Homicide and ſudden Provocation, the Law indulgeth to Human Frailty, *and to that alone.*

'Beſides the Circumſtance of the Priſoner's ſtanding with the Axe in his Hand, declaring before any Attempt to enter the Shop, "That the firſt Man that did enter ſhould be a dead Man,"—ſheweth it to be an Act of Deliberation as well as Cruelty.

'And where the Circumſtances of Deliberation and Cruelty concur, as they do in this Caſe, the Fact is undoubtedly Murder; as flowing from a wicked Heart, and Mind grievouſly depraved, and acting from Motives highly Criminal. Which is the genuine Notion of Malice in our Law.'

'will lye at their Door that did it; becauſe it drew me under an ill Im-
'putation of defending myſelf by Subornation of Perjury.

'I would be willing to do my Duty towards my Neighbours, as well
'as God, before I die.

'I have many Papers and Concerns (by reaſon of my Profeſſion) of my
'Clients in my Hands, who will ſuffer if they are not put into ſome Or-
'der. And nothing but theſe two Conſiderations could make Life de-
'ſirable under this heavy Load of Irons, and reſtleſs Remorſe of Con-
'ſcience for my Sins.

'A ſhort Reprieve for theſe Purpoſes, I hope will be agreeable to your
'Lordſhip's Humanity and Chriſtian Virtue; whereupon your Lordſhip's
'Name ſhall be bleſſed with my laſt Breath, for giving me an Opportu-
'nity to make Peace with my Conſcience and God Almighty.'

Then the Court paſſed Sentence on him, and told him he ſhould be allowed a reaſonable Time for the Purpoſes he mentioned, which they hoped he would make a good uſe of; and ordered his Execution for *Saturday*, *March* 28. When the Gaoler came (with a Barbarity natural to thoſe Fellows) to load Mr. *Noble* with Irons, he was very much confounded; for though he had given, he ſaid, near 200*l.* to all the Crew about him to have ſome Favour, they loaded him with the heavieſt Irons, and curſed him as they were putting them on. Thus the Ladies left the dear Partner of their Pleaſures and Perils bound with harder Chains than thoſe of Love, his Hands manacled, his Legs fetter'd, his Friends abandoning him, his very Counſel and Solicitors declaring, they would not have been concerned for him had they known of the Adultery; yet all this he bore with uncommon Patience, but ſhewed great Concern for being ſo baſely deſerted by the very Women, who brought upon him all his Misfortunes.

He behaved very decently, whilſt under Sentence of Death; and would often ſay, he did not think his Crime Murder in the Eye of the Law, and continually exclaimed againſt *Farrington*, the Bailiff's Evidence. One Thing was very particular, Mrs. *Sayer* came to *Kingſton*, the Day before he was executed, in the Diſguiſe of a Servant-Maid, and ſent a Letter to him, giving him Notice ſhe was come, and ſo diſguiſed, that if he would ſee her, ſhe could come eaſily to him, notwithſtanding the Orders the Gaoler had not to admit her. *Noble*, on reading the Letter, did not ſeem averſe to ſeeing her; but the Divines who attended him, perſuaded him from it; and he ſent her word, *That he was a Man ſtill, and liable to Paſſions; ſhe had Time, and might repent; but he had but a very ſhort Time, and that muſt be employed about the Concerns of his Soul.* It is certain, he ſaw neither of the Women after his Conviction, though they were ſoliciting a Reprieve for him all the Time.

Accordingly, *Saturday*, *March* 28, 1713, he was executed at *Gallows-Hill*, near *Kingſton*; when he delivered the following Account to the three Clergymen that attended him.

The true Copy of the original Paper ſigned by Mr. Richard Noble, *which he deſigned for his Laſt Speech, delivered, to Mr.* Cooke, *Curate of* Kingſton, *and Ordinary of* Surrey; *another to Mr.* Broughton, *Vicar of* Kingſton; *and a third to the Rev. Mr.* L'Herondell: *With a particular Account of his Behaviour ſome Days before his Execution, by all the aforeſaid Clergymen.*

An Account writ by Richard Noble, *the Afternoon before his Execution.*

'I HAVE, ſince my Confinement (under Sentence of Death) to this very
'Hour, been under the greateſt Expectation of a ſhort Reprieve;
'eſpecially, for that I was credibly aſſured the Lord Chief Juſtice *Parker*
'had promiſed to grant it for my *Clients* Sake, in caſe they would make
'Affidavit before him, of their having Papers and Writings in my Hands;
'which Condition (I am told) was perform'd on their Part.

'If ſuch Promiſe was made, I heartily forgive him in not performing it.

'This Diſappointment I aſſign as the true Reaſon of my being very
'brief in the Account, which otherwiſe might have been incumbent on,
'or at leaſt have been expected from me to have enlarged upon.

'I have been often told, that it hath been reported I have acted crimi-
'nal Indecencies with Mrs. *Saliſbury* and Mrs. *Elizabeth Nevil* (the Mo-
'ther and Siſter of Mrs. *Mary Sayer*), and that both or one of them were,
'or was privy to, or countenancing of ſuch unlawful Acts of mine with
'the ſaid Mrs. *Sayer*. I think it my Duty to declare, as I do, that ſuch
'Report is falſe.

'As to the murdering Mr. *Sayer*, I do declare, that Mrs. *Salisbury*, or
'Mrs. *Sayer*, did not draw the Sword with which I unfortunately killed
'him: Nor was either of them aiding, directing, or adviſing of ſuch
'Murder: Nor did either of them open the Door whereat I killed him;
'tho' the contrary hath been ſuggeſted to me by one of the Siſters of
'the Deceaſed.

'I am told, that it is reported I was married to Mrs. *Sayer* whilſt we
'were in the *Marſhalſea*, and that ſhe hath been with me ſince my Con-
'demnation. I do declare, that ſuch Reports are falſe, and that I never
'was married to the ſaid Mrs. *Sayer*.

'As to what relates chiefly to myſelf, Time will not permit my ſaying
'ſo much as I intended. I hope that my Dying Words may make a deep
'and ſenſible Impreſſion on the Minds of ſuch Perſons as may read this
'Paper, that ſuch as are going on in a Courſe of Sin, may be awakened
'from their Lethargy, and deterred from the Continuance in, or Com-
'miſſion of any known Sin againſt the Living God; but more eſpecially
'thoſe who have been Partners with me in my Sins.

'I would not extenuate or palliate the Crime of Murder which I com-
'mitted: Therefore muſt ſay, that though the Fact was committed under
'the greateſt Surprize, and without any premeditated Malice, or Deſign,
'by removing him out of the World to have the freer Acceſs to his Wife,
'(which gave me reaſonable Hopes of my eſcaping the Juſtice of human
'Laws); yet I muſt own, that the Judgment of God, in bringing me to
'this deſerved and ſhameful Death is very juſt; and I do declare, that I ne-
'ver had, nor ever knew that Mrs. *Saliſbury*, Mrs. *Sayer*, and Mrs. *Nevil*, or
'any of them, had any Deſign to kill Mr. *Sayer* by Poiſon, or otherwiſe.

'I have ſecretly and wilfully committed many great and moſt heinous
'Sins againſt God, beſides that for which I am now to die. God ſuf-
'fered me to act thoſe Sins for ſeveral Years, without puniſhing me him-
'ſelf, or ſuffering me to fall under the Hand of human Laws. I had fre-
'quent Checks of Conſcience to recal and reſtrain me from committing
'further Sins; but I ſtifled or diverted thoſe good Thoughts, and con-
'tinued the Practice of my beloved Sins with Pleaſure.

'I indeed have made many Reſolutions to God of Repentance and
'Converſion, but ſoon broke through them, which is a great Aggrava-
'tion of my Offences; and thoſe Sins, and thoſe Aggravations undoubt-
'edly juſtly provoked God to ſuffer me to act that horrid Crime, for
'which I am now to die.

'I heartily beg Pardon of the Relations of the Deceaſed, for the Injury
'done them by the Murder of Mr. *Sayer*.

'I heartily beg Pardon of all others that I have injured by any ſecret
'or open Means.

'I heartily forgive every Perſon that has done me any Injury; eſpe-
'cially thoſe who ſtrained their Conſciences to affect me on my Trial. I
'pray God give them Grace to repent of thoſe and all other Sins; leſt
'by ſuch and other Provocations againſt God, they deſtroy both their Bo-
'dies and Souls.

'I have had very good Help and Inſtructions from ſome worthy *Di-
'vines*, and other good Chriſtians that have attended me ſince my Con-
'demnation; who have (I believe) done my Soul much Good, for
'which I am very thankful; and may God have the Glory by it, and
'they their due Reward.

'I have (ſince my Condemnation) occaſionally been under the utmoſt
'Diſorder and Perplexity, for having ſo many and ſuch great Sins to re-
'pent of in ſo ſhort a time; but as my Endeavours for a longer Time
'have proved ineffectual, ſo I hope that God Almighty will accept, in
'his great Mercy, that ſmall Space which he, in his wiſe Providence,
'hath thought fit to allow me.

'And whereas I have been told, that I was thought to be one of the
'Sect of the *Free-Thinkers*, I do utterly deny the ſame, and that I ever
'ſo much as read any Book publiſhed by the *Free-Thinkers*.

'Perhaps it may be obſerved, that this my Dying Speech is not ſo pa-
'thetical as that which I ſpoke when I received Sentence of Death.
'Then I was in hopes of preſerving my Life; but now, being ſatisfied
'to the contrary, my Thoughts are turned another way (to wit) to make
'my Peace with my Conſcience and my God.

'But as to the Truth of this my Dying Speech, I call God Almighty to
'witneſs, that I know not of the leaſt Falſity therein, as I hope for eter-
'nal Salvation.

March 27. 'RICHARD NOBLE.'

BEING under the Obligations uſual on thoſe, that receive Papers from Dying Perſons to be publiſhed, and having faithfully diſcharged our Truſt therein, we have found ſome other Reaſons to ſubjoin to it a further brief Relation of Mr. *Noble*'s Behaviour and Conduct during the laſt Week of his Life, wherein we all frequently viſited him.

'So far as any or all of us could poſſibly diſcern, or collect from his
'many Anſwers and Declarations from his whole Diſcourſe, and the Te-
'nor of his conſtant Devotion, he repented from the Bottom of his Heart
'of the manifold and heinous Sins of his Life; that Crying Sin eſpecially
'for which he died.

'He profeſſed an unſhaken Belief of the Truth and Importance of the
'Chriſtian Religion, and a ſtedfaſt Faith in, and Reliance on the only
'atoning Merits of his Redeemer.

'He was deſirous, and reſolute to die in the Communion of the Church
'of *England*, and in perfect Charity with all the World; he appeared
'under a calm Reſignation to the Sovereign Will of God, and not with-
'out increaſing Hopes of Pardon, as his Death approached nearer; to the
'very Article of which his Diſpoſition was ſuch as himſelf had often
'prayed for.

'We pray to God, that theſe laſt Sentiments of his (who is cut off by the
'juſt Judgment both of God and Man, in the 28th Year of his Age) may
'have that happy and peculiar Effect, which (next to his own Salvation)
'he conſtantly had in view; the reclaiming thoſe in particular (we mean)
'who have at any time, or in any manner, been Partners or Aſſociates
'with him in Wickedneſs. We find this briefly hinted in his Paper;
'but we know, he thought on it frequently, and laboured much
'about it. We could produce Inſtances and Proofs of all we ſay: But
'we hope this general Account will ſuffice to anſwer the Importunity of
'ſome; and perhaps to ſilence the importunate Clamours of others, who
'have added very falſe, as well as needleſs Aggravations to his Guilt.'

March 30, 1713.

Thomas Cooke, Ordinary of *Surrey* and Curate of *Kingſton*.
John Broughton, M. A. Vicar of *Kingſton*.
F. Alex. L'Herondell, Chaplain to one of Her Majeſty's Regiments.

The following Caſe being reckoned curious, and a proper Addition to Mr. *Noble*'s Motion in Arreſt of Judgment, is here inſerted.

The Caſe of Mr. Richard Noble *impartially conſidered: Abſtractly from the Man, or Crime, but merely as to the Law, in relation to the Motion by him made, on* Monday *the* 16*th Day of* March, 1712, *at* Kingſton *Aſſizes, in Arreſt of Judgment: And the Reaſon given for over-ruling the ſame confuted.* By a *Student* of the *Inner-Temple*.

RICHARD NOBLE, Gentleman, *Mary Saliſbury*, and *Mary Sayer*, Widow, were indicted; he, for the Murder of *John Sayer*, Eſq. on the 29th Day of *January*, *Anno* 11° *Annæ Reginæ*; *Saliſbury*, as preſent, aiding, aſſiſting, and abetting the ſame; and *Mary Sayer*, Widow of the Deceaſed, for Petty-Treaſon, as being preſent, aiding, aſſiſting, and abetting the Murder of her ſaid Huſband; and the ſaid *Noble*, on the Coroner's Inqueſt for the Murder of the ſaid *John Sayer*, and for Manſlaughter on the Statute of Stabbing: And on *Thurſday* the 12th Day of *March*, 1712, were ſe-

verally arraigned, and ſeverally pleaded *Not Guilty*, and put themſelves on Trial, to which they were brought the next Morning; and on their Trial they ſeverally challenged of thoſe returned to ſerve upon the Jury, *viz.* *Richard Noble* 20, *Mary Saliſbury* 20, and *Mary Sayer* 35, peremptorily; after which a Jury was ſworn, and charged with them all jointly; and on a long Hearing found *Richard Noble* Guilty of the Facts in the Indictments, and alſo on the Coroner's Inqueſt; and found *Mary Saliſbury* and *Mary Sayer* Not Guilty.

Whereupon, on *Monday* following, the 19th of *March*, *Richard Noble* was ſet to the Bar, and demanded what he could ſay, why Judgment ſhould not be given, and Execution awarded? Upon which he moved in Arreſt of Judgment in theſe or the like Words:

My Lord, I humbly move in Arreſt of Judgment, for that I apprehend I have had a Miſ-Trial, and that my Trial has been contrary to the Law of *England*, in that we ſevered in our Challenges, and yet were tried together by the ſame Jury: And, to warrant this Opinion, I have in my Hand the Trial of Mr. *Charnock*, *King*, and *Keys*. There were, my Lord, then upon the Bench, the Lord Chief Juſtice *Holt*, the Lord Chief Juſtice *Treby*, the Lord Chief Baron *Ward*, Mr. Juſtice *Nevill*, Mr. Juſtice *Powell*, and Mr. Juſtice *Rokeby*; and there the Lord Chief Juſtice *Holt*, directing himſelf to the Priſoners, ſaid thus: "Look ye, you that are the Priſoners, every one of you has the Li- "berty to challenge Thirty-five of thoſe that are returned to ſerve upon "the Jury that is to try you, without ſhewing any Cauſe: Now, if you will "all join in the ſame Challenge, then we can try you all together as you "are altogether jointly in the ſame Indictment, and ſave the Time and "Trouble that will otherwiſe be unavoidable; but if you will not join in "the ſame Challenge, but every Man challenge for himſelf, as by Law he "has Liberty to do, we muſt be forced to try you ſingle; and therefore "we would know of you, whether you deſign to join in your Challenges "or not." *State Trials*, Vol. IV. p. 566.

And in the ſame Page, "I tell you, what the Law is in ſuch Caſes; "you may, every Man of you, challenge Thirty-five peremptorily, with- "out Cauſe; but if you do not all agree in the ſame Challenges, ye can- "not be tried together by the ſame Jury, but the Court muſt ſeparate "you, and try you every one ſingle."

And again, "Do you underſtand what is ſaid to you, Mr. *King* and "Mr. *Keys*? Every one of you may, without ſhewing any Cauſe, except "againſt Thirty-five of thoſe that are returned of the Jury, which are to "try you, if you have no mind that thoſe ſhould be ſworn; but then, "if each of you do ſeverally challenge Thirty-five, ye cannot be tried by "the ſame Jury."

And there is a Caſe to the ſame purpoſe in one of the Year-Books, I think it is in 9 *E.* IV. *fol.* 27, but deſire that my Counſel may ſpeak to it.

This is the Subſtance of what Mr. *Noble* then ſaid; upon which, being aſked who were his Counſel? He anſwered, Mr. *Darnall* and Mr. *Bonwick*, who were by the Court readily aſſigned to be his Counſel; but (for what reaſon I cannot well apprehend) could neither of them be prevailed on *to ſpeak to it.*

So that although it was agreed and allowed, that the Words were as full and clear as they could be penned, the Court ſoon over-ruled the Motion, alledging, That the Lord Chief Juſtice *Holt*'s Reaſon in the Caſe of *Charnock*, *King*, and *Keys*, was, that in caſe each of them ſeverally challenged Thirty-five, three times Thirty-five would amount to One Hundred and Five, and then they muſt have been obliged to ſever them (as the Court were near obliged to have done in the preſent Caſe) for Default of Jurors; And Mr. *Noble*, after a Speech by him, tending to obtain a ſhort Reprieve, had Judgment given againſt him.

I have, as carefully as I could, fairly and indifferently ſtated the Caſe, and ſhall now proceed to conſider it as briefly as poſſible.

Challenge of a Juror is an undoubted Right of the Subject, and was at the Common Law; and therefore, it is to be preſumed, to have been as ancient as Trial by Juror, and *was* unqueſtionably *at firſt allowed* in favorem Vitæ, *and to give the Priſoner an Opportunity, as it were, to chuſe his Jury, ſo as he exceed not the Number preſcribed by the Law:* And, conſequently, I take it, at the Common Law, every Man, of right, might and ſtill may, the ſame having been altered by no Statute that I can find, as to a Commoner, demand to be tried ſingle, although jointly indicted in the ſame Indictment with others; and that for theſe Reaſons, among others:

Firſt, For that in caſe an innocent Perſon ſhould unhappily be indicted with a Criminal, it might be a means to prevent the Jury, from the Evidence given againſt the Criminal, to be inveigled or drawn aſide, to give too hard a Verdict on the Guiltleſs.

Secondly, For that when a Pannel is returned, the Priſoner (who, as was ſaid before, may in a manner chuſe his Jury) will otherwiſe be deprived of that Right: As if two or three are indicted, and the firſt perceive that in the Beginning of the Pannel there are ſuch returned, as he has great reaſon to ſuſpect are partial, but by challenging has a Proſpect to bring himſelf to thoſe in the Pannel, which he has reaſon to apprehend are indifferent; if, when he has challenged the Number the Law allows him, and his Hands, as it were, tied up, the other indicted with him ſhall come in and take off all thoſe indifferent Men, and ſo leave him over to thoſe he had as much (or more) reaſon to ſuſpect as thoſe he had before challenged; which is a Miſchief, and that the Law abhors, for the Juror returned may have Malice to one, and be indifferent as to the other; and ſo is the 9 *E.* IV. *fol.* 27. and the Plaintiff or Proſecutor no ways prejudiced, for he might have ſued ſeveral *ven. fac.* and thereby have been aided. And ſo is the Book expreſly.

Thirdly, For that the Court cannot accept of a joint Plea, nor receive a joint Verdict; but the Plea of *Not Guilty*, although it be the General Iſſue, yet in its Nature and Effect is Several.

And ſo in Treſpaſs againſt Several; they may every one come and plead ſeveral Pleas by ſeveral Attornies, and have ſeveral Trials: And reaſonable, for otherwiſe a Plaintiff might join one in the Action, who could oblige all the others to ſtand or fall by his Confeſſion, Defence, or Plea. And as in Treſpaſs they may ſever in their Pleas, ſo in Treaſon or Felony *Not Guilty* is a ſeveral Plea, nay, and amounts to a Special Plea; and the Priſoners, or any of them, ſhall have the ſame Advantages, as if he or they had pleaded ſpecially to all Intents and Purpoſes whatſoever. *Dr. & St. cap.* 48. *fol.* 150, 151, 152.

From whence I argue, That it is the Right of every Subject to demand and have a ſeparate Trial, in criminal Caſes, if ſo he be minded. For,

If Three are indicted of Felony, one challenges whole Number Twenty, and thoſe Twenty are to be drawn, that is, ſet aſide and not ſuffered to paſs upon the other; and the ſecond challenge Twenty, thoſe are to be drawn or ſet aſide in like manner; and the third challenge likewiſe Twenty, who muſt by the ſame Rule be likewiſe drawn or ſet aſide, as to all; this will amount to Sixty challenged by the firſt; and as the firſt and ſecond Priſoners have the Benefit of the Challenges of the third, ſo has the third the Benefit of theirs. This tantamounts to a Challenge of Sixty by each, and thereby endangers their being preſſed or hanged for challenging above the Number preſcribed by the Law; which the Court is by no means to ſuffer.

An Appeal againſt *Beauchamp*, and ſeveral others, who plead *Not Guilty*, and one *ven. fac.* for all iſſued return, *&c.* at which Day one of the Defendants challenge a Juror peremptorily, and the other Defendants ſay nothing, the Juror ſhall be ſworn againſt them, and the Reaſon there given is, for that otherwiſe they might be delayed of their Acquittal for ever; a Miſchief, Inconvenience, and Wrong: And therefore the Book goes on, and ſays, If Covin be between me and two others, that I bring an Appeal againſt them and another, to the end the other ſhall be detained in Priſon, *&c.* in that Caſe, if I have a joint *ven. fac.* &c. and one challenge peremptorily; and if he remain for default of Jurors, then at another Day may the other do in the ſame manner; and then, when they have taken their peremptory Challenges, ſtill one of them may challenge with Cauſe, and I will commit this Challenge, *&c.* and ſo the Three ſhall remain in Priſon for ever. If the Challenge of one ſhall be for all, *&c.* And the Doubt there was, Whether the Court could ſever them, it being in an Appeal, and the *ven. fac.* joint? And by all the Juſtices of the one Bench, and the other, it was held, That becauſe the *ven. fac.* was joint, the Challenge of the one is for all, for that he could not be drawn as to one, and taken againſt the other; and the Plaintiff ought to have had ſeveral *ven. fac.*

And afterwards the Plaintiff challenged the Array, which was quaſhed; and the Plaintiff prayed ſeveral *ven. fac.* againſt every one of them to the Coroners; which, by Juſtice *Jenny*, he could not have in that Caſe, for this reaſon only, becauſe the Plaintiff had elected to have a joint *ven. fac.* The Plaintiff notwithſtanding prayed to have ſeveral *ven. fac.* at their Peril. Which plainly ſhews, that the Law was againſt them as to the other. 9 *E.* IV. *fol.* 27.

And it was there ſaid, *That at a Gaol-Delivery, if an Inqueſt be demanded to paſs upon two or three Men, and one challenge peremptorily, then the Clerk ought to ſever the Felons, every one by himſelf.* And there ſeemed to be a Diſference (and ſo is the Book) where there are ſeveral Plaintiffs, *&c.* becauſe if a Man be found favourable to one, he is favourable to both, for that their Title is joint: But otherwiſe it is of Defendants, where a Man may have Favour or Malice to one, or not; or be indifferent to the other. 9 *E.* IV. *fol.* 27.

Appeal againſt the Principal and Acceſſary, who plead *Not Guilty*, and the Acceſſary challenge the Array, and the Principal ſaid nothing; and becauſe the Array was quaſhed on his Challenge, *Hankford* would not take the Inqueſt againſt the other; and the Reaſon was, becauſe the *ven. fac.* was joint, and the Plaintiff might have had ſeveral *ven. fac.* 4 *H.* IV. 58.

And in *Banco Reg.* *Thimelby* and *Gray* were arraigned on an Indictment of Robbery, as Principals, who ſeverally pleaded *Not Guilty*, and ſeverally put themſelves upon their Country; upon which a *ven. fac.* was returned this Term, and the Jury appeared, and Three of the Jury were ſworn againſt both, and *Thimelby* challenged the four next without Cauſe, or without ſaying peremptorily; and *Gray* would not challenge them, for which *Thimelby* was withdrawn from the Bar; and the Four who were challenged by *Thimelby* were ſworn againſt *Gray*, and ſo many more, till Twelve were charged on him, who found him Guilty: And *Saunders* moved, Whether this was a right Trial or not? For that there was but one *ven. fac.* awarded, nor but one Pannel returned; and one Juror cannot be drawn out of the Pannel, and in the ſame Pannel be allowed: But by the Opinion of all the Juſtices of both Benches, the Trial was good, for that no Judgment was given, that the Jurors that were challenged by the one ſhould be drawn, but, that they ſhould ſtand aſide for a time; and were not clearly diſcharged by the Court; and for that the *ven. fac.* for the King differ from *ven. fac.* in an Appeal. *Dyer*, *fol.* 152, *pl.* 8.

And although in 1 *H.* V. 10. it is ruled by the Opinion of the Court, that a Juror on Indictment may be challenged by one of the Defendants, and ſtand againſt the other, *&c.* that is, it is no Principal Cauſe of Challenge in one Defendant to ſay the other Defendant had before challenged him. And ſo is the Book to be taken, and the Law is agreeable thereto, and the Reaſon there given fully explains it ſo to be intended, *viz.* for that they are ſeveral Pannels and Inqueſts in Law; and therefore, if one Defendant had appeared on an Indictment, and the other Defendant had made Default, yet the Court would have proceeded againſt him who appeared, although it may be otherwiſe in an Appeal.

Which plainly proves the Court ought to ſever the Priſoners on Indictment, where they will not join in their Challenges.

And in the Trial of the Regicides; *Harriſon*, *Scroop*, *Jones*, *Clements* and *Scot* were ſet to the Bar to be tried, and Sir *Thomas Allen* was called and ſworn; then Sir *Joſhua Aſh* was called, and Mr. *Scroop* excepted againſt him: then Sir *Jeremy Whichcot* was called, and Mr. *Harriſon* excepted againſt him; *James Halley*, Eſq. being next to be ſworn, Mr. *Scot* excepted againſt him: Whereupon the Court (ſpeaking to the Priſoners) ſaid, "If you will not agree in your Challenges, we muſt be forced to try "you ſeverally." And *Henry Mildmay*, Eſq. being called next, Mr. *Scroop* excepted againſt him: Whereupon the Court ſaid, "We muſt needs try "them ſeverally, therefore ſet them all aſide but *Harriſon*." Which was done, and the ſeveral Perſons which before had been called and excepted againſt, were again called, and excepted againſt by Mr. *Harriſon*. *Trial of the Regicides*, *State Trials*, Vol. II. p. 313. And ſo in Mr. *Scroop*'s Trial.

Jones, *Scroop*, *Scot*, *Gregory*, *Clements*, and *Carew* being ſet to the Bar, Sir *Thomas Allen* was called, and his Hand being on the Book, *Scroop* challenged him; and thereupon the Lord Chief Baron ſpoke thus to the Priſoners: "That you may not miſtake, if you challenge in "this manner, and do not join in your Challenges, we muſt try you "ſeverally, one after another: I muſt tell you the Courſe of the Law; "if one Challenge one, and another challenge another, we muſt ſever, "and go to Trial one by one. Call the next." The Clerk called Sir *Henry*

Henry Worth, and *Scroop* challenged him; upon which the Lord Chief-Baron replied, "Then we *muſt* go on ſeverally, ſet all aſide but Mr. "*Scroop*." And directing himſelf to Mr. *Scroop*, ſaid farther, "Mr. "*Scroop*, you may challenge particularly whom you will, till you come "to Thirty-five; if you go beyond that Number, you will loſe the Be-"nefit of the Law."

And in that of *Carew*, *Scot*, *Jones*, and *Clements*: They being at the Bar, the Lord Chief-Baron demanded of the Priſoners, Whether they were all agreed as to their Challenges? Who anſwered, *No*. "Then "(ſaid the Lord Chief-Baron) we muſt do as before, ſever you, and go "to Trial ſeverally:" And directed, that the Three ſhould be taken away, and that Mr. *Carew* ſhould be let ſtand at the Bar.

And indeed, through the whole Courſe of the Proceedings on the Trial of the Regicides, the Court took great Care of the ſeveral Priſoners, that none of them might be any ways prejudiced, either by challenging too many (*viz.* more than the Law allows) of the Jury, or any other Forms of Law, as a Matter perfectly incumbent on the Court to obſerve, take care of, and prevent.

And now I beg Leave to obſerve, that the Reaſon the Court gave in *Noble*'s Caſe, was not that the Lord Chief-Juſtice *Holt* grounded his Opinion on; for that in *Fol.* 1. of *Charnock*'s Trial, it appears that above eight-ſcore were by the Sheriff returned to ſerve on that Jury, conſiſting of Baronets, Knights, Eſquires, and Gentlemen; ſo that it plainly appears (they having been called over, ſitting the Court) that in caſe each of the Priſoners had challenged Thirty-five, amounting to One Hundred and Five in all; yet would there have been a ſufficient Number of Jurors, to wit, above Fifty-five, left to have paſſed upon, and tried the Priſoners.

And the Words of the Lord Chief-Juſtice *Holt* in Mr. *Charnock*'s Trial, "We can try you all together, as ye are all together jointly in the ſame "Indictment, and ſave the Time and Trouble, that will otherwiſe be "*unavoidable*; but if you will not join in the ſame Challenges, but every "Man challenge for himſelf, as by Law he has Liberty to do, we muſt "be forced to try you ſingle, and therefore, *&c.*" can bear no other Conſtruction, for the Word *unavoidable* is, what *muſt happen or come to paſs*, notwithſtanding any Accident or intervening Circumſtances or Conjuncture whatſoever: And, in that Senſe, I make no Queſtion, his Lordſhip ſpoke them; for otherwiſe, ſeveral other Expreſſions, no Doubt, would have occurred, and been uſed by his Lordſhip, as it might be neceſſary, and the like.

The often Repetition of the ſame Thing, has alſo a great Weight to enforce this Obſervation.

And this Reaſon clearly to me appears, to be the Foundation of the Caſe in the Commentaries, that though the Pannel be joint on Indictment, and *Tales* awarded, yet the Court (who are ever to be of Counſel for the Priſoners, to give them Law and Juſtice, 2 *Inſt.* 178, and not permit any Inconvenience to happen to them in Forms of Law, *Trial of* Charnock *& al.* 7. *Dr. & St. c.* 48. *p.* 150, 1, 2.) may and (as I humbly apprehend) ought, in caſe the Priſoners ſever in their challenges, to ſever the Pannel, and prevent not only the Inconvenience in that Caſe mentioned, but many other. *Plow. Com.* 100, 101. *H. P. C. fol.* 256. *Octavo Edition.*

And this is the more to be relyed on, for that in an Appeal againſt one *Woodlack*, the Defendant took ſo many Challenges, that the Jury remained againſt the Defendant, by Default of Jurors, and reſolved, that in an Appeal of Murder, Rape, or Felony, there may be had a larger Number than the principal Pannel returned immediate, *viz.* what Number the Juſtices pleaſe to award, in regard the Defendants may challenge peremptorily; and therefore the Juſtices award a *Tales* of 40. 14 *H.* VII. *fol.* 716. *tit. Appeal.* And ſo of an Indictment. *Hale's Pleas of the Crown*, 257, 8*vo.*——*Finch*'s *Law*, *c.* 36. *fo.* 415. and that the Stat. *W.* II. *c.* 38. does not extend to Criminal Caſes or Indictments. *Vane*'s Caſe, *Kelyng* 7. 16.

And the Practice has conſtantly been, and was ſo reſolved at the Reſtoration, by a great Number of Juſtices, upon mature Deliberation, That if ſeveral Priſoners be put upon one Jury, and they challenge peremptorily, and ſever in their Challenges, that then he who is challenged by one is to be drawn againſt all, becauſe the Pannel being joint, one Juror cannot be drawn againſt one, and ſerve for another; but in ſuch Caſe the Pannel might be ſevered, and that the ſame Jury may be returned between the King and every one of the Priſoners, and then they are to be tried ſeverally, and there the Challenge of one Priſoner is no Challenge to diſable the Juror ſo challenged againſt another. And the Caſe of Dr. *Ellis*'s Servant, *Plow. Com.* 100, 101. was agreed to be good Law, as to the ſevering the Pannels in that Caſe. And accordingly, in the Trial of *Harriſon*, *Scroop*, *Carew*, and other the Regicides, who challenged peremptorily, and ſevered in their Challenges, the Pannels were ſevered, and they were tried ſeverally. *Kelyng*'s *Reports*, *fo.* 9, 10. *State Trials of the Regicides*, Vol. II. p. 308, &c.

And throughout all the Books there appears to be no Diſpute, but that where the Priſoners on Indictment challenge ſeverally, the Court ought to ſever them in their Trials. But it plainly appears, the only Queſtion was, How, or in what Manner that was to be done, the *ven. fac.* and Pannel being joint? But that Objection being once removed, the Law is plain, That the Trials in all ſuch Caſes are to be ſevered, or the Priſoners cannot legally be tried at all.

And therefore I humbly ſubmit it to the Judgment of the Learned in the Law, whether, in the principal Caſe, (not as to the Fact, which I pretend no ways to meddle with) although Judgment has paſſed on the Priſoner *Noble*, yet he having before Sentence moved this Matter in Arreſt of Judgment, and likewiſe, as I have been credibly informed, (my coming into Court being juſt after that was over-ruled) having deſired and earneſtly preſſed to be tried ſeparately and apart from the other two, there be not Room to reſpite Execution till the Point be ſettled, and Conſideration had what may be neceſſary farther to be done therein. And the rather, for that in the Caſe of *Hopkin Hugget*, on a ſpecial Verdict found at a Gaol-Delivery at *Newgate*, 25 *April*, 1666, 18 *Car.* II. on an Indictment of Murder, to this Effect: That *John Berry*, and two others with him the Day and Place, *&c.* had *de facto*, but without Warrant (for aught appeared) impreſt a Man, unknown, to ſerve in the Wars againſt the *Dutch* Nation; that thereupon, after the unknown Man was impreſt, he, with the ſaid *John Berry*, went together quietly into *Cloth-Fair*; and the ſaid *Hopkin Hugget* and three others walking together in the Rounds in *Smithfield*, and ſeeing the ſaid *Berry* and two others, with the Man impreſt, going into *Cloth-Fair*; inſtantly purſued after them, and overtaking *Berry* and the impreſt Man, and the two other Men, required to ſee their Warrant, and *Berry* ſhewed them a Paper, which *Hopkin Hugget* and the three others ſaid was no Warrant; and immediately the ſaid *Hopkin Hugget* and the three others drew their Swords, to reſcue the ſaid Man impreſt, and did thruſt at the ſaid *John Berry*, and thereupon the ſaid *John Berry*, and the two others with him, did draw their Swords and fight together, whereupon the ſaid *Hopkin Hugget* did give the Wound, *&c.* to the ſaid *John Berry*, whereof he inſtantly died: And if upon the whole Matter the ſaid *Hopkin Hugget* be guilty of Murder, they find ſo; if of Manſlaughter, they find ſo, *&c.* And afterwards the Opinion of all the Judges of *England*, met at *Serjeants-Inn*, in *Fleet-Street*, being deſired in the Caſe, (having had Copies of this Special Verdict ſent to them) whether they held it Murder or Manſlaughter? And there being a Difference in their Opinions, *viz.* the Lord Chief-Juſtice *Bridgman*, Lord Chief-Baron *Hales*, Mr. Juſtice *Atkins*, *Tyrell*, *Turner*, *Brown*, *Archer*, and *Rainsford*, were of Opinion as then adviſed, but not to be bound by it, that it was no Murder, but only Manſlaughter; and gave ſome Reaſons to ſupport their Opinions: But the Lord Chief-Juſtice *Kelyng*, Mr. Juſtice *Twiſden*, *Wyndham*, and *Morton*, were of another Opinion, and held it to be Murder, and gave their Reaſons for it: After which Difference the Lord Chief-Juſtice *Kelyng* granted a *Certiorari*, to remove the Cauſe into the then King's-Bench, to be argued there, and to receive a final and legal Determination. And although all the Judges of the Court were clearly of Opinion it was Murder, yet it being in a Caſe of Life, they did not think it prudent to give Judgment of Death upon him, but admitted him to his Clergy. *Kelyng's Reports*, *fo.* 59, 60, 1, 2.

So very tender were the Judges in the Caſe of Life, not only well to be adviſed, but even againſt their own Opinions, and that when they were very clear in it, to give Judgment in Favour of Life, although in a Caſe of Murder.

II. The Trial of Major John Oneby, at the Seſſions-Houſe in the *Old-Bailey*, before the Right Honourable Sir Francis Forbes, Knt. Lord-Mayor of *London*, Mr. Baron Hale, Sir William Thompson, Knt. Recorder of *London*, and others his Majeſty's Juſtices, *March* 1725-6, for the Murder of William Gower, Eſq.

"JOHN *Oneby*, of *St. Martin's in the Fields*, Gent. was indicted, for "that he, on the 2d Day of *February*, 12 *Geo.* at the ſaid Pariſh, "felonioufly, voluntarily, and of his Malice fore-thought, "made an Aſſault upon one *William Gower*, Eſq. and that he the ſaid "*John Oneby*, with a Sword which he then and there held drawn in his "Right Hand, the ſaid *William Gower* in and upon the left Part of his "Belly, near the Navel, felonioufly, voluntarily, and of his Malice "forethought, did ſtrike and thruſt, giving the ſaid *William Gower*, then "and there, with the ſaid drawn Sword, in and upon his ſaid left Part of "his Belly, near the Navel, a mortal Wound of the Length of one Inch "and a half, and of the Depth of ten Inches; of which mortal Wound "the ſaid *William Gower* lived in a languiſhing Condition, from the 2d "Day of *February* to the 3d Day of the ſaid *February*; on which 3d Day "of *February*, the ſaid *William Gower*, at the Pariſh aforeſaid, of the ſaid "mortal Wound did die; and that the ſaid *John Oneby*, the ſaid *William* "*Gower* felonioufly, voluntarily, and of his Malice fore-thought, did "kill and murder."

He was a ſecond Time indicted, on the Coroner's Inquiſition, for the ſaid Murder.

Thomas Hawkins. On the 2d of *February*, between Nine and Ten at Night, Mr. *Blunt*, the Deceaſed, the Priſoner and myſelf, went from *Hill*'s Coffee-Houſe to the *Caſtle*-Tavern in *Drury-Lane*, where, in about half an Hour, Mr. *Rich* came to us. After the fourth Bottle, the Priſoner called for a Box and Dice; the Drawer ſaid, they had none in the Houſe, *Why then*, ſays the Priſoner, *bring the Pepper-Box.* The Drawer brought it, and Dice were laid upon the Table: but I don't know by whom. We played low, nobody ſetting above half a Guinea, and yet I had no great Inclination to game, and eſpecially to ſet the Priſoner; and therefore, after a trifling Loſs I declined the Play. The Priſoner appeared diſguſted at it, and aſked me, why I refuſed? I told him I ſhould uſe my own Pleaſure, whether it was agreeable to his Humour or not. The Reſt continued playing. The Deceaſed loſt 30*s.* Mr. *Rich* ſaid, *Who will ſet me three Half-Crowns?* Upon which the Deceaſed took ſomething out of his Pocket, and laid it on the Table, but concealed it with his Hand, and ſaid, *I'll ſet ye three Pieces*; and then taking his Hand away, we ſaw three Half-pence. This was not offered to the Priſoner; but he appeared to be much affronted. He ſaid, *That is very impertinent to ſet three Half-pence.* The Deceaſed ſaid, *What do you mean by impertinent?* And the Priſoner replied, *You are an impertinent Puppy*; and preſently ſnatched up a Bottle, and threw it at the Deceaſed's Head, and it beat ſome Powder out of his Wig, but did him no Hurt. He in Return, toſſed a Glaſs or a Candleſtick, I can't tell which, at the Priſoner; but it did not reach him. They both roſe up together, and went to their Swords, which hung up in the Room. The Deceaſed being quickeſt got his Sword firſt, and drew it, and ſtood ſtill in a Poſture of Defence, at a good Diſtance from the

the Priſoner, who was advancing, and was drawing his Sword to meet him; but Mr. *Rich* ſtept in between, and prevented him. Then the Deceaſed threw away his Sword, and they all ſat down again, and drank for about half an Hour; when the Deceaſed offering his Hand to the Priſoner, ſaid, *We have had Words, Major, and you was the Aggreſſor; but let us agree.* The Priſoner anſwered, *No, damn ye! I'll have your Blood!* And then turning to me, he ſaid, Hawkins, *you was the Occaſion of this. Why then*, ſays I, *if ye have done with him, and have any thing to ſay to me, I am your Man, and I'll ſee you out. No*, ſays he, *I have another Chap firſt.* In about half an Hour after this, which was near Three in the Morning, the Company broke up. I went out of the Room firſt, and Mr. *Blunt*, and Mr. *Rich* were next after me. When I came into the Street it rained, and I run under a Penthouſe, where I ſtood a little while; but not having a Chair ready, and ſeeing none of the Company come out, I returned to the Room, where I found the Deceaſed wounded, and leaning on a Chair in a languiſhing Condition. He died the next Morning. I knew him intimately, and I don't believe that there was a ſweeter temper'd Man in the World.

John Rich. I, the Priſoner, the Deceaſed, and ſome others, went together to ſee the new Tragedy of *Hecuba*; we ſat in the Pit. The Deceaſed and the Priſoner appeared to be good Friends all the Time of the Play; and as ſoon as it was done I left them; but met them again at the *Caſtle* Tavern in about half an Hour. The Priſoner and I called for a Box and Dice; which not being to be had, he called for a Pepper-Box, and it was brought; I ſaw Dice lying upon the Table, but don't know how they came there. I ſaid, let us play low. Some Words paſt between the Priſoner and Mr. *Hawkins*. I laid down three Half-Crowns. The Major ſet me. I threw. *Seven* was the Main, and *Six* the Chance. The Deceaſed put down three Half-pence againſt me, and ſaid, *Here, I'll ſet ye three Pieces.* The Priſoner damned him, and called him an impertinent Puppy. *Sir*, ſaid the Deceaſed, *I am not afraid of ye, and he that calls me a Puppy is a Scoundrel.* At theſe Words, the Priſoner *threw* a Bottle at him. It bruſhed his Wig as it paſſed, and he in return *toſſed* a Glaſs. They both got up together; but the Deceaſed being nimbleſt, jumped on the Table, and reached his Sword firſt; and then ſtepping down, he drew, and ſtood ready to defend himſelf, but made no Offer to puſh. In the mean time, the Priſoner took down his Sword and Cane, which hung together; and there being the Table and a Chair between them, he came round the Table, and was going to engage with the Deceaſed; but I ſtept between them, told the Priſoner, who was drawing his Sword, if he made a *Longe*, it muſt be through my Body, which, as I was unarmed, would be wilful Murder. The Deceaſed then threw away his Sword, and they both ſat down again. The Deceaſed put his Hand forward, and ſaid, *Come, Major, let us be reconciled, Words in Heat may be forgot and forgiven.* The Priſoner anſwered, *God damn you, you lie—I'll have your Blood, by God!* And then, turning to Mr. *Hawkins*, he ſaid, *This is all along of you.* Mr. *Hawkins* anſwered, *Then I am your Man*; and the Priſoner replied, No, *I have another Chap to deal with firſt.* When we all got up to go, the Priſoner hung his great Rug-Coat upon his Shoulders, and I think buttoned it in one or two Places. Mr. *Hawkins* went out firſt, Mr. *Blunt* next, the Deceaſed followed him; I, the Deceaſed, and the Priſoner came laſt: but he was hardly out of the Room, when he called to the Deceaſed, *Hark ye, young Gentleman, a Word wi' ye.* The Deceaſed turned back, they both re-entered the Room. The Door was immediately ſhut faſt. I heard a Claſhing of Swords, and a loud Stamp on the Floor, which I gueſſed was made by the Priſoner, he being a very heavy Man. Mr. *Blunt* and I ſtept back, and endeavoured to get in; we could not readily open the Door; but the Drawer coming to our Aſſiſtance, we made an Entrance, Mr. *Blunt* firſt, and I cloſe behind him. The Priſoner was then next to the Door, and ſtanding with his Sword drawn in his Right Hand, the Point of it being towards the Deceaſed, whom he held by the Shoulder with his Left Hand. I think the Deceaſed had then no Sword in his Hand, at leaſt I ſaw none; and I ſoon afterwards found it cloſe to the Wainſcot, behind the Folding of the great oval Table. It was bloody and greaſy four or five Inches from the Point. The Deceaſed cloſed with the Priſoner; but in ſuch a manner, as if he rather fell towards him through Weakneſs, than otherwiſe, which makes me think the Wound was given him before we came in. We put him into a Chair, and ſent for a Surgeon. As I held up my Hand to part them, I felt a little Prick through my Coat, by the Priſoner's Sword; but I believe it was done accidentally. Mr. *Blunt* at the ſame time clapt his Hand on his Belly, and ſaid he was dangerouſly wounded; but I am ignorant by what Means. I told the Priſoner, when we came out of the Room, that I was afraid he had killed the Deceaſed, *No*, ſays he, *I might have done it, if I would; but I have only frighted him. But ſuppoſe I had killed him, I know what I do in thoſe Affairs; for if I had killed him To-night, in the Heat of Paſſion, I ſhould have had the Law on my Side; but if I had done it at any other Time, it would have looked like a ſet Meeting, and not a Rencounter.* I adviſed him however to make off, for fear of the worſt.——I aſked the Deceaſed on his Death-Bed, if he received the Wound fairly? He anſwered faintly, I think I did—but—I don't know—what might have happened —if you—had not—come in.

Michael Blunt. From the Play we went to *Will*'s, and thence to the *Caſtle*, where we were very merry and friendly, till the Dice were called for. We played low, but Mr. *Hawkins* ſoon declined; upon which the Priſoner ſaid to him, *Why do you come into Company, when you won't do as others do?* Mr. *Hawkins* anſwered, *Don't trouble yourſelf about me, I'll do as I pleaſe.*—The Deceaſed ſet three Half-pence: the Priſoner ſaid it was damned impertinent; and ſome other Words paſſing, he flung a Flaſk at the Deceaſed, who in return toſſed a Glaſs or a Candleſtick. They took their Swords, but were prevented from engaging, and ſo they ſat down again; the Deceaſed offered his Hand to be reconciled, upon which the Priſoner gave him very ill Language, and ſwore he would have his Blood. As this made me apprehenſive that their Quarrel would break out again the next Day, I invited the Company to dine with me, in hopes to bring on a Reconciliation, and prevent future Miſchief. The Priſoner anſwered my Offer with, *No, G---d damn ye, I'll dine with none of ye. Are ye angry, Sir*, ſays I, *Have ye any thing to ſay to me?—Or me?* ſays Mr. *Hawkins.—Or me?* ſays Mr. *Rich.*—No, he had nothing to ſay to any of us.—This was about Two or Three in the Morning. And after we were all come out of the Room, I heard the Priſoner call the Deceaſed back; and they were no ſooner got into the Room again, but the Door was flung to, with great Violence, and I heard the Claſhing of Swords. When I got in, which was with much Difficulty, I did not ſee that the Deceaſed had any Sword in his Hand, but he was ſinking forward; and I, by going to aſſiſt him, received a Wound in my Belly, which I was afraid was mortal; but I cannot tell how, or by whom it was given, though I think it could not be by the Deceaſed, becauſe he had no Sword; and beſides, was not in a Condition to do it.—A Surgeon being in the Houſe, gave me his immediate aſſiſtance.

Mr. *Shaw*, the Surgeon. I found the Deceaſed languiſhing in a Chair. His Inteſtines appeared at the Wound, and by being expoſed to the Air began to mortify. When I had dreſſed him I ſent him Home; but the next Day I found a ſecond Rupture of the Inteſtines. He died ſoon after; and that Wound was the Cauſe of his Death.

Priſoner. A Wager was laid betwixt Mr. *Rich* and Mr. *Blunt*, concerning Mr. *Mills*'s acting the Part of *Cæſar* in the Play of *Julius Cæſar*, and it was loſt by Mr. *Blunt*. After this a Box and Dice were called for, but not by me; the Drawer ſaid he had Dice, but no Box; upon which, ſomebody called for a Pepper-Box. I flung a Main at 12*d.* and paſſed it about. Mr. *Hawkins* refuſing, I ſaid, I thought there was as good Fellowſhip in a little Play, as in altogether Drinking: Then we played for Half-a-Crown or three Shillings; and when the Box came round again, the reſt likewiſe refuſed to play; at laſt, the Deceaſed offered to ſet three Half-pence, which I ſaid was very impertinent. He called me Raſcal; *You impertinent Puppy*, ſays I, *what do you mean by that?* Upon which, he threw a Glaſs at my Head, and drew upon me. I told him, he acted baſely in drawing upon me, when it was he that gave the Affront. After this I put on my Great Coat, and was going out. Mr. *Hawkins* had ſlipt away, and the reſt being gone out of the Room, the Deceaſed puſhed the Door to, and drew upon me, and wounded me in the Knee, and cut my Fingers. I parried and cloſed with him; he endeavoured to ſtab me in the Back; at which Time Mr. *Blunt* came in, and received a Wound in his Belly, which muſt have been by the Deceaſed's Sword.

John Barnes, the Drawer. I threw the Priſoner's Great Coat over his Shoulders, as he was going out. Mr. *Hawkins* came out firſt, and aſked if his Chair was at the Door? I ſaid, Yes. Mr. *Blunt* followed, and I went down to unbar the Door; the reſt of the Company not coming, I went back and met Mr. *Rich*; he bid me open the Door; I thought he meant the Street-Door, and was turning that Way again; but he ſwore at me, and told me the other Door: I opened it, and went in firſt, and the Deceaſed and the Priſoner were both with their Swords in their Hands, pointing towards each other. The Deceaſed cloſed with the Priſoner in a manner as if he was rather falling than puſhing; and the Priſoner with his Left Hand had hold of the Deceaſed, who, as ſoon as we parted them, was ſo weak that he could not ſtand. I did not ſee him bleeding when I came into the Room, though I cried out to the Priſoner, *For God's Sake what are ye doing?*

Priſoner. Did not you ſee the Deceaſed offer to ſtab me in the Back?

Barnes. No.

Mr. *Burdet*, a Surgeon. The next Day in the Evening, the Priſoner ſent a Coach to my Houſe with a Letter for me, informing me that he had been wounded in a Rencounter, and deſiring me to come to him. I went, and found him in Bed at the Houſe of Mrs. *Gardiner* in *Dean-Street*, near *Red-Lion-Square*, where he had concealed himſelf. He had one Wound below his Knee an Inch and half long, another on his Buttock, two of his Fingers were cut in the firſt Joint, and he ſhewed me three or four Holes in his Breeches; but none of his Wounds were above a Quarter of an Inch deep, and that in his Leg had but juſt raiſed the Skin.

Mrs. *Gardiner.* The Priſoner came to my Houſe about Two o'Clock in the Morning: He was bloody, and upon ſearching him, I found a Wound in his Buttock as deep as my Finger, and I dreſſed it for him.

Court. The Evidence is plain, that the Priſoner gave the firſt Provocation; and it is not denied, that he afterwards killed the Deceaſed. The Queſtion is, Whether from the Time the Priſoner threw the Bottle, to the Time the Deceaſed received the Wound, there was any Reconciliation? If there was not, I think it can be no leſs than Murder.

The Jury found there was no Reconciliation; but not being ſatisfied as to the Murder, they agreed upon a Special Verdict.

The Counſel on both Sides attending, they ſtated the principal Points of the Evidence for the Conſideration of the Judges.

What the Priſoner's Counſel drew up, was to this Effect:

" We find that the Priſoner, the Deceaſed, and Three more met at the " Tavern, where they all appeared very friendly.---A Box and Dice were " called for,---they played ſome Time together, till Mr. *Rich* ſaid, *Who " will ſet me three Half-Crowns?*---The Deceaſed put down three Half- " pence, and ſaid, *I'll ſet ye three Pieces.*—The Priſoner ſaid, *That's im- " pertinent*---The Deceaſed anſwered, *He that ſays I am impertinent, is a " Raſcal.*---The Priſoner threw a Bottle, and the Deceaſed threw a Glaſs. " ---They both got up, and took their Swords; but one of the Company " ſtepped in, and prevented their engaging.---They ſat down again to " drink,---ſtaid about an Hour, and then the Company broke up.---The " Priſoner put on his Great Coat---They all went out of the Room.--- " The Priſoner and the Deceaſed returned, the Door was ſhut, and the " Claſhing of Swords was heard."

The Counſel for the King ſtated the Evidence to the following Purpoſe:

" We find, that on the 2d of *February* the Priſoner, the Deceaſed, " and Three others were in Company at the *Caſtle* Tavern, and continued " in a peaceable manner for about two Hours.---The Priſoner then called " for a Box and Dice; but none being to be had, he called for the Pepper- " Box, which was brought.---Dice were found upon the Table;---they " played at Hazard.------Mr. *Rich* aſked, who would ſet him three " Half-Crowns? The Deceaſed in a jocular manner laid down three " Half-pence, and ſaid, *There's three Pieces*---The Priſoner called him " an impertinent Puppy, and threw a Bottle at him, which miſſed him, " but bruſhed his Wig ---The Deceaſed toſſed a Glaſs or Candleſtick at " the Priſoner, which did not hit him.---They both roſe up, and took their " Swords; but were prevented from fighting.---They ſat down again.---

The

" The Deceased offered to be Friends with the Prisoner; but the Prisoner " answered, *No, God damn ye! I'll have your Blood, by God!*—In about " an Hour after this, the Company all went out of the Room; but the " Prisoner called to the Deceased, and said, *Young Gentleman, a Word* " *with ye.*—They both returned into the Room,—the Door was shut with " Violence, and the Clashing of Swords was heard.—We find that from " the Time that the Bottle was flung, to the Time of the breaking up of " the Company, there was no Reconciliation."

These two rough Draughts being compared, and some Alterations being made, a third was drawn up, which was agreed to and signed by the Jury, and was to this Tenor.

Special Verdict.

" That upon the 2d Day of *February*, 1725, the Prisoner and the De- " ceased were in Company, together with *John Rich*, *Thomas Hawkins* " and *Michael Blunt*, in a Room at the *Castle* Tavern in *Drury-Lane*, in " the County of *Middlesex*, in a friendly manner. That after they had " continued thus for two Hours, Box and Dice were called for; the " Drawer said, he had Dice but no Box; and thereupon the Prisoner bid " the Drawer bring the *Pepper-Box*, which he immediately did: And " then the Company began to play at Hazard; and after they had played " some time, the said *Rich* asked, If any one would set him *three Half-* " *Crowns?* Whereupon the Deceased in a jocular manner laid down *three* " *Half-penny Pieces*, and then said to the said *Rich*, I have set you *three Pieces*, " and the Prisoner at the same time set the said *Rich* three Half-Crowns, " which the said *Rich* won: and immediately after the Prisoner, in an " angry manner, turned about to the Deceased, and said, *It was an im-* " *pertinent Thing to set Half-pence, and that the Deceased was an imperti-* " *nent Puppy for so doing*; to which the Deceased answered, *Whoever called* " *him so was a Rascal.* That thereupon the said *John Oneby* took up a " Bottle, and with great Force threw it *erga prædict' Willielmum Gower*; " which Bottle did not hit the said *Gower*, but brushed his Perriwig, as " it passed by his Head, and beat out some of the Powder; whereupon " the Deceased immediately after tossed a Candlestick or Bottle *erga Præ-* " *dict' Johannem Oneby*, but did not hit him with the same: Upon which " the Deceased and the Prisoner both rose up to fetch their Swords, which " then hung up in the Room; and the Deceased drew his Sword, but the " Prisoner was prevented from drawing his by the Company; and the De- " ceased thereupon threw away his Sword, and the Company interposing, " they sat down again for the Space of an Hour. That at the Expiration of " an Hour, the Deceased said to the Prisoner, *We have had hot Words, but* " *you was the Aggressor*; *but I think we may pass it over*; and at the same " time offered his Hand to the said *John Oneby*, to which the said *John* " *Oneby* answered, *No, damn you, I will have your Blood.* They further " find, that afterwards the Reckoning was paid by the Deceased, the Pri- " soner, *Rich*, *Hawkins* and *Blunt*; and all the Company, except the " Prisoner, went out of the Room to go home; and the Prisoner remain- " ing alone in the Room, called to the Deceased in these Words, *Young* " *Man, come back, I have something to say to you*; whereupon the Deceased " returned into the Room, and immediately the Door was flung to and " shut, and thereby the rest of the Company were excluded; and then a " Clashing of Swords was heard, and the Prisoner, with his Sword, gave " the Deceased the mortal Wound mentioned in the Indictment, of " which he died the next Day. They further find, that at the breaking " up of the Company, the Prisoner had his Great Coat thrown over his " Shoulders; and that he received three slight Wounds in the Engage- " ment; and that the Deceased being asked, upon his Death-Bed, whether " he received his Wound in a manner, amongst Swordsmen, called fair, " answered, *I think I did.* That from the time of throwing the Bottle, " there was no Reconciliation between the Prisoner and the Deceased. " And whether this be Murder or Manslaughter, the Jury pray the Ad- " vice of the Court, and find accordingly."

The Prisoner being carried back to *Newgate*, remained very easy, for about a Twelve-month, having no Irons on, and lodged in a commodious Room; and as the Prosecutor had taken no Steps towards bringing on the Hearing of the Special Verdict, he grew pretty confident it would be determined *Manslaughter*, and fee'd Counsel to move the Court of King's-Bench for *a Concilium*, to be made for arguing the Special Verdict before the Court; which being ordered, a *Certiorari pro Rege* was brought *(a)*; and the Prisoner being at the Bar, it was made a *Concilium*, the Court being of Opinion that it could not be made a *Concilium* in his Absence; and in *Hillary* Term, 13 *Geo.* I. it was argued by Serjeant *Darnall* for the King, and Serjeant *Eyre* for the Defendant.

Serjeant *Darnall.* In order to consider whether this be Murder or Manslaughter, I shall premise that which is not to be disputed, that every malicious Killing is Murder, and that Malice may be either express or implied. This is Malice implied in the Act itself, because there was no reasonable Provocation; there was nothing but Words passed between them, till the Prisoner threw the Bottle at the Deceased; and it has been often resolved, that, in point of Law, Words are no Provocation. But if Words were a sufficient Provocation; yet it appears, the Prisoner began with Words as well as Acts. The calling Mr. *Gower* an impertinent Puppy was previous to the saying or doing of any thing by Mr. *Gower*, that could give Offence to the Prisoner: If the setting of Half-pence was a Thing to be resented, the Affront was to Mr. *Rich*, and not to Mr. *Oneby*, whose Bett to *Rich* was not at all affected by what was done by Mr. *Gower*. And that it is Murder in this Defendant, I think cannot be disputed, after the Judgment of the Court in *Mawgridge*'s Case (inserted at the End of the next Trial); there the Bottle thrown by *Cope* hit *Mawgridge*, and broke his Head; here, the Candlestick or Bottle tossed by *Gower*, did not hit the Prisoner at the Bar: That was a sudden Conflict; this a deliberate Act, after a Disposition to Peace manifested by Mr. *Gower*, and a Continuance of Malice in the Prisoner for above an Hour after the first Conflict. What was done here by Mr. *Gower* would have been justifiable in him, even if the Candlestick had hit the Prisoner: and so it was resolved in *Mawgridge*'s Case; for there the Bottle returned by Mr. *Cope* did hit the Defendant, and broke his Head. And as the Act done by Mr. *Gower* was justifiable in him, it follows, that it can be no foundation to excuse or mitigate the subsequent Killing by Mr. *Oneby*. The Case put in *Mawgridge*'s Case of an Assault by *A* upon *B*. *B* draws his Sword, and pursues *A* to the Wall, where *A* in his own Defence kills *B*; this is held Murder in *A*, though it has many strong Circumstances in favour of *A*, which are not in this Case. But I apprehend, it is not necessary to rely barely on this Point, that there is Malice implied in the Act; since it plainly appears, upon the State of the Case, that here is express Malice. When the Deceased was desirous to end the Matter amicably, the Prisoner replies, *No, damn you, I will have your Blood:* This explains and goes through the whole Fact, and proves the subsequent Killing to be malicious.

I do therefore insist, that the taking it either way, either as a Killing out of Malice implied, or Malice express, it is Murder; and that this *upon the Fact* is a Killing of Malice implied, and upon the Prisoner's own Words coupled with the Fact, it is Malice express, and consequently Murder.

Serjeant *Eyre*, for the Defendant. The Question is, what degree of Homicide this is; and I apprehend it to be but Manslaughter: The Distinction is, that if the Killing be of Malice fore-thought, it is Murder; if on a sudden Occasion, it is but Manslaughter; and that I take to be this Case: In 3 *Instit.* 51. Malice prepensed is defined to be, when one compasseth to kill another, and doth it *sedato animo:* On the other hand, Manslaughter is the doing it without Premeditation, upon a sudden Brawl, Shuffling, or Contention. 3 *Instit.* 57.

The Law has ever been indulgent to the Passions of Men; *Ira furor brevis est*, and therefore as a Madman, the Party is excused for what he does in a sudden Transport of Passion. I do admit, that bare Words are no Provocation; but yet they will serve to explain the Nature of the Combat, and shew whether it was sudden or not. The calling the Prisoner *a Rascal*, was what no Man of Honour could put up; and as this was the Beginning of the Quarrel, the Fighting was as sudden as the reproachful Words. If the Prisoner had stabbed Mr. *Gower*, upon speaking the Words, and *Gower* had done nothing, I believe it would have been Murder; but here was a regular Fight, an Interchange of Blows, and so it comes up to the Case put in *Kelyng* 55. of a Combat between two of a sudden Heat; where if one kills the other, it is but Manslaughter.

The Law has fixed no certain Time, when it shall be presumed the Passions of Men are cooled. The Case in 12 *Co.* 87. must take up a longer time than this; for there the Boy ran three Quarters of a Mile to his Father, and told his Story, and after that the Father provided himself with a Cudgel, and had as far to go in pursuit of the other Boy; and there is this Difference between that Case and the Case at Bar; that there the Adversary was out of Sight, but here he continued in Presence, which must rather inflame than abate the Passion.

The Words made use of by Mr. *Gower* carry an Imputation on Mr. *Oneby*, which might provoke him afresh; the telling him, *he was the Aggressor*, was not likely to make an End of the Quarrel: And that is plain, from the Manner in which Mr. *Oneby* understood them, who would never have said so harsh a Thing to his Friend Mr. *Gower*, if he had been at that Time in any degree Master of himself.

It is not found by the Verdict who began, after Mr. *Gower* returned into the Room: It is not likely the Prisoner began, because he had his Great Coat thrown over his Soulders; and as to the shutting the Door, it is stated to be done immediately on Mr. *Gower*'s returning, and is likelier to be done by him that came into the Room, when the first Conflict happened. It appears Mr. *Gower* was the readiest to draw his Sword; it was actually drawn, and the Prisoner's was not; and since it is not stated, who drew first the second Time, I think it ought to be explained by the first.

To make it Murder in the first Instance, it must be done with a Weapon that would endanger Life. The Bottle in *Mawgridge*'s Case was full of Wine, and it hit him *(Cope)* so violently that he never spoke more. But for any thing appearing upon the Verdict, this might be only a small Oil-Bottle, usually set upon Tables in Public-Houses; and might perhaps be empty before it was flung. The Case of Mr. *Turner*, which is taken notice of in *Comb.* 407. was held Manslaughter upon this Reason, because the Clog was not such an Instrument, from a Blow with which it was likely Death should ensue. But supposing the Bottle to be as big and as full as *Mawgridge*'s Bottle, yet no harm was done by it here, as there was in *Mawgridge*'s Case. Here was no drawing the Sword *eo instante*, as *Mawgridge* did; which occasioned the Judges to lay the returning the Bottle by Mr. *Cope* out of the Case, and construe the immediate drawing the Sword, as an Intent to supply the Mischief, which the Bottle might fall short of; and even, in that Case, one great Man differed from the rest of his Brethren.—So that *Mawgridge*'s Case is materially different from this. There the Intention from the first throwing the Bottle was to commit Murder, here it was otherwise. There the first Bottle hit, here it missed. There the Murderer's Intent was immediately carried into Execution, here was a long Interruption. The Deceased needed not have returned, if he had not been equally disposed to combat; and he himself said it was a fair Combat, which there was no Pretence to say in *Mawgridge*'s Case.

Serjeant *Darnall* replied. The Words on both Sides must certainly be laid out of the Case; if not, *Puppy* was worse than *Rascal*, because it is the Name of a Beast. If Mr. *Gower* took *Oneby* to be the Aggressor, the Condescension was greater in him; it is no more than saying, I, who have been injured, am ready to pass it by. I do not find it was at all relied upon in *Mawgridge*'s Case, that the Bottle was full; and as to the Case in *Comberbatch*, *Turner's* Servant there had committed a Fault, for which he was liable to be corrected: The Deceased's Declaration was only that he received the Wound by *a fair* Push.

The Court said nothing upon this Argument, but appointed another to be before all the Judges of *England*. And in *Easter* Term following (*May* 6), it was accordingly argued by Mr. *Lee* for the King, and Mr. *Kettleby* (Serjeant *Baynes*, who was retained, being ill) for the Prisoner, to the same Effect as the former Argument. *Str.* Vol. II. 770. The Prisoner not being present in *Serjeant's-Inn (Chancery-Lane)*, as he was in Court upon the first Argument; this last being only to have the Advice of the other Judges.

Trinity *Term*, 13 Geo. I. *and* 1 Geo. II. 1727.

Monday, *June* 12. Mr. *Oneby* being brought to the Bar from *Newgate* to hear the Resolution of the Court, the Chief Justice *Raymond (b)* delivered the Opinion of the Judges, in the following manner.

(a) Sir *John Strange*'s Reports, Vol. II. p. 766, 767, 768.

(b) From Lord *Raymond*'s Reports, Vol. II. p. 1435, and following Pages.

The King *verſ.* John Oneby.

AT the General Seſſions of the Peace, held at *Hicks-Hall*, for the County of *Middleſex*, 28th Day of *February*, in the 12th Year of his Majeſty's Reign, *John Oneby*, of *St. Martin's in the Fields*, Gent. was indicted, for that he, the 2d Day of *February*, 12 *Geo.* at the ſaid Pariſh, feloniouſly, voluntarily, and of his Malice afore-thought, made an Aſſault upon one *William Gower*, Eſq. and that he the ſaid *John Oneby*, with a Sword, which he then and there held drawn in his Right Hand, the ſaid *William Gower*, in and upon the left Part of his Belly, near the Navel, feloniouſly, voluntarily, and of his Malice fore-thought, did ſtrike and thruſt, giving the ſaid *William Gower*, then and there, with the ſaid drawn Sword, in and upon his ſaid left Part of his Belly, near the Navel, a mortal Wound; of which mortal Wound, the ſaid *William Gower*, lived in a languiſhing Condition, from the ſaid 2d Day of *February*, to the 3d Day of the ſaid *February*; on which 3d Day of *February*, the ſaid *William Gower*, at the Pariſh aforeſaid, of the ſaid mortal Wound, did die; and ſo the Jurors find, that the ſaid *Oneby*, the ſaid *William Gower* feloniouſly, voluntarily, and of his Malice fore-thought, did kill and murder. Which Indictment being delivered to the Juſtices of Gaol-Delivery for *Newgate*, the ſaid *John Oneby* was arraigned thereupon, and pleaded Not Guilty. And upon the Trial, which was had before Mr. Baron *Hale*, and Sir *William Thompſon*, Recorder of *London*, the Jury found the the Special Verdict following, *viz.*

" That the ſaid *John Oneby*, and the ſaid *William Gower*, together with " *John Rich*, *Thomas Hawkins*, and *Michael Blunt*, were in Company " together in a Room in the *Caſtle*-Tavern, in the Pariſh of *St. Martin's* " *in the Fields*, in a friendly Manner; that after the ſaid *John Oneby*, " *William Gower*, *John Rich*, *Thomas Hawkins*, and *Michael Blunt*, had " continued together in the ſaid Room, for the Space of two Hours, a " Box and Dice were called for; whereupon the Drawer ſaid, that he " had Dice but no Box; and that thereupon the ſaid *John Oneby* com- " manded the Drawer to bring a Pepper-Box, and accordingly a Pepper- " Box and Dice were brought; that immediately after, the ſaid *John* " *Oneby*, *William Gower*, *John Rich*, *Thomas Hawkins*, and *Michael Blunt*, " began to play at Hazard; and after they had played half an Hour, the " ſaid *John Rich* aſked, if any of the Company would ſet him three " Pieces of Money, called Half-Crowns; that thereupon the ſaid *William* " *Gower*, in a jocular Manner, ſet three Pieces of Money, called Half- " pence, and then ſaid to the ſaid *John Rich*, that he had ſet him three " Pieces; that the ſaid *John Oneby*, at the ſame Time, ſet the ſaid *John* " *Rich* three Half-Crowns, which the ſaid *John Rich* won; and imme- " diately the ſaid *John Oneby*, in an angry Manner, turned to the ſaid " *William Gower*, and ſaid to him, that it was an impertinent Thing to " ſet Half-pence; and further ſaid to the ſaid *William Gower*, that he, " the ſaid *William Gower*, was an impertinent Puppy in ſo doing; to " which the ſaid *William Gower* then and there anſwered, that whoſo- " ever called him ſo was a Raſcal; and thereupon the ſaid *John Oneby* " took up a Glaſs-Bottle, and with great Force threw it at the ſaid *Wil-* " *liam Gower*; but the Glaſs-Bottle did not ſtrike the ſaid *William Gow-* " *er*, but paſſing by near his Head bruſhed his Peruke, which he then " had upon his Head, and beat out ſome of the Powder out of his Pe- " ruke; that thereupon the ſaid *William Gower*, immediately after, toſſed " a Glaſs or Candleſtick at the ſaid *John Oneby*, but the Glaſs or Can- " dleſtick did not hit the ſaid *John Oneby*, upon which, both the ſaid " *John Oneby* and *William Gower* preſently roſe from their Seats, to fetch " their Swords, which then hung up in the Room; and the ſaid *William* " *Gower*, then drew his Sword out of the Scabbard, but the ſaid *John* " *Oneby* was hindered by others of the Company from drawing his Sword " out of the Scabbard; whereupon the ſaid *William Gower* threw away " his Sword, and by the Interpoſition of the ſaid *John Rich*, *Thomas* " *Hawkins*, and *Michael Blunt*, the ſaid *William Gower* and *John Oneby* " ſat down again, and being ſo ſet down, continued for the Space of an " Hour, in Company with the ſaid *John Rich*, *Thomas Hawkins*, and *Mi-* " *chael Blunt*; that after the Expiration of that Hour, the ſaid *William* " *Gower* ſaid to the ſaid *John Oneby*, *We have had hot Words, but you was* " *the Aggreſſor*, but I think, *we may paſs it over*; *and at the ſame Time the* " *ſaid* William Gower *offered his Hand to the ſaid* John Oneby; to which " the ſaid *John Oneby* then anſwered the ſaid *William Gower*, *No*, *damn* " *you*, *I will have your Blood*; that afterwards the Reckoning was paid " by the ſaid *John Oneby*, *William Gower*, *John Rich*, *Thomas Hawkins*, " and *Michael Blunt*: And that the ſaid *William Gower*, *John Rich*, *Tho-* " *mas Hawkins*, and *Michael Blunt*, went out of the ſaid Room, with an " Intent to go home, leaving the ſaid *John Oneby* in the Room; that " the ſaid *John Oneby*, ſo as aforeſaid, remaining in the Room, called to " the ſaid *William Gower*, *Young Man*, *come back*, *I have ſomething to ſay to* " *you*; that thereupon the ſaid *William Gower* returned into the ſaid " Room, and the Door of the Room was immediately flung to, and ſhut; " by reaſon of which ſhutting of the Door, all of the ſaid Company, be- " ſides the ſaid *William Gower* and *John Oneby* were ſhut out of the " Room, and that then after ſhutting of the Door, a Claſhing of " Swords was heard; then the Jury find, that the ſaid *John Oneby* gave " the ſaid *William Gower*, with his Sword, the mortal Wound in the In- " dictment mentioned, of which he died; but they further find, that at " the breaking up of the Company, the ſaid *John Oneby* had his Great " Coat thrown over his Shoulders, and that the ſaid *John Oneby* received " three ſmall Wounds in the fighting with the ſaid *William Gower*, and " that the ſaid *William Gower* being aſked upon his Death-Bed, Whether " he the ſaid *William Gower* had received his Wound in a Manner among " Swordſmen called *fair?* Anſwered, *I think*, *I did:* And they further find, " that from the Time the ſaid *John Oneby* threw the Glaſs-Bottle at the " ſaid *William Gower*, there was no Reconciliation between the ſaid *John* " *Oneby* and *William Gower:* And whether this is Murder or Manſlaugh- " ter, the Jury pray the Advice of the Court: And if, *&c.*"

So that the Queſtion upon the Special Verdict is, Whether *John Oneby*, the Priſoner at the Bar, is guilty of Murder or Manſlaughter?

A great deal of Time was ſpent in drawing up this Special Verdict; for although the Trial at the *Old-Bailey* was in the Beginning of laſt *March* was twelve Months, yet the Record was not removed into this Court; till *Hilary* Term laſt, towards the End of which Term, it was argued by Counſel on both Sides; and another Argument being deſired by the Counſel for the Priſoner, we thought it proper to deſire the Opinion of all the reſt of the Judges; and for that Purpoſe, it was argued before all the Judges, at *Serjeants-Inn-Hall* in *Chancery-Lane*, upon the 6th Day of *May* laſt, which was as ſoon as all the Judges could meet, by reaſon of the Intervention of the Circuits. And after mature Conſideration had upon a Meeting of them, they *ſeriatim* gave their Opinions, and came to this Reſolution unanimouſly, not one of them diſſenting, and which I have Authority from them to declare, *viz.*

That *John Oneby*, the Priſoner at the Bar, upon the Facts found upon this Special Verdict, is guilty of Murder.

Without entering into a nice Examination of the ſeveral Definitions or Deſcriptions of Murder, as they are found in the old Law-Books, as *Bracton*, *Britton*, and *Fleta*, where the Wickedneſs of the Act is aggravated by the Circumſtances of Secrecy or Treachery, Murder has been long ſince ſettled to be the voluntary killing a Perſon of Malice prepenſe; and that whether it was done ſecretly or publickly. *Staundf.* Pl. Cor. 18. b. 3 Inſt. 54.

But then it muſt be conſidered, what the Word Malice in ſuch Caſe imports. In common Acceptation, *Malice* is took to be a ſettled Anger (which require ſome Length of Time) in one Perſon againſt another, and a Deſire of Revenge. But in the legal Acceptation, it imports Wickedneſs, which includes a Circumſtance attending an Act that cuts off all Excuſe. By 25 *H.* VIII. c. 3. for taking away Clergy, it is enacted, That every Perſon who ſhall be indicted of the Crimes therein mentioned, and thereupon arraigned, and ſtand mute, of Malice or of Frowardneſs of Mind, ſhall loſe the Benefit of his Clergy. Now in that Place, Malice can never be underſtood in the vulgar Senſe; for the Party cannot be thought to ſtand mute, out of a ſettled Anger, or Deſire of Revenge, but only to ſave himſelf: and therefore ſuch ſtanding Mute, and refuſing to ſubmit to the Courſe of Juſtice, is ſaid to be done wickedly, *i. e.* without any Manner of Excuſe, or out of Frowardneſs of Mind.

This Malice, an eſſential Ingredient to make the killing a Perſon Murder (to uſe the Expreſſions of Lord Chief-Juſtice *Coke*, and Lord Chief-Juſtice *Hale*, whoſe Authority hath eſtabliſhed them), muſt be either implied or expreſs; and ſays *Hale*, in *his Pleas of the Crown* 44. this implied Malice is collected either from the Manner of doing, or from the Perſon ſlain, or the Perſon killing. As to the two laſt, there is no Occaſion, at preſent, to take them into Conſideration.

I. As to the firſt, *viz.* from the Manner of doing, as *Hale* expreſſes it, or as *Holt*, Chief-Juſtice *(Vide* Mawgridge's *Caſe poſtea)* ſays, from the Nature of the Action: 1. Wilfully poiſoning any Man implies Malice. 2. If a Man doth an Act, that apparently muſt do Harm, with an Intent to do Harm, and Death enſues, it will be Murder. As if *A* runs with a Horſe, uſed to ſtrike, amongſt a Multitude of People, and the Horſe kills a Man, it will be Murder; for the Law implies Malice from the Nature of the Act. 3. Killing a Man without a Provocation is Murder; as if *A* meets *B* in the Street, and immediately runs him through with a Sword, or knocks out his Brains with a Hammer or Bottle. And if angry Words had paſſed in that Caſe between *A* and *B*, yet it would have been Murder in *A*, becauſe Words are not ſuch a Provocation, as will prevent ſuch a Homicide from being Murder; Lord *Morley*'s Caſe, *Kelynge* 56. and *State Trials*, Vol. VII. 4. The Law will imply Malice from the Nature of the original Action, or firſt Aſſault, though Blows paſs between the Parties, before the Stroke is given, which occaſions the Death. As if upon angry Words or abuſive Language between *A* and *B*, of a ſudden *A*, without any Provocation (for angry Words or abuſive Language in ſuch a Caſe is looked on as none), draws his Sword immediately, and makes a Paſs at *B*, or ſtrikes at him with any dangerous Weapon, as a Piſtol, Hammer, large Stone, *&c.* which in all Probability might kill *B*, or do him ſome great bodily Hurt, and then *B* draws his Sword, and mutual Paſſes are made, and *A* kills *B*, this will be Murder, for the Act was voluntary; and it appears from the Nature of it, that it was done with an Intent to do Miſchief; and therefore ſince in all Probability it might have occaſioned *B*'s Death, or done him ſome great bodily Harm, the Law implies Malice prepenſe; and the Reſiſtance or Paſſes that were made by *B*, were but in the Defence of his Perſon, which was violently and cruelly attacked. And this was the Reſolution of *Kelynge*, Chief-Juſtice, *Twiſden*, *Windham*, and *Morton*, Juſtices in *Hopkin Hugget*'s Caſe, *Kelynge* 62 *(a)*. And though in the principal Caſe, the eight other Judges differed in Opinion from the four Judges in the King's-Bench; yet, to this Opinion of the Four, the eight Judges did agree, as *Kelynge* took it. And this was the true Reaſon of *Mawgridge*'s Caſe. The Judgment in which Caſe is a great Authority in this Caſe, that not being ſo ſtrong a Caſe as the preſent Caſe. It was indeed objected by the Counſel for the Priſoner at the Bar, in their Arguments in the preſent Caſe, 1. That *Mawgridge*'s Caſe was a ſingle Caſe, that the Judgment in that Caſe had carried Murder further than it had ever been carried before. 2. That it was not determined with the unanimous Opinion of all the then Judges, for one very great Judge of the then Twelve, *viz.* Lord *Trevor* differed from the other Judges, and held it was only Manſlaughter. But upon our meeting to conſider of this preſent Caſe, all the Judges unanimouſly agreed, that *Mawgridge*'s Caſe was undoubted Law *(b)*, and that that Judgment was a right and juſt Judgment, ſo groundleſs was that Inſinuation, which had been made (for ſuch an Inſinuation there was) in *Weſtminſter-Hall*, that ſome of the preſent Judges were of Opinion, that the Judgment in *Mawgridge*'s Caſe was not a legal Judgment.

And this is as much as is neceſſary, rather more than is neceſſary, to be ſaid as to implied Malice, ſince there will be no Occaſion in this Caſe to look out for Malice implied.

II. Malice expreſs is a Deſign formed of taking away another Man's Life, or of doing ſome Miſchief to another, in the Execution of which Deſign Death enſues. And this holds, where ſuch Deſign is not formed againſt

(a) Judge *Foſter*'s Reports, p. 138, 313, 315, *Hugget*'s Caſe.

(b) This Caſe of *Mawgridge*, being ſo frequently quoted in this, and the next Trial; and as every Gentleman may not have *Kelynge*'s Reports ready at Hand to turn to, we have inſerted the whole Caſe from *Kelynge*, p. 117 to p. 138.

againſt any particular Perſon; as if *A* having no particular Malice againſt any particular Perſon, comes with a general Reſolution againſt all Oppoſers; if the Act be unlawful, and Death enſue, it is Murder. As if it be to commit a Riot, to enter into a Park, Lord *Dacre*'s Caſe *H. P. C.* 47. *Moore* 86. *Sav.* 67. So if *A* goes with a Reſolution to kill the firſt Man he meets, and meeting *B*, kills him, it is Murder with expreſs Malice: yet *A* had not declared any Malice againſt *B*, nor againſt any particular Perſon. Much more it will be expreſs Malice, when the miſchievous Deſign is formed againſt any particular Perſon, which may be made evident, as well by Circumſtances as by the expreſs Declarations of the Perſon killing. As that he would be revenged of *B*, or that he would have his Life, or have his Blood; and ſome time after he kills *B*. And that ſuch Declarations ſpoken ſeriouſly, or deliberately, or after Time for Reflection, manifeſt an expreſs Malice, no body can doubt.

Having thus briefly mentioned that known and ſettled Rule, that there muſt be either Malice expreſs or implied, to make Murder, and alſo ſome Inſtances of what is one and what the other of them; I come to the preſent Caſe before us.

All the Twelve Judges were unanimous in Opinion, That as the Facts are found in this Special Verdict, it appears, that the Priſoner at the Bar had expreſs Malice againſt Mr. *Gower*, when he gave him the mortal Wound, of which he died: 1. Mr. *Gower* did nothing that could reaſonably raiſe a Paſſion in Mr. *Oneby*. He gave him no Provocation whatſoever; for when Mr. *Gower* ſet the three Half-pence, he ſet them againſt Mr. *Rich*, and that in a jocular manner; therefore that was no Affront to Mr. *Oneby*. 2. Upon that Mr. *Oneby* turned to Mr. *Gower* in an angry manner, and gave him abuſive Language, and called him impertinent Puppy; the Anſwer of *Gower* was not improper, nor more than what might be expected, that whoſoever called him ſo was *a Raſcal*. 3. That as *Oneby* had before begun with *Gower*, by giving him abuſive Language; ſo he then took up the Glaſs-Bottle, *et magna cum vi*, threw at *Gower*, and beat the Powder out of his Peruke; if it had killed *Gower*, it had certainly been Murder; upon which *Gower* toſſed a Glaſs or Candleſtick at *Oneby*. And the Difference of finding in the Special Verdict is obſerveable: *Oneby* threw the Bottle at *Gower*, *magna cum vi*; *Gower* only toſſed the Glaſs or Candleſtick at *Oneby*. 4. When they fetched their Swords, *Gower* did it only to defend himſelf; for the Verdict finds, that though *Gower* drew his Sword firſt, yet the Priſoner at the Bar, being hindered by the Company from drawing his Sword, *Gower* thereupon threw his Sword away. 5. By the Interpoſition of the Company, the Priſoner at the Bar and Mr. *Gower* ſat down again, and continued in Company for an Hour; after which Mr. *Gower* ſaid, *We have had hot Words, but you was the Aggreſſor*, but I think *we may paſs it over, and offered his Hand to the Priſoner*; that the Priſoner at the Bar was the Aggreſſor, is true, and that in a violent manner: This was ſufficient to have appeaſed Mr. *Oneby*; but what is his Anſwer? *No, damn you, I will have your Blood.* There is an expreſs Declaration of Malice, an expreſs Declaration of a Deſign of taking away Mr. *Gower*'s Life. Theſe Words are incapable of any other Conſtruction. Theſe Words ſhew his malicious Intent, even in throwing the Bottle at firſt; they are ſpoken an Hour after the firſt Action, and are ſpoken with Deliberation. The next Fact the Jury find is; that afterwards (not particularly finding what Interval of Time paſſed between the ſpeaking theſe Words, and what is found next) that Mr. *Gower*, *Rich*, *Hawkins* and *Blunt* went out of the Room with an Intent to go home, leaving the Priſoner at the Bar in the Room; that the Priſoner remaining in the Room, called to the ſaid *William Gower*, ſaying, *Young Man, come back, I have ſomething to ſay to you.* Theſe Words alſo ſhew a plain Deliberation; and being attended with the Circumſtances found before, and what follows immediately, import Contempt; *young Man* are inſolent and imperious; *come back*, and import a Reſentment he had conceived againſt Mr. *Gower*, about which he had ſomething to ſay to him. For what Purpoſe did the Priſoner ſtay, after all the Company had left the Room to go home? It was to ſay ſomething to Mr. *Gower*. What is that? Why, as ſoon as Mr. *Gower* is returned into the Room, the Door was immediately flung to and ſhut, and the reſt of the Company ſhut out; and then after ſhutting the Door, a Claſhing of Swords was heard, and the Priſoner gave Mr. *Gower* the mortal Wound, of which he died.

Theſe immediate, ſubſequent Facts ſhew, what it was the Priſoner had to ſay to Mr. *Gower*; it was to carry the malicious Deſign, he had before declared he had againſt Mr. *Gower*, into Execution, *viz.* to *have his Blood*; and he had it, for he gave him the Wound of which he died.

To go further: If the Priſoner had Malice againſt Mr. *Gower*, though they fought after the Door was ſhut, the Interchange of Blows will make no Difference; for if *A* has Malice againſt *B*, and meets *B*, and ſtrikes him, *B* draws, *A* flies to the Wall, *A* kills *B*, it is Murder. *H. P. C.* 42. *Kelynge* 58.

Nay, if the Caſe had been, that there had been mutual Malice between the Priſoner and Mr. *Gower* (*which does not appear to have been on the Part of the Deceaſed*) *(a)* and they had met and fought upon that Malice, the killing Mr. *Gower* by the Priſoner had been Murder. *H. P. C.* 47. 1 *Bulſtr.* 86, 87. *Hob.* 121. *Crompt.* 21.

The Judges were all of Opinion, upon the Facts found in this Verdict, there appeared to be expreſs Malice in *Oneby* againſt Mr. *Gower*; and then *Oneby* killing *Gower*, having ſuch expreſs Malice againſt him, they were all unanimous, and clear of Opinion, that this was plainly Murder.

Having thus mentioned the Reaſons, upon which we ground this preſent Reſolution, I ſhall next conſider, if any of the Objections made by the Counſel for the Priſoner are in anſwer to theſe Reaſons, or take off the Force of them.

The Counſel for the Priſoner, Mr. *Oneby*, inſiſted, that upon the whole Verdict, the Caſe was no more than that from a ſlight Occaſion; paſſionate Words aroſe, mutual Reproaches paſſed; the Quarrel was ſudden, mutual Aſſaults were made; and on a ſudden fighting, in Heat of Paſſion, the Priſoner killed the Deceaſed, which can be no more than Manſlaughter.

That ſuch Fact could amount to no more than Manſlaughter; thy cited the known Caſe, that if *A* and *B* fall out upon a ſudden, and they preſently agree to fight, and each fetches his Weapon, and go into the Field and fight, and one of them kills the other; this is but Manſlaughter, *H. P. C.* 48. 3 *Inſtit.* 57. becauſe the Paſſion was never cooled.

In this Caſe (ſaid they) it is plain the Quarrel aroſe on a ſudden; Mr. *Oneby*'s Paſſion was raiſed, and that it is not found by the Jury to have ever been cooled; and therefore the Words, Mr. *Oneby* ſpoke, *No, damn you, I will have your Blood*, &c. were only Words of Heat, ſpoke under the Continuance of the firſt Paſſion. And they further inſiſted, that the Law had fixed no Time, in which the Paſſion muſt be took to be cool; but that depends upon Circumſtances, of which the Jury are the proper Judges. In this Caſe, the whole Time that paſſed, between the Quarrel, and giving the mortal Wound, was but little more than an Hour; and it has been adjudged, that the Paſſion ſhall not be took to be cooled in very near that Time. 12 *Co.* 87. *Cro. Jac.* 296. *H. P. C.* 48. *Rowley*'s Caſe, where the Child of *A* beat the Child of *B*. *B*'s Child, all bloody, ran home to his Father; *B*, the Father, ran Three-quarters of a Mile, and beat the Child of *A*; by means whereof he died: This was adjudged to be only Manſlaughter; yet there muſt have been a conſiderable Time after *B* was provoked by the Uſage of his Child before he killed *A*'s Child, becauſe he ran Three-quarters of a Mile; yet it being one continued Paſſion raiſed in *B*, upon the beating of his Child, it was held this was only Manſlaughter. And in this preſent Caſe, to ſhew the Paſſion of Mr. *Oneby*, which was ſuddenly raiſed, was not cooled, the Counſel for Mr. *Oneby* obſerved, that the Jury had expreſly found that there was no Reconciliation between *Oneby*, the Priſoner, and Mr. *Gower*, the Deceaſed, from the time Mr. *Oneby* firſt threw the Bottle.

This I take to be the chief Objection, upon which the Counſel for the Priſoner principally relied.

In anſwer to this Objection, I muſt firſt take notice, that where a Man is killed, the Law will not preſume that it was upon a ſudden Quarrel, unleſs it is proved ſo to be; and therefore in *Legg*'s Caſe, *Kelynge* 27. it was agreed, upon Evidence, that if *A* kills *B*, and no ſudden Quarrel appears, it is Murder; for it lies upon the Party indicted to prove the ſudden Quarrel.

In the next place, from what I have ſaid before, it appears, that though a Quarrel was ſudden, and mutual Fighting before the mortal Wound given, it is by no means to be took as a general Rule, that the killing a Man will be only Manſlaughter. It is true, if reproachful Language paſſes between *A* and *B*, and *A* bids *B* draw, and they both draw (it is not material which of them draws firſt), and they both fight, and mutual Paſſes are made, Death enſuing from thence will be ony Manſlaughter, becauſe it was of a ſudden, and each ran the hazard of his Life. But there is a wide Difference between that Caſe, and where upon Words *A* draws his Sword, and makes a Paſs at *B*, or with ſome dangerous Weapon attacks him, and then *B* draws, and they fight, and *A* kills *B*; there, though there was a Quarrel upon abuſive Language, and there was afterwards a mutual Fighting, yet ſince *A* attacked *B* with a Weapon or Inſtrument, which might have taken away *B*'s Life, though they fought afterwards, that will be Murder. And this was agreed by all the Judges in the preſent Caſe.

But for the Argument's Sake, and it is only for Argument's Sake, and to give the Objection made by the Counſel for the Priſoner its full Force; if it ſhould be looked on here, that what is found in the former Part of the Verdict was upon a ſudden Quarrel, and only the Effect of Paſſion; yet, if it appears upon the Special Verdict, that there was a ſufficint Time for this Paſſion to cool, and for Reaſon to get the better of the Tranſport of Paſſion, and the ſubſequent Acts were deliberate, before the mortal Wound given, the killing of the Deceaſed will be Murder.

And all the Judges were of Opinion, that, upon Conſideration of the Facts found, it appeared, there had been ſufficient Time for Mr. *Oneby*'s Tranſport of Paſſion to cool, and that he had deliberated; and that the killing of Mr. *Gower* was a deliberate Act, and the Reſult of Malice Mr. *Oneby* had conceived againſt the Deceaſed.

But before I mention their Reaſons, I muſt lay down this Propoſition, which they all agreed, *viz.* that the Court are Judges of the Malice, and not the Jury; and that the Court are alſo Judges upon the Facts found by the Jury, whether if the Quarrel was ſudden, there was Time for the Paſſion to cool, or whether the Act was deliberate or not.

Upon the Trial of the Indictment, the Judge directs the Jury thus: If you believe ſuch and ſuch Witneſſes, who have ſworn ſuch and ſuch Facts, the killing the Deceaſed was with Malice prepenſe expreſs, or it was with Malice implied, and then you ought to find the Priſoner guilty of Murder; but if you do not believe thoſe Witneſſes, then you ought to find him guilty of Manſlaughter only; and ſo according to the Nature of the Caſe, if you believe ſuch and ſuch Facts, the Act was deliberate, or not deliberate; and then you ought to find ſo and ſo. And the Jury may, if they think proper, give a General Verdict, either that the Priſoner is Guilty of Murder, or of Manſlaughter. But if they decline giving a general Verdict, and will find the Facts ſpecially, the Court is to form their Judgment from the Facts found, whether there was Malice or not, or whether the Fact was done on a ſudden Tranſport of Paſſion, or was an Act of Deliberation, or not.

Although there are many Special Verdicts in Indictments for Murder, there never was one, where the Jury find in expreſs Terms that the Act was done with Malice, or was not done with Malice prepenſe; or that it was done upon a ſudden Quarrel, and in Tranſport of Paſſion; or that the Paſſion was cooled or not cooled; or that the Act was deliberate, or not deliberate: But the Collection of thoſe Things from the Facts found, is left to the Judgment of the Court. *Holloway*'s Caſe, *Palm.* 545. *Cro. Car.* 131. *W. Jones* 198. So in the Caſe cited by the Counſel for the Priſoner, *Cro. Jac.* 296. *Rowley*'s Caſe, the Jury find the Fact, but don't find in expreſs Terms, that the Father, whoſe Child was beat, killed the other Child in a ſudden Heat of Paſſion; but that was left to the Judgment of the Court, upon the particular Facts found.

But then it is objected, that the Law has fixed no Time, in which the Paſſion muſt be ſuppoſed to be cooled. 'Tis very true, it has not, nor could it, becauſe Paſſions in ſome Perſons are ſtronger, and their Judgments weaker, than in others; and by Conſequence it will require a longer Time in ſome, for Reaſon to get the better of their Paſſions, than in others: but that muſt depend upon the Facts, which ſhew whether the Perſon has deliberated or not; for Acts of Deliberation will make it appear whether that violent Tranſport of Paſſion was cooled or no.

But thus far the Reſolution of the Judges have already gone; and it has been adjudged, that if two fall out upon a ſudden, and they appoint to fight

(a) The Verdict implies the contrary: For *He offered him his Hand*, &c.

next:

next Day, that the Paſſion by that Time muſt be looked on to be cooled; and in ſuch Caſe, if they meet next Day, and fight, and the one kills the other at that Meeting, it has been often held to be Murder. *Hale P.C.* 48.

To go a little further. If two Men fall out in the Morning, and meet and fight in the Afternoon, and one of them is ſlain, this is Murder; for there was Time to allay the Heat, and their Meeting is of Malice. So is *Legg*'s Caſe, *Kelynge* 27.

At the Meeting of all the Judges, before Lord *Morley*'s Trial by the Peers, for the Murder of one *Haſtings*, they all agreed, that if upon Words two Men grow to Anger, and afterwards they ſuppreſs that Anger, and then fall into other Diſcourſe, or have other Diverſions, for ſuch a reaſonable Space of Time as in reaſonable Intendment their Heat might be cooled; and ſome Time after they draw upon one another, and fight, and one of them is killed; this is Murder, becauſe being attended with ſuch Circumſtances, it is reaſonably ſuppoſed to be a deliberate Act, and a premeditated Revenge upon the firſt Quarrel. But the Circumſtances of ſuch an Act being Matter of Fact, the Jury are Judges of them, *Kelynge* 56. The Meaning of which laſt Words is, that the Jury are Judges of the Facts, from which thoſe Circumſtances are collected. But, as ſaid I before, when thoſe Facts are found, the Court is to judge from them, whether they do not ſhew the Act was deliberate or not.

Lord *Morley* upon his Trial by the Peers was acquitted; and after that, in *Eaſter* Term, 18 *Car.* II. *Broomwich*, who was indicted as a Principal, in being preſent, aiding, and abetting Lord *Morely*, in the Murder of *Haſtings*, was tried at the King's-Bench Bar. The Quarrel was at a Tavern; but it was proved, when the Quarrel was at the Tavern, that Lord *Morley* ſaid, If we fight at this Time, I ſhall have a Diſadvantage, by reaſon of the Height of my Shoes; and preſently after they went into the Fields, and fought; Lord *Morley* killed *Haſtings:* But while they were fighting, *Broomwich* made a Thruſt at *Haſtings*, and Lord *Morley* cloſed in with *Haſtings*, and killed him; and (ſays the Book) this was held as clear Evidence of their Intention to fight, when they went out of the Tavern; and the Quarrel being only about Words, and fighting in a little Time after, it was held Murder by all the Court. And there need not be a Night's Time between the Quarrel and the Fighting, to make it Murder, but ſuch Time only, as it may appear not to be done on the firſt Paſſion; for Lord *Morley* conſidered the Diſadvantage of his Shoes; and the Court directed the Jury that it was Murder in *Broomwich*, being preſent, and aiding; but the Jury acquitted him. 1 *Sid.* 277. reports the ſame Caſe, and ſays, that the Court, in the Direction to the Jury, laid it down, that after the Provocation in the Houſe, they ſay, this is no convenient Place (and ſo have Reaſon to judge of Conveniency), and appoint another Place, though the Fight is to be preſently; this is Murder, for the Circumſtances ſhew their Temper.

In *H. P. C.* 48. if *A* and *B* fall out, *A* ſays he will not ſtrike, but will give *B* a Pot of Ale to touch him, *B* ſtrikes, *A* kills him; Murder.

Two quarrel; the one ſays, if you'll go into the Field, I will break your Head, and there one kills the other; Murder. *Crompt.* 25. p. 49.

Two fall out on a ſudden in the Town, and they by Agreement go into the Field preſently, and one kills the other; Murder. *Crompt.* 23. fol. 31.

From theſe Caſes it appears, that though the Law of *England* is ſo far peculiarly favourable (I uſe the Word peculiarly, becauſe I know no other Law that makes ſuch a Diſtinction between Murder and Manſlaughter), as to permit the Exceſs of Anger and Paſſion (which a Man ought to keep under, and govern) in ſome Inſtances to extenuate the greateſt of private Injuries, as the taking away a Man's Life is; yet in thoſe Caſes, it muſt be ſuch a Paſſion, as for the time deprives him of his reaſoning Faculties; for if it appears Reaſon has reſumed its Office; if it appears, he reflects, deliberates, and conſiders, before he gives the fatal Stroke, which cannot be, as long as the Fury of Paſſion continues; the Law will no longer, under that Pretext of Paſſion, exempt him from the Puniſhment, which from the Greatneſs of the Injury and Heinouſneſs of the Crime he juſtly deſerves, ſo as to leſſen it from Murder to Manſlaughter. Let us ſee, therefore, whether upon this Special Verdict it appears, that the fighting and killing Mr. *Gower* was only done in Heat of Paſſion, or was a deliberate Act. By what I obſerved before, it plainly appears it was a deliberate Act. But to recapitulate in ſhort; after the Words had paſſed, and the Bottle was thrown by the Priſoner, and Swords drawn; by the Interpoſition of Friends they ſat down, and continued in company for an Hour (a reaſonable Time under thoſe Circumſtances for the Paſſion to cool); and after that Hour expired, the Deceaſed ſays, *We have had hot Words, but you was the Aggreſſor*; *but, I think, we may paſs it over*; and at the ſame time offered *his Hand* to the Priſoner, which was enough to have appeaſed the Priſoner: To this Mr. *Oneby* anſwered, *No, damn you, I'll have your Blood*; Words expreſſing Malice, not Paſſion: Then, when the Company went out of the Room, the Priſoner ſtayed, and called the Deceaſed back; *Young Man, come back, I have ſomething to ſay to you:* The Door immediately was ſhut, claſhing of Swords was heard, and the Deceaſed received the mortal Wound from the Priſoner at the Bar. The Priſoner's Words ſhew, what was his Intention, *viz.* to take away Mr. *Gower*'s Life; and the Killing him may properly be ſaid to have been done upon Deliberation and Conſideration.

The Counſel for the Priſoner in their Arguments inſiſted, that there were ſeveral Circumſtances found in the ſpecial Verdict in favour of the Priſoner, which were a Foundation for the Court, to conſtrue the other Expreſſions to be only Words of Heat; and that what he did was in the Heat of his firſt Paſſion, which was never cooled, and not out of Malice. As 1. It is found, that at the breaking up of the Company, Mr. *Oneby* had his Great Coat thrown over his Shoulders; from whence it would be a Strain, to think he then intended to fight with Mr. *Gower*. 2. It might be Mr. *Gower*, who ſhut the Door, who came back after he was out of the Room, the Jury not having found who ſhut the Door. 3. That it was found, there was no Reconciliation between them, from the throwing the Bottle at Mr. *Gower*. But as to the firſt of theſe Objections, conſidering the Words the Priſoner uſed after this, and after the Deceaſed was out of the Room, and what followed, ſince the Jury have found this Fact, without ſaying any more about it, the natural conſtruction is, that this was only uſed by the Priſoner as a Blind to the Company, to conceal from them his real Intention, till they were gone out of the Room. As to the ſecond; it ſtands uncertain upon the Verdict; but it is an Uncertainty, which can have no Influence upon the preſent Determination; for if Mr. *Gower* had ſhut the Door, that would not alone have materially altered the Caſe. As to the third; ſince expreſs Malice before appeared to be in the Priſoner, the finding that Fact does not import, that the firſt Heat of Paſſion continued only, but that the Malice continued.

The Counſel for Mr. *Oneby* farther objected, that it appeared there was a mutual Fighting after the Door was ſhut; for it is found that he received three ſlight Wounds; then it is not found, who drew firſt, or made the firſt Aſſault, after the Door was ſhut; and it was poſſible a new, ſudden Quarrel might then riſe, in which Mr. *Gower* might be the Aggreſſor, and therefore the Special Verdict was uncertain in a material Point. The Anſwer to which is, what is ſaid in *Legg*'s Caſe, *Kelynge* 27, cited before; that if *A* kills *B*, and no ſudden Quarrel appears, it is Murder; for it lies on the Party indicted, to prove the ſudden Quarrel; and therefore the Jury not having found any ſuch Thing for the Priſoner's Benefit, it is to be took there was no ſuch. This is ſaid, ſuppoſing the latter Part of the Verdict could be conſidered, without regarding the former Part of it; and that when the Company went out of the Room, the Priſoner and Mr. *Gower* were reconciled. But however that might have been, here it appears there was no Reconciliation, and therefore there can be no Imagination of a new, original Quarrel in the Room after the Door was ſhut. And as to the ſlight Wounds the Priſoner received, that is immaterial; for he having Malice againſt Mr. *Gower*, though there was mutual Fighting, and the Priſoner was wounded, yet, when he killed Mr. *Gower*, it will be Murder.

The laſt Fact in the Special Verdict, which they relied on, was, when Mr. *Gower* was aſked upon his Death-Bed, whether he had received his Wounds in a Manner among Swordſmen called *fair?* He anſwered, *I think I did*; whereby the Deceaſed ſhewed, he was ſatisfied the Act was fair. The Anſwer to which is plain; that if *A* have Malice againſt *B*, and they meet and fight, though the Fight is never ſo fair according to the Law of Arms, yet if *A* kills *B*, it will be Murder.

The Caſes the Counſel for the Priſoner principally relied on, to make this Fact only Manſlaughter, were *Rowley*'s Caſe, 12 *Co.* 87. and *Turner*'s Caſe, *Comberbatch* 407, 8.

As to 12 *Co.* 87. the Caſe was, that two Boys fighting together, the one of them was ſcratched in the Face, and he bled a great deal at the Noſe; and ſo he ran Three-quarters of a Mile to his Father, who, ſeeing him very bloody, took in his Hand a Cudgel, and went Three-quarters of a Mile to the other Boy, and ſtruck him upon the Head, upon which he died; and it was held but Manſlaughter, for the Paſſion of the Father continued. And there is no Time, that the Law can determine, that it was ſo ſettled, that it ſhould be adjudged Malice prepenſe. (Note, *Theſe are are the Words of* 12 *Co.* 87.)

To which the Anſwer is plain, for the Reaſon given in *Cro. Jac.* 296. which is the ſame Caſe, that the Father having no Anger before, but being provoked upon the Complaint and Sight of his Son's Blood, and in that Anger beating him, of which he died, the Law adjudged it to be upon that ſudden Paſſion. But that is, conſidering what has been ſaid before, clearly diſtinguiſhable from the preſent Caſe; beſides it may be added, it was but *a little Cudgel* he ſtruck with, from which no ſuch fatal Event could be reaſonably expected *.

Turner's Caſe was this; his Wife complained the Boy not cleaned her Clogs, upon which Mr. *Turner* took up a Clog, and ſtruck him on the Head, and killed him; and though there was no other Provocation, it was held only Manſlaughter. But the Reaſon of that was, becauſe the Clog was ſo ſmall, there could be no Deſign to do any great Harm to the Boy, much leſs to kill him; and a Maſter may correct a Servant in a reaſonable manner for a Fault. And Lord Chief Juſtice *Holt*, in *Comberbatch* 408. ſays, that in that Caſe, it was an unlikely Thing, meaning that the Clog ſhould kill the Boy. The Counſel for the Priſoner, being apprehenſive of the Authority of *Mawgridge*'s Caſe, beſides the Obſervations they had made, mentioned before, to induce the Court to look upon that Judgment, as not warranted by Law, endeavoured to diſtinguiſh the preſent Caſe from it, ſuppoſing it to be Law. And 1*ſt*, They ſaid, that, in *Mawgridge*'s Caſe, the Bottle hit Mr. *Cope*, and ſtunned him; but here the Bottle did not hit Mr. *Gower*, but only bruſhed ſome Powder out of his Peruke. 2*dly*, In *Mawgridge*'s Caſe, the Bottle was full of Wine; here it is not found to have been ſo, and therefore muſt be took to have been empty; and the Size of the Bottle does not appear, it might be very ſmall. 3*dly*. *Mawgridge* drew his Sword immediately after throwing the Bottle, without Intermiſſion; here Mr. *Gower*'s Sword was firſt drawn. 4*thly*, Mr. *Cope* never drew; here Mr. *Gower* not only drew the firſt, but Claſhing of Swords were heard, ſo there muſt have been fighting.

It is very true (ſo far as theſe Facts will make a Difference) this preſent Caſe is diſtinguiſhable from *Mawgridge*'s Caſe; for that Caſe was determined only upon an implied Malice (but, as I ſaid before, was very rightly and juſtly determined, as we all agreed), for ſtrictly and properly ſpeaking, although the Word Expreſs-Malice is mentioned in the Reaſons given for that Reſolution, yet it was but Malice implied. But ſtill this way of diſtinguiſhing the preſent Caſe from *Mawgridge*'s, will be of no Service to the Priſoner, becauſe, though all the Judges held this Caſe was diſtinguiſhable from *Mawgridge*'s Caſe; it was in reſpect that this was a much ſtronger Caſe as to the Murder, the Jury having found Facts which ſhew Mr. *Oneby* had an expreſs Malice againſt Mr. *Gower*. Upon the whole Matter, this Court, with the concurrent Opinion of all the other Judges, is of Opinion, that the Priſoner at the Bar, *John Oneby*, by this Special Verdict, is found guilty of Murder.

Memorandum. As ſoon as I had delivered this Reſolution, I deſired my Brothers *Forteſcue*, *Reynolds*, and *Probyn*, that if they diſapproved any thing I had laid down, they would expreſs their Diſapprobation; but they publickly declared, they concurred *in omnibus.*

Major *Oneby*, obſerving that great Streſs was laid on that wicked and malicious Expreſſion of his to the Deceaſed, *damn you, I'll have your Blood:* he declared, that as he hoped to find Mercy at the Hands of Almighty God, he never made uſe of that Expreſſion. He then prayed to be recommended to his Majeſty's Clemency, in regard to his long and faithful Services in the Army. As to the firſt, the Court told him, that as the Words

* *Vide Foſter*'s Reports, P. 294. *Rowley*'s Caſe.

were

were ſworn, and ſtood in the Special Verdict, his Allegation availed nothing: And to the ſecond, That as that was a Court of Juſtice, he muſt apply elſewhere for Mercy.

The Priſoner being, after this Reſolution pronounced, intituled by the Courſe of the Court to have four Days to move in Arreſt in Judgment, he was ſent back to *Newgate*, and a Rule for bringing him up to receive Judgment the End of the Week was made; before which Time, an Account came of the Death of his late Majeſty at *Oſnabrug*, the 11th of *June*. And afterwards, at the Time appointed by the Rule, he was brought to the Bar, and Judgment was pronounced againſt him, and Execution awarded (*a*). After which, a pretty ſtrong Application was made to his Majeſty King *George* the Second for a Reprieve; but he was pleaſed to declare, that the Judges having adjudged the Priſoner guilty of Murder, the Law ſhould take its Courſe. In which Attempt, the Priſoner not ſucceeding, he killed himſelf in *Newgate*, in the Night before the Day appointed for his Execution, by cutting through the Great Artery in his Arm with a Razor, by which he bled to Death.

On *Monday*, the 19th of *June*, he was brought up, and objected, "That there was no Joinder of Iſſue, for want of a *Similiter* (*b*): but "the Precedents in all capital Caſes being in this Manner, the Objection "was over-ruled. And Mr. Juſtice *Forteſcue*, in a very ſerious Speech, "pronounced the Sentence for his Execution; which was appointed for "*Monday* the 3d of *July*. Upon the Morning whereof, he opened a "vein, and bled to Death (*c*), to avoid the Infamy of an Execution."—He was buried in the Highway, with a Stake drove through his Body.

On his deſtroying himſelf, the following Account was publiſhed in a Narrative of his Life.

"*John Oneby*—aged about 53 Years, was born at *Barwell* in *Leiceſterſhire*.—His Father was an Attorney, of an unblemiſhed Character, and "practiſed with great Succeſs.—He took Care to beſtow an Education on "his Son *John*—as deſigning him for the Buſineſs of the Law; who accordingly ſerved a Clerkſhip with a Gentleman of great Note and Eminence in his Profeſſion: but proving a Youth of an aſpiring and "haughty Temper—his Head ran upon Things greater than the Proviſion "they had made, or were capable of making for him.

"The Cuſtody of the great Seal of *England* being committed to Sir "*Nathan Wright*, a very near Relation of Mr. *Oneby*'s Mother; Application was made to this Gentleman, to beſtow ſome genteel Employment on his young Kinſman.—But nothing greater than the Place of "his Train-bearer could be procured.

"His great Spirit brooked with it for ſome Time, hoping that ſomething better would offer.—But as nothing did, he quitted the Lord-"Keeper's Service, and took up a Reſolution of going abroad into the "Army.

"His Friends ſoon procured him a Commiſſion, and he ſerved in ſeveral "Campaigns under the late Duke of *Marlborough* in *Flanders*, where he "acquired the Reputation of a gallant Officer, he having diſtinguiſhed "himſelf in ſeveral Battles and Sieges, and received divers Wounds.

"He having once the Misfortune to quarrel with an Officer of Horſe "at *Bruges*, they went out together from the Camp, and fought. His "Antagoniſt received a mortal Wound, and died the next Day. But this "being done, as the People of Honour call it, *fairly*, Mr. *Oneby* was called "to a Court-Martial, and very honourably acquitted; and had now eſtabliſhed that vain, empty Character, ſo much admired by too many "in the Army, *viz.* of *having felled* his Man.

"The next Exploit of this Nature was performed by him at *Port-Royal* in *Jamaica*; where fighting a Duel with one Lieutenant *Tooley*, "they were both deſperately wounded. Mr. *Tooley* languiſhed for about "eight Months, and then died; but having been long before perfectly "reconciled to Mr. *Oneby*, the latter was never called in Queſtion about "his Death.

"Having ſerved about 22 Years in the Army, and riſing gradually, according to his Right of Seniority, he at length attained to the Rank of "a Major in the Regiment of Dragoons, commanded by the Honourable "Brigadier *Honeywood*. But upon the Peace of *Utrecht*—his Pay was "curtailed, and a Stop put to his farther Preferment.

"In theſe Circumſtances he returned to *England*, verſed in all Kinds of "Vice, particularly Gaming, to which he had much addicted himſelf in "the Camp, and had there met ſeveral Revolutions of Fortune. Sometimes an auſpicious Hand of Dice having enabled him to make an Entertainment for the chief Generals in the Army; his Ambition leading "him to great Profuſeneſs that Way, when it has been in his Power. "And at other Times his ill Luck has reduced him to ſcandalous Neceſſities. He now aſſociated himſelf with the principal Gameſters of this "Town, deſigning to ſupport himſelf after their Example; and frequented "all the public Places of Reſort, where Gentlemen played, being ſeldom "without Cards or Dice in his Pockets. And there is no Doubt, "but it was he who conveyed the Dice upon the Table at the *Caſtle* Tavern, in *Drury-Lane*, which produced Gaming; the Conſequence "whereof was then the Murder of Mr. *Gower*; and ſince that, of himſelf."

III. The Trial of James Carnegie of *Finhaven*, before the Court of Juſticiary (in *Scotland*), held at *Edinburgh*, July 25, 1728, for the Murder of *Charles* Earl of *Strathmore*.

Curia Juſticiaria S. D. N. *Regis tenta in novo Seſſionis Domo Burgi de* Edinburgh, *decimo quinto Die Menſis* Julii, *Milleſimo ſeptingenteſimo vigeſimo octavo, per honorabiles Viros* Adamum Cockburne *de* Ormiſtoun, *Juſticiarium Clericum, Dominos* Jacobum Mackenzie *de* Royſtoun *et* Gulielmum Calderwood *de* Poltoun, *Magiſtrum* Davidum Erſkine *de* Dun, *Dominum* Gualterum Pringle *de* Newhall, *et Magiſtrum* Andream Fletcher *de* Miltoun, *Commiſſionarios Juſticiariæ dict.* S. D. N. *Regis*.

Curia legitime affirmata.

Intran.

JAMES CARNEGIE of *Finhaven*, Priſoner in the Tolbooth of *Edinburgh*, Pannel, indicted and accuſed at the Inſtance of *Suſanna* Counteſs of *Strathmore*, and Mr. *James Lyon*, Brother-German and neareſt of Kin to the deceaſt *Charles* Earl of *Strathmore*, with Concourſe and at the Inſtance of *Duncan Forbes*, Eſq; his Majeſty's Advocate, for his Highneſs's Intereſt, for the Crime of WILFUL and PREMEDITATE MURDER committed by him upon the Perſon of the ſaid *Charles* Earl of *Strathmore*, as is more fully mentioned in the Indictment raiſed againſt him thereanent, which is as follows: "*James Carnegie* of *Finhaven*, now Priſoner in the "Tolbooth of *Edinburgh*, you are indicted and accuſed at the Inſtance of "*Suſanna* Counteſs of *Strathmore*, and Mr. *James Lyon*, Brother-German "and neareſt of Kin to the deceaſed *Charles* Earl of *Strathmore*, with "Concourſe and at the Inſtance of *Duncan Forbes*, Eſq. his Majeſty's "Advocate, for his Highneſs's Intereſt: THAT WHERE, by the Laws of "God, the Law of Nature, the common Law, and the municipal Law, "and Practice of this Kingdom, as well as the Laws of all well-governed "Realms, WILFUL and PREMIDITATE MURDER, and all MURDER and "HOMICIDE, or being Art and Part thereof, are moſt atrocious Crimes, "and ſeverely puniſhable; *yet true it is, and of Verity*, That you have "preſumed to commit, and are guilty, Actor, or art and part, of all, or "one or other of the foreſaid horrid Crimes: IN SO FAR AS, having "a cauſeleſs Ill-will and Reſentment againſt the deceaſt *Charles* Earl of "*Strathmore*, you conceived a deadly Hatred and Malice againſt him; "and ſhaking off all Fear of GOD, and Regard to the foreſaid laudable "Laws, on *Thurſday* the Ninth of *May*, in this preſent Year, One "Thouſand Seven Hundred and Twenty-eight, or one or other of the "Days of the ſaid Month, about the Hour of Eight or Nine of the "Night of that Day, or ſome other Hour of that Day or Night, upon "the Street of the Town of *Forfar*, within the County of *Forfar*, you "did, with a drawn Sword, or ſome other offenſive or mortal Weapon, "without the leaſt Colour or Cauſe of Provocation then given by him, "invade the ſaid deceaſt Earl, who had no Weapon in his Hand, and "did baſely and felonioufly murder and kill him, by giving him a Wound "therewith in the Belly, ſome Inches above the Navel, which, by following the Thruſt with a ſecond Puſh, went through the Inteſtines "and the Back, a little lower than where the ſaid Weapon entered the "Belly: Of which Wound, after great Pain, on *Saturday* immediately "thereafter, or in ſome ſhort Space thereafter, he died; and ſo was "cruelly and barbarouſly murdered by you. AT LEAST, at the Time "and Place above-mentioned, with a drawn Sword, or ſome other mortal Weapon, without any juſt Cauſe or Provocation, you gave the ſaid "deceaſt *Charles* Earl of *Strathmore* a Wound in the Belly, which reached through the Inteſtines and Back, wherethrough he ſoon after fell "down, and died at the Time foreſaid. AT LEAST, at the Time and "Place above deſcribed, the ſaid *Charles* Earl of *Strathmore* was with a "drawn Sword, or ſome other deadly Weapon, felonioufly and barbarouſly wounded, and of the ſaid Wound died within a few Days thereafter; and you were art and part in his Murder. By all which, it is "evident, That you are guilty, art and part, of the Crimes of WILFUL "and PREMEDITATE MURDER and HOMICIDE, or one or other of them, "at the Time and Place, and in the Manner above ſet forth. And "which Facts, or Part thereof, or your being art and part of any of the "ſaid Crimes, being found proven by the Verdict of an Aſſize, in preſence of the Lords Juſtice-General, Juſtice-Clerk, and Commiſſioners "of Juſticiary, you ought to be exemplarily puniſhed with the Pains of "Law, to the Terror of others to commit the like in Time coming."

Purſuers. *(d) Procurators in Defence.*

Mr. *Duncan Forbes*, his Majeſty's Advocate.
Mr. *Charles Areſkine*, Solicitor.
Mr. *Alex. Hay*, Advocate.
Mr. *Patrick Grant*, Advocate.
Mr. *George Ogilvy*, Advocate.
Mr. *John Ogilvie*, Advocate.
Mr. *Hugh Dalrymple*, Advocate.
Mr. *Robert Dundas*, Advocate.
Mr. *James Ferguſſon*, Senior, Advocate.
Mr. *John Forbes*, Advocate.
Mr. *William Grant*, Advocate.
Mr. *James Paterſon*, Advocate.
Mr. *George Smollet*, Advocate.

(*a*) Lord *Raymond*'s Reports, Vol. II. p. 1499, 1500.

(*b*) *Strange*'s Reports, Vol. II. p. 775.

(*c*) The Caſe was, He deſired, the Morning of his intended Execution, to be ſtill, that he might compoſe himſelf againſt the Coming of his Friends; about Seven, he ſaid *faintly* to his Footman, who came into the Room, Who is that, *Philip?* A Gentleman coming to his Bed-ſide ſoon after, called *Major! Major!* but hearing no Anſwer, he drew open the Curtains, and found him weltering in his Blood, and juſt expiring. Mr. *Green*, a neighbouring Surgeon, was inſtantly ſent for; but before he came, the Major was dead; he had made ſo deep a Wound in his Wriſt with a Penknife, that he bled to Death. *Select Trials* at the *Old-Bailey*, Octavo, Vol. II. p. 153.

(*d*) Among the ſeveral *Scotch* Words in the following Trial—for *compeared*, read *appeared*: for the *Pannel*, read the *Priſoner* or *Defendant*; for *Purſuers*, read *Counſel againſt the Priſoner*; for *Procurators in Defence*, read *Counſel for the Defendant*; for *Aſſize*, read *Jury*; for *aſſolzie*, read *acquit*: and when it is ſaid *Bridgeton*, it means Mr. *Lyon* of *Bridgeton*; the Name of Place being the common Deſcription in *Scotland*. As *Lochiel*, for *Cameron* of *Lochiel*; *Foulis*, for *Munro* of *Foulis*, *&c.*

The Libel being openly read in Court, and debate *viva voce*, in Presence of the Lords, they ordained both Parties to give in their Informations to the Clerk of Court, in order to be recorded; the Purſuers to give in theirs againſt *Saturday* next; and the Pannel's Procurators to give in his againſt *Friday* thereafter: And continued the Cauſe till the 1ſt Day of *Auguſt* next to come, at nine o'Clock Morning; and ordained Witneſſes and Aſſizers to attend at that Time, each Perſon, under the Pain of Law; and ordained the Pannel to be carried back to Priſon; and granted ſecond Diligence for the Purſuers againſt the Witneſſes.

Information for Suſanna *Counteſs of* Strathmore, *and Mr.* James Lyon, *Brother-German to the deceaſed* Charles *Earl of* Strathmore, *and his Majeſty's Advocate for his Highneſs's Intereſt, againſt* James Carnegie *of* Finhaven, *Pannel.*

THE ſaid *James Carnegie* is indicted and accuſed as guilty, art and part of WILFUL and PREMEDITATE MURDER; at leaſt of MURDER and HOMICIDE: *In ſo far as*, upon the 9th of *May* laſt, upon the Streets of *Forfar*, with a drawn Sword, he wounded the deceaſed *Charles* Earl of *Strathmore* in the Belly, ſome Inches above the Navel; which Wound went through the Inteſtines and the Back, a little lower than where the ſaid Weapon entered the Belly; of which Wound he died ſoon after.

The Indictment, in the firſt Place, charges the Fact as proceeding from a cauſeleſs Ill-will and Reſentment the Pannel had conceived againſt the Defunct, who, at the Time the Wound was given, had done nothing that could be pretended as a Colour or Cauſe of Provocation: And a Circumſtance is noticed, from which it may be inferred, that there was deadly Hatred and Malice; namely, That after one Puſh there was a ſecond, whereby the Wound went quite through his Body.

There is a ſecond Branch of the Indictment, in which the Circumſtance of *premeditate Malice* and *forethought Felony* needed not to be libelled; and he is charged only with *Murder* or *Homicide*, as ſeparately relevant. And, laſtly, Art and Part is charged upon him.

At calling before the Lords of Juſticiary, againſt the firſt Branch of the Indictment, it was excepted, "That the Indictment was too general, "particular Circumſtances not being expreſt from which the cauſeleſs "Ill-will or Reſentment mentioned, and forethought and premeditate "Malice could be inferred, whereby the Pannel was deprived of the Be"nefit due to all Pannels, when tried for their Life, to exculpate him"ſelf, by ſhewing, that if at any Time, *prior* to the Time mentioned "in the Indictment, there was any Appearance of Grudge or Quarrel be"tween the Defunct and him, there was an After-reconciliation and en"tire Friendſhip: *And it was ſaid*, That general Libels ought not to be "ſuſtained."

To this it was anſwered, That a previous Grudge is charged, and that the deceaſt was invaded without the leaſt Colour or Cauſe of Provocation; which is the ſtrongeſt Evidence of Forethought, eſpecially when joined with this other Particular, that the firſt Thruſt was followed with a ſecond Puſh, which was a Mark of inveterate and relentleſs Malice; and that it was ſufficient to charge a previous Quarrel in general, which would be made appear by the Proof. Nor will it be found, that in Libels of forethought Felony, it is uſual or neceſſary to libel all the Circumſtances from which the Forethought may be preſumed, eſpecially when the *ſpecies facti* is charged in that Manner, as affords the Preſumption of *Forethought*, ſetting forth, That the Wound was given without the leaſt Colour or Cauſe of Provocation on the Part of the Defunct at that Time. Neither can it be thought unfair with regard to the Pannel, who if he had any relevant Ground of Exculpation, would have Acceſs to prove Friendſhip with the Defunct, to take off any Charge of precedent Quarrels, whereof he could not be ignorant. And ſtill there muſt be leſs Ground of Complaint, where no good Reaſon of Exculpation is offered, whereby the Pannel can be allowed to adduce Proof, which it is believed is, without Contradiction, the Caſe upon the firſt Branch of the Libel.

As to the two laſt Branches of the Indictment, it was alledged, "That "ſeveral Circumſtances attending the Fact complained of were concealed, "which, when opened, afforded the Pannel plain and obvious Defences; "*and therefore it was informed*, That the Pannel, a Perſon diſpoſed to "Peace, and in entire Friendſhip with the Defunct, chanced to be in "Company with him about the Time charged in the Indictment, with "one *John Lyon of Bridgeton*, and others: That *Bridgeton* gave him the "higheſt Provocation, not only by Words, but by proceeding ſo far, as "to throw him into a Kennel, where the Pannel was in Hazard of pe"riſhing, being extremely drunk: That getting up, heated with Liquor, "and ſo extremely provoked, he drew his Sword, and purſued *Bridgeton*, "and that the Defunct thruſting himſelf between them, caſually received "the Thruſt aimed at another."

From theſe Circumſtances, it was pled for the Pannel, "That if "he did kill the Defunct, it was a mere Miſadventure, rather a Misfor"tune as [than] a Fault, and in no Event could ſubject him to the *pœna "ordinaria*; for that, 1*mo*, In theſe Circumſtances had he killed the ſaid "*John Lyon* of *Bridgeton*, the Pain of Death could not have been inflict"ed either by the Law of God, the Common Law, nor by the municipal "Law of this Kingdom, neither by the Laws of other well-governed "Realms; particularly by the Laws of our neighbouring Nation, in re"gard the Fact was done of Suddenty, by a Perſon in Drink, and highly "provoked."

And, 1*mo*, As to the Law of God, *Chap.* xxi. *Ver.* 13. of *Exodus* was appealed to, where it is ſaid, *That if a Man lie not in Wait, there was to be a Place appointed whither he ſhould fly*; which ſeemed to require Forethought. And the xxxvth *Chap.* of *Numbers*, *Ver.* 22. where it was ſaid, *That if any one thruſt another ſuddenly without Enmity, the Congregation was to judge between the Slayer and the Revenger of Blood*; from which it would ſeem, that Slaughter or Suddenty was not puniſhable by Death.

To this it was anſwered, That in the Law of God the general Rule was, *Whoſo ſheddeth Man's Blood, by Man ſhall his Blood be ſhed: And at the Hand of Man, and at the Hand of every Man's Brother, and at the Hand of every Beaſt was the Life of Man to be required*, Gen. *Chap.* ix. That by the Law of *Moſes*, Death of a Suddenty was plainly capital; nor had the Manſlayer the Benefit of the City of Refuge, but where the Slaughter was mere Misfortune, and caſual, which was plainly the Meaning of the Words in *Exodus*, *If a Man lie not in Wait, but God deliver him into his Hand*; which could not with any Propriety be underſtood of Slaughter committed, where the Intention and Deſign *antecedit ictum licet non congreſſum.*

And this Matter is clearly explained in the xxxvth *Chap.* of *Numbers*, where *he who ſmites with an Inſtrument of Iron, is called a* MURDERER; and where it is ſaid, *That he who ſmites with a throwing Stone, or with a Hand-weapon of Wood, wherewith a Perſon may die, and he die, the Murderer is ſurely to be put to Death.* And then the Law proceeds plainly to treat of Caſes, where Death enſues from Strokes or Thruſts of a Weapon not deadly, and there it requires indeed Hatred and Enmity; but if it be done ſuddenly and without Enmity, or (which is remarkable) in the 23d Verſe, *With any Stone wherewith a Man may die, ſeeing him not, and was not his Enemy, nor ſought his Harm; then the Congregation was to judge between the Slayer and the Revenger of Blood.* From which 'tis plain, that Slaughter upon Suddenty, even without Forethought or previous Enmity, was capital by the Law of *Moſes*, if the Wound was given with a lethal [deadly] Weapon, except when it was done by mere Chance, *As by throwing a Stone, whereby a Man may die, the Perſon who threw it ſeeing him not, and ſo at no Time was his Enemy, or ſought his Harm.* And this is the Caſe mentioned, *Chap.* xix. *Ver.* 4. *Deut.* where it is ſaid, *Whoſo killeth his Neighbour ignorantly, whom he hated not in Time paſt* (which is limited by the Example immediately ſubjoined to Homicide merely caſual), *ſhall fly into one of theſe Cities, and live.* Now, in the preſent Caſe, the Nature of the Weapon and of the Wound are ſuch, as clearly exclude founding with any Colour upon the Diſpoſition of the Law of *Moſes*, though the Queſtion were of the Pannel's claiming the Benefit of the City of Refuge. But neither is it an Argument of any Force to plead, that where the Benefit of the City of Refuge was granted, that by the Law of Nature the Crime was not capital; for the Revenger of Blood could never have been tolerated to kill without the City of Refuge, where innocent Blood was ſpilt, whereby the Land muſt have been polluted, and the Subjects were permitted *impune*, ſo notoriouſly to break in upon the eſtabliſhed Laws of Nature; and therefore, though it is an Argument of unavoidable Force, that where-ever, by the Law of *Moſes*, capital Puniſhments are allowed, ſuch Puniſhments are lawful: But the Argument is not of equal Strength, that where the Powers of the Law were ſuſpended by the *jus aſyli* eſtabliſhed by poſitive Precept, that therefore, in Countries where there is no ſuch Privilege, either by the Laws of God, or the Laws of the Land, that there the Puniſhment is not to be capital, where the *jus aſyli* could have been claimed.

2*do*, It was contended, "That by the Common Law, not only *dolus*, "but *propoſitum* was neceſſary; and that Slaughter committed *impetu et "rixa* were not to be puniſhed capitally." And to this Purpoſe, the Authority of the learned *Voet.* was cited, who ſeems to ſay, *That* in rixa, *if the Perſon cannot be diſcovered who gave the deadly Wound, the ordinary Puniſhment ſhould not take Place.*

But when this Matter is conſidered, it is plain there ariſes no good Argument for the Pannel from the Common Law: For though there is a Difference to be made between *propoſitum* and *machinatio præmeditata*, and ſudden Paſſion and Heat of Drink, determining the Will to commit the Crime; yet as Laws were made and became neceſſary, chiefly from the depraved Paſſions of Mankind, they cannot afford a ſufficient Excuſe againſt the ordinary Puniſhment of an atrocious Crime; and there is *dolus*, when a Crime is even committed of a ſudden, although there be no Forethought: So it is commonly ſaid, that Opportunity makes the Thief, and Theft is committed *impetu*, nevertheleſs not without dole. Nor is it neceſſary to prove or libel a Forethought in the Commiſſion of the Crime. In the ſame Manner Paſſion or Provocation may unfortunately determine the Will to the Commiſſion of a horrid Crime; but it would be of dangerous Conſequence to allow of Bloodſhed under Colour of Paſſions which Men ought to ſubdue, or of Drunkenneſs which they ought to avoid, or of a ſudden vicious Turn of Mind; and therefore, in the *Roman* Law, whoever committed Slaughter *dolo malo*, whether deliberately and upon Forethought, or of Suddenty, was to be puniſhed *ex lege Cornelia de Sicariis:* And to ſhow that it was ſufficient, that the Deſign ſhould only precede the Act from which Death followed, and not the meeting of the Perſons, as the Acts of the Mind are only to be known by external Circumſtances; the Kind of Weapon, in the ſame Manner as in the Law of *Moſes*, was ſufficient to found a Preſumption of ſuch *propoſitum*, as, joined with the Act of Killing, brought the Manſlayer under the *pœna legis Corneliæ:* So in the *l.* 1. § 3. *ff. ad legem Corneliam de Sic.* it is ſaid, *Si gladium ſtrinxerit, & in eo percuſſerit, indubitate occidendi animo id eum admiſiſſe*; and if prior Forethought had been neceſſary, the Kind of Weapon could not poſſibly have founded a ſufficient Preſumption: But as it manifeſtly made appear the Intention to kill, whether that Intention had its Birth from Paſſion or Drink, it was voluntary Slaughter, done *dedita opera*, and therefore to be puniſhed capitally. And the Paſſage cited from the learned *Voet.* rather confirms this Doctrine, That if *in rixa*, which muſt ſuppoſe Suddenty, the Perſon who inflicted the mortal Wound was diſcovered, he was to be ſubjected to the ordinary Puniſhment. And the ſame Author, § 9. of that Title, obſerves, That though ſuch as commit Slaughter, *calore iracundiæ*, may be ſaid *impetu delinquere*; yet there *neque judicium, neque aſſenſus animi, neque voluntas deeſt*; and ſays, *That a Perſon provoked by verbal Injuries, how great ſoever, was not free from the* pœna ordinaria. And the Truth is, if Paſſion and Provocation were ſufficient to excuſe Slaughter, it were in vain to lay down the Rules ſo anxiouſly conceived in the Laws concerning the *moderamen inculpatæ tutelæ*, where the Slayer muſt prove that he was *conſtitutus in periculo vitæ.* And had the Caſe ſtood otherwiſe in the *Roman* Law, it could never have been doubted, when Jealouſy was the Rage of a Man, and Adultery the higheſt Provocation againſt a Huſband, and a real Injury; the Queſtion could never have been ſtated to be determined by the Emperor, as in *l.* 38. *ff.* § 8. *ad legem Juliam de adult.* Whether a Huſband, *impetu tractus doloris, uxorem in adulterio deprehenſam interfecerit*, was liable to the *pœna legis Corneliæ de Sicariis?* And who, by that Deciſion, upon the peculiar Circumſtances of the Caſe was exeemed [exempted], and nevertheleſs made ſubject, *ſi loci humilis*, of being condemned *ad opus perpetuum*, and if *honeſtior* was to be condemned *relegari in inſulam.* But as the Caſe muſt be determined upon the Law of *Scotland*, it is unneceſſary to dwell too long upon the Arguments drawn from the *Roman* Law.

3*tio*, It was contended for the Pannel, "That by the Law of *Scotland*, "Slaughter and Murder were of old different Species of Crimes, and only

" Murder committed upon forethought Felony was properly computed " *Murder*, and punished as such; but that Slaughter committed upon " suddenty, or *chaud melle*, and *in rixa*, was deemed only *homicidium cul-* " *posum*, and not punishable by Death." And to support this Position, several Acts of Parliament were appealed to, by which it was statuted, That Murder was to be capitally punished; but *chaud melle*, or Slaughter committed upon Suddenty, was to be punishable according to the old Laws: And that in this Case, if the Pannel had even killed *Bridgeton*, at whom he aimed the Thrust, in the Circumstances above set forth, it was not Murder upon Forethought, but upon Suddenty and high Provocation.

To this it was answered, That this Doctrine, so directly contrary to the received Opinion, had little Countenance from the old Laws and Acts of Parliament, less from the constant Practice before the Act of Parliament King *Charles* II. in the Year 1661, and stood in plain Contradiction to this last Law, and the constant Practice and repeated Decisions of the Court of Justiciary from that Time down to this Day.

By the old Law, particularly *Chap.* 3. of the first Statutes of King *Robert* I. intitled, *Men condemned to the Death should not be redeemed*, IT IS STATUTED AND ORDAINED, GIF ANY MAN, IN ANY TIME COMING OR BYGANE, IS CONVICT OR ATTAINTED OF *Slaughter*, REIF, OR ANY OTHER CRIME TOUCHING LIFE AND LIMB " COMMON JUSTICE " SHALL BE DONE UPON HIM, WITHOUT ANY RANSOME." Here *Slaughter* in general is mentioned, and Justice was to be done upon the Person convict of it, and the Punishment by the Title was plainly Death: So that, at common Law, Slaughter in general was capital. The next Paragraph does indeed save the King's Power (which must be the Power of pardoning), and the Liberties granted by the King to the Kirk and Kirkmen, and other Lords; which must be understood of special Immunities in the case of Manslaughter; For no Privilege was to protect against Murder upon Forethought; and the Exception confirms the Rule.

By *Chap.* 43. of the Statutes of King *Robert* III. it is statuted, THAT NA MAN USE ANY DESTRUCTION, HERSHIPS, BURNING, REIF, *Slaughter*, IN TIME TO COME, UNDER THE PAIN OF TINSEL OF LIFE AND GOODS: Whereby the Pain of Death is clearly made the Punishment of Slaughter in general. And in the immediate subsequent Chapter, the Sheriff was to take diligent Inquisition of Destroyers of the Country, or such as had destroyed the King's Lieges with Hershipps, *Slaughter*, &c. and was to take Bail from them, if arrested, to compear at the next Justice-ayr; and if Bail was not given, the Sheriff was to put him to the Knowledge of an Assize; *And gif he be taynt with the Assize for sic an Trespassour*, it is said, HE SHALL BE CONDEMNED TO DEATH: Which seems only to relate to Manslaughter, and not to Murder upon forethought Felony, which was one of the Pleas of the Crown, to be tried only before the King's Justiciar; as is evident from *Chap.* 11. King *Malcolm* II's Laws, and *Chap.* 13 and 15. whereas Slaughter might be tried by the Sheriff, where there was a certain Accuser, as appears from *Book* I. of the *Regiam Majestatem*, *Chap.* 1. § 7, 8, 9.

There are sundry others of the old Statutes, that seem plainly to presuppose that Slaughter was capital, and particularly these of *Alexander* II. *Chap.* 2. § 3, 4, 5, 6. And so *Skene*, in his Treatise of Crimes, *Tit.* 2. *Chap.* 6. says, *That Slaughter* in rixa, *or* chaud melle, *is generally punished by Death, and Confiscation of the moveable Goods pertaining to the Trespassour; but with this Difference, that the Girth or Sanctuary was no Refuge to him who commits Slaughter by forethought Felony, but he should be delivered to the Judge Ordinary, to underly the Law:* Which plainly appears from *Act* 23. *Parl* 4. *James* V. whereby Masters of Girth are ordained to deliver up such Persons as are guilty of Murder upon forethought Felony. And it is in vain to found upon *Law* 90. *Parl.* 6. *James* I. which says in the End, GIF IT BE FORETHOUGHT FELONY, HE SHALL DIE THEREFORE; because the Act relates to all Manslayers; and though that particular and most atrocious Species be mentioned, as that for which the Murderer should die, yet the Argument will not hold, That therefore no other Kind of Slaughter was capital: For it is there said in the general, That if the *Slayer* is taken with red Hand, the Law shall be done upon him within that Sun; which cannot be understood of a Crime not capital. And Sir *George Mackenzie*, in his Observations upon it, says, *This may seem to imply, that Men die not for Murder committed without forethought Felony; but this holds not in our Law, for Murder, though committed without forethought Felony, is punishable by Death, except it was either casual, or in Self-Defence.*

The *Act* 51. *Parl.* 3. *James* I. was improperly founded on by the Pannel's Procurators; for that Act does no more than extend the Difference between forethought Felony and *chaud melle* to all Transgressions as well as Slaughter; as Sir *George Mackenzie* observes upon that Law, where he says, That *chaud melle*, or *homicidium in rixa commissum*, is capital by our present Law.

That Criminals who resorted to, and took Sanctuary in Churches, had Protection, though their Crimes were capital, is extremely plain from *Chap.* 6. of the Statutes of K. *Alexander* II. where it is said, *That Thieves and Reivers who fly to holy Kirk, if moved with Repentance, he confess that he has heavily sinned, and for the Love of God is come to the House of God for Safety of himself, he shall have Peace in this manner, That he shall not lose his Life nor Limb, but restore what he had taken, and satisfy the King, and swear upon the Evangel, That for thereafter, they shall never commit Reif nor Theft; but if he declared himself innocent, he was to be tryed.* And in the last Paragraph of that *Chap.* it is said, " *Moreover Manslayers*, &c. *if they fly, in* " *manner foresaid, to the Kirk, the Law aforesaid shall be kept and observed* " *to them.*"

There seems to have been this other Difference too, by the Books of the old Law between Murder upon Forethought and Slaughter, that the Trial of Murder was summar, whereas Manslaughter could not be tried till after forty Days, as appears by the Statutes of *Robert* II. from *Chap.* 3. to *Chap.* 9.

After the Reformation, when the *jus asyli*, formerly given to Churches, dropped, the Distinction between Murder and Manslaughter was looked on with less Attention, and Libels were commonly framed indifferently, for Murder, and Slaughter in general, without any Mention of forethought Felony; nor was it ever objected, that Malice or premeditate Design was requisite to make the Crime capital: And Criminals were punished to Death, where from the Proof there was not a Colour or Pretence of Forethought, or any premeditate Design; as will appear from looking into the Books of Adjournal. And many Instances might be given, particularly in the Case of *Jean Currie* against *William Fraser*, the last of *July*, 1641; where the Pannel was condemned upon an extrajudicial Confession, adminiculated with other Circumstances; in which he set forth the Fact, that the Defunct and he had some little Quarrel about a Staff; and hearing that he had murdered his Brother, he came into a House where the Defunct was; and that either the Defunct, or some other that was by, took the Pannel by the Arm, to hold him: Having freed himself, he aimed a Stroke with a Wninger at the Defunct's Arm; but missing it, he struck the Defunct about the Pap: And upon this Proof, he was found guilty, and executed.

In the Case of *Bruce* against *Marshall*, the 3d *April*, 1664, Slaughter was libelled, and he was condemned upon his own judicial Confession: From which it appears, That he was so far from having any Forethought, that he suffered not only the greatest Provocation in Words, but was even beat with Hands and Feet by the Defunct while he was on the Ground; but at last getting up, and (as the Confession bears) being overcome with Passion, he drew a Knife, and struck at him in two several Places of his Body, whereby he died. And upon this Confession, where there was Suddenty, Provocation and Passion, he was brought in as guilty, and condemned to be beheaded.

The Law remaining somewhat uncertain concerning casual Homicide, and there being no longer any Benefit of Girth as formerly; in the Year 1649, an Act was past during the Usurpation, for removing all Question and Doubt that might thereafter arise in criminal Pursuits for Slaughter, ordaining, that the Cases of Homicide after following, *viz.* casual Homicide, Homicide in lawful Defence, and Homicide committed upon Thieves and Robbers, should not in Time coming be punished by Death, notwithstanding any Laws or Acts of Parliament, or any Practick made heretofore, or observed in punishing of Slaughter. And this past into a Law after the Restoration in the Year 1661; and at the same time, all Decisions given conform to this Act, since the 4th of *February* 1649 Years, are declared to be sufficient to secure all Parties interested, as if the Act had been of that Date; which was necessary, because the Acts during the Usurpation had been rescinded: And this Law has ever been looked upon as the Standard. And the Practice of the Court of Justiciary, since that Time, clearly demonstrates, that Slaughter of Suddenty, and Slaughter upon Provocation, which could not be brought under one or other of the Particulars there mentioned, have been taken to be capital.

The Procurators for the Pannel here observed, " That though in the " Cases there mentioned, the Law ordained Slaughter not to be capital, " yet it neither said, nor supposed, that the former Law, whereby Pannels " were intitled to plead against a capital Punishment, was thereby abro- " gated, but only statuted in the Cases there mentioned."

To this it was answered, That the Narrative of the Statute was for removing of all Question and Doubt that may arise thereafter in criminal Pursuits for Slaughter, and consequently cannot be supposed to have left doubtful Cases, that the Pannel's Procurators must admit were not so clear as casual Homicide, and Homicide in Defence: nay, the Law seems to suppose pretty plainly, that all Slaughter by the Laws and Acts of Parliament, or Practicks, was capital, not declaring what was Law from any other Period than the Year 1649, but enacting the same with a *non obstante*, and judging it necessary to confirm the Decisions that had past, conform to that Act during the Usurpation, which would have been vain, if it had not been at least doubtful, whether casual Homicide, Homicide in lawful Defence, and Slaughter committed upon Thieves and Robbers, did not subject those guilty to the Pain of Death: And if those Degrees of Homicide were so much as doubtful, it is not possible to conceive that *chaud melle*, or Slaughter committed, *dedita opera*, though without Forethought, was, by the Law of *Scotland*, not capital. Or if it should be supposed to have been doubtful, whether these last Degrees of Homicide were capital: that the Legislature, upon a Narrative, that all Question and Doubt that might arise hereafter in criminal Pursuits for Slaughter, should be removed, would have enacted in the clearer Cases, with a *non obstante*, and left the more difficult in the dark, as surely the greatest Advocates for Slaughter on Suddenty must admit, that, at least, it is more culpable than either Homicide merely casual, or Homicide in lawful Defence.

The Argument drawn from the Rubrick of the Act, which mentions Degrees of casual Homicide only, can conclude no more, than that the Title is imperfect; and it would be resting too much upon an Argument *à rubro*, to make it defeat what is said in the Law, That all Questions concerning Slaughter were thereby to be removed, and which opposes casual Homicide to Homicide in lawful Defence; and consequently cannot under the Words, *casual Homicide*, comprehehend all Slaughter not upon forethought Felony. And Sir *George Mackenzie* in his Observations upon the Act takes notice, that the Title is very ridiculous, and consequently no Argument can be drawn from it.

One Thing may not be improper to notice, is, that if killing by forethought Felony was the only Species of Slaughter capital, the Crown was disabled from pardoning any capital Slaughter whatsomever, which does not appear to have been the Opinion of our Lawyers.

As to the Decisions subsequent to this Law, they will be found entirely agreeable to the Doctrine now laid down; Sir *George Mackenzie* observes, that tho' many Lawyers are positive, that tho' *homicidium in rixa*, even where the Author of the Plea is known, may by the Rigor of Law be punished by Death, yet that no Country uses this Rigor; yet he remembered, that in *William Douglass*'s Case, this was urged, and albeit it was not proven that he was the Killer, yet the Assize found him guilty, and he thereupon died. This is a Case more favourable, than where the Person that gave the mortal Wound is known, though given suddenly, and even upon Provocation; and therefore shews what our Law is, and with how little Reason the Procurators for the Pannel maintain their Argument upon the Law of *Scotland*.

In the Case, his Majesty's Advocate against *Nicolson*, the 24th *June*, 1673, Murder and Slaughter, without Forethought, were charged upon *Nicolson*, the Pannel; and his Procurators pleaded the Benefit of the Act of Parliament anent casual Homicide, in the several Degrees thereof, he being in a Condition that he was not able to remember. To this it was answered, That the Defence was not relevant, in regard the Homicide could not be said to be casual, such as the Case of throwing of Stones over Dikes, and accidentally killing a Passenger: And the Pannel having afterwards proponed a Defence, That being in use to carry a Gun as a Fowler, and calling accidentally

cidentally for Meat to his Dogs at a Mill, the Defunct fell upon him, and offered to ſecure him as a *French* Soldier, or fit to be one; in the Struggle, his Gun being half bend, went off, and killed the Defunct: Both the Libel and Defence were found relevant, and it appeared upon the Proof, that *Nicolſon* was drunk, and that there was no previous Quarrel; but taking Exception at ſomewhat the Defunct ſaid, he ſhot him with his Gun; and by the Verdict of the Aſſize, *he was found guilty of the Slaughter committed upon the Defunct*, and ſentenced to have his Head ſtruck off in the *Graſs-market*; which ſhows that neither Drunkenneſs nor Suddenty is a relevant Defence againſt the *pœna ordinaria* in Slaughter.

And, in the Caſe of *Murray* contra *Gray*, 10th *June*, 1678, the Lords *found the Libel relevant, and that there was no Neceſſity of any diſtinct Probation for proving precogitate Malice*; which clearly ſhows that Slaughter, other than upon Forethought, was capital. And to ſhow that Provocation and Paſſion are not received as Defences againſt the *pœna ordinaria*, a Multitude of Deciſions might be brought, particularly in the Caſe of *Aird*, who was indicted in 1693, for the Slaughter of *Agnes Bayne*, having given her ſome ſtrokes on the Side and Belly with his Foot, by which ſhe fell into Fainting-Fits, and immediately died. The Defence was, *great Provocation and caſual Homicide: Provocation*, in as far as ſhe threw a Chamber-Pot in his Face; and when he gave her hard Words, ſhe and her Neighbours fell upon him, and beat him; upon which he gave her the Strokes above-mentioned. And in that Trial it was argued, there was no *animus occidendi*, no previous Malice, no mortal Weapon; and the Texts from Scripture urged in defence of the preſent Pannel, and the Arguments from the civil Law, and from our own Acts of Parliament were urged: Nevertheleſs the Lords *found the Libel relevant, repelled the Defences; and, upon the Proof, he was ſentenced to die.*

In the Caſe of *William Carmichael* in 1694, *Drunkenneſs* was founded on to excuſe a *pœna ordinaria*, and Forethought was neither libelled, nor proven; and the Lords found the Libel relevant, and, upon the Proof, he was ſentenced to be hanged.

In the Year 1695, *George Cuming*, Writer in *Edinburgh*, was indicted for the Crime of *Murder* or *Manſlaughter* of *Patrick Falconer*; the Defences now offered for the Pannel, upon the Diſtinction in the old Law, between Forethought and *chaud melle*, were offered; nevertheleſs the Libel was found relevant, and the Aſſize returned a Verdict *guilty of Manſlaughter*; upon which he was condemned to die.

In the Caſe of *Burnet* of *Carlops*, the 22d *January*, 1711, though a Defence was ſuſtained, yet the Libel without Forethought was found relevant: And in that of *Hamilton* of *Green*, the 30th *June*, 1716, the Pannel offered to prove, That he was accidentally at the Houſe of *Thomas Arcle*, of whoſe Murder he is accuſed, at the Day libelled, with ſome of his Acquaintances, and had no deadly Weapon along with him; That he became inebriated to a great Degree, and having left the Houſe, and returned to aſk for the Slip or Cover of the Sheath of a Sword, the Defunct gave him moſt indecent, injurious and ſcurrilous Language, and perſiſting in it, the Pannel puſhed, or ſtruck at him with his Sword, having the Scabbard thereon, that he had Reaſon to believe had a Crampet upon it: And being ſtill more and more provoked by repeated, injurious Words, to protect himſelf from further Inſolence he had Reaſon to look for, the Pannel ſtill remaining on Horſeback, the Defunct ruſhed himſelf upon the Sword. And this circumſtantiate Fact was offered to be proven. Nevertheleſs the Libel was found relevant, and the Pannel's haill Defences repelled, and, upon the Proof, was ſentenced to have his Head ſevered from his Body; and was accordingly beheaded.

In the Caſe of *Thomas Roſs* and *Jaffrey Roberts*, the 20th *July*, 1716, it was pled for the Pannels, that being Recruits lately come from *England* to *Scotland*, and not knowing the Way, they aſked the Defunct the Road to *Edinburgh*, who refuſing to ſhew it, and one of the Pannels expoſtulating with him, why he treated a Stranger ſo, that came to ſerve the King? He uttered very diſreſpectful Words with reſpect to his Majeſty; and one of the Pannels having called him Villain for ſuch opprobrious Expreſſions, he came up to *Roſs*, and with his Fiſt gave him a Blow on the Face, and then pulled him down to the Ground, and beat him with a great Stick, to the imminent Danger of his Life, ſaying, That he ſhould never go alive out of his Hands: And *Roberts* having come to his Aſſiſtance, and reſcued him a little; *Roſs*, the Pannel, gave the Defunct a Wound with a Kniſe, whereof he died. *Roſs* pleaded, There neither was nor could be forethought Felony, or premeditate Malice, againſt a Perſon whom he had never ſeen before: That it was committed upon Suddenty: That he had the higheſt Provocation, both verbal and real. Nevertheleſs, by the Interlocutor, *Roſs*, the Pannel, his giving the Wound was found relevant to infer the Pain of Death. And the Defence from Provocation by Words, and receiving a Blow on the Face, being pulled down to the Ground, and beat with a great Stick *to the Danger of his Life*, jointly ſuſtained relevant to reſtrict the Libel to an arbitrary Puniſhment, was found to be elided by the Reply, That, at the time of giving the Wound to the Defunct, the Defunct's Hands were held by *Jaffrey Roberts*, the other Pannel. From whence, 'tis evident, that Slaughter upon Suddenty, *in rixa* or *chaud melle*, and by a Perſon who had received the greateſt verbal and real Injuries, even beyond that of being thrown into the Kennel, of the Nature that is ſet forth into which the preſent Pannel was thrown, is by that Interlocutor found *homicidium doloſum*, and not *culpoſum*, but capital.

And, in a very late Trial, in the Caſe of *Davidſon*, the Soldier, Slaughter upon the greateſt Suddenty was ſuſtained, and he was upon the Proof executed.

And the Judgment given in 1717, in the Caſe of *Brock* and *Lindſay*, determines this Point beyond all Diſpute. Theſe Pannels were accuſed of the Murder of one *Anderſon*: And as the Libel did expreſly ſet forth a Quarrel and a Struggling betwixt the two Pannels and the Defunct, which made it directly an *homicidium in rixa*; ſo the Pannels, at leaſt *Lindſay*, offered a pretty ſtrong Defence, namely, that the Defunct, without any Provocation, juſtled them, and ſtruck at *Lindſay*, and beat him down to the Ground; and it was while they were on the Ground, the Wound was given. And the Defence was pled for two ſeveral Purpoſes: Firſt, That the Crime was not capital, becauſe no forethought Felony. And, 2dly, To intitle them to the Act of Indemnity, under which all Homicides were included, except wilful Murder, and Slaughter of forethought Felony. And the Interlocutor upon the Relevancy was in thir Words, *Find the Pannels, or either of them, at the Place and Time libelled, their giving* Archibald Anderſon *a Cut or Wound in the Neck or Throat, or other mortal Wound, with a Knife or other mortal Weapon, whereof he, the Defunct, ſoon thereafter died; or that the ſaid Pannels, both or either of them, were art and part therein, relevant to infer the Pains of Death, and other Pains libelled: And repel the haill Defences for the Pannel, excepting that Defence pled upon his Majeſty's gracious Act of Indemnity; anent which the ſaid Lords ſuperſeded to give their Judgment, till the Concluſion of the Probation, and Return of the Verdict.*

This then is an undoubted Authority, that Homicide may, by the Law of *Scotland*, infer the Pain of Death, though it be neither wilful Murder, properly ſo ſpeaking, nor forethought Felony; otherwiſe the Court could not have found the Crime relevant to infer the Pains of Death, and at the ſame time reſerve the Conſideration, whether there was any forethought Felony, or not.

Upon this Interlocutor a Proof was adduced, and a Verdict returned, finding *Lindſay*, one of the Pannels, guilty; and yet the Court having reſumed the Conſideration of the Indemnity, found him intitled to the Benefit of it: That is, in other Words, they found the Crime was neither voluntary Murder, nor Slaughter of forethought Felony. So that 'tis plain, had not the Indemnity intervened, *Lindſay* muſt have ſuffered Death for killing, though there was no previous Deſign of Forethought.

And an Interlocutor upon the Relevancy, much to the ſame Purpoſe with the former one, was alſo pronounced, the 31ſt of *Auguſt*, 1721, in the Caſe of *Samuel Matthews*, a Soldier; where the Libel was found relevant to infer the Pain of Death, reſerving the Conſideration of another Act of Indemnity then pled for the Pannel.

It would be in vain, and lengthen a Paper already too long, to run through all the Deciſions which ſhew, that neither the Drunkenneſs of the Pannel, nor Provocation given him, nor the Suddenty upon which the Fact was committed, can afford a Defence to the Pannel, to exculpate the Slaughter, or leſſen the ordinary Puniſhment: And therefore the Purſuers ſhall leave the firſt Branch of the Defence with the Lords, with this Obſervation, that if it is really founded in Law, by looking into the Books of Adjournal, one would think our Law has hitherto been very ill underſtood.

2do, It was offered, what indeed is alone applicable in the preſent Caſe, "That if the Pannel intended only to wound or kill *Bridgeton*, and by "Miſadventure the deceaſt Earl of *Strathmore* was wounded, and of that "Wound died, the *pœna ordinaria* was not to be inflicted."

It was anſwered, That according to the Rules of the civil Law, he who intending to kill one, kills another, is nevertheleſs ſubject to the *pœna ordinaria*; ſo *Julius Clarus* delivers his Opinion in his *Receptæ Sententiæ*, *lib.* 5. § *homicidium*, *N.* 6. where, after having taken notice, that the contrary was indeed the Opinion of ſome, adds, *Sed certe ego ſi caſus contingeret, illi facerem caput amputari.* And the learned *Mathæus*, *lib.* 48. *tit. de Sicariis*, § 12. gives the ſame Opinion, obſerving that the Act is conſummate, there is *animus* or Deſign of killing, and Death: That it would be a ridiculous Defence, that the Pannel intended to ſteal the Goods of one Man, but happened to ſteal thoſe of another; or againſt Adultery, that he intended to defile one Man's Wife, and happened to light upon that of another: And he thinks 'tis as unreaſonable to hope for Safety from this Defence, that the Meaning was to kill one, but another received the Stroke, and died.

Voet. in his Commentary agrees with them, *lib.* 48. *tit.* 8. *n.* 2. where he ſays, that there is no Difference, *Sive vulnus in titium directum ab eo declinatum, Mævio in proximo ſtanti lethale fuerit, ſive denique occidatur qui cædis impediendæ cauſa, ſeſe medium inter agreſſorem & defendentem interpoſuerit: quia prævalet, quod principale eſt, nec error talis tollit aut occidendi animum, aut cædem lege Cornelia vindicandam.* And for this not only founds upon the *l.* 18. § 3. & § *ult. ff. de injur. and l.* 5. § 1. *ff. de ſervo corrupto*; but adds the Authorities of *Farinacius*, *quæſt.* 125 *n.* 156 & 157. as alſo, that of *Fachinæus*, *Carpzovius* and *Berlichius*, and others. And this Opinion obviates the Defence, as put in its moſt favourable Light, which however would be of very delicate Proof, that the Defunct thruſt himſelf between *Bridgeton* and the Pannel, and received the Stroke aimed at the other.

The learned *Sande*, *lib.* 5. *tit.* 9. *defin.* 6. which has this Title, *Qui alium pro alio occidit, nihilominus ordinaria, leg. Cornel. pœna affiendus*, ſays, after agreeing, that, according to the *Roman* Law, ſuch Error would not have excuſed the Murder, *Hæc ſententia ubique uſu obtinuit, & ſecundum eam, reus ad mortem condemnatus & decapitatus eſt*, 17th November, *anno* 1621; and there alledges the Authority of *Gomeſius*, *Emanuel*, *Soir*, and *Carolus Molinæus*, *Qui alios cumulat*, in his Book *ad conſuetudines Pariſienſes.* And Sir *George Mackenzie* in his Criminals, *tit. Murder*, § 9. ſays, after ſtating the Queſtion, "Yet I think he ſhould die, ſeeing "the Deſign of killing a Man, and not any particular Man, is Murder; "and the Killer intended to deface GOD Almighty's Image, and to take "from the King a Subject."

'Tis nothing to the Purpoſe, that ſome of the Authors who write upon the *Roman* Law, are of a different Opinion, in a Caſe not determined in Words by the Text, when the Bulk of the Commentators are of the other Side, the moſt recent and of greateſt Authority; and when it appears to be received as a Rule by the Practice of Nations, that the ordinary Puniſhment ſhould be inflicted. And it may not be improper to obſerve, that the Caſes where Lawyers diſſent from the received Opinion, are generally unjuſtifiable Homicide, that is, where the Byſtander was killed, when the Killer intended to execute his Purpoſe in lawful Defence, and not *in homicidio culpoſo*, which is the higheſt the Pannel's Caſe could poſſibly be pled upon Provocation, according to any Opinion delivered by the ſtrongeſt Advocates for the Queſtion the Pannel pleads.

That it is not always neceſſary, that the Intention ſhould be directed towards the Miſchief done, in order to inflict the Pain of Death, muſt be evident from looking to the xxi. *Chap.* of *Exod. Ver.* 22. and 23. where, *If a Woman with Child is hurt when men are ſtriving, and Miſchief follow; Life is to be given for Life.* And the Kind of Killing now in queſtion was plainly ſuch as, according to the Law of *Moſes*, would not have intitled the Slayer to the Benefit of the City of Refuge: For though in the xix. *Chap.* of *Deut. Ver.* 4. *Whoſo killeth his neighbour ignorantly, whom he hated not in time paſt*, is ſaid to be intitled to that Priviledge; yet this is limited immediately with an Example of Manſlaughter merely caſual.

The Procurators for the Pannel inſiſted, "That this Kind of Killing "was intirely caſual, beyond, and without the Intention of the Party: That "in the Caſe of *Maſſon*, in the Year 1674, *Burnet* of *Carlops*, and ſeveral "others, where it appeared there was no Intention to Kill, the Puniſh-"ment was mitigated."

It was answered, That where, from the Nature of the Weapon, and Means by which the Wound was given, taking all the Circumstances together, there was no Evidence or Presumption that the Pannel intended Death to any Person whatsoever; and the *propositum* was neither proved, nor could be presumed, as in the Case of *Masson*. And in that of *Burnet* of *Carlops*, where Persons having Swords, only struck with Staves, it was held as approaching towards a casual Homicide. But that can never be pretended, when the Wound given as libelled was so clearly mortal, and the Instrument the most lethal [deadly]; and the Decision of *Carlops*, even with that Difference, stands single in the Books of Adjournal.

It was further contended for the Pannel, "That as *animus occidendi*, "and Death following, are admitted to be necessary, in order to inflict the "highest Punishment; so as from the Circumstances mentioned in Ex- "culpation, 'tis evident there was no Intention against the Defunct: And "it cannot be known whether the Pannel's Design was to kill *Bridgeton*, "since he was not killed, or if the Wound would have been mortal, had "the Sword reached him; and consequently the necessary Requisites to "constitute a Murder, were not to be found here."

It was answered, That the Invasion with a mortal Weapon, with which the Defunct was killed, was a sufficient Proof in Law that the Invader intended to kill, since Death followed; and that there is no wounding by Measure, and Certainty not to kill. The Act implies *dolus* and Malice, which, with Death following, makes Murder, without any further Proof of an Act of the Will to kill; and there would have been as little Evidence that the Pannel intended to kill *Bridgeton*, if he had actually received the Wound and died, because it was possible the Sword might have pierced further than he intended; and if he did not design to kill *Bridgeton*, and killed the Defunct, he must have been the Person against whom the Mischief was directed. As indeed it may be argued from the Rage and Drunkenness pled in Excuse and Defence, 'tis possible that *ex rabie* he intended to kill whomever he met with; and if Rage from Passion and Drink is allowed to palliate Murder, 'tis impossible any one can be safe. And these very Circumstances, without which the Defence has not a Colour, must, at the same Time, give Evidence, that the Pannel's Intention of pursuing *Bridgeton* with a Sword, was to kill and destroy him; for he pleads them to excuse his killing of the Defunct, as sufficient Provocations to incite him to it.

The Law of *England* was frequently mentioned by the Procurators for the Pannel in the pleading, as what would justify the Arguments brought for them; and particularly it was said, "That all Killing of a Suddenty "by that Law, was only Manslaughter, and not Murder." But the contrary will appear, by looking into *Hawkins's Pleas of the Crown*, *Book* 1. *Chap.* 31. of *Murder*, where he clearly distinguishes between deliberate Murder, and Murder committed on a sudden: And in this last Case, Malice prepensed is, by the Law of *England*, often implied, as Lord Chief-Justice *Keylinge* lays it down, *Regina versus Mawgidge*, and justifies it by the Case of *Holloway*, who espying a Boy that came to cut Wood, took him, and tied him to an Horse's Tail with a Cord, and then gave the Horse two Blows, whereby he run away, and broke the Boy's Shoulder, whereof he died; which must have been sudden, and was adjudged Murder. And *pag.* 130, he supposes *A* to have been provoked by *B*, and to have drawn his Sword, and made a Pass at him, when *B* had no Weapon drawn, but missed him; thereupon *B* draws his Sword, and passes at *A*, and there being Interchange of Passes between them, *A* kills *B*. *I hold*, says the Author, *this to be Murder in* A, *for* A's *Pass at* B *was malicious, and what* B *afterwards did was lawful.* Here is both Suddenty and Provocation, and yet, in the Opinion of that great Lawyer, it would have been held Murder. And in the present Question, neither *Bridgeton*, nor the Deceased, had any Weapon drawn.

And to shew, that according to the Law of *England*, the aiming at one, and hitting another, does not make Death following Manslaughter; in the End of the next Page he sets down the Case of Dr. *Williams*, a *Welshman*, who having a Leek in his Hat, upon St. *David's-Day*, a certain Person pointed to a Jack-of-Lent that hung up hard by, and said to him, *Look upon your Countryman!* At which Dr. *Williams* being enraged, took a Hammer that lay upon a Stall hard by, and flung at him, which hit another, and killed him: And though being indicted upon the Statute of Stabbing, it was resolved he was not within that Statute, because of the Kind of Weapon; *Yet*, says the Author, *if the Indictment had been for Murder, I do think that the* Welshman *ought to have been convicted thereof* (*a*).

And since the Pannel's Procurators insisted so much upon the Law of *England*, the Pursuers cannot but mention the Authority of one of those Lawyers, as to one of the Cases they themselves stated in the Debate, *Hawkins's Pleas of the Crown*, *Chap.* 31, *in fin.* The Case is, That a Person shooting at tame Fowls with Intent to steal them, accidentally kills a Man; that Author says, *That it is agreed it would be Murder, and not Manslaughter.*

'Tis true indeed, that it would appear by the Law of *England*, as laid down in these *Reports*, that if there is Provocation, in some particular Cases, sufficient to alleviate the Act of Killing, it reduces it to a bare Homicide. But then no Provocation from Words is ever sustained, nor even Assaults, but upon this Ground, That he who was affronted or assaulted, might reasonably apprehend, that he that treated him in that Manner might have some further Design upon him, which resolves the Matter into a Kind of Self-Defence; and in this the Law of *England* differs from the Law of *Scotland*, which requires, in order to lawful Defence, and killing under the Notion of Danger from the Assailant, *ut quis sit constitutus in Periculo Vitæ*. But then there is no Pretence of apprehending dangerous Consequences, when the Party killed, or intended to be killed, was flying, and had no Weapon, as in this Case, and the Passion in such Circumstances resolves itself simply into Revenge, which no Law ever sustained to alleviate or palliate Murder; for there the Malice prepensed is clear and evident.

But then, if it be considered in the present Case, that the Party affronting or invading, is not only set forth to have fled, and to have had no Weapon in his Hand, but that he escaped; what Colour is there, upon these Principles, to alleviate the killing of a Person interposing to prevent the Mischief, when there was no Resistance upon the Part of any Person whatsoever, as in the Case of a Combat, and where it was voluntary as to the Person giving the Wound, in regard he could have stopped when *Bridgeton* fled, which cannot be said with regard to the *Welshman* who threw the Hammer.

To conclude this Matter, it appears pretty evident, the Circumstances offered in Exculpation afford, by the Law and Practice of *Scotland*, no relevant Defence, suppose the Person killed had been the Provoker, much less in the Case where the Person killed generously interposed to prevent the Mischief, having given no Colour or Cause of Provocation, having no Weapon, and where the Person, against whom the Invasion is said to be meant, was without drawn Sword, and flying: The Murder in these Circumstances must have proceeded either from Rage and Revenge, which no Law can ever favour, since Laws were made, and Judges appointed, that private Persons should not attempt judging in their own Case, and to bridle the unruly Passions of Men, or from set Purpose and Design to kill the Defunct, from former Resentment. And what adds to the Presumption of the last, is the Nature of the Wound, quite thro' the Body, and that the Sword went through the Back lower than where it pierced the Belly; which excludes all Possibility of pleading, that the Pannel's stumbling might have pushed it forward, because, by the Nature of the Thing, had he stumbled after the Sword pierced the Defunct's Body, it must have raised the Point of the Sword, so that it could not have pierced lower in the Back than in the Belly.

Upon the *first* Branch of the Libel, the Pursuers think it unnecessary to open the particular Circumstances from which the Pannel's causeless Ill-will and Resentment may appear against the Defunct; that is Matter of Evidence, and upon which no Interlocutor in the Relevancy can pass, and must lie in the Breast of the Assize: And against this Relevancy no Exception, or Colour of Exception can be pretended to lye. And as to the separate Relevancy, and *Art* and *Part*, what is offered to be proven, that the Defunct thrust himself in a Manner upon the Pannel's Sword: As it is of too delicate Proof, and was repelled in the Case of *Hamilton* of *Green*, it is believed the Lords can have no Regard to it. And as for the Drunkenness and Provocation, especially where the Provocation is said to have been given by a third Party; if it were sustained, it must turn up what have been thought the Foundations of the Law of *Scotland*, and stand in Opposition to all the Practice that can be discovered from the Books of Adjournal. And the allowing such Defences as might possibly have some Colour in the Law of *England*, to be proven, would be of dangerous Consequence in the Law of *Scotland*, where the Pursuers are tied up to a precise Relevancy: So that the Procedure in that Part of the Island, in Trials of this Kind, unless the whole Form of Trial were adopted in our Law, would open a Door for leaving Murders unpunished. The Law of *Scotland* alone can be the Rule in this Case; though, at the same Time, it is believed, that the *species facti*, as set forth by the Pannel, would be sufficient Warrant for a Verdict of Murder, even according the Laws and Practice of *England*. *In respect whereof*, &c.

CHA. ARESKINE.

Information for James Carnegie, *of* Finhaven, *Pannel*; *against* Susanna, *Countess of* Strathmore, *the Honourable Mr.* James Lyon, *Pursuers, and his Majesty's Advocate, for his Highness's Interest.*

THE said *James Carnegie*, of *Finhaven*, stands indicted before your Lordships of WILFUL and PREMEDITATE MURDER and HOMICIDE; in so far as, *Having a causeless Ill-will and Resentment against the Deceased* Charles, *Earl of* Strathmore, *he conceived a deadly Hatred and Malice against him*; *and* (on the Day libelled) "Did, with a drawn Sword, without the "least Colour or Cause of Provocation then given by him, invade the "said deceased Earl, and did basely and feloniously murder and kill him, "by giving him a Wound therewith in the Belly, whereof he soon after "died. *At least*, At the Time and Place described, the said *Charles*, "Earl of *Strathmore*, was, with a drawn Sword, feloniously and barba- "rously wounded, and died of the said Wound within a few Days there- "after; and that the Pannel was art and part in this Murder. *And the* "*Indictment concludes*, By all which it is evident, That you are guilty, "art and part, of the Crimes of wilful and premeditate Murder and "Homicide, or one or other of them, at the Time and Place, and in "the Manner above set forth."

The Pannel was brought to your Lordships Bar, upon the 15th of *July* current, to plead to this Indictment, where he appeared under that deep Melancholy and Depressure of Spirit with which a Man and Christian must be loaded, who finds himself accused, not only of shedding of Blood, but of shedding the Blood of one, whose personal Character and Qualities drew, from all who had the Honour to know him, the highest Esteem and Regard; and for whom the Pannel himself had all the Honour, entire Friendship, sincere Affection, and high Respect, that either his Rank, personal Merit, or great Benevolence could call for; and of having done this barbarously, from premeditated Malice, deadly Hatred, and Felony fore-thought.

Your Lordships having put the Question to him, in the ordinary Way, What he said to the Indictment? He expressed himself in these Words:

My Lords,

"I FIND myself accused by this Indictment of maliciously murdering "the Earl of *Strathmore*; but as to any Ill-will, Malice, or Design "to hurt the Earl, GOD is my Witness, I had none: On the contrary, "I had all the due Regard, Respect, and Kindness for his Lordship, that "I ever had for any Man. I had the Misfortune that Day to be mortally "drunk, for which I beg GOD's Pardon, so that, as I must answer at "God's great Tribunal, I do not remember what happened, after I got "the Affront your Lordships will hear of from my Lawyers. One Thing "I am sure of, if it shall appear that I was the unlucky Person who "wounded the Earl, I protest before GOD, I would much rather that a "Sword had been sheathed in my own Bowels. And further, I declare, "That I do not so much as remember, that I saw the Earl after I came "out of the Kennel, and even not so much as the drawing of my Sword; "and therefore I cannot acknowledge the Libel, as it is libelled."

From these Words so expressed, it is evident, in what a dismal Situation of Mind this unhappy Gentleman must be. If what he hath said be true, he

(*a*) Lord Chancellor *Bacon* is in this Opinion of *Hawkins* expressly. *See* Vol. IV. (Edit. 1740.) p. 41. on explaining this Maxim of *English* Law. *In criminibus sufficit generalis malitia, &c.* where he states Cases very similar to the Case here argued.

cannot be guilty of the malicious murdering the deceaſt Lord; yet he may have been the unhappy Inſtrument of his unfortunate Death; and what a bitter Reflection that muſt afford, all Circumſtances, particularly that of Friendſhip, conſidered, will occur to every generous Man: It may produce Thoughts more afflicting than that of Death itſelf.

The Counſel for the Pannel, in the Entry to the Debate, judged themſelves under a Neceſſity, from the great Honour all of them had for the Perſon of the deceaſt Lord, and always will have for thoſe who remain of his Family, and from the particular Obligations of Friendſhip that ſome of them owed him in a more diſtinguiſhed Manner, to declare, that if they had the leaſt Apprehenſions, that his Lordſhip's Death had happened by, or from any Deſign or Intention of the Pannel againſt his Life, that no Motive, even of Relation or natural Tie to the Pannel, would have induced them to open their Mouth in his Defence; but that Innocence is always preſumed, and that the Circumſtances, ſo far as yet appears, ſeem to ſet forth the Action as a *Fatality*, and not a *Deſign*, Juſtice and Duty called upon them to give their weak Aſſiſtance, until the Matter appeared in another Light.

The Fact, as laid in the Libel, is in very general Terms; and thoſe Circumſtances from which the Nature of the Action falls to be determined, and which are material for the Pannel's Defence, being entirely omitted, the Procurators for the Pannel were obliged to ſet forth the Caſe as it truly happened, according to the Information given them; which by our Law and Form, they are enabled to do, without owning the Libel, or admitting even thoſe Facts, which, in the Recital, according to Information, they are led to narrate: And the Account given of it was,

" That, on the 9th of *May* laſt, the deceaſt Earl of *Strathmore*, the " Pannel, and ſeveral others, were called to be preſent at the Funeral of a " Daughter of *Patrick Carnegy* of *Loures*, a near Relation of the Pannel's; " that they dined together at the Gentleman's Houſe, where they drunk " a good deal, all in Friendſhip and Familiarity, without the leaſt Appear- " ance of Quarrel or Difference: That, after the Burying was over, they " together with the Lord *Roſehill*, Mr. *Thomas Lyon*, and Mr. *Lyon* of " *Bridgeton*, and other Gentlemen, went to one Clerk *Dickſon*'s, a Tavern " in *Forfar*, where they drunk pretty plentifully, and where the Pannel " happened to be overtaken with too much Liquor: That all this while, " nothing but Friendſhip appeared betwixt the deceaſt Earl and the Pan- " nel; but that *Bridgeton* was, from Time to Time, bearing hard upon " the Pannel; and, by the whole Tenor of his Converſation, endeavour- " ing to fret or affront him.

" After this, the Pannel waited on the Lord *Strathmore*, at the Lady " *Auchterhouſe*'s, where his Lordſhip went to viſit, and *Bridgeton* followed " them thither, and in that Houſe begun the former Way of Converſa- " tion, making the Pannel's Family-concerns the Subject of his Diſcourſe, " in the moſt provoking Manner, aſking him in a jibing Way, to ſupply a " a Lord in the Company with Money, pulling him rudely by the Breaſt, " and gripping him by the Wriſt, and ſtriking his Hand againſt the Table, " telling him, he muſt give that Lord ſuch a Sum at that Time; then in- " ſiſting, That he ſhould give him the Choice of his Daughters; and ſtill " gripping him, and daſhing his Hand in the foreſaid rude manner, told " him, he would have him promiſe to do ſo; and aſking him, in an inſo- " lent way, What, would he not do it? Then telling him, if it were his " Caſe, if he refuſed, he would maul him, ſhaking his Hand in the Pan- " nel's Face. After this, in a ridiculing Way, deſiring him to ſettle his " Eſtate in a certain manner, ſince he had no Sons of his own; then up- " braiding him with his Debt. All which, the Pannel bore with Patience, " and endeavoured to ward off the Diſcourſe, when *Bridgeton* ſtill in- " ſiſted in the moſt provoking Way. And that *Bridgeton* likewiſe uſed " very great Rudeneſs to the Lady in whoſe Houſe they were; par- " ticularly, when ſhe in Civility offered him a Glaſs of Brandy, he, " ſeeing the Pannel already overtaken with Drink, deſired the Lady to " give it to him, her Brother; and upon her ſaying that her Brother did " not ſeem to want it at that Time, he gripped her by the Arm ſo rude- " ly, as to make her complain, and ſwore, by GOD, her Brother either " ſhould drink it, or ſhe ſhould drink it herſelf; and perſiſted in this Way " of doing, till the Lord *Strathmore* thought it proper to break off the Vi- " ſit, and ſo went out of the Houſe.

" That *Finhaven* and *Bridgeton* followed the Earl; and when they came " to the Street, ſome Words paſſed, and *Bridgeton* uſed the Expreſſion, *God* " *damn him*, meaning the Pannel, and with that gripped him by the " Breaſt, and puſhed him into a dirty Kennel two Feet deep, over Head " and Ears, where, in the Condition he was, he might have been ſmothered " if a Servant of the Earl's had not helped him out, who at the ſame time " expreſſed his Indignation at the Action he had ſeen, by theſe Words " addreſſed to *Bridgeton*, *Sir, though you be a Gentleman, you are uncivil.*

" That *Bridgeton*, after having ſo flung the Pannel into the Kennel, " leaving him there, walked forward; at the ſame time turning about, " and folding his Arms acroſs his Breaſt, ſcornfully laughed at him in " that Condition.

" That the Pannel being helped out of the Kennel in manner foreſaid, " immediately drew his Sword, and, in a juſt Paſſion, purſued *Bridgeton* " with a ſtaggering Pace: And *Bridgeton* run towards the Earl of *Strath-* " *more*, whoſe Back was then to him, and endeavoured to pull out his " Sword; at which time the Pannel coming up with *Bridgeton*, made a " Puſh at him; in which Inſtant the Earl turning haſtily about, puſhed " off *Bridgeton*, and threw himſelf in the Way of the Sword, by which " he received the fatal Wound."

Theſe are the unlucky Circumſtances of the Fact, as the Lawyers for the Pannel have been inſtructed to plead: And from it, as ſo ſtated, the Defence inſiſted upon for the Pannel was, That the Act of Killing is not Murder, nor capital, where there is no Malice nor Forethought againſt the Perſon killed, either proved to have been conceived and retained at any time preceding the Act of Killing, or preſumed from the Circumſtances to have preceded the Act immediately before the committing of it: But that in this Caſe there is no antecedent Malice ſpecified or libelled; and therefore it muſt be taken for granted, that there was none. And as to preſumed Malice immediately preceding the Act, that the Circumſtances entirely exclude that Preſumption; firſt, Becauſe, as the Fact is laid, any Blow or Puſh that was intended, was made at, and deſigned for *Bridgeton*, and not againſt the Earl of *Strathmore*; and ſince the *initium facti* is to be conſidered, as well as the Event, a Puſh begun and intended againſt *Bridgeton*, could never be the Foundation of a Preſumption of Malice againſt the Lord *Strathmore*, the Perſon killed, without which, the Killing could not be capital, but in this Caſe was merely caſual and accidental, it having happened by the Earl's unluckily turning about in the Time of the Pannel's very Act of puſhing againſt *Bridgeton*, whereby the Earl received the fatal Wound. 2*do*, That the Pannel could never be more criminal in having killed the Earl of *Strathmore* by a Thruſt directed at *Bridgeton*, than he would have been if he had killed *Bridgeton* himſelf; but that ſo it was, that if he had killed *Bridgeton*, after the Provocation given in Manner above ſet forth, that it would have been conſtrued only as caſual or culpable Homicide, without Forethought, becauſe done *ex incontinenti*, & *ex ſubito impetu*, & *calore juſtæ iracundiæ*; yea, in ſome Meaſure in Self-defence, ſince the Pannel having been thrown into the Kennel, even to the Danger of being ſuffocated, he had Reaſon after that to expect the worſt from *Bridgeton*, ſince no Gentleman will throw another into a Puddle, who is not ſuppoſed to be ready to go further, as he cannot but expect the ſtrongeſt Retortion of the Injury; and that the Pannel had the more Reaſon to think ſo, that *Bridgeton* immediately betook himſelf to the Earl of *Strathmore*'s Sword, and endeavoured to pull it out, having none of his own, by reaſon that the known Ferocity of his Character and Behaviour is ſuch, that the Country-Gentlemen of his Acquaintance decline to keep company with him, if he wear any Arms: In ſuch caſe the Pannel was to expect the worſt, and ſo was in ſome meaſure in his own Defence, altho' he may have exceeded the *moderamen inculpatæ tutelæ*; which Exceſs, in ſuch Circumſtances, would not be puniſhable by Death, but only by an arbitrary Puniſhment.

And in ſupport of this Defence the Counſel for the Pannel ſhall now, in this Information, endeavour, though ſomewhat out of the Order of their pleading, to follow the Information given in for the Purſuers. And firſt, To ſhow your Lordſhips, that Killing in ſuch Circumſtances was not capital by the Divine Law, or Law of *Moſes*. 2*do*, That it was not capital by the Common Law, which we in great meaſure follow in Matters of that Kind. 3*tio*, That it was not capital by our own ancient Law. 4*to*, That our ancient Law in that particular is not altered by the Statute of *Charles* II. 5*to*, That the Practice of the Court is not inconſiſtent, but agreeable to what is here pled. And 6*to*, That the Laws of our neighbouring Nations are for the moſt part conſonant to thoſe Principles, as well as the Judgment of foreign Courts.

And to begin with the Divine Law, it may be divided into two: Firſt, The Law of Nature, which is the firſt of all Laws, and hath no other Author than God Almighty himſelf. 2*do*, His Will revealed by Writing, particularly in the Laws delivered by *Moſes*.

And as to the Law of Nature, one of the firſt Principles ſeems to be, that every Action muſt be conſtrued and regulated from the Intention of the Actor. Every Action whatever, except in ſo far as it is conjoined with the Will and Intention of the Agent, differs in nothing from the Action of an irrational Creature; yea, if we may ſo ſpeak, as to call the Operation or Impulſe of an inanimate Creature an Action, the Actions of Man ſeparated from his Intention and Deſign as a rational Creature, differ in nothing from the Actions of Brutes, or the Impulſe of Things inanimated; and conſequently that Action, be what it will, can neither be Crime nor Virtue; it is a mere Impulſe or Motion, not properly ſubject to Laws or Rules. But then, indeed, when it comes to be conjoined with the Intention, or, which is the ſame Thing, conſidered as the Action of a rational Agent, there it comes to be ſubject to Laws, to be conſidered as criminal or virtuous: Or if it appear to be accidental, ſo as to have depended upon no Will nor Deliberation of Reaſon, then it returns to be of the Nature of the Act of an irrational Creature, or inanimate Subſtance, and is ſubjected to no Penalty, nor yet capable of receiving a Reward. The plain Conſequence of which is, that it is the *animus* alone that determines the Nature of the Act; and if the *animus* or Intention was criminal, then, by the Law of Nature, the Action itſelf amounts to a Crime. On the other hand, if it be good and virtuous, the Act is laudable by the Law of Nature, ſuppoſing even a bad Conſequence ſhould follow. But, in the third Place, If the Action truly ariſe from no Intention or Principle governing that Action, it is neither laudable nor puniſhable, it returns to be of the Kind already mentioned, the ſame with the like Act of an irrational Creature, or the Impulſe of an inanimate Subſtance, moved by a Cauſe intrinſic to itſelf. And the Conſequence of all this is, that by the primary Law of Nature, the Intention muſt make the Crime; and therefore if there appear no Intention to commit that particular Fact which happens to be complained of, it is not a Crime, notwitſtanding of a bad Conſequence; it is conſidered as a Fatality.

And the Application is plain to the preſent Argument, that if the unfortunate Act of killing the deceaſt Lord did not flow from any Intention to him directed; then that Act is not by the Law of Nature a criminal Act, however the antecedent Acts directed againſt another may be criminal. It is another Queſtion, how far a rational Agent, *verſans in illicito*, is bound for Conſequences that did not fall under his Intention? We ſhall afterwards endeavour to ſhew, that that is neither a Queſtion in the Law of Nature, nor in the Divine Law; but is a Queſtion ariſing from the municipal Laws of particular Kingdoms, or at fartheſt from the Law of Nations, ſometimes called the *ſecondary* Law of Nature.

As this Point, that the Intention directed towards the Act committed, muſt govern the Action, ſo as to render it criminal or not, according to the firſt Principles of the Law of Nature, ſeems to be pretty plain, if we retire our Thoughts from other After-laws; ſo indeed it is confirmed and illuſtrated by the written Law of God, as delivered by *Moſes*, with regard particularly to the Queſtion of Manſlaughter. It is almoſt unneceſſary to obſerve, that whether the Remedy againſt the penal Conſequences of Actions, committed without Intention, was in form of an Abſolvitor upon the Trial, or by having Acceſs to a City of Refuge; it is the ſame Thing: The Queſtion is, What was to be the Puniſhment that was to take effect? If the Puniſhment was to be ſtopt in that Form, by flying into a City of Refuge the Principle of Law is the ſame, as if the Effect had been to be ſtopt in any other way. And juſt ſo, as we will afterwards have occaſion to notice, it is the ſame Thing as to our Law, whether the Manſlayer was to be ſafe, by flying into Gyrth or Sanctuary, according to the old Law, or now to be ſafe by a judicial Abſolvitor or Reſtriction of the Puniſhment. And juſt ſo with regard to the Law of neighbouring Nations; it is all one, whether a Man is to be freed by Benefit of Clergy, or ſuch other Form, if he is to be free. The Foundation

Queſtion

Queſtion is only, What was the Puniſhment that neceſſarily, *cùm effectu*, falls to be inflicted upon a Homicide of ſuch and ſuch a Kind; and as in this Caſe, upon a Homicide committed without Forethought or malicious Intention directed againſt the Perſon that hath ſuffered? And therefore if, by the *Moſaic* Law, one in the Pannel's Circumſtances was to have the Benefit of a City of Refuge, the Argument concludes, that by that Law he would not have been ſubjected to the Pain of Death. Indeed we believe we will be able to go a little further to ſhew your Lordſhips, that, according to the Opinion of the moſt learned Interpreters and Doctors of the *Jewiſh* Law, the Benefit of the City of Refuge was ſcarce neceſſary in ſuch a Caſe as that which is now before you.

In the xixth *chap.* of *Deut.* the Cities of Refuge are appointed to be ſeparated in the Midſt of the Land, that every Slayer may fly thither: *And this is the caſe* (ſays the Text) *of the ſlayer, which ſhall fly thither; that he may live: Whoſo killeth his Neighbour ignorantly, whom he hated not in time paſt*; or, as it is ſaid to be more literally in the Original, *from Yeſterday the third Day*. By this Text your Lordſhips ſee thoſe two are conjoined as explicatory of one another, *ignorantly whom he hated not in Time paſt*; and ſo the Word *ignorantly* is put in oppoſition to *Hatred in Time paſt*, and by that means the Senſe is plain, that by *ignorantly* is not meant, without knowing that he kills his Neighbour, but without a Fore-knowledge, a Foreſight, a former Ratiocination and Deſign: In which Senſe, Knowledge is moſt frequently taken, becauſe it is impoſſible to maintain, that if a Man ignorantly kill his Neighbour, even whom he hated before, taking the Word *ignorantly*, in that Senſe, of his not knowing that he kills him, or killing him by mere Accident, without his Knowledge, can be liable as a Murderer; becauſe it is impoſſible to conjoin even previous Enmity with accidental ignorant Killing, ſo as to make out a Crime of Murder; that were exceeding inconſiſtent with every Principle of Reaſon, far more with a Law flowing from infinite Perfection. But then the Matter is fully explained by *Ver.* 11. of that ſame Chapter, which determines when a Man is not to have the Benefit of the City of Refuge; *But if any Man hate his Neighbour, and lie in Wait for him, and riſe up againſt him, and ſmite him mortally that he die, and flieth into one of theſe Cities: Then the Elders of his City ſhall ſend and fetch him thence, and deliver him into the Hand of the Avenger of Blood, that he may die.* Here are both Sides of the Queſtion put, the one fully to explain the other; the laſt to explain what is meant by *ignorantly*, whom he hated not *in Time paſt*. The laſt Text does by no means ſay, that if a Man ſmites his Neighbour whom he knoweth, although without Hatred, and without lying in Wait, and without riſing up againſt him, that he ſhall ſurely die; but on the contrary, puts the Iſſue of his dying upon his hating of him whom he killed, and upon his riſing up againſt him whom he did kill; and upon his lying in wait, that is, in other Words, upon his deſigning to take his Opportunity from a premeditated Malice: For indeed the Meaning cannot be that of a formal lying in wait, or lurking in a Paſſage where the Perſon was to paſs; but he who deſigns the Thing, and takes his Opportunity, lies in wait in the plain Senſe of the Text. Beſides, the Word *ignorantly* very plainly imports, and carries under it that Caſe of a Man's killing, by Miſadventure, one whom he did not intend to kill, that is plainly Ignorance as to him who was killed; and yet it will be true, that if he deſignedly kill one in place of another, miſtaking the Perſon, but deſigning to kill that Perſon, as ſuppoſed to be the other, he does not ignorantly kill the Man whom he does ſlay, he kills him knowingly, although he miſtake the Man.

Nor is it of any Importance, that the Examples immediately ſubjoined in the 5th *Verſe*, are Inſtances of Slaughter intirely accidental; and where the Slayer did really not know that he killed, that is an Example, but not an Example exhauſting the Rule, which the 11th *Verſe* fully clears, as not extending the capital Puniſhment to all who came not under the Deſcription in the 5th *Verſe*, but to thoſe alone who *hated their Neighbour, lay in wait for him, and roſe up againſt him.*

And though this is plain enough from that Part of the Law, yet the Matter is indeed more fully explained in xxxvth *Chap.* of *Numb.* where there is another Ordinance as to Cities of Refuge, and they are appointed to be ſix; and the general Rule is ſet down, *That every one that kills any Perſon unawares, may fly to thoſe Cities.* Nothing can be plainer than the meaning of killing unawares, that is, without Deliberation, unexpectedly, without Fore-thought, *ex improviſo, ex inconſultu:* Theſe are all ſynonymous, and accordingly the *Septuagint* Tranſlation ſo renders the Words ἀκουσίως that is, *involuntarily*; and ſo likewiſe the *Jewiſh* Doctors have explained it, as will afterwards be noticed.

After this the Text goes on with an Enlargement or Amplification of that general Law, "And if he ſmite him with an Inſtrument of Iron (ſo "that he die) he is a Murderer, *&c.* And if he ſmite him with throwing "a Stone (wherewith he may die) and he die, he is a Murderer, *&c.* Or "if he ſmite him with an Hand-weapon of Wood (wherewith he may die) "and he die, he is a Murderer." Theſe are the Amplifications; but then follows the Limitation in the 20th *Verſe. But if he thruſt him of Hatred, or hurl at him by lying of wait, that he die; or in Enmity ſmite him with his Hand, that he die: He that ſmote him ſhall ſurely be put to Death; for he is a Murderer*, &c. Here is the Limitation, he that killeth or thruſteth with an Iron-Weapon, is a Murderer, under the Limitation introduced by the Particle *but*, as an explicatory Exception to the Generality of the Rule, *but if he thruſt him with Hatred*; that is, in other Words, that he is a Murderer, if he thruſt him in Hatred: And therefore Commentators refer from this Text to the other in *Deuteronomy*, already cited, for Explication of this, where it is ſtatuted, *That if a Man hate his Neighbour, and riſe up againſt him, and ſmite him*; whereby they plainly underſtand, thruſting him of Hatred, as the ſame with riſing up againſt him, and ſmiting him with Hatred, ſo as to comprehend every Manner of Killing with any Weapon; and conſequently that this is not a diſtinct Manner of Killing, from what is expreſſed in the 16th *Verſe*, but a Quality adjected to the Manner of Killing, ſo as to make it Capital, *viz.* That it muſt be done in Hatred. And this is yet more clearly explained by the 22d and following *Verſes*, where the Oppoſition is ſtated betwixt thruſting ſuddenly and of Enmity, with a direct Reference to the 16th, 17th, and 18th *Verſes*, *But if he thruſt him ſuddenly without Enmity, or have caſt upon him any thing, without laying of wait; or with any Stone wherewith a Man may die, ſeeing him not, and caſt it upon him that he die, and was not his Enemy, neither ſought his Harm: then the Congregation ſhall judge*, &c. *and ſhall deliver the Slayer out of the Hand of the Avenger of Blood.* There all the three Methods of Killing before-mentioned are referred to: Thruſting, properly applicable to the killing with a Sword, but without Enmity; caſting any Thing upon him, without lying in wait, or Fore-thought, or with any Stone, wherewith a Man may die, the very Thing expreſſed in the 17th *Verſe*, and from which he is deemed to be a Murderer; yet, if he was not his Enemy, neither ſought his Harm, he is not a Murderer, he is not to die, but to be delivered from the Avenger of Blood. So that theſe three laſt Verſes are a plain Limitation of all that went before; the Inſtrument, whatever it was, was to raiſe a Preſumption, if a mortal one: But yet if it appear the Perſon was not *thruſt*, or *hurled* at, or *ſmitten* in *Enmity*, &c. the Slayer was to be delivered from the Avenger of Blood.

Neither can it ſtumble your Lordſhips, that in the 22d *Verſe* are theſe Words, *ſeeing him not*, as if this were one of the Requiſites neceſſary for the Slayer's Safety, that he did not ſee the Man whom he thruſt at, or killed with a Stone, though not done in Enmity: For, *firſt*, 'Tis impoſſible to imagine, that the Words, *ſeeing him not*, however they might refer to the Caſe of throwing a Stone, can have any Reference to the Words, *thruſting without Enmity.* How can a Man thruſt at him whom he ſeeth not? Or, How can he ſmite him whom he ſeeth not, in any proper Senſe of Smiting? And therefore it is plain, that as to the Thruſting, the only Limitation is, that it be done without Enmity. But, *2do*, Your Lordſhips will obſerve, that the Word *Him* in that Sentence, *ſeeing him not*, is not at all in the Original; it is an Adjection of the Tranſlator's, and, as ſuch, is diſtinguiſhed in different Characters in any correct Editions of our Bibles, and indeed is an erroneous Adjection: The Words ſhould be only *ſeeing not*; and perhaps the Tranſlations ought not at all to be by the Participle *ſeeing*, but, according to the Idiom of the *Latin* Language, by an Adjective, ſuch as, *improvidus, imprudens*, or the like; and, according to our Language, by a Subſtantive and Adverb, ſuch as, *without foreſight*: And ſo the *Septuagint* does tranſlate it in theſe Words, ἀπ' ἀδόκ, which, in our Language, is directly *without foreſight*, that is, without Premeditation or anterior Deſign to give the Stroke. And ſo the Senſe comes out, that where a Thruſt or Blow of that kind is given, without Enmity, Foreſight and Premeditation, or, in other Words, *ſine dolo*, that there Death was not to follow, but the Slayer to have the Benefit of the City of Refuge. And that the moſt ancient Lawyers, and *Jewiſh* Doctors themſelves, have underſtood the Scope of the *Moſaic* Law to be ſuch, is the next Point we are to endeavour to ſhew your Lordſhips.

And, in the *firſt* place, We beg leave to refer to an ancient Treatiſe, called *Moſaicarum & Romanarum Legum Collatio*, laſt publiſhed by the learned *Schulten*, with his own Notes upon it; in the firſt *Tit.* of which, *De homicidiis caſu, V. voluntate*, § 5. are thoſe Words, *Item de caſualibus homicidiis* Moiſes *legaliter dicit, Si autem non per inimicitias immiſerit ſuper eum aliquod vas non inſidians, vel lapidem, quo moriatur*, non per dolum (your Lordſhips will pleaſe mark thoſe laſt Words) *& ceciderit ſuper eum, & mortuus fuerit, ſi neque inimicus ejus*, &c. *liberabitis percuſſorem.* Here is directly ſet down, by way of Paraphraſe, the Senſe of the 23d *Verſe* of the xxxvth *Chap.* of *Numb.* before cited; and in place of theſe Words, *ſeeing not*, the Paraphraſe of this ancient Collator is expreſt by theſe Words, *non per dolum*; which ſhews what Underſtanding he had of the Words, directly congruous to what we have above ſet down, and, as we apprehend, to be the *Septuagint* Tranſlation; and this Paraphraſe the Annotator approves of as the juſt Meaning of the Text.

But we beg leave to give your Lordſhips another great Authority, who founds his Opinion upon the Notions of the *Jewiſh* Doctors, or rather ſets forth what they all agreed on to be the Import of the *Moſaic* Law on this Head, and that is the great and learned *Selden*, in his Treatiſe, *De jure naturali & gentium, juxta diſciplinam Hebræorum, Lib.* IV. *Cap.* 2. The Title of which is, *De homicidio involuntario, ſeu quod caſu factum aut errore.* There the learned Author takes notice of all the Texts upon this Subject, and of the *Jewiſh* Doctors who had wrote upon it, whoſe Names we need not trouble your Lordſhips to repeat, but refer to the Quotations *Selden* makes. That learned Author takes notice of three Sorts of Homicide, which he and the *Jewiſh* Doctors reckoned to be involuntary, according to the *Moſaic* Law, and not to be puniſhed with Death: The *Firſt* is, What is merely accidental. The *Second* is, Where the Killing was not merely accidental, but as he expreſſes it, *prope accedens ad violentiam.* The *Third* we beg leave to ſet down in his own Words, as coming up directly to our Caſe: *Tertia autem homicidii involuntiarii ſpecies eſt, ubi qui alium occidit ex errore quidem aut ignorantia, quæ tamen prope accedit ad id quod ſpontaneum eſt ſeu voluntarium; veluti ubi quis alterum occidere volens, alterum jactu aliterve perimit, aut ubi jactu ſive ſaxi ſive teli in hominum cætum, cujus nec ignarus qui jecerit quis occiſus: adeoque interveneric culpa latiſſima. Ex tribus hiſce homicidii involuntarii ſpeciebus, nulla eſt quæ morte ex ſententia forenſi ordinaria, ſive in Ebræo aliove circumciſo, ſive in proſelyto domicilii, aut gentili alio puniretur. Nam in univerſum pronunciant, homicidium nullum, ſeu qui non ſponte ſcelus patraret, ſic foro puniendum.* Yea, he goes further, That, in this laſt Caſe, according to the *Jewiſh* Doctors Opinion, there was no need of going to the City of Refuge, for that the Avenger of Blood had not a Power in that Caſe to kill.

We apprehend, nothing can be more direct or ſtrong to the preſent Caſe, than that Authority which is laid down, as the univerſal Opinion of the *Jewiſh* Doctors, which we hope does deſerve ſome Regard in the Interpretation of the *Moſaic* Law.

And this naturally leads us further to obſerve to your Lordſhips what we inſinuated before, that the Queſtion ſtarted by *Roman* and *modern* Lawyers, how far a Perſon that intends to kill one Man, is liable to the Pain of Death if he kill another, hath no Foundation in the *Moſaic* Law, either from the Texts, or the Opinion of thoſe *Jewiſh* Doctors. As to the *laſt*, your Lordſhips ſee, that *Selden* from them, directly ſtates the Caſe, *ubi quis alterum occidere volens, alterum jactu aliterve perimit*; and he and they determined that to be an involuntary Homicide, not puniſhable with Death; and we apprehend, that in this they are founded in the Words of all the Texts, *If any Man hate his Neighbour, and lye in wait for him, and riſe up againſt him, and ſmite him mortally, that he die:* Not one Word here of riſing up againſt one and killing another; not a Word of hating one, and in conſequence of that Hatred killing another: That was a Caſe which did not fall under that Law. The Hatred and the Riſing-up, was, by that Law, to be againſt the Man who was killed; if another by Fatality happen to be killed, that was a different Caſe, it was an involuntary Homicide; the Crime there was not the Killing, but ſtood upon the riſing up againſt

againſt him who was not killed; and ſo the Puniſhment was for Invaſion, but not for Killing. The Texts in the Book of *Numbers* are all to the ſame Purpoſe: *If he ſmite him who is killed of Hatred, or hurl at him by laying of wait that he die, or in Enmity ſmite with his Hand that he die*, &c. where all the Rules are ſtill directed towards the Perſon alone that is killed; and that of killing another, when the Stroke was not deſigned at him, is quite left out of the Caſe. And the Application of this Reaſoning to the preſent, unhappy Accident, is too evident to need Enlargement. If it appear that the Puſh was aimed at *Bridgeton*, that the Enmity was againſt him, and not againſt the deceaſed Lord; then, whatever be the Conſtitution of the *Roman*, or more modern Laws, the preſent Caſe is quite out of the Deſcription of the *Moſaic* Law concerning this Article of Manſlaughter.

What hath been already ſaid at ſo great Length, does fully obviate what is offered in the Purſuers Information in way of Anſwer. It is true, that the general Rule in the Divine Law is, *That whoſo ſheddeth Man's Blood, by Man ſhall his Blood be ſhed*; and ſo, by the Sixth Commandment, the Prohibition is general, *Thou ſhalt not kill*: Yet even the Commandment itſelf admits of Exceptions; ſuch as, Killing in Self-Defence, and Killing in Execution of Juſtice, and Killing in Proſecution of juſt War, and the like. The other Rule likewiſe admits of Exceptions, not ſo as entirely to juſtify the Killing, and to make the Act lawful, but yet ſo as to excuſe from the Pain of Death. The Texts already noticed are expreſs, that a Man's Blood may be ſhed, and yet the Blood of the Shedder not be required on that Account. The Queſtion is, Whether this misfortunate Pannel's Caſe comes not under the Exceptions? And that we have already diſcuſſed.

The Poſition, That, by the Law of *Moſes*, "Death of a Suddenty "was plainly capital, and that the Slayer had the Benefit of the City "of Refuge, only where the Slaughter was by mere Misfortune," is aſſumed without ſufficient Foundation. 'Tis plain, that he who thruſts without Enmity, does not kill the Man by mere Caſualty: The Act from which Death follows, is a voluntary Act, although without Enmity: And although the Killing is involuntary, and ſo can never be ſaid to be merely caſual in the Senſe the Pu ſuers would take the Words; neither are the Words in *Exodus*, *If a Man lye not in wait, but GOD deliver him into his Hand*, in the leaſt contrary to what hath been advanced: For it is moſt properly ſaid, that where the Act is without the Deſign of the Killer, without Enmity, and without Hatred; that there, in ſo far as concerns the Killing, GOD hath delivered the Man into the Hand of the Slayer. The plain Meaning is, That where a Man is killed, not with Deſign, but that the Thing happens by the over-ruling Hand of Providence, permitting Things of that Kind, in his Sovereign Wiſdom, and from his Supreme Power; that there the Perſon is delivered to Death by the over-ruling Hand of GOD. And where could ever this be more properly applied, than on the preſent melancholy Occaſion, when the providential turning-about of the unfortunate, deceaſed Lord, occaſioned his receiving the fatal Wound?

It is likewiſe a Poſition aſſumed without Reaſon, "That wherever a "Man was killed by a mortal Weapon, that was Murder by the *Moſaic* Law." We hope we have already demonſtrated the contrary. If Enmity and Fore-thought was required, (and we need only repeat that one Text, which expreſſes the Killing a Man with a Stone, wherewith he may die) there the Text declares the Stone to be a mortal Weapon; yet for all that, in caſe of the Circumſtances mentioned in the other *Verſe*, the Slayer was not to die, but to be delivered from the Avenger of Blood: And this ſingle Conſideration muſt be ſufficient to refute ſuch a Poſition. Is it not poſſible for a Man to uſe a mortal Weapon, where there is no Enmity, nor Deſign to kill the Perſon who is ſlain? If it be poſſible, as it certainly is, then can we imagine that a Law, ſo perfect as the Divine Law itſelf, could make a Man guilty of Murder, becauſe of the Uſe of ſuch a Weapon, where he really intended no more Harm, than a Man that uſed a Weapon of another Kind? Beſides, that in truth every Weapon is a mortal Weapon with which a Man may be killed: And therefore, to imagine that the Divine Law laid ſuch a Difference betwixt an Inſtrument of Iron, and one of another Kind, is certainly to go too far. The Law of GOD has put the Matter upon a much juſter Footing, to wit, the Intention of the Perſon, which alone can diſtinguiſh his Actions.

The Purſuers alſo ſay, "That though the Argument is good, that "wherever the Benefit of the City of Refuge was not competent, there "the Crime was capital; yet it does not follow, that where the Power "of the Laws were ſuſpended by the *Jus Aſyli*, that the Puniſhment "is not to be capital in a Country where the *Jus Aſyli* takes no Place."

But, with Submiſſion, this is no ſolid Way of arguing: The Queſtion hitherto treated is, What was the Law of *Moſes*, with regard to Puniſhments in the Caſe of Manſlaughter? If the Puniſhment in any Caſe was not capital, becauſe of the Privilege of the *Aſylum*, the Concluſion is juſt, that the all-wiſe GOD did not intend ſuch Puniſhments ſhould be inflicted for ſuch an Offence, and the Form of granting the Protection for the Puniſhment, does not alter the Subſtance of the Law.

The *next* Point undertaken to be illuſtrated is, That Manſlaughter, under ſuch Circumſtances as occur in the preſent Caſe, was not, by the Common Law, puniſhable by Death: And this Argument muſt indeed be divided into ſeveral Branches, ſuch as, *1mo*, That culpable Homicide was not ſo puniſhable, and that Homicide committed upon ſuch high Provocation, as was here given by *Bridgeton*, could amount to culpable Homicide only. *2do*, That, by that Law, the deceaſed Lord not having been intended to be killed, but the Invaſion, whatever it was, intended againſt another; the killing the Earl was caſual, or at worſt culpable, not puniſhable with Death.

And as to the *firſt* of theſe Points, we ſhall not trouble your Lordſhips with Infinity of Laws and Opinions of Lawyers that might be adduced upon the Point, but only take Notice of ſome of the moſt remarkable, and which ſeem moſt appoſite to the preſent Caſe. And in the *firſt* Place, The Foundation of the *Roman* Law on this Point, appears to have been laid down as early as the Days of *Numa*: For the *Roman* Writers take Notice of a Law of his in theſe Words; *In Numæ legibus cautum eſt, ut ſi quis imprudens hominem occidiſſet, pro capite occiſi & natus ejus in concione offerret arietem.* This Law is taken Notice of by *Pithaeus*, in his Annotations upon the fore-cited, ancient Treatiſe, comparing the *Moſaic* and *Roman* Law, with regard to this Head of Manſlaughter, as agreeing preciſely with the Law of *Moſes*; and the plain Meaning of it is, That where a Man kills another, although culpably, yet if it be *ſine dolo per imprudentiam*; he is not to ſuffer Death, but to make an Aſſythment to the neareſt Relations of the Perſon killed: And the ſame Treatiſe takes Notice of a Reſcript of *Adrian*'s to the ſame Purpoſe, directed to *Taurinus Ignatius*, approving of a Judgment given in the Caſe of one *Marius Evariſtus*, whereby the Proconſul had mitigated the Puniſhment of Manſlaughter upon that ground, That ſuppoſe it was done *per laſciviam*, and culpably, yet it was *ſine dolo*. The Words of the Reſcript are, *Pœnam Marii Evariſti recte, Ignate Taurine moderatus es ad modum culpæ; refert enim, & in majoribus delictis conſulto alio quod admittatur an caſu; & ſane in omnibus criminibus diſtinctio hæc pœnam aut juſtitiam provocare debet aut temperamentum admittere.* And *Schulten*, in his Annotations, explains what is meant by *caſu*, in theſe Words; *Per caſum hic intelligitur fieri quod non fit dolo, quamvis et quod impetu fit, caſu dicitur fieri*, l. 1. §. 3. ad leg. Cornel. de Siccar. *Ubi pro cauſa, editiones veteres & gloſſam recte haberi caſu certiſſimum eſt.* Which, by-the-bye, ſhows how erroneous the Purſuers Interpretation of the Words *caſus* and *caſual* is, when they would reſtrict them to what is done by mere Accident.

The general Rules of the civil Law are plain on this Point, That it is the *animus qui maleficia diſtinguit*; That there can be no Murder, *ſine animo occidendi*. But theſe general Topics need not be inſiſted on, where the Texts themſelves are ſo expreſs, ſuch as not only theſe already mentioned, but even that *l.* 1. §. 3. *ad leg. Corn. de Siccar. Divus Adrianus reſcripſit, eum qui hominem occidit, ſi non occidendi animo hoc admiſit, abſolvi poſſe.* And a little after, *Et ex re conſtituendum hoc, nam ſi gladium ſtrixerit, & in eo percuſſerit, indubitate occidendi animo id eum admiſiſſe.* But then he adds the Exception, *Sed ſi clavi percuſſit, aut cuccuma in rixa: quamvis ferro percuſſerit, tamen non occidendi animo, leniendam pœnam ejus qui in rixa caſu magis quam voluntate homicidium admiſit.* It is true that the Purſuers, and indeed ſeveral of the Doctors, endeavour to turn this Text the other Way, by a plainly erroneous Interpretation, and wrong pointing of the Text. They pretend, "That where a Wound is given "by a Sword, there the *animus* is undoubtedly preſumed;" and ſo far right as to the Rule. But then the Law ſets down the Exceptions; *firſt*, If the Stroke be *clavi aut cuccuma*, ſuppoſe theſe be mortal Weapons wherewith a Man may die, yet becauſe they are not Inſtruments expreſly made for Death, the Preſumption is, that *aberat animus occidendi*, unleſs Circumſtances make it appear otherwiſe. Then the *ſecond* Exception is *in rixa, quamvis ferro percuſſerit*, although a Man ſtrike with a Sword, yet if it be *in rixa*, ſuddenly, or upon a Provocation given, *tamen non occidendi animo, leniendam pœnam*, becauſe *in rixa, caſu magis quam voluntate homicidium admiſit*. Thoſe Doctors, indeed, who go wrong in the Interpretation of this Text, pretend, That the Meaning of *quamvis ferro* is not, although he ſtrike with a Sword, but would make the Meaning to be, *Although he ſtruck with an Inſtrument of Iron*, and ſo make the Word *ferrum*, and alſo thoſe Words, *in rixa*, refer to other Words, *clave aut cuccuma*; ſo as that the Senſe ſhould be, if a Man ſtrike, *clave aut cuccuma in rixa*, although theſe be Inſtruments of Iron, he is not preſumed to have had the *animus occidendi*. But, with Submiſſion, as both the learned *Noodt* and *Schulten* obſerve upon that Law, the Interpretation is ſtrained, and indeed illiterate: For the Word *ferrum* is never uſed in Law in that Senſe, but always does ſignify a Sword; and ſo the Expreſſion is the ſame, but ornately repeated in other Words, as if the Emperor had ſaid, *in rixa quamvis gladio percuſſerit*: And ſo the Senſe is, that the *animus* is in general preſumed from the uſing a Sword, that it is not preſumed where the Inſtrument is not an Inſtrument made for Death; but if the Killing happen *in rixa*, the *animus* is not preſumed, although the Stroke be given with a Sword.

And this is likewiſe the Opinion of the learned *Gretius*, in his Annotations upon the Text, in *Numbers* above cited, *Ver.* 16. which, in the *Latin* Tranſlation, is rendered, *Si quis ferro percuſſerit*; on which *Grotius* hath this Note, *Mos Ebraiorum multis verbis rem circumloqui. Senſus eſt; mortis eſſe pœnam qualicunque telo quis hominem occiderit. Ex telo præſumitur malum conſilium, niſi contrarium appareat.* There your Lordſhips ſee that Author's Opinion is as we plead, that the uſing a mortal Weapon preſumes the Deſign, but not *præſumptione juris & de jure*; for he adds, *niſi contrarium appareat.*

The Reſcript of the Emperor *Antonine* is likewiſe as expreſs on this Head as can be, *l.* 1. *Cod. de Siccar. Frater veſter rectius fecerit, ſi ſe præſidi provinciæ obtulerit. Qui ſi probaverit, non occidendi animo hominem a ſe percuſſum eſſe, remiſſa homicidii pœna, ſecundum diſciplinam militarem ſententiam preferet; crimen enim contrahitur, ſi et voluntas nocendi intercedat, cæterum ea quæ ex improviſo caſu potius quam fraude accidunt, fato plerumque non noxæ imputantur.* Here the Emperor plainly ſets down theſe two Things, *firſt*, That *pœna homicidii eſt remittenda, ſi animum occidendi non habuerit.* *2do*, That where the Thing is done *ex improviſo*, there is no *animus*; that 'tis to be looked upon as done *caſu*, by Fatality, rather than Crime: But nevertheleſs, that in ſuch a Caſe there may be an arbitrary Puniſhment.

The Doctors of the *Roman* Law ſeem to be unanimous on this general Point. *Carpzovius*, one of the ſevereſt Criminaliſts, is moſt expreſs upon it; *Ceſſat porro pœna ordinaria homicidii, ſi culpa vel caſu fuiſſet commiſſum homicidium*; and goes on, *quod adeo verum eſt, ut in homicidio lata culpa, dolo non æquiparetur. Clarus* is likewiſe as expreſs upon this general Head; and ſuch Shoals of others are by them quoted and referred to, that it were vain to repeat their Names, or trouble your Lordſhips with quoting their Words. We don't know that any Lawyer of Reputation differs upon the general Point.

But then indeed the Queſtion comes, What is culpable Homicide? And whether the preſent Caſe falls under that Deſcription? Which is next to be illuſtrated. And here we humbly inſiſt, that where the Homicide is committed upon a ſudden Quarrel, and Provocation given, eſpecially by real Injury, and that Quarrel begun not by the Killer; that this is no more than culpable Homicide: And for this, in the *firſt* Place, we oppone the Law already cited, *in rixa quamvis ferro percuſſerit.* And to the ſame Purpoſe is the firſt Law, §. 5. *ff. ad ſenat. conſult. Turpillianum*, the *l.* 2. *Cod. de abolit.* and the §. 2. *l.* 16. *de pœnis*; the Words of which we ſhall not trouble your Lordſhips with repeating, becauſe they are the common Texts founded upon by Doctors on this Head. We have likewiſe for us the Authority of all the ancient, moral Philoſophers; ſuch as, *Ariſtotle*, *Plato*, *Plutarch*, and many others, likewiſe commonly taken Notice of by the Lawyers on this Subject. It is true, ſome of the ſevereſt Criminaliſts, ſuch as *Matthæus* and *Carpzovius*, don't admit the Rule in general, but ſtill they admit as much as is neceſſary in the preſent Queſtion: They don't allow, that where the

the Killer is *auctor rixæ*, that he is at all to be excuſed, although the Killing happen *in calore iracundiæ*; but then moſt of them do admit it, if the Killer be not the *auctor rixæ*, but be the Perſon provoked, to whom a juſt Provocation has been given, eſpecially by a real Injury: And ſo particularly *Carpzovius*, one of the ſevereſt, after he has argued at length againſt the general Point, concludes in his *Quæſtio* 6. §§ 14 and 16. *Nihil quoque adverſatur regula adducta, quod ſcilicet delictum ira commiſſum, mitius puniri ſoleat; quia hæc regula de ira ex juſta cauſa proveniente accipienda eſt: duplex etenim ira eſt, alia ex juſta cauſa provenit, quæ ſi non in totum, tamen ex parte excuſat, ut delinquens mitius puniatur; alia vero non provenit ex juſta cauſa, quæ in nihilo excuſat.* Then he adds, *Hæc diſtinctio communiter recepta eſt ab interpretibus*, and cites ſeverals. And then concludes, *Si ergo juſta cauſa calorem iracundiæ præcedat, veluti ſi quis ab alio fuerit provocatus, aut alio modo offenſus, tunc is qui ira et intenſo dolore permotus, provocantem ſeu offendentem interficit abſque dubio a pœna ordinaria liberabitur; ſecus vero ſi quis, abſque juſta et probabili cauſa iratus, aliquem occidat, de quo caſu nos hic loquimur, qui pœnæ homicidii ordinariæ neutiquam eſt eximendus.* And then takes Notice, that the Practice in the Court of *Lipſwick* is agreeable to this.

There is an adjudged Caſe very appoſite, publiſhed in a Book, called *Alphonſi Villagut Neapolitani Conſultationes Deciſivæ*, very learnedly reſolved. It is the *Deciſio* 29. We ſhall ſtate the Caſe in the Words of the Author, *Quidam nobilis Raguſinus fuiſſet verberatus, extra (ſed prope) eccleſiam ſanctæ crucis caſtri Gravoſæ, a quodam alio nobili Raguſino, in eodem puncto evaginavit pugnionem contra dictum verberantem, ac in fugam jam converſum & ipſum inſequens, unico vulnere ſibi inflicto in dicta eccleſia (quam ille ingreſſus fuerat) dictam eccleſiam egrediens ſeſe in fugam dedit & cum dictus verberator, ex dicto unico inflicto vulnere intra dictam eccleſiam mortuus eſſet.* The Caſe came to be tried, at leaſt the Queſtions upon it, to be reſolved by the ſaid *Alphonſus*; where ſeveral Queſtions occurred, but thoſe which are moſt applicable to the preſent Caſe are two: Firſt, *An hujuſmodi homicidium in eccleſia perpetratum, fuerat dicendum voluntarium nec ne, eo quod dictus nobilis inſecutus fuiſſet illum ceſſantem a verberibus inferendis, ac ſic unico vulnere inflicto interfeciſſet?* The ſecond Queſtion is, *An dictus nobilis prædicto modo ac de cauſa violans dictam immunitatem eccleſiaſticam, veniat in foro ſeculari, & eccleſiaſtico pœna ordinaria plectendus, vel ſolum mitiori pœna?* The Reſolution upon the firſt Queſtion is, That though, at firſt View, the Homicide might ſeem voluntary, *Eo quod dictus nobilis, nemine ipſum compellente, fugientem hominem vulneraverit, nihilominus nullo pacto fore judicandum homicidium voluntarium, aut pro tali dictum nobilem puniendum.* The Reaſons for this Reſolution are ſet down with great Learning and Judgment, but are ſo long, that 'tis impoſſible to repeat them: *Firſt*, They are taken from the Definition of voluntary Homicide. *2do*, From the Texts of the *Roman* Law, and the Opinion of Doctors. *3tio*, From that Particular, that the Nobleman had been immediately ſtruck before; on which the Words are remarkable, *Ex hoc ergo articulo, apertiſſime elicitur homicidium hujuſmodi fuiſſe caſuale, & non voluntarium, nam nulla mora interjacente, evaginato pugnione, ipſe nobilis bacculo percuſſus inſecutus fuit dictum percuſſorem jam fugientem, & hoc pro honoris proprii redemptione, ut ſic ſe tueretur ab injuria corporali recepta ex verberibus:* After which follows a long Reaſoning, all in the Pannel's Favours. And this Caſe we take the more Notice of, becauſe the Purſuers pretended to make a Diſtinction betwixt the Caſe of a Wound given the very Moment a real Injury is done, and the like given after the Injurer has deſiſted from beating, and retired to ſome Diſtance; but there is no Difference, except the Interval be ſo long, as it can be ſuppoſed the Thought of the Perſon injured was cool. The other Queſtion is likewiſe reſolved in Favour of the accuſed, that in ſuch a Caſe, not the ordinary Puniſhment, either eccleſiaſtical or civil, ought to take Place, but only the *pœna mitior*, and confirmed by very ſtrong Reaſons, which we cannot recite, but refer to.

Amongſt other Authors that might be cited for ſupporting this Opinion, is the learned *Voet*, in the very Section cited by the Purſuers, *ad tit. ad leg. com. de ſic. n.* 9. where, after he has ſaid what is cited for them, that one killing another who has provoked him only by a verbal or ſlight Injury, *vix eſt ut ab ordinaria pœna abſolvendus ſit*; he adds, that if the Provocation was by an atrocius real Injury, that would be ſufficient to mitigate the ordinary Puniſhment; and to confirm that, cites *Mathæus Berlichius*, &c. And the Reaſon given by theſe Authors for making this Allowance, in caſe of juſt Provocation, is expreſt in theſe Words by *Gothofred, ad l.* 17. *d. t. Quod ei ſit ignoſcendum, qui provocatus ſe ulciſci voluit, quique juſtum dolorem proſequitur.*

And indeed we apprehend this Opinion is founded in the firſt Principle of Nature; for ſcarce any human Conſtancy can ſuffer ſuch high real Injury, without the Paſſions being inflamed: And although Killing is no Doubt an Exceſs in the Retortion of a real Injury, yet ſtill it is but an Exceſs, and the Injury ſhews the Thing done without Deſign; and therefore, becauſe of inſuperable, human Weakneſs, the Puniſhment falls to be mitigated. And the Application to the preſent Caſe, as we apprehend, is obvious; *Bridgeton* had given the higheſt Provocation, not only by a Track of verbal Injuries and Endeavours to pick a Quarrel, but had committed the moſt provoking real Injury, to throw a Gentleman over Head and Ears in a dirty Puddle, in the Middle of a Town, and Sight of ſo many On-lookers; no Injury could be more provoking. Yea indeed there was more in it than an Injury only: One that was able to throw the Pannel into the Puddle in that Manner, was likewiſe able to have ſuffocated him there; the Pannel had no Reaſon to expect otherwiſe, and therefore no Wonder if he betook himſelf to his Sword. And the other Circumſtance noticed, that *Bridgeton*, immediately upon the doing the Thing, endeavoured to draw and make himſelf Maſter of my Lord *Strathmore*'s Sword, gave the Pannel Ground to expect the worſt; and ſo it may be doubted, if he was obliged to wait till *Bridgeton* ſhould have an Opportunity to give him the Blow, even with a mortal Weapon. And when this is conſidered, the Fact goes further than a Retortion of the higheſt Injury: The Pannel was in ſome Meaſure put upon his Defence; and granting that his puſhing at *Bridgeton* was an Exceſs, yet ſtill that Exceſs falls only to be puniſhed *pœna extraordinaria.*

All Lawyers diſtinguiſh Exceſſes of that Sort into three Kinds, that of Time, Place, and Weapon that is uſed; and Exceſs in point of Time is puniſhed even with Death, where the Interval is great; becauſe that Interval preſumes Fraud and Deliberation: But here was no Exceſs of Time; the Thing was done *ex incontinenti*, when the Injury was freſh and recent. There is likewiſe Exceſs in point of Place, when the Injurer is allowed to retire to a conſiderable Diſtance from the Place where the Injury is given; and this in ſome Meaſure coincident with the other, becauſe it implies an Interval of Time: Yet if it be not great, the Lawyers hold it to be only puniſhable arbitrarily. And then the third is the Exceſs in the Uſe of the Weapon, where there is no Interval of Time or Place; and that is always agreed to be puniſhable only arbitrarily, where the Provocation is high.

From what is ſaid it ſeems plain, that if *Bridgeton* had received the Thruſt, the Homicide would have been culpable only; and ſo it remains to be conſidered, if the Caſe comes out worſe for the Pannel, becauſe it was my Lord *Strathmore* that received the Wound, and not *Bridgeton*. And we apprehend it does not, but on the contrary, that this gives a great Strength to the Defence: And that becauſe, *1mo*, The Puſh being deſigned at *Bridgeton*, ſhows that there was no Malice at my Lord *Strathmore*, neither premeditated, nor preſumed from the giving of the Wound: For admitting it to be true, that in an ordinary Caſe, the giving a Wound with a mortal Weapon preſumes the Dole or malevolous Intention; yet that can never be where the Puſh is pointed at another than him who by Fatality receives it. And ſo the Caſe comes out thus, That the Pannel in making one Puſh, could not deſign it at two Perſons; and ſo if he deſigned it at *Bridgeton*, 'tis impoſſible to ſay he had a Deſign againſt my Lord *Strathmore*. It is plain in the Nature of the Thing, that the Deſign, tho' preſumed from the giving the Wound, yet in point of Time it precedes the actual receiving of the Wound, altho' that Preceding or Precedence be but momentary; and therefore if, in the very Act of Puſhing, the Deſign appears to have been againſt *Bridgeton*, it excludes all Pretence of any *animus* againſt another who received the Wound by Fatality, in the very Moment that the Deſign was pointed againſt the other.

And here your Lordſhips will likewiſe obſerve, that there can be no *animus occidendi* preſumed at all againſt any Man, not even againſt *Bridgeton* himſelf; becauſe the drawing a Sword, and puſhing at a Man with it, does not of itſelf preſume a Deſign to kill the Man puſhed at, except the Wound, and Death actually follow: For it is from the Event of the Wound, and Death following alone, that the Intention is preſumed. Therefore ſince Death did not happen to *Bridgeton*, the Law cannot preſume an Intention to kill him; ſince the Foundation of the Preſumption is removed, or did not happen. If the Blow had miſſed him, or had not killed, but wounded him; the Intention would not be preſumed: And therefore it cannot here be preſumed, as the Caſe happened; for there is no ſuch Preſumption in Law, as that Killing one preſumes a Deſign to kill another; except where it appears that the Slayer killed one Man by Miſtake, taking him to be another: As for inſtance, killing *Caius* in the Dark, when the Killer really believed him to be *Titius*; there indeed the killing of *Caius* preſumes the Intention of killing *Titius*, although he was not actually ſlain: And therefore in that Caſe the Killer is indeed guilty of Murder. But 'tis quite another Caſe, where one Man is killed, not by Miſtake for another, but by Fatality, when the Puſh was intended at another, whom the Killer knew, which is the Caſe in Hand. And therefore we do humbly inſiſt, that it cannot be ſaid there was an Intention to kill *Bridgeton*, ſince his Death did not follow. Neither can it be ſaid there was an Intention to kill the Earl of *Strathmore*; becauſe, though his Death did moſt unluckily happen, yet the *initium*, upon which the Intention muſt be founded, did not happen, the Puſh being made at *Bridgeton*; for thoſe two muſt always concur, the Puſh made at the Man who dies, and the actual Death: And where it happens otherwiſe, the Death is a mere Fatality; not intirely innocent, becauſe the Killer was ſo far faulty in invading the other; but then it is no more than an Invaſion; it is not Murder from Malice preſumed. No Preſumption of Law can get the better of contrary Evidence: The Preſumption of Law may be, That where a Man is killed, he was intended to be killed: But if from the Circumſtances the direct contrary appear, that there was no Intention againſt him; this is Evidence which excludes the Preſumption; and ſo there can be no Murder in the Caſe.

It is indeed a Caſe ſtated by the Lawyers, What ſhould be the Conſequence, if a Perſon intending to kill one Man, kill another? And we acknowledge they are greatly divided among themſelves upon the Queſtion; a great many of the ableſt of them are in all Caſes clear, that where one Man is killed, and another was deſigned, it cannot be Murder, becauſe of the Want of an Intention againſt him. *Bartolus*, *Farinacius*, *Gomeſius*, *Menochius*, and Numbers of others quoted by them, are plain in that Opinion, and give an Account of ſeveral Judgments of the Courts of *Mantua*, and *Naples*, and others, to that Purpoſe; and *Farinacius* ſays, that it is the common Opinion, *Et ab hac ſententia in judicando non eſſe recedendum.* And however other Lawyers may ſeem to differ, yet, in the *firſt* Place, the divine Law, for any Thing that can be found in it, is on this Side; becauſe it plainly ſpeaks only of beating him, and riſing up againſt him who happens actually to be killed, and mentions no ſuch Caſe as deſerving Death, as this is of riſing up againſt one Man, and by Fatality killing another. *2do*, That this was the Opinion of the *Jewiſh* Doctors, is plain from the Quotation already brought from *Selden*, where this very Thing of killing one Man in place of another is made part of the third Caſe ſtated of involuntary Homicide, and determined not to be capital. But *3tio*, Thoſe Lawyers, who at firſt view ſeem to differ, do really not differ, when the Caſes are diſtinguiſhed: For what they plainly mean, is only where a Man by Miſtake kills *Titius*, believing him to be *Mevius*. This we admit is capital, for Reaſons before given; but not the other of killing one by Fatality, and not for another, but directing the Blow at the other.

But then your Lordſhips will obſerve, that all Lawyers agree in this, That wherever a Man is to ſuffer for killing one, when he intended to kill another; that can only be where the Forethought and doloſe Intention to kill the other is certain, but not where the Invaſion is *ex impetu*: And therefore, ſuppoſing one invade another, with an Intention to hurt, or *percutere*, as the Lawyers call it, but without a certain Evidence that his thorough Intention was to kill; there, ſuppoſing the Blow intended for one do kill another, the Killer cannot ſuffer Death: And which by-the-bye ſhows your Lordſhips, that there is no ſuch Preſumption in Law, as, That becauſe the Puſh killed the Earl of *Strathmore*, therefore the Pannel intended to kill *Bridgeton*; for if that were Law, then the Queſtion could never occur, but would be inept, Whether a Man intending to kill one, and killing another with

with that Blow, is guilty of Murder, or is presumed to have intended to kill that other at whom the Stroke was intended? We shall trouble your Lordships only with two Authorities on this Point, which are very direct to the Case: The first is that of *Berlichius*, which we the rather notice, because he seems to be against us on the general Point; after discussing which, he hath these Words, speaking of his own Opinion, *Fallit, si quis aliquem non occidere, sed percutere tantum, volens, alium præter intentionem percutiat ut moriatur.* From this your Lordships see, that it is no consequence, That because the Thrust killed my Lord *Strathmore*, therefore it should be presumed the Pannel intended to kill *Bridgeton*: If that were true, that Lawyer's Position, from whom Nobody differs, must be direct Nonsense. And therefore since there is no other Evidence of a further Intention against *Bridgeton* than *percutere*, except it arise from the Death of my Lord *Strathmore*, and that his Death cannot presume it; we are directly under the Position the Lawyer lays down, That though my Lord was unhappily killed, yet the Pannel ought not to suffer Death, where it does not appear that he intended to do more than to push at *Bridgeton* at random, *percutere*, without a certain Design to kill.

But this is yet more plainly laid down by another very distinct Lawyer, *Masurius Labio*, in his Treatise called, *Homicida excusatus, cap.* 35. where treating of this very Question, he first notices, that if the Killer was *occupatus in re licita*, such as defending against any Aggressor, which in some measure is the case here, that then he is not liable, although he chance to kill a third Party: But then he goes further, *Aut etiam, ut amplius dicta extendamus, reus quantumvis in re illicita occupatus, tali tamen in casu constitutus fuit, ut si Caium interfecisset, non nisi culpæ reus futurus fuisset, ejusque loco cum infelici fato Sempronius lethalem acceperit ictum, magis est, ut reus hoc ipso causam suam non gravasse censeri debeat: cum enim Caii internecione mortem meritus non fuisset, certe imprudentia atque in facto error magis eum à Sempronii cæde excusare debet: atque Caio potius, si is vel rixæ auctor fuerit, vel iracundiam alterius justam provocaverit, id quod inde secutum imputandum reor.* Here your Lordships see he is stating the Case of a *Rixa*, where one had given Provocation as *Bridgeton* did; he indeed supposes, that in such a Case killing the Provoker ought not to infer Death; much less, says he, the *accidental killing of a third Party:* And your Lordships will observe he asserts further, that the Provoker, or *auctor rixæ*, is rather to be judged guilty of the Slaughter.

And a little after, he comes yet closer to the present Case: *Quod si tamen Caium adversarium occidere nollet, sed illi tantum nocere, Sempronium autem imprudenter se ictui objicientem, eo ipso interemerit, tunc certe imprudentia Sempronii delictum rei aggravare non debet; si enim is moderatorem rixæ se non obtulisset, corpusque suum subito & ex propinquo non objecisset, Caius a cædente forte remotior, non nisi vulnus aliamve noxam inde reportasset, unde Sempronio mors oblata est: excusandus ergo a tanto merito percussor tunc, cum occidendi animus hic non adfuisse apparet.*

This is so apposite to the present Question, that one would think it were a Resolution on the Case: For by that your Lordships see, that notwithstanding one's being killed, the Author says it does not from thence appear, that there was an Intention to kill the other: The other, who, as being at a greater Distance, might not have been killed, might only have been hurt and wounded, although the Person that came unhappily in the way happened to be killed. This is just what we have pled, That it does not appear there was an Intention to kill *Bridgeton*, because he might not have been killed, but he might only have been hurt or wounded; and therefore the Pannel ought not to suffer Death, because of the Fatality of killing the deceased Lord, *qui subito corpus suum ex propinquo objecit.* And upon all those Grounds, we humbly insist, that if *Bridgeton* had been killed, there would have been no Place for a capital Punishment: But then separately, whatever be in that, that since it does not appear (nor cannot, since Death did not follow) that there was a certain Intention to kill him, the casual Killing of the Earl of *Strathmore* cannot be punishable with Death.

What has been said, fully removes any Argument that may be drawn from Sir *George Mackenzie*'s Opinion, "That he who by mistake kills one "for another, should die:" For your Lordships see, that he speaks only of that Case, when one Man is certainly intended to be killed, but another is killed by mistake, being supposed to be him: That is not the Case now before your Lordships.

And in this Question, concerning the Pannel's Intention and Design, the Circumstance of his being overtaken with Drink, is a Circumstance that assists in the Argument. We do not say, that being drunk affords a Defence for killing; nevertheless it is a Circumstance whereby to show, there was no Malice or Dole, especially against the Earl of *Strathmore*; since every body may conceive, how easy it is for a Man that is drunk, pushing at one, even to stagger upon another, or not to have the Judgment and Presence of Mind to draw back, when that other suddenly throws himself in the way of the Thrust.

What is laid down by the Pursuers, in opposition to all this, in their Information, is so fully obviated, that it is quite needless to repeat their Argument; only whereas they say, "That if Killing, notwithstanding of "Provocation, had not been capital, it could not have been a Doubt in "the Common Law, Whether a Husband ought to suffer Death, who "killed his Wife taken in the Act of Adultery?" But we apprehend, that the direct contrary Consequence follows, that if high Provocation had not afforded a Defence, then indeed there could not have been a Doubt the Husband must have died, because high Provocation was all that he had to plead: But the Doubt was, whether a Provocation of that kind, where there was no real corporal Injury to the Husband himself, was sufficient? And the Law determines that it was; and consequently establishes the Rule, That high and grievous Provocations ought to alleviate the Punishment.

The Brocard, That *versans in re illicita tenetur de omni eventu*, affords no Argument against the Pannel in this Case; nor indeed hath it been much insisted on by the Pursuers. *1mo*, It is not true in many Cases. But, *2do*, It holds in no Case, except with regard to Consequences or Events, that happen with regard to that Subject or Object, against whom or which the unlawful Act is directed: As for instance, if one sets fire to a House, he is guilty of Murder, if a Person happen to be burnt in that House; or if he undermine a House, he is liable for all the Goods that may be destroyed by its Fall; but he is not liable for any extrinsic Damage that may happen to another. Subject casually and by accident: And therefore, suppose it were proved, that one unlawfully invading another, without a Design to kill, might in some Cases be liable, if Death followed; yet that can only be with regard to the Person he invades, but never with regard to what accidentally happens to another Person. And so *Carpzovius* explains the Matter, *Qu.* 1. §. *ult.* in these Words: *Supra dicta enim (quod nempe danti operam rei illicitæ imputari debeat, quicquid fuerit præter ejus intentionem ex eo actu secutum) procedunt tantum, quantum ad subjectum, circa quod versatur ipsa malitia illicite operantis, & quantum ad ea quæ illi objecto per se & immediate junguntur, aut necessario sequuntur; non autem quoad illa quæ per accidens oriuntur, a re illa mala, cui opera datur.* Besides, 'tis certain, that the Brocard is no Rule at all in the Matter of Manslaughter, otherwise there never could be such a Thing as culpable Homicide; which 'tis plain there is.

The next Thing to be considered is, What was and is the Law of *Scotland* concerning this Matter? And *first*, As to our ancient Law, the Pursuers seem to be the first that ever disputed, that according to it there was a Distinction betwixt Slaughter and Murder. Sir *George Mackenzie* is express upon it. By our Law, says he, Slaughter and Murder did of old differ, as *homicidium simplex et premeditatum* in the civil Law; and Murder only committed, as we call it, upon forethought Felony, was only properly called Murder, and punished as such; for which he quotes the express Statute, *Parl.* 3. *cap.* 51. K. *James* I. appointing that Murder be capitally punished, but *chaud melle*, or Slaughter committed upon Suddenty, shall only be punishable according to the old Laws, and several other Acts of Parliament, to which we beg leave to refer [*See the Abstract of them at the End*]; which expressly make the Distinction betwixt forethought Felony, and Slaughter of Suddenty: And though none of all these Laws particularly express the Punishment of Manslaughter, as they could not well do, because that was arbitrary according to Circumstances; yet, as Sir *George* observes, the Opposition and Distinction is established betwixt Slaughter by Forethought, and *chaud melle*, and the Punishment of the one to be less than that of the other: And therefore, we apprehend, we may leave this Point as clear and undoubted.

The Pursuer has endeavoured, to no manner of purpose, to set up others of our ancient Laws, in opposition to those observed by Sir *George Mackenzie*, such as the third Statute of King *Robert* I. which, with Submission, is nothing to the purpose: For, *first*, It does not concern capital Crimes only, but any Crime touching Limb, as well as Life. *2do*, Though the Word Slaughter is mentioned, without adding by forethought Felony, yet the same Thing is added in other Words, when it says, touching *Life or Limb*, to which alone the Act relates, that is, forethought Felony; because Slaughter, by *chaud melle*, touched neither Life or Limb. The Title of the Act is, *Men condemned to Death should not be redeemed.* But what is that to the purpose, in a Question, Who should be condemned to Death, and who not?

The 43d Chap. of the Act of King *Robert* III. is as little to the purpose; for as it speaks of Hairships, Burnings, Reif, and Slaughter, 'tis very plain it means only wilful, premeditate Slaughter, otherwise it would follow, that not only wilful Fire-raising, but burning of a House by Neglect, or *lata culpa*, would infer the Pain of Death, which Nobody ever dreamed. And the next Paragraph makes it further clear, appointing Sheriffs to take diligent Inquisition, GIF ANY BE COMMON DESTROYERS OF THE COUNTRY, OR HATH DESTROYED THE KING'S LIEGES WITH HAIRSHIP, SLAUGHTER, &c. Can a Man be a common Destroyer by Slaughter, except where the Slaughter is supposed to be by forethought Felony? 'Tis certain he cannot; and therefore the Pursuers Procurators fall into a great Mistake in Law, when they say, that gif he be ken'd with the Assize, *Si attentus fuerit per assisam tanquam talis malefactor, condemnabitur ad mortem*, must relate to Manslaughter, because the Sheriff could not judge of Murder. It is directly otherwise: If he be attainted by the Assize as such a Malefactor, that is, as a common Oppressor by Slaughter, &c. he is to be condemned to Death. This is an Exception from the Rule, that Murder was to be tried by the Justice-ayr: This Law appointed it to be tried in that Way, in case the Person accused could find his Barras or Borgh to compear at next Justice-ayr; but if he could not, the Sheriff was immediately impowered to try: And by-the-bye, this does not concern particular Fact, but concerns that general Accusation of being a common Oppressor, like to the Case of a Sorner, or one habite and repute an Egyptian. Nor can the Lawyers for the Pannel find any Word in the Statutes of *Alexander* II. which the Pursuers refer to, that does in the least pre-suppose that Manslaughter was capital in them: The direct contrary appears, that Manslayers were to be tried, whether guilty of Murder or not; and if found not guilty, that they were to have the Benefit of the Gyrth. And accordingly *Skeen*, in his Annotations, refers directly to the Acts of Parliament, which Sir *George Mackenzie* takes notice of, establishing the Distinction, and to some of the *English* Acts to the same Purpose.

As to the Passage cited from *Skeen*, in his Treatise of Crimes, *tit. Slaughter*, there is certainly a direct Blunder in the Printing; and instead of these Words, *or casually by chaud melle*, probably it ought to have been, *not casually, or by chaud melle*; for otherwise he directly contradicts himself, and cites Acts of Parliament which prove the very contrary of what the Pursuers would make him assert: Yea, the very next Paragraph establisheth the Distinction in these Words, SUA THAT THE GYRTH OR SANCTUARY IS NAE REFUGE TO HIM WHA COMMITS SLAUGHTER BE FORETHOUGHT FELONY; *ergo*, it was a Refuge to him that committed Slaughter, not by forethought Felony, and saved him even from the arbitrary Punishment of Manslaughter. And *Skeen* himself, in his Explication of the Words *chaud melle*, says it is in *Latin rixa, an hot, sudden tuilzie*, or *debate*, which is opponed, as contrary to forethought Felony; and cites the Act *James* I. But how is it contrary in our Law, if the Effect and Punishment be the same? And upon the Words *forethought Felony*, he in like manner makes the just Distinction, and supports it by the Authority of *Cicero*, in his Treatise *De Officiis*, where he is writing, as a Moralist, and not as an Orator.

The Pursuers Answer to the 8*th Act*, 6 *Parl. J.* I. is quite trifling; for nothing can be plainer than the Opposition there stated betwixt forethought Felony and other Slaughter: And when the Act statutes, THAT IF IT BE FORETHOUGHT FELONY, THE SLAYER SHALL DIE; the Consequence is obvious, according to the plainest Rules of Logic, that if it be not forethought Felony, he shall not die, otherwise the Act is absurd. And as to Sir *George Mackenzie*'s Observation upon these Words, it is certainly not so accurately placed as an Observation upon that Act, because it plainly relates

relates to the Act of *Charles* II. and therefore falls to be considered, when we come to argue the Import of that Act.

The Pursuers Observation, by way of Answer to the 51st *Act. Parl.* 3. *James* I. is entirely nought; for if it extend the Difference between Forethought and *chaud melle* to all Transgressions as well as Manslaughter, then for certain it establishes the Distinction in the Case of Manslaughter; and so Sir *George Mackenzie* likewise says, in his Observations on this Act, as well as in his Criminals. And as to his further Observation, That *chaud melle* is by our present Law punishable by Death; that still refers to the Act of Parliament *Charles* II. and must be examined with it.

The Pursuers have further pled, "That the Benefit of the Sanctuary "might be competent where Crimes were capital;" which he founds upon the Statutes of *Alexander* II. But this is not worth disputing; for if the Flying to the Sanctuary, joined with Repentance, and so forth, rendered the Crime not capital, it is all the same thing; that is, in effect, to render the Crime not capital only by another Form, but still the Substance remains, that according to the Law the Pain of Death was to be inflicted. At the same time that Statute concerning Reifs, whereby Repentance absolves from the Punishment, is somewhat peculiar, and does not at all contradict the other Laws, which make or suppose *chaud melle* not to be capital; and the last Part of the Statute, appointing, THAT IF MANSLAYERS FLY TO THE KIRK, THE LAW SHALL BE KEEPED AND OBSERVED TO THEM, establishes the Point, that if they were not found Murderers by Forethought, they were to be returned to the Sanctuary, and freed from Punishment.

The Pursuers say, "That after the Reformation, when the *jus asyli* "was in effect abolished, then the Distinction betwixt forethought Fe-"lony and *chaud melle* ceased; and that it was never objected, that Ma-"lice or premeditate Design was requisite to make the Crime capital." And for this they take notice of two Cases, *Currie* against *Fraser*, *July* 1641, and *Bruce* against *Marshal*, *April* 1644. But in the *first* place, The Procurators for the Pannel with Reason say, That if that happened, it was an Error in Judgment; for since the Distinction was established by the old Laws, and that there was no Law at that time altering or repealing those old Laws, the Abolition of Popery, and of the Flying to the Kirk in consequence, was no Reason for judging contrary to the civil Laws that were still standing; and if an Escape of that kind happened, it must be attributed to the over-great Zeal, and, if we may be allowed to say it, a Sort of enthusiastic Keenness of those Times: And we do apprehend, that the Act 1649, and the Act of *Charles* II. were intended to correct the Errors that by too great Zeal had then crept in.

At the same time, as to the two Cases cited, they are nothing to the purpose; for as to the first, which is *Fraser*'s, there was not one Circumstance pled or proved which could make the Slaughter *chaud melle*: But, on the contrary, it appeared direct premeditate Murder, no real Provocation, but a Quarrel about a Staff; a Murder committed in Revenge, upon the Slayer's hearing the Person killed had murdered his Brother, which plainly implied a premeditate Design. What Argument this can afford, is submitted. This indeed may be remarked, that the Case gives some Notion of the Spirit of the Times; the Presbytery took Evidence whether the Murder was accidental or wilful, they found it to be wilful, and no ways accidental; their having done so, was taken as Evidence in Court, and even the Wife of the Deceased was sworn as a Witness: Things, it is hoped, not to be drawn into example; only so far it shews, that even then it was a Consideration by the Presbytery themselves, Whether it was a wilful Murder or not? Which seems to point at an Establishment of the Distinction. But, in short, there is not one Circumstance in the whole Case that could exclude the Premeditation or Forethought, but all quite on the contrary.

The other Case of *Marshall*, in the 1644, is as little to the purpose; he was libelled for wilful Murder, and he confessed it, without pleading any Defence, because indeed he had none. He in his Confession adjected some Circumstances which might have given some Colour, but indeed very little for a Defence: But he offered no Proof even of those Circumstances; and his own Declaration could be no Evidence of them. They were not intrinsic, but extrinsic Qualities of the Declaration. He had given repeated Stabs with a Knife. Where could be the Question that that was Murder? And these being all the Instances the Pursuers bring before the Act of *Charles* II. it is plain they prove nothing by them.

As to the Act, *Charles* II. [*See the Act at the End*] it is humbly insisted for the Pannel, That it introduces no new Law against any Person accused of Slaughter, but ascertains somewhat in their Favours, *viz.* "That ca-"sual Homicide, Homicide in lawful Defence, and Homicide committed "upon Thieves, *&c.* shall not be punished by Death. *And then further* "*statutes*, That even in case of Homicide casual, it shall be leisome to "the Criminal Judge, with Advice of the Counsel, to fine him in his "Means, *&c.* or to imprison him." This Law seems introduced to correct some Abuses that had been; whereby Homicides falling under some of those Descriptions, either had been punished with Death, or at least that it had been made a Doubt of, if they might not be so punished. What those Cases were, does indeed not appear from the Records, so far as the Pannel's Procurators know; but it seems such Cases, at least such Doubts, were. But then the Act does not determine what was meant by casual Homicide, and does by no means say, that nothing was to be reckoned casual Homicide, except that which was merely accidental; but, on the contrary, it leaves casual Homicide to be explained, according to the Construction of former Laws, whether our own Laws, or the Laws of other Nations.

2do, It is plain from the Act, that, by casual Homicide, something is understood quite different, at least beyond Slaughter merely accidental; for the Act is concerning the several Degrees of casual Homicide: And so even Homicide in Defence, and Homicide committed upon Thieves, *&c.* are brought under that general Description of casual Homicide; and these last Kinds are given as Exemplifications of the general Description; which shews, that casual Homicide was intended to be opposed only to Slaughter dolose, committed either by premeditate Forethought, or Malice presumed to be taken up from the Circumstances immediately preceding the Act; and therefore, however critical Exceptions may be taken to the Rule, yet materially there is no strong Objection lies to it, because when *casual* is taken in the extensive Signification, as opposite to *fraudulent* and *dolose Slaughter*, all the Species mentioned in the Act do properly enough fall under it, and are Degrees of casual Homicide. And indeed it is worth observing, and makes in this Case for the Pannel, that the Rubric cannot be said to have been indigested or adjected by mere Inadvertency, since the same Rubric is made use of in the Act 1649, and again repeated in the 1661, so many Years after.

And this Rubric affords another plain Argument, That the Legislative did at least consider that there might be Degrees of casual Homicide, and consequently they could not understand by that, only merely accidental Slaughter, strictly so called: Since there can be no Degrees of that; it is but one, and does not admit of Degrees. And therefore this is sufficient to shew, that more was meant than the Pursuers incline to admit; and if more was meant, that can allow of no other Construction, than to bring under these Words what the Lawyers call *culpable Homicide*, so as that your Lordships and the Jury may judge from Circumstances, whether the Slaughter is to be reckoned as casual, or really malicious, from Malice prepense.

The last Part of that Act of Parliament further enforces that Matter, which gives a Power not only to fine for the use of the nearest Relations, but even to imprison for casual Homicide. Now, how is it possible to believe, in Consistency with any Justice, that a Man might be imprisoned for a Fact intirely innocent, and no ways either culpable or criminal? Yet such Homicide merely accidental is: And therefore this shews to Demonstration that the Legislator understood, that under the Description of casual Homicide, such a Fact might come as carried a *culpa* along with it, and was not absolutely accidental or innocent.

And this being the plain Meaning of the Law, it must remain only to consider, whether culpable Homicide, or more particularly the present Case, does not, in a true and legal Sense, fall under the Words *casual Homicide*. And we hope we can be under no Difficulty to make that good, from what has been already said; *first*, That even by the *Jewish* Doctors and Interpreters of the *Mosaic* Law, Homicide without Hatred and Foresight, hath been called *casual Homicide*; the Passage above cited from the Collation of the *Mosaic* and *Roman* Law expressly shews it. *2do*, All that has been said from the Texts of the civil Law, and Lawyers, prove it; since they directly call Slaughter, *ex subito impetu, ex calore iracundiæ, in rixa*, where there was just Provocation, *casual*; *casu magis quam voluntate fit*; *casui magis quam noxæ imputandum*: And all the rest of their Expressions plainly denominating all Slaughters *casual* in the large Sense, except that which is done *dolose animo occidendi*. *3tio*, The Expressions in our own old Laws prove the same Thing; those Kind of Slaughters are called *chaud melle* or *Chance-Medley*, which is casual: And so *Skeen* speaks, in the very Place the Pursuers have cited, Manslaughter committed voluntarily, by forethought Felony, or not (which ever of the Degrees be received) casually by *chaud melle*. There your Lordships see *chaud melle* is expressly brought under the Description of casual; and so that being the case, we are under the Letter of the Act *Charles* II. we are included under the first Branch of *casual Homicide*.

And as we apprehend this holds in general, so it holds more particularly in the Pannel's Case, where, whatever was designed against *Bridgeton*, yet, as to my Lord *Strathmore*, the Killing was casual, and therefore falls directly under the Words of the Statute.

It affords no solid Argument against us, that the Act of Parliament bears these Words, FOR REMOVING OF ALL QUESTION AND DOUBT THAT MAY ARISE HEREAFTER IN CRIMINAL PURSUITS FOR SLAUGHTER. For, *1mo*, Those Words must still be understood with regard to the Particulars enacted upon, that it is for removing all Doubts as to those Particulars; for it can never be pretended, that this or any Act of Parliament could remove all Doubts, even upon unforeseen Cases, many of which might happen that could not fall under the Words of that Law: For instance, Homicide committed in suppressing a Mob, strictly speaking, falls under none of the Words; or Homicide committed in preventing the Escape of a Prisoner actually imprisoned, and endeavouring his Escape: And many other Cases may be figured. But, *2do*, According to the Interpretation we insist upon, the Act of Parliament does remove all Questions, so far as human Eyes could foresee, if the Words *(casual Homicide)* be taken in the Sense we give them; and, on the contrary, it does not remove all Questions, if culpable Homicides, and this very Case be not included; for then the Law has statuted nothing upon them, either one way or other, but hath only statuted upon Murder merely accidental, Homicide in Defence, and the others therein mentioned. Besides, that it may be pled without any Stretch, that a culpable Homicide is a Species of Homicide in Defence; though not precisely in Defence of Life, it is in Defence against a further Injury threatened, and expected from the prior Injury already given: And on these Considerations, we humbly apprehend, the Act of Parliament makes nothing against the Pannel, but rather favours him, since the Question is anent a Homicide purely casual as to the Person that was killed: and which Consideration entirely distinguishes his Case from every other Case that hath been tried since the Act of Parliament. And it may not be improper to notice, that Sir *George Mackenzie* says, "The Word *casual*, in the "Rubric of this Act, is taken in the lax Signification." And why not then take it in the same lax Signification in the statutory Part?

It is now proper to take notice of Sir *George Mackenzie*'s Observations upon the 51st *Act*, *James* I. And in the *first* place, If Sir *George* be supposed to go as far in his Opinion as the Pursuers plead, we must beg leave to oppone the Law, and submit the Interpretation of it to your Lordships Judgment, as not sufficiently supporting his Opinion. *2do*, Sir *George* says nothing against the Slaughter's being casual in the present Case, where the Blow was intended at one, and another struck by Fatality. *3tio*, His Words do not go so far as the Pursuers would stretch them; for, in his Observation on the said 51st *Act*, he only says in general, *That* chaud melle, *or* homicidium in rixa commissum, *is capital by our present Law*: And so it is in many Cases; for instance, where the Killer is the Provoker, where he reiterates Strokes in such a manner, as to shew a Forethought and formed Design, although not premeditated for a long Interval of Time before: But Sir *George* does by no means say, that *chaud melle* or *homicidium in rixa commissum*, is in every Case capital; the contrary is most certain, as will appear from your Lordships Judgments afterwards to be noticed.

His Obervation upon the 90th *Act* is no ways against us; he says, indeed, "That Murder, though committed without forethought Felony, "is punishable with Death:" By which he must mean premeditated Malice,

Malice, and that is true; for no doubt Malice, where it can be presumed from the Act itself, and where the contrary does not appear from Circumstances, is punishable by Death, without further Forethought; but then he subjoins an Exception, which leaves the Matter where it was, *except*, says he, *it be casual*; that is, according to the Words of the Law: And so the Question remains, What is casual in the Sense of that Law?

The Pursuers use an Argument, which seems to be of no Force, "That "if Manslaughter was not capital, then the Crown could not pardon any "capital Slaughter; because by our Law the Crown could not pardon "Murder." We might easily admit the whole, without hurting our Argument; for if it be true that the Crown could not pardon Murder, then it is likewise true that he could not pardon any Slaughter that was capital; because no Slaughter was capital but Murder: Nevertheless the Position, That the Crown could not pardon Murder, is not supported by Practice, and, we doubt, not by our Law; because in several Cases, even of Murder, the very Thing statuted is, THAT THE PERSON OF THE CRIMINAL SHALL BE IN THE KING'S WILL; consequently the King can pardon, as well as order to be put to Death.

The Pursuers, in their Information, next go on to mention a great many Cases that have been judged by the Court since the Act 1661; and the first mentioned is that of *William Douglas*, which appears in the Records, and is noticed by Sir *George Mackenzie*, and is indeed noticed by him as a Foundation for some Things, wherein he seems to go too far. But this Case will never deserve any Regard; it has always been looked upon as a hard one, and we are afraid a Reproach on the Justice of the Nation. But at the same Time the Fault did not lye on the Court; it was truly the Jury; for the Trial went in general upon the Art and Part; and there appears no particular Pleadings to this Purpose on record in that Case: So that what Sir *George* says of it must be from mere Memory of Things not thought fit to be recorded.

The next Case mentioned is that of *Nicolson*, in the 1673, which can never make for the Pursuers, because there your Lordships sustained both the Libel and the Defence, though indeed the Defence was not proved: And therefore, if the Pursuers say, that the Defence was upon *chaud melle*, or culpable Homicide; the Case is with us, because your Lordships sustained the Defence. And although in Reality the Crime was proved to be wilful Murder, and the Defence not proved; yet so far it is on the Pannel's Side, that the Advocate insisted *Nicolson* was *versans in re illicita*, by carrying a Gun, which he acknowledged used to go off on half-bend; yet your Lordships sustained the Defence, "That the Gun "went off in a Struggle:" And if an Argument from a Lawyer's Pleading be good for any Thing, Sir *George Mackenzie* pled for the Pannel, in that Case, some of the very same Principles we now insist on, "That there "was no Prejudice against the Person killed, and that the Gun went off "in a Struggle." But indeed, the Case is naught in the Argument, and it seems strange why it is cited: It is true the Man was said to be drunk, and there was not a previous Quarrel; but then there was no Provocation, no *justa causa iracundiæ*, and no *iracundia* at all; but the Gun was twice deliberately snapped, and the third Time the Man was killed.

The third Case mentioned, is *Murray* contra *Gray*, yet less to the Purpose than any other: For there, the giving the Wound was libelled so far premeditate, that the Slayer followed the Person out of the House where he was, and killed him without any Provocation: And not one single Fact was pled in Defence, but a strange Demand made, that the Lords should make an Inquisition, in order to discover who was the first Aggressor; but it was not once pled that the Defunct was the Aggressor or Provoker. What can be the Meaning of citing such Cases?

The next Case cited is that of *Aird*, in the 1693; which indeed is something more to the Purpose, but yet does not answer the Pursuers Intention: For the Lords did not there find, that every Homicide was capital, except what was merely accidental; they indeed sustained the Libel, and repelled the Defences, which were mainly founded upon Provocation by ill Words from a Woman, and her throwing a Chamber-pot at the Pannel's Face, who was a Soldier: Which the Lords did not find sufficient to exculpate from the Libel, which bore reiterate Strokes to have been given the Woman in her own Door (which, by-the-bye, was hamesucken) she thrown over the Stairs, and pursued by the then Pannel. That Case was very singular: First, an Attack upon a Woman by a Soldier, who ought to have contemned Insults from the Female Sex, at least, not returned them with any Blows: No Injury of that Kind from a Woman can justify Blows given, much less reiterated Blows, and deliberately trampling to Death, throwing her over her Stair, and still continuing to pursue her: There, the presumed Difference of Strength, and Difference of the Sex, made such an Attack a barbarous Murder; just as an Invasion by a much stronger Man against a weaker, or by a Man against a Woman, although not with a mortal Weapon, would make a Blow with a mortal Weapon, given by such a Woman or weaker Person, come within the Description of Self-defence: Which is a Case that Lawyers state, although the same Thing would not be good, if they were of equal Strength, or that the Invasion was by the Woman, or Person of weaker Strength.

Another Case mentioned, is that of *Carmichael* in the 1694. But sure your Lordships must be weary of so many Cases, so little to the Purpose: For neither there, is there one Circumstance pled upon to exclude Forethought, or to show that the Thing was casual in any Sense; but some trifling Objections against the Form of the Libel: Only, indeed, Drunkenness, by itself, was founded on, which your Lordships did not sustain. And who can doubt it must be so?

The seventh Case mentioned by the Pursuers, is that of *George Cuming* the 1695. And upon looking into the Case, it must be owned, that it seems a very narrow, hard Case: But then the whole Burden of the Pursuers pleading turns upon this. That supposing there was a *rixa*, and that the Thing happened upon a sudden Quarrel; yet *Cuming* himself was the first Provoker, and the *auctor rixæ*, and therefore could not plead the Benefit even of Self-defence; which indeed brings the Case within what all Lawyers agree on. And had it not been for that Circumstance, 'tis impossible the Decision could have gone as it went: For in effect, the King's Advocate admitted the Defence, barring that Circumstance; but insisted upon that as what governed the Case. Yet still the Decision is narrow.

The Pursuers also mention the Case of *Burnet* of *Carlops*, *anno* 1711. But it is plainly against them; and it being to be noticed for the Pannel, shall not be dwelt upon here.

The next Case is that of *Hamilton* of *Green*, *anno* 1716; which does not all meet: For there a plain Murder was libelled, that the Pannel first made several Pushes with his Sword and Scabbard upon it; and not content with that, drew the Sword, and gave the Defunct the mortal Wound. And no Provocation was pled upon, on the Part of the Pannel, except what was verbal only. And the only real Injury, by striking with the Sword and Scabbard, was admitted to have been given by the Pannel. And though it was there pled, that the Defunct himself rushed upon the Sword, that was contrary to the Libel. And if the Fact had come so out, the Libel would not have been proved. And therefore, that Case does not all meet; for there were not sufficient Circumstances to exclude the Dole, or so much as to make a *homicidium culposum*.

Another Case they mention, is that of *Thomas Ross*, and *Jeffery Roberts*, 20th *July*, 1716; which makes against the Pursuers, as it is set forth by themselves: For there the Lords did sustain the Defence of Provocation by Words, receiving a Blow on the Face, being pulled down to the Ground, and beat with a great Stick or Car-rung, relevant to restrict the Libel to an arbitrary Punishment. And though the Words, "To the "imminent Danger of his Life," are insert, as they were pled in the Defence; yet that was not a Fact, but a Consequence inferred from the being struck with a Stick. And if the *periculum vitæ* had been the Foundation on which the Interlocutor went, then it must have been unjust; because no Man alive ever doubted, that a Man in Self-defence might lawfully kill, without being subject to any arbitrary Punishment whatsoever: But the Case was, that your Lordships found the Provocation and real Injuries reduced the Fact to a *homicidium culposum*. You indeed sustained the Reply, That the Defunct was held by *Jeffrey* at the Time of receiving the Wound, because that excluded the Defence of the Pannel's being upon the Ground when he gave the Wound, and made the Fact amount to Murder; because it never was doubted, but if one stab another, especially with a Knife, which is stabbing in the most barbarous Sense, when that other is held, and so put out of the State of doing further Injury, that is Murder by the Law of all Nations.

The Pursuers likewise mention a Case of *Davidson*, without noticing either Date or Circumstances; and therefore the Pannel must conclude there was no Defence proposed, exclusive of the Dole or Forethought.

The Case of *Lindsay* and *Brock*, the *Greenock* Taylors, is very far from putting the Case out of Doubt, or indeed touching it at all. The Case was, that the Defunct was enticed out of his House, and was attacked by two at the same Time; and when he and they were on the Ground, one of them, which came out to be *Lindsay*, stabbed him in the Throat with a Penknife. There your Lordships did not sustain the Crime as capital against them both, even upon the Art and Part, but only against the one who should appear to have given the Stab, and that came out to be *Lindsay*: But then indeed you found, not without Difference in Opinions, that nevertheless he had the Benefit of the Indemnity, upon this Foundation, that tho' the *homicidium* was *dolosum*, because of the Circumstances, yet it was not from Malice premeditate: And the Majority were of Opinion, that the Indemnity excluded nothing but premeditate Murder, and did not touch any Case done *in rixa*, notwithstanding the Person guilty might be the *auctor rixæ*. This does by no means determine any Question betwixt a *dolosum* and *culposum homicidium*; for that Fact was insisted to be *dolosum*, and indeed so found. 'Tis true, it proves that an Indemnity may reach even a *homicidium dolosum*, where the Dole arose immediately, and not *ex intervallo*; but that says nothing to this Question, nor is it proper to enter upon the Argument about the Indemnity, now that the Judgment is given.

The Case of *Mathews*, the Soldier, the Pursuers admit, was of the same Nature, and so needs no other Answer; only, That, in that Case, there were no Circumstances sufficient to exclude the Dole, or make it only a culpable Homicide.

These are all the Cases the Pursuers have mentioned, and, if Numbers would do, no Doubt there is enough; but your Lordships are to judge how far to the Purpose: And one Thing is remarkable with regard to them all, That not one of them touches the Case in hand, in so far as concerns the Slaughter's being casual as to my Lord *Strathmore*, the Invasion being intended against *Bridgeton*.

But now the Counsel for the Pannel beg leave to take notice of several Decisions, even since 1661, which directly establish the Point pled for the Pannel; and the first is *Mason*'s Case in the 1674, to be seen in the Record; and also observed by Sir *George Mackenzie*. *Mason* was accused of killing *Ralston*, The Defences were three, *first*, That *Ralston* had followed *Mason* from House to House, at last put violent Hands upon him; whereby *Mason* was forced to throw him off, and that he fell against a Stool. 2*do*, That the Wound was not mortal, but *Ralston* died *ex malo regimine*. 3*tio*. That the Homicide was merely casual, and in Self-defence, *Ralston* being the Aggressor. The Lords sustained the Libel only relevant to infer the *pœnam extraordinariam*, and seperately sustained the other Defences to assoilzie *in totum*, and remitted all to the Knowledge of the Inquest. Here your Lordships see, the Killing only sustained *ad pœnam extraordinariam*, without regard to the three Defences of casual Homicide, Self-defence, and dying *ex malo regimine*; for they are all sustained separately to assoilzie, even from the *pœna extraordinaria*: Here then was a culpable Homicide, sustained only *ad pœnam extraordinariam*, though neither merely casual, nor in Self-defence; and so there can be no Judgment more direct upon the Point now pled.

And here the Pannel must notice, once for all, That it makes nothing to this Question, That in that, and other like Cases to be mentioned, a mortal Weapon was not used; for it is one Question, What is sufficient to make a Homicide only culpable? And quite another, Whether, in our Law, there is such a Thing as culpable Homicide, though neither merely casual, nor in Self-defence? That of the using a deadly Weapon enters into the Argument, Whether a Homicide is dolose or culpable only? But it makes nothing to the other Question, since Homicide may not be merely casual, although no mortal Weapon is used, as appears both from this Decision, and the Case of *Bain*, cited for the Pursuers.

Another Case is that of *Grierson* and others, 12th *March*, 1684; where the Pannels being accused of Murder, for killing the Defunct in a Scuffle; the Defence proponed was, That the Defunct was the first Aggressor, and did invade the Pannels, or one or other of them; and that *William Grierson*, or one

or other of them, being ſtanding before the Fire, the Defunct threw the ſaid *William*, or one or other of them, in the Fire, and fell upon him himſelf; and then, after the Scuffle was over, the Defunct did riſe, walked up and down, diſcourſed, and of new again beat the ſaid *William Grierſon*, and threatened to kill him if he would not be gone; that the Defunct went in good Health to the Door thereafter. Theſe the Lords ſuſtained relevant to liberate from the ordinary Pain of Death. Here is another Deciſion in Point; the Crime was not found merely caſual, or the Court muſt have aſſoilzied; at leaſt, could only have impriſoned, and could have inflicted no other arbitrary Puniſhment. But that was not the Caſe, it was found culpable, and not merely caſual; and therefore the Puniſhment reſtricted. Sure then it is not true in Law, that all Homicides are capital, unleſs they be merely caſual.

A third Caſe, is that of *Maxwell* and others, 7th *November*, 1690, purſued for the Murder of *John Ruſſel*, where the Court ſuſtained this Defence, That there was a previous Combination to make a Convocation, in order to debar and keep out Mr. *Walter Macgil*, Miniſter of from entering into his Church that *Sunday*, in conſequence of which a Convocation happened; and when they were required to diſperſe, they took the Keys from the Beadle, and beat the Notar, and the Miniſter's Wife, and others, before the Slaughter was committed, relevant to reſtrict the Slaughter to an arbitrary Pain. And found yet further, That if any actual Attempt was made, by throwing great Stones at the Miniſter, before committing the Slaughter, that that was ſufficient to liberate from the Slaughter *ſimpliciter*. Sure the firſt Part of the Defence implied neither accidental Homicide, nor Self defence, but a Provocation by real Injuries; yet the Court juſtly ſuſtained it to reſtrict.

On the 6th *November* that ſame Year, another Judgment was given, very oppoſite to the Purſuer's Pleadings, in the Caſe of Captain *Price* and others, who were proſecuted for ſhooting one *John Reid*, a Tradeſman of *Glaſgow*, and Serjeant at that Time of a Guard kept in that Town. The Caſe was, That Captain *Price*, and others with him, had made ſome Diſturbance in the Houſe where they lodged, and committed ſome Rudeneſs to the Landlady and her Maid, which occaſioned the Guard to be called; and when the Guard came, commanded by *Reid*, and entered the Room where *Price* was, he and his Company reſiſted the Guard, and one of them ſhot *Reid* dead. The Defence proponed was, "That before any "Guard came, a Mob had begun to riſe, and had gathered at the Door "where the Officers were, who had ſhut the Door upon themſelves, and "cried out to ſhoot the Dogs, and Words to that Purpoſe: That when "the Guard came, they did not know it was the Guard, but reſiſted and "fired, from Apprehenſion that it was the Mob, and ſo killed *Reid* the "Commander of the Guard." The Lords "ſuſtained that Defence re-"levant to reſtrict the Libel." And in that Judgment, beſide the Eſtabliſhment of the general Principle, this may be obſerved, That *Reid* was killed by Miſtake, as one of the Mob, and there neither was nor could be any Provocation from him; neither was it pled, That the Mob had given any real Injury, but only were gathered in a tumultuous Way, and uttering injurious Words: Yet the Court juſtly reſtricted the Libel; tho' it is plain the Slaughter was not accidental, except in ſo far as the Commander of the Guard was killed in Place of a Mobber. Neither was it Self-defence, becauſe the Pannels had no Right to reſiſt the Guard, only there was an Injury by the Convocation, and an Apprehenſion given of greater Injuries, though that Apprehenſion was not ſo idly founded.

The Caſe of Captain *Wallace* firing on the Boys from the *Abbay*, may likewiſe be noticed; but being a well-known Caſe, needs not be at length recited.

A fourth Caſe is that of Enſign *Hardie*, 6th *June*, 1701: He was accuſed of Murder, by giving repeated Thruſts, with a drawn Sword, to one *Smith*, who at the Time had no Arms, whereof *Smith* inſtantly died; and that he afterwards boaſted of his Crime and Cruelty, telling other Gentlemen, That he had bowed his Sword upon the Perſon of a Fellow at *Scarbridge*. The Defence proponed, and ſuſtained, was, "That the De-"funct was the firſt Aggreſſor, and did take Hold of the Pannel's Horſe-"bridle; and when he was holding the Horſe by the Bridle, did give the "Pannel a Stroke over the Face with a Rung or Tree, and wounded "him to the Effuſion of his Blood; and that the Defunct beat the Pan-"nel from his Horſe." Theſe were *found relevant to reſtrict the Libel to an arbitrary Puniſhment.* And then the Reply was ſuſtained relevant to elide it, "That the Pannel beat the Defunct on the Face with a twiſted "Rod, before he ſtruck the Pannel." Here again the Point is fixed; no caſual Homicide, nor Homicide in Self-defence: And ſo your Lordſhips had found by a former Interlocutor, wherein you repelled the Defence, when proponed as Self-defence, but yet reſtricted the Puniſhment, becauſe the Homicide was culpable.

A ſixth Caſe yet ſtronger, is that of the firſt of *March*, 1710: *Peter Madean*, who was accuſed of the Murder of *James Ewing*, by ſhooting him dead with a Fowling-piece, when *Ewing* had no Arms in his Hand. The Defence ſuſtained to reſtrict the Libel to an arbitrary Puniſhment was, "That the Defunct quarrelled the Pannel, under the Name of "Raſcal, how he durſt carry a Fowling-Piece, and that if the Prince "had his own, he durſt not ſo do;" and adding theſe Words, "That her "Majeſty was but a Whore; and thereupon aſſaulted the Pannel for tak-"ing his Carabin from him." Theſe are the Words of the Interlocutor; and it is ſo plain, that no Obſervation needs to be made upon it.

Another Caſe is that of *Bathgate*, 23d *January*, 1710: He was accuſed of murdering *Andrew Braidwood*, by throwing him down to the Ground, and giving him ſeveral Strokes and Bruiſes, whereof he died. Your Lordſhips "found the Libel only relevant to infer an arbitrary Puniſhment;" yet the Fact was not entirely caſual, nor pled to be ſo: And you ſuſtained the Defence, "That the throwing down libelled was only a Wreſt-"ling, out of no Malice, and that previous thereto the Defunct was va-"letudinary, and in the Habit of ſpitting Blood, relevant to elide the "Libel *in totum*."

The Caſe of *Govan*, 3d *March*, 1710, is not ſo plain as the others above-mentioned; but yet it does aſſiſt in the Queſtion: For there your Lordſhips ſuſtained opprobrious Language and Invaſion, by beating in a Scuffle, though without mortal Weapons, relevant to reſtrict the Puniſhment of killing with a Sword, even ſuppoſe the killing ſhould be proved to have been without the Door of the Houſe, when the laſt beating was only pretended to have been within the Houſe; and ſo the beating muſt have been over before giving the Wound, and the Pannel employed *in proſequendo*, by way of Retortion of the Injury that had been given.

Another unanſwerable Caſe is that of *Carlops*, *January* 8th, 1711; the Circumſtances of which are ſo well known, that it is in vain to repeat them; ſure it was neither accidental Homicide, nor Homicide in Defence: But the Lords ſuſtained the Defence, That the beating was *per plures commiſſum*, in Conjunction with any two of the following Defences, *viz.* "That any beating committed by them was in a Tulzie or *Rixa*, "in which they mixed themſelves, to relieve a Youth in the Defunct's "Grips, or in a Struggle with him. Or, *ſeparatim*, That they had "Swords about them, and only made uſe of Staves or Batons, relevant "to reſtrict the Libel to an arbitrary Puniſhment."

There is another Caſe likewiſe worth noticing, 18th *December*, 1712; the Caſe of Serjeant *Davies*, who was accuſed of the Murder of Mr. *Robert Park*—where your Lordſhips "found the Pannel his being alone, Time "and Place libelled, and a Scuffle then happening betwixt the Defunct, "with two or three more in his Company and the Pannel, and after a "beating with Staves betwixt the ſaid Men and the Pannel, the ſaid Pan-"nel his retiring, and calling for the Guard, and being mutilate in the "Hand before he gave the ſaid mortal Wound, relevant to reſtrict the "Libel to an arbitrary Puniſhment."

Another very late Caſe is that of *Jaſper Reyſano*, 14th *December*, 1724, where the Pannel being accuſed of killing *Robert Lamb*, by throwing him over the Stairs, without Cauſe or Provocation, whereby he was brained, your Lordſhips ſuſtained it only "relevant to infer an arbitrary Puniſh-"ment." Yet ſure it was not accidental, far leſs in Defence. All which Caſes plainly eſtabliſh the Point, that even ſince the Act of Parliament, 1661, the conſtant Practice hath been to find culpable Homicides only relevant to infer arbitrary Puniſhment; and that there are Homicides not puniſhable with Death, though neither merely accidental, nor in Self-defence.

There is alſo a Caſe which deſerves to be noticed as to that Point, of a third Party's being killed when interpoſing betwixt other two in a Scuffle: Which is the Caſe of *John Graham*, 1ſt *December*, 1712, where *Graham* was accuſed of murdering *David Cochran*. But your Lordſhip ſuſtained the Defence, "That while he was attacked by *Blyth* with a drawn Dirk, "the Pannel was in his own Defence with a drawn Bayonet; and that in "the mean Time, the Defunct interpoſing as a Redder betwixt them, "did caſually receive the Wound libelled relevant to reſtrict the Libel to "an arbitrary Puniſhment."

This Information having drawn to ſo great a Length, we are unwilling to trouble your Lordſhips with further References to the Laws of other Countries, particularly to the Law of *England*; although we apprehend the Law there does not differ ſubſtantially from our Law in this Particular, except it be in theſe; 1*ſt*, That Manſlaughter is in effect not puniſhable at all in *England*, otherwiſe than by a Kind of eluſory Puniſhment; 2*dly*, That in no Caſe *dolus* is preſumed only from the giving the Wound, except upon the particular Statute of Stabbing: Whereas, indeed, it is in ſeveral Caſes otherwiſe with us; culpable Homicide is puniſhable arbitrarily, and no Doubt in many Caſes, where contrary Circumſtances do not appear, the giving the Wound preſumes Dole, and even by the Statute of Stabbing, the Killer hath the Benefit of his Clergy, if the Perſon killed give the firſt Blow or real Provocation, and that although the Provocation did not immediately precede the Act of Killing, if it happened at any Time of the Quarrel.

That by the ancient Law of *England*, Slaying a Man did not infer Death, yet perhaps not what we call Murder itſelf, ſeems plain from *Aſſiſa* Henrici *Regis apud* Northampton, publiſhed by *Selden*, in his *Jahus* Anglorum, Page 120. of the laſt Edition; by which it appears, that even Murder itſelf and Robbery, was puniſhable only by Mutilation, ſuch as cutting off the Hand or Foot: And all their Law-books, as well as the daily Practice, eſtabliſhes the Diſtinction betwixt forethought Felony, and ſlaying on Suddenty; yea of old, even a Murderer by Malice prepenſe ſeems to have had the Benefit of the Clergy, and that Benefit only taken away from ſuch Murderers by the firſt Act, 23d *Henry* VIII. and their Books of Reports are full of the Examples that Slaughter on Suddenty is not Murder or capital. In *Coke*'s Reports it is ſtated, that ſeveral Men playing at Bowls, two of them quarrelled, and a third, in Revenge of his Friend, ſtruck the other with a Bowl, of which wound he died: This was held Manſlaughter; for it was done upon a ſudden Emotion, in Revenge of his Friend.

There likewiſe, two Boys combating together, one of them was ſcratched in the Face, and his Noſe run a great Quantity of Blood; he went three Quarters of a Mile off to his Father; who ſeeing him all bloody, took in his Hand a Cudgel, and went three Quarters of a Mile to the Place where the other Boy was, and ſtruck him upon the Head, of which the Boy died. This was held but Manſlaughter; for the Ire and Paſſion of the Father was continued; and there was no Time determined in the Law that it was ſo ſettled, that it ſhall be adjudged Malice prepenſe in Law.

The Caſe of *Mawgridge*, ſet down at length by Lord Chief-Juſtice *Keyling*, in his Reports *, makes ſtrongly for us; and we beg Leave to refer to the whole Treatiſe there ſet down, and particularly to the firſt Ground of Provocation, which he declares to be ſufficient ſo as to alleviate the Act of Killing, and to reduce it to a bare Homicide: "He ſays, "If one Man, upon angry Words, ſhall make an Aſſault upon another, "either by pulling him by the Noſe, or fillipping upon the Forehead, "and he that is ſo aſſaulted ſhall draw his Sword, and immediately run "the other thorow, that is but Manſlaughter; for the Peace is broken "by the Perſon killed, and with an Indignity to him that received the "Aſſault: Beſides, he that was ſo affronted might reaſonably apprehend, "that he that treated him in that Manner might have ſome further De-"ſign upon him." Your Lordſhips ſee how cloſe this is to the Caſe: The Inſult and Indignity done by *Bridgeton* was vaſtly ſtronger than any

* This Caſe of *Mawgridge*'s is ſo often quoted in Trials for Murder, that we ſhall ſet it down at large; and being drawn up by ſo great a Man as Lord Chief-Juſtice *Holt*, gives it great Authority.

any thing here mentioned and having received such an Affront, he had Reason to expect worse; more especially when, as we offered to prove, *Bridgeton* was endeavouring to pull out my Lord *Strathmore*'s Sword.

We must likewise humbly refer to several Cases set down by Serjeant *Hawkins*, in his Pleas of the Crown, which fully agree with what we now plead; and particularly take notice of what he says, pag. 84. "If a third "Person happen, accidentally happen, to be killed by one engaged in a "Combat with another, upon a sudden Quarrel, it seems that he who "kills him is guilty of Manslaughter only." And it would seem that there is even a Difference made, betwixt killing a Person that endeavours to interpose, if he tell that he comes for that Purpose, and killing one who accidentally is interposed betwixt the two contending Parties, which was my Lord *Strathmore*'s Case: The Killing him who interposes to separate, if he give notice what he is doing, is reckoned worse than the Killing the other. And this Observation shews that the present Case is stronger than the above-cited Case of *Graham*, where your Lordships restricted it to an arbitrary Punishment. And what that Author observes, confirms a Distinction we have made, betwixt a Man quarrelling with another, and killing a third Party, where it is proved the Killer had a felonious Intention to murder the other, and the Case where that does not appear; for however, in the first Case, he might be guilty of the Murder of the third Party, yet if a Design to murder the Person he quarrelled with is not proved, then he can never suffer capitally for killing the third Party: And we have already endeavoured to prove, that that must be the Case as to *Bridgeton*, where he gave the Provocation, and no Act followed against him sufficient in Law to establish a Design of murdering him.

The Pursuers have cited the same Books, and *Mawgridge*'s Case, as for them; but that we submit. The particular Cases of *Holloway*, and *Williams* the *Welchman*, spoke of by *Keyling*, are not at all to the Purpose: The *Welchman*'s Case was no Judgment; but neither in that nor in *Holloway*'s was there any real personal Injury, on which a great Stress is laid in all these Questions.

The Pursuers mention another Case stated, but never adjudged; A Person shooting at Fowls with an Intent to steal them, accidentally kills a Man; that will be Murder. This perhaps may be justly doubted. Sure it would be too severe. But supposing it were so, it is of no Importance: Stealing, even of Fowls, by the Law of *England*, is Felony of Malice prepense; And where a Man attempting to commit one Felony, does another, there is little Doubt but in strict Law he is guilty of the Felony committed (*a*). But what is that to the Case of a Provocation by a real Injury?

The Pursuers have quoted the Authority of *Voet*, and a Decision observed by him from *Sande*, to prove, that where one Man was intended to be killed, and another slain, the Crime is Capital: In which, no doubt, *Voet* differs from many as learned Lawyers, who are of the other Side. But his Opinion, and that of *Sande*, is obviated by what is already said: It is only in the Case of no Provocation or real Injury on the Part of him who was designed to be killed. And *2do*, 'Tis always taken for granted by *Voet*, and all who are of that Opinion, that the Design of murdering the Person intended to be invaded, do appear and is proved: But we have already shewn, that cannot be said in the present Case.

The Pursuers pretended, That there was a Circumstance in the Libel which implied Malice against the Earl of *Strathmore*, viz. "That the "Thrust given was followed by a second Push." But as there is nothing in this Fact, it may be the Subject of Imagination, but can never be the Subject of Proof, unless it were pretended, as it is not, that the Pannel drew back or out his Sword, and made a second Thrust; which will appear not to be true, from the Nature of the Wound; and the Thrust will be found to have been so momentary, that it was impossible. *2do*, If any thing like that happened, it will appear, that there was no more in it, but the Pannel's staggering, or moving the Sword, by his Weight leaning upon it. *3tio*, There is no Relevancy in it at all; the Fact being, That the Pannel pushed as at *Bridgeton*: And no Circumstance will make it appear, that he knew he had touched the Earl of *Strathmore* till some time after the Fatality was perfected.

The Pursuers further pretended, "That as they had libelled Malice, "they would prove it from other antecedent Facts that had happened some "Time before, whereby it would appear, that there was Enmity betwixt "the Defunct and the Pannel."

It is answered for the Pannel, *1mo*, That no such Facts being libelled, nor, to this Minute, condescended upon, either in the Debate or Information, they can by no means enter into the Proof, otherwise the highest Injustice would be done to the Pannel in this and every such Case: For if the pretended Facts, inferring Malice, had been libelled, then it would have been competent to the Pannel to have elided the same by a proper Proof, to shew that they inferred no Malice on his Part; he might have proved Dissimulation or Reconciliation, and would have been prepared for that Purpose. But where such Facts are concealed, and may have happened at an unknown Distance of Time, 'tis impossible the Pannel can be prepared with proper Evidences. And though it is sufficient, in an Indictment, to libel Malice in general, in order to make a Relevancy; yet then it is always understood that the Pursuer intends no more than the presumed Malice arising from the Fact libelled: Neither can such Proof come in under the Head of Art and Part, because that can only have Regard to such Facts as happen at the Time of committing the Action complained of, and such as import a Share in the Action; but cannot reach to pretended Qualifications of Malice that happened the Lord knows when.

In the next place, the Pannel offers to exclude all Pretence of former Enmity, by proving, that, for some Time before, they had met from Time to Time occasionally, without any Marks of Enmity, but all the seeming Requisites of Friendship and Civility intervening; and particularly, that that very Day they had dined together, afterwards drunk together for a considerable Time, and visited together, in the Lady *Auchterhouse*'s, a common Relation, with all Appearances of Friendship; and that the deceast Earl had kindly invited the Pannel and his Family to come and visit him and his, and made a Challenge of Kindness of it, That he was too great a Stranger. In the Case of Enmity, the Divine Law itself determines, when Hatred is to be presumed, and when not: "Whoso killeth his "Neighbour ignorantly, whom he hated not in Time past; in the *He*- "*brew*, from Yesterday, the third Day;" or, as in the *Latin* Translation, *qui heri & nudius tertius nullum odium contra eum habuisse comprobatur*. So that the very Friendship that passed that Day on which the unhappy Accident happened, excludes all Pretence of former Enmity, suppose there had been any seeming Differences, of which the Pannel is not conscious, far less of Malice, or any capital Enmity that ever was.

Upon the whole, though this fatal and melancholy Accident, which gives occasion to the Trial, does and must ly heavy on the Mind of the Pannel, and produce the strongest Sorrow and Regret in all that had the Honour to know the deceast Earl; yet the punishing the Pannel capitally for an Offence which happened *casu magis quam voluntate*, would be a very rigorous Extension of the Law. It is plain, from what is above said, that culpable Homicide, both by our Law and Practice, is punishable only arbitrarily, and comes under the general Description of casual Homicide in the Act 1661. No Case can be more pitiful or favourable than this, where the Death happened to a Person nowise intended to be hurt: And therefore 'tis hoped your Lordships will sustain the Defence pled, relevant to restrict the Libel to an arbitrary Punishment.

RO. DUNDAS.

Curia Justiciaria S. D. N. *Regis tenta, in novo Sessionis domo Burgi de* Edinburgh, *primo die mensis* Augusti, *millesimo septingentesimo vigesimo octavo, per honorabiles viros* Adamum Cockburne *de* Ormistoun, *Justiciarium Clericum*; *Dominos* Jacobum Mackenzie *de* Royston, *et* Gulielmum Calderwood *de* Poltoun, *Magistrum* Davidem Erskine *de* Dun, *Dominum* Gualterum Pringle *de* Newhall, *et Magistrum*, Andream Fletcher *de* Miltoun, *Commissionarios justiciariæ dict.* S. D. N. *Regis.*

Curia legitime affirmata.

Intran.

James Carnegie of Finhaven, Pannel,

Indicted and accused *ut in die præcedenti.*

"THE Lords Justice Clerk and Commissioners of Justiciary, having "considered the Indictment, raised at the Instance of *Susanna* Countess of *Strathmore*, and Mr. *James Lyon*, Brother-german and nearest "of Kin to the deceast *Charles* Earl of *Strathmore*, with Concourse and "at the Instance of *Duncan Forbes*, Esquire, his Majesty's Advocate, for "his Highness's Interest, against *James Carnegie* of *Finhaven*, Pannel, "with the foregoing Debate thereupon; they fand, and hereby find, that "the Pannel, at the Time and Place libelled, having by Premeditation "and forethought Felony, with a Sword or other mortal Weapon, wounded the deceast *Charles* Earl of *Strathmore*, of which Wound he the said "Earl soon thereafter died, or that he the Pannel was Art and Part there- "of, relevant to infer the Pains of Law; but allowed, and hereby allow "the Pannel, to prove all Facts and Circumstances he can, for taking off "the aggravating Circumstances of Forethought and Premeditation: "As also fand, and hereby find, That he, the said Pannel, Time and "Place foresaid, having, with a Sword, or other mortal Weapon, wounded the said deceast Earl, of which Wound his Lordship soon died, or "that he the Pannel was Art and Part thereof, *separatim*, relevant to in- "fer the Pains of Law: And repelled, and hereby repell the Defences "proponed for the Pannel: And remitted, and hereby remit him, and "the Indictment, as found relevant, to the Knowledge of an Assize."

AD. COCKBURNE, I. P. D.

The Lords Justice-Clerk and Commissioners of Justiciary continued the Diet, at the Instance of *Susanna* Countess of *Strathmore*, and others, against *James Carnegie* of *Finhaven*, Pannel, till To-morrow, at Nine of the Clock in the Morning; and ordained Witnesses and Assizers to attend at that Time, each Person under the Pain of Law; and ordained the Pannel to be carried back to Prison.

Curia Justiciaria, S. D. N. *Regis, tenta in novo Sessionis domo Burgi de* Edinburgh, *secundo die mensis* Augusti, *millesimo septingentesimo vigesimo octavo, per honorabiles viros* Adamum Cockburne *de* Ormistoun, *Justiciarium Clericum*; *Dominum* Gulielmum Calderwood *de* Poltoun; *Magistrum* Davidem Erskine *de* Dun, *Dominum* Gualterum Pringle *de* Newhall, *& Magistrum* Andream Fletcher *de* Miltoun, *Commissionarios Justiciariæ dict.* S. D N. *Regis.*

Curia legitime affirmata.

Intran.

James Carnegie of *Finhaven*, Pannel,

Indicted and accused *ut in diebus præcedentibus.*

The Lords proceeded to make Choice of the following Assizers:

A S S I Z E.

Sir *Robert Dickson* of *Inveraск*,
George Loch of *Drylaw*,
**John Watson* of *Murrays*,
Walt. Riddel of *Granton*,
George Warrender of *Burntsfield*,
Tho. Brown of *Bonington*,
* *George Haliburton* of *Fordel*,
James Balfour of *Pilrig*,
Robert Dundas, Merchant in Edinburgh,
David Inglis, Merchant there,
David Baird, Merchant there,
Alex. Blackwood, Merchant there,
* *John Couts*, Merchant there,
John Steven, Merchant there,
James Ker, Goldsmith there.

N. B. Those of the Jury marked thus * protested against the Verdict.

The above Assize being all lawfully sworn, and no lawful Objection in the contrary, the Pursuers for Probation adduced the Witnesses after deponing, *viz.*

RObert Hepburne, Hammerman in *Forfar*, solemnly sworn, purged, examined and interrogate, deponed, That he was in the Town of *Forfar*,

(*a*) At the *Lent* Assizes at *Chelmsford* in *Essex*, 1763, two Sailors were convicted for the Murder of a Farmer: The Case was, the Sailors came to steal the Farmer's Fowls; the Farmer with his Son pursued them; one of the Sailors struck the Farmer several Blows on the Arm, which (though not likely) killed him. This was held to be Murder; because the Act they were about was unlawful; but the Sailors, after several Respites from Execution, received his Majesty's most gracious Pardon.

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the ninth Day of *May* laſt, betwixt the Hours of Eight and Nine o'Clock at Night, where he did ſee the deceaſt Earl of *Strathmore*, Lord *Roſehill*, and Mr. *Thomas Lyon* my Lord *Strathmore*'s Brother, walking in the Streets; and at the ſame Time did ſee *Lyon* of *Bridgeton*, and *Finhaven* the Pannel, ſtanding near to the Lady *Auchterhouſe* her Houſe, upon the Street; what Words paſſed betwixt them, he being at a Diſtance could not hear; ſaw *Bridgeton* give *Finhaven* a Puſh with his Hand; and *Finhaven* fell in the Gutter; and he ſaw a Servant of the deceaſt Earl of *Strathmore* help *Finhaven* up out of the Gutter; and when *Finhaven* got up, he ſaw him draw his Sword immediately; but that *Bridgeton* coming up faſter than *Finhaven*, he ſaw *Bridgeton* offer to draw my Lord *Strathmore*'s Sword; but does not know whether he got it drawn, or not, but ſaw *Finhaven* draw his Sword before *Bridgton* offered to draw my Lord *Strathmore*'s; and when *Bridgeton* was coming up from the Place where *Finhaven* fell, he looked over his Shoulder, and ſeeing *Finhaven* with his Sword drawn, he went faſter up to my Lord *Strathmore*, as ſaid is; and when *Finhaven* came up, my Lord *Strathmore* being ſtanding about a Pair of Butts from the Place where *Finhaven* fell, and when *Bridgeton* came up, and endeavoured to draw my Lord *Strathmore*'s Sword, as ſaid is, my Lord turned him about, and ſet *Bridgeton* aſide, and made ſome Steps towards *Finhaven*, who would be at that Time about ſix or eight Ells from my Lord; and he did ſee my Lord endeavour to take *Finhaven* in his Arms when they met, and in a little after that, that he did ſee my Lord withdraw himſelf aſide from the reſt of the Company, and ſaw him put down his Breeches, and lift up his Shirt, and heard him ſay he had got a Wound, and repeated theſe Words three Times, and ſaw him put up his Shirt, and in a ſhort Time thereafter ſaw my Lord fall to the Ground. And being interrogate, If he ſaw *Finhaven* the Pannel make a Thruſt at my Lord *Strathmore* with a Sword? *Deponed*, He did not ſee him make the Thruſt, but at that Time did ſee no other Sword drawn but *Finhaven*'s; and after my Lord retired he ſaw ſeveral other Swords drawn. *Deponed*, That there was no other Company ſtanding with my Lord but my Lord *Roſehill*, and his own Brother Mr. *Thomas*, before that *Bridgeton* and *Finhaven* came up: And that he ſaw all this that he has deponed upon, from his own Shop-door, which was about ſeven or eight Ells Diſtance from that Part of the Street where my Lord *Strathmore* was ſtanding. And being interrogate, If he knows what came of *Bridgeton*, after he came up to my Lord? *Deponed*, That he knew not what became of *Bridgeton* after my Lord put him aſide: And that there was as much Day-light as he could ſee what he has deponed upon: And that *Finhaven* the Pannel was in Boots; and that he was coming faſt up after *Bridgeton*, but *Bridgeton* went faſter towards my Lord; and that when my Lord *Strathmore* fell, he ſaw *Thomas Adam*, Maltman, take up my Lord from the Ground, and ſaw no other Body aſſiſting. *Deponed*, He ſaw the Pannel's Sword twiſted out of his Hand by Mr. *Thomas*, or my Lord *Roſehill*; but which of them, he knows not; and that it was after my Lord fell. And *deponed*, That he did ſee the Wound in my Lord's Belly, a little below the Navel; and that it was blooding. *Deponed*, That he ſaw *Finhaven*, after his Sword was twiſted out of his Hand, walk in his ordinary way of walking, towards the Lady *Auchterhouſe* her Houſe. *Cauſa ſcientiæ patet.* And this is the Truth as he ſhould anſwer to God.

Robert Hepburne.

AD. COCKBURNE.

Nota, The Procurators for the Pannel having (before purging) objected to the above-named *Robert Hepburne*, why he ought not to be a Witneſs in this Caſe; becauſe, ſince his Citation to be a Witneſs, he had expreſſed Malice and Ill-will againſt the Pannel in thir Words, *viz.* "That he thanked GOD, he had now an Opportunity to hang "him, and would do it if he could." And ſeeing theſe Expreſſions were clearly proven againſt him, by two concurring Witneſſes, in Preſence of the Court and Jury, they deſired the ſame might be ſo marked in the Books of Adjournal. Which, and this Depoſition, the Lords left to the Conſideration of the Jury.

David Lord *Roſehill*, ſolemnly ſworn, purged, examined and interrogate, *deponed*, (being interrogate for the Pannel) That the Time libelled, the Deponent, on the Occaſion of a Burying, was brought in Company with the deceaſt Earl of *Strathmore*, the Pannel, and others; and together they dined in Mr. *Carnegie* of *Lours*'s Houſe; and after Dinner and the Burying was over, they together went to the Houſe of Mr. *Dickſon*, Clerk of *Forfar*, where they continued ſome conſiderable Time, drinking a Glaſs of Wine together; and after they left that Houſe, they aſſembled in the Houſe of my Lady *Auchterhouſe*, in the ſame Town, the Pannel's Siſter, where the deceaſt Earl had gone to make a Viſit. *Deponed*, That during all that Day, and in the ſeveral Places where the deceaſt Earl, the Pannel, and the reſt of the Company were, he the Deponent, obſerved nothing but great Civility and Friendſhip betwixt the deceaſt Earl and the Pannel. *Deponed*, That before they parted from the Lady *Auchterhouſe*'s, the Pannel appeared to the Deponent to be drunk, and far gone in Drink, to the Degree of ſtaggering; and he obſerved the Pannel drink plentifully in theſe ſeveral Houſes. *Deponed*, That he the Deponent, during the Time of his being with the ſaid Company, was moſtly engaged in Converſation with the deceaſt Earl, and had not the Occaſion to obſerve what paſſed in Converſation betwixt the Pannel and Mr. *Lyon* of *Bridgeton*: And being interrogate about what he knew of the Character and Temper of the Pannel? *Deponed*, That, according to the Deponent's Knowledge of him, which had been of long Continuance, and particularly according to the Character he the Pannel bore in the Country, he was thought to be nowiſe quarrelſome in his Temper, but to be of a peaceable and good Diſpoſition. *Cauſa ſcientiæ patet.* And this was the Truth as he ſhould anſwer to God. *Roſehill.*

D. ERSKINE.

William Douglas, lawful Son to *William Douglas*, late Provoſt and Chirurgeon-Apothecary in *Forfar*, ſolemnly ſworn, purged, examined, and interrogate for the Purſuers, *deponed*, That on that Day whereon the deceaſt Earl of *Strathmore* was wounded, he the Deponent was at *Forfar*, and on the Streets, where he did ſee the Earl with my Lord *Roſehill* and Mr. *Thomas Lyon* his Brother, and at the ſame Time, he obſerved *Finhaven* and Mr. *Lyon* of *Bridgeton* ſtanding together near to the Lady *Auchterhouſe* her Lodging; and ſo on thereafter looking about, he obſerved *Finhaven* leaning and falling backwards into a Kennel; and after getting out of it, which he appeared to the Deponent to do very ſoon, he drew his Sword, and with it went up to the Company where the Earl, *Bridgeton*, and the reſt were; and at the firſt Sight, upon the Pannel's approaching to the Earl, *Bridgeton* and the reſt, *Bridgeton* was then interpoſed betwixt the Earl and the Pannel; but all of a ſudden and a clap (*a*), the Earl came to be interpoſed betwixt *Bridgeton* and the Pannel; and at the Time of the ſaid Earl's Interpoſition, the Pannel was within the Length of his Sword at the Place where *Bridgeton* was ſtanding; that is to ſay, had been ſtanding. *Deponed*, That he did obſerve the Pannel make a Thruſt with his Sword, and at the Time of ſo doing, the Earl was ſtanding next the Pannel, and his Face towards him. *Deponed*, That the Earl received a Wound in his Belly, and after receiving it, he ſaw him pull his Shirt from under his Breeches, and at the ſame Time ſaw him blooding, and ſoon thereafter his Lordſhip fell down, and he heard him ſay, that he had got it; and before the Earl fell, and while he was upon the Ground, he did obſerve his Brother Mr. *Thomas*, with his drawn Sword, twiſt *Finhaven*'s Sword out of his Hand, after ſeeing and hearing ſome claſhing of their Swords: But at the Time when *Finhaven* made the Puſh, as ſaid is, he obſerved no other Sword drawn but *Finhaven*'s; and at the Time when the Pannel recovered his Thruſt, the Pannel and the Earl were very near one another: And all this Time, the Deponent was about the Length of this Room, or ſome more, diſtant from the ſaid Earl and the Pannel, whoſe Sides were oppoſite to the Deponent; and after the Earl of *Strathmore*'s Fall, and that his Brother Mr. *Thomas*, twiſted the Sword out of the Pannel's Hand, the Pannel, who was in Boots, ran towards his Siſter's Door: After the deceaſt Earl was carried to a Houſe, and his Wound was dreſt, he heard his Lordſhip ſay, that after the Sword entered his Belly, he the Pannel gave it a ſecond Thruſt. *Deponed*, That when he obſerved *Finhaven* falling into the Puddle, as aboveſaid, there was none ſtanding with him or by him but Mr. *Lyon* of *Bridgeton*. And what he has above deponed, happened on the ninth Day of *May* laſt, about the Hour of Nine at Night. *Cauſa ſcientiæ patet.* And this was Truth as he ſhould anſwer to God. *Will. Douglas.*

DA. ERSKINE.

Andrew Douglas, alſo lawful Son to the ſaid *William Douglas*, ſolemnly ſworn, purged, examined and interrogate, *Deponed*, That the Time and Place libelled, the Deponent ſaw *John Lyon* of *Bridgeton* puſh the Pannel upon the Breaſt, whereby the Pannel fell in the Gutter, which the Deponent apprehended would have taken him up to the Knee; that it was a very naſty Gutter; and that he ſaw the Pannel ariſe out of the Gutter, and immediately draw his Sword, by which Time *Bridgeton* was walking off towards my Lord *Strathmore* and others, who were ſtanding upon the Street about the Diſtance of the Length of this Room from the foreſaid Gutter: And *deponed*, That he followed after *Finhaven* immediately, after ſtanding a little while with his Comerades: And that before the Deponent came up to the Place where my Lord *Strathmore* and the other Gentlemen were ſtanding, my Lord *Strathmore* had fallen upon the Street. And the Deponent being aſked, how ſoon that happened? *Deponed*, That it was in a moment; and that when the Deponent came up as aforeſaid, he ſaw Mr. *Thomas Lyon* and *Finhaven* engaged, and making Paſſes at other with their drawn Swords; which the Deponent explained to be only a claſhing with their Swords; and that Mr. *Thomas Lyon* did very ſoon twiſt the Sword out of *Finhaven*'s Hand; whereupon *Finhaven* ran away to his Siſter's, the Lady *Auchterhouſe*'s Lodging, and the Door was ſhut after him. *Cauſa ſcientiæ patet.* And this was the Truth as he ſhould anſwer to God. *Andrew Douglas.*

AND. FLETCHER.

John Ferrier, Reſidenter in *Forfar*, ſolemnly ſworn, purged, examined and interrogate, *deponed*, That, at the Time and Place libelled, the Deponent having Occaſion to go to water his Maſter's Horſe, he ſaw *Bridgeton* and the Pannel, as they came out from the Lady *Auchterhouſe*'s Lodging, about the Bridge-ſtone near the Shambles, and there heard *Bridgeton* ſay to the Pannel, You muſt give me an Anſwer to my Queſtion, which the Deponent heard was, If the Pannel would give his Daughter to the Lord *Roſehill*? And upon the Pannel's ſaying, No; *Bridgeton* aſked him, If he would drink a Bottle of Wine, and if he would drink the King's Health? And upon the Pannel's refuſing to do either, the Deponent ſaw *Bridgeton* take hold of the Pannel by the Breaſt, and violently puſh him into the Kennel; and heard *Bridgeton* at the ſame Time, ſay, Go, and be damn'd, and your King *George*, whom you love ſo well. And thereafter *Bridgeton* walked towards my Lord *Strathmore*, Mr. *Thomas Lyon*, and my Lord *Roſehill*, who were ſtanding upon the Street at ſome little Diſtance; and that *Finhaven* was helped out of the Gutter by a Footman of my Lord *Strathmore*'s: And that upon the Pannel's getting upon the Streets again, he immediately drew his Sword, and ran up the Street after *Bridgeton*; and before *Bridgeton* had come the Length of the Place where the Lord *Strathmore* and others were ſtanding, he looked over his Shoulder, and ſeeing *Finhaven* following him in manner above-mentioned, he run up to my Lord *Strathmore*, who, and the reſt of the Company, had ſtill their Backs turned to the Place from whence *Finhaven* and *Bridgeton* were coming: And that *Bridgeton*, upon his coming up to *Strathmore*, laid hold upon my Lord *Strathmore*'s Sword, and endeavoured to pull it out; upon which my Lord *Strathmore* turning about puſhed *Bridgeton* off, and in the mean time *Finhaven* made a Puſh with his Sword at *Bridgeton*, and at that Inſtant he obſerved my Lord *Strathmore* puſhing *Bridgeton* aſide, and make a Step towards *Finhaven*; and obſerved at ſame time *Finhaven*, going on with his Puſh, to ſtagger forward with the Thruſt upon my Lord *Strathmore*; and thereafter the Company went all through other (*b*), ſo that the Deponent could not ſee where the Thruſt landed: And very ſoon thereafter the Deponent ſaw Mr. *Thomas Lyon* with his Sword ca' (*c*) *Finhaven*'s Sword out of his Hand, which lighted at a good Diſtance upon the Street: Upon which *Finhaven* run off, ſtaggering, towards the Lady *Auchterhouſe*'s Lodging, and had almoſt fallen upon the Street before he got in at the Gate; and much about the ſame Time the Deponent ſaw the Earl of *Strathmore* fall down upon the Street, and afterwards carried off, and that *Thomas Adam* and *Janet Binnie* were the firſt that came to his Aſſiſtance. *Deponed*, That the Kennel was deep and

(*a*) *Viz.* Inſtantly. (*b*) *Viz.* Intermingled, in great Confuſion. (*c*) *Viz.* Force.

dirty, and that the Pannel was deep in it, but not freely covered: That when he aroſe, his Face was almoſt as black as his black Coat; and that while theſe Things paſt, the Deponent was riding upon the Side of the Street, betwixt the Gutter and the Place where the Earl of *Strathmore* and others were ſtanding; and upon ſeeing the Beginning of this Accident, he ſtopped his Horſe a little, till he ſaw as above-mentioned. *Cauſa ſcientiæ patet.* And this was the Truth as he ſhould anſwer to GOD.

John Ferrier.
AND. FLETCHER.

David Barclay, lawful Son to *David Barclay*, Brewer in *Forfar*, ſolemnly ſworn, purged, examined and interrogate, *deponed*, That at the Time and Place libelled he ſaw *Bridgeton* puſh the Pannel into a Gutter, and ſaw a Servant raiſe him out of the Gutter: And when the Pannel got to the Street, he ſaw him draw his Sword, and go towards the reſt of the Company, and *Bridgeton* was beyond the Earl of *Strathmore*, his Brother and Lord *Roſehill*, who were interpoſed betwixt the Pannel and *Bridgeton*, and did not ſee the Pannel puſh with the Sword, and ſaw a little after my Lord *Strathmore* fall upon the Street; and immediately after that ſaw Mr. *Thomas Lyon*, with a naked Sword, beat the Pannel's Sword out of his Hand, and the Pannel immediately run toward the Lady *Auchterhouſe*'s Houſe, and got in at the Door. And *deponed*, That when *Bridgeton* thruſt the Pannel into the Gutter, the Servant who lifted him up, ſaid to *Bridgeton*, or ſome other Servant ſtanding by, that he was uncivil, tho' he was a Gentleman: And that what the Deponent ſaw and heard, as aforeſaid, was betwixt Eight and Nine o'Clock of the Evening of the Day foreſaid. *Cauſa ſcientiæ patet.* And this was the Truth as he ſhould anſwer to GOD.

David Barclay.
WA. CALDERWOOD.

Elizabeth Binnie, Spouſe to *Andrew Gray*, Baxter in *Dundee*, ſolemnly ſworn, purged, examined and interrogate, *deponed*, That the Time and Place libelled, ſhe ſaw *John Lyon* of *Bridgeton* give a Puſh to the Pannel, whereby he fell in the Gutter, and was raiſed out of it by the Lord *Strathmore*'s Servant; and when he got to the Street, ſaw him draw his Sword, and heard him utter an Oath, but did not know what the Words were: And then the Deponent turned her Back, and did not ſee *Finhaven* puſh with the Sword. *Cauſa ſcientiæ patet.* And this was the Truth as ſhe ſhould anſwer to GOD: and declared ſhe could not write.

W. CALDERWOOD.

John Macky, Servant to Mr. *Robert Nairn*, Brother-german to —— *Nairn* of *Drumkilbo*, ſolemnly ſworn, purged, examined, and interrogate, *deponed*, That at the Time and Place libelled, he did ſee *William Macgliſh*, my Lord *Strathmore*'s Servant, take *Finhaven* the Pannel out of the Gutter, where the Deponent ſaw him ly; and did ſee *Finhaven* draw his Sword after he was out: And did hear one of the Gentlemen, ſtanding in the Place where my Lord *Strathmore* was wounded, call out to *Finhaven*, Stand off, Sir; and a little Space thereafter he ſaw the deceaſt Earl of *Strathmore* taken up. *Cauſa ſcientiæ patet.* And this is the Truth as he ſhould anſwer to GOD; and *deponed* he could not write.

WA. PRINGLE.

James Barrie, Servant to *James Carnegie* of *Finhaven*, ſolemnly ſworn, purged, examined and interrogate, *deponed*, That, at the Time and Place libelled, the Deponent was holding his Maſter's Horſes upon the Streets of *Forfar*, near to the Lady *Auchterhouſe*'s Lodging: That he had ſeen the ſaid Earl of *Strathmore*, and other Company with him, go along the Street from the ſaid Lodging, and his Maſter and *Bridgeton* followed at a little Diſtance; heard them converſing together, and thought that *Bridgeton* lookt and ſpoke angry at his Maſter, and demanded that he ſhould give him an Anſwer; did not well hear what his Maſter ſaid, except theſe Words, That he intended to be of that Reſolution ſtill: Whereupon *Bridgeton*, with his two Hands, puſhed his Maſter into the Gutter, at the ſame Time expreſſing himſelf, Go be damn'd, and let that Man take him up for whom he had ſo great a Favour. And the Deponent ſeeing his Maſter lying in the Gutter, quit his Horſes, and came to relieve him, but found that my Lord *Strathmore*'s Servant had helped him out before he came, and then he did ſee his Maſter draw his Sword, and go pretty faſt forward, ſtaggering, and ſaying, This cannot be ſuffered; then his Maſter came up to the Company, and ſaw him make a Puſh at *Bridgeton*; but that before his Maſter came up to them, he did ſee *Bridgeton* make an Attempt to draw my Lord *Strathmore*'s Sword; and as *Bridgeton* was going toward my Lord *Strathmore*, he did ſee *Bridgeton* look over his Shoulder to *Finhaven*, and lookt as if he had been laughing. Obſerved, that when his Maſter made the Puſh, as before mentioned, he ſeemed as if he'd been falling, and ſaw him cloſe upon Lord *Strathmore*: But before this, my Lord *Strathmore* had put *Bridgeton* aſide, and my Lord *Strathmore* had advanced a Step or half a Step toward *Finhaven*; and then they went all in a Crowd thro' other, and he did not know what was doing amongſt them, but did ſee his Maſter's Sword ſtruck out of his Hand by another Sword, and then did ſee his Maſter go down to his Siſter's Lodging. *Deponed*, That as his Maſter was thrown upon the Back in the Gutter, and was covered near over the Belly, and ſaw his Face all beſpattered with Dirt, and ſaw the Mire run out of his Boot-tops as he went up the Street; and *deponed* his Maſter at that Time was very drunk. Being interrogate further, *deponed*, That he has frequently ſeen his Maſter drink, and propoſe the deceaſed Earl of *Strathmore*'s Health at his Table, and this a ſhort Time before the unlucky Accident happened. *Deponed*, That about a Month before, the late Earl and his Maſter was together at *Burnſide*'s Burial, and heard the Earl invite his Maſter to his Houſe, and heard him anſwer, That he intended that very ſoon. *Deponed*, That his Maſter rode with Piſtols that Day, but *deponed* there was not ſo much as a Stone in them. *Deponed*, That eight or ten Days before this unlucky Accident, his Maſter bid the Deponent go to the Taylor, and get his Clothes ready, for he intended as ſoon as he got his Chaiſe home, to go with his Lady and make a Viſit to my Lord *Strathmore* at *Glammis*. *Cauſa ſcientiæ patet.* And this is the Truth as he ſhould anſwer to GOD.

James Barrie.
WA. PRINGLE.

Elisabeth Vilant, Servant to *Margaret Carnegie*, Relict of the deceaſt Mr. *Patrick Lyon*, of *Auchterhouſe*, ſolemnly ſworn, purged, examined and interrogate, *deponed*, That, on the Afternoon of the ninth of *May* laſt, ſhe did ſee my Lord *Strathmore* and *Finhaven* in the Lady *Auchterhouſe*'s Houſe, and did ſee nor hear nothing paſs between them but what was kind and civil; and ſhe was much of the Time in the Room before *Bridgeton* came in: But after he came in, ſhe was but coming and going; and when my Lady called for a Glaſs of Brandy, the Deponent brought it in, and my Lady ſet it by, and ſaw Nobody drink it, and that my Lady told in the Company, That *Bridgeton* had taken her by the Wriſt, and that ſhe had not been ſo ill uſed by any Man, and complained of Pain. And *deponed*, That that Afternoon *Finhaven* appeared to be very drunk. *Cauſa ſcientiæ patet.* And this is the Truth as ſhe ſhould anſwer to GOD.

Elizabeth Vilant.
AD. COCKBURNE.

Isabel Meik, Servant to the before-named and deſigned *Margaret Carnegie*, ſolemnly ſworn, purged, examined and interrogate, *deponed*, That in the Evening on the ninth of *May* laſt, *Finhaven* came up to the Lady *Auchterhouſe*'s Houſe, and the Door being ſhut after him, ſhe came up after into the ſaid Houſe: And ſhe turning about upon ſome People knocking at the Door, and opening the ſame, there came in two or three Noblemen or Gentlemen with drawn Swords; and *Finhaven* being then in the Trance*, ſhe took him by the Sleeve, and put him in the Peat-houſe, and lockt the Door of the Peat-houſe; and when the Bailie came in ſearch of him, ſhe delivered the Key to the Bailie, who took him out. And *deponed*, That *Finhaven* was mortally drunk, and when ſhe ſaw him, he was all beſpattered with Dirt. *Cauſa ſcientiæ patet.* And this is the Truth as ſhe ſhould anſwer to GOD. And *deponed* ſhe could not write.

AD. COCKBURNE.

William Dickſon, Shoemaker in *Forfar*, ſolemnly ſworn, purged, examined and interrogate, *deponed*, That the Time and Place libelled, the Deponent being at his own Stair-foot, ſaw two Gentlemen ſtanding together whom he then did not know, and one of them did throw the other in the Puddle; and that Gentleman who was thrown in the Puddle was taken forth thereof by another whom he did not know: And when he got up, he drew his Sword, and went up towards other three that were ſtanding together, and the Gentleman who threw him in the Puddle was nigh them; he did not ſee the ſaid Gentleman puſh with his Sword at any. *Deponed*, That my Lord *Strathmore* was one of the three that was ſtanding there, did not ſee him fall, but ſaw him carried away. *Deponed*, That after the Mob roſe, he then ſaw *Finhaven* the Pannel, whom he knew to be the Gentleman that was thrown in the Puddle, and that he was chaſed back by two Gentlemen with drawn Swords to my Lady *Auchterhouſe*'s Houſe. *Cauſa ſcientiæ patet.* And this is Truth as he ſhould anſwer to GOD; and cannot write.

W. CALDERWOOD.

David Cauty, Merchant, and one of the Bailies of *Forfar*, ſolemnly ſworn, purged, examined and interrogate, *deponed*, That upon the ninth of *May* laſt, about Nine o'Clock in the Evening, the Deponent being in a Houſe near to the Lady *Auchterhouſe*'s Lodgings, there came a Servant, and told that there was very bad News that Night; That the Earl of *Strathmore* was killed by *Finhaven*: Upon which the Deponent went to the Streets, and there found a great Mob, who told the ſame which he had heard before. Whereupon the Deponent went towards Mr. *Dickſon*'s Houſe, to which Place the Earl of *Strathmore* was carried; and then the Deponent met with, at leaſt did ſee, Mr. *Thomas Lyon* and *Bridgeton*, but cannot be ſure if my Lord *Roſehill* was with them, who went towards the Lady *Auchterhouſe*'s Lodgings: And Mr. *Fletcher* of *Balinſlow* told the Deponent, That he wanted a fore Hammer, to break open the Lady *Auchterhouſe*'s Door; whereupon the Deponent being a Magiſtrate, told, that it was his Duty to preſerve the Peace, and prevent any illegal Proceedings, or bad Conſequences therefrom. Thereafter the Deponent went towards my Lady *Auchterhouſe*'s Lodgings, and there found Mr. *Thomas Lyon* and *Bridgeton*, and demanded their Arms, which they delivered to the Deponent; and thereafter went to the ſaid Lodgings, got Acceſs, my Lady *Auchterhouſe*'s Servant delivering the Key of the Peat-houſe, where he found *Finhaven* lying upon Lint ſpread above the Peats, notwithſtanding at firſt the Lady and her Servants denied he was there; and the Deponent told *Finhaven*, he was his Priſoner; and he aſked the Deponent, how the Earl of *Strathmore* was? And the Deponent told he was very bad, as he was informed. And the Deponent having diſperſed the Mob, cauſed carry *Finhaven* to the Priſon; and when he came to Priſon, he fell a crying to a great Extremity, as if he had been diſtracted, and ſaid, It was the greateſt Misfortune that could happen him; and ſaid, That he deſerved to be hanged for wounding ſuch a worthy Earl: And *deponed*, That *Finhaven* appeared to the Deponent to be in Liquor, and drunk; but he did regret his Misfortune in the ſame Manner as if he had been ſober. *Deponed*, That he was frequently in Priſon with *Finhaven*, and in two or three Days after he was impriſoned, he heard him ſay, That there had been ſome Grudge or Miſunderſtanding betwixt the Earl of *Strathmore* and him, but that afterwards it was better cultivate, and in a manner done away; but did not hear the Cauſe of the ſaid Grudge or Miſunderſtanding expreſt. *Deponed*, That when he heard *Finhaven* regret the Misfortune that had happened the Earl of *Strathmore*, he ſaid the Deſign was againſt another, namely, *Lyon* of *Bridgeton*. *Cauſa ſcientiæ patet.* And this is the Truth as he ſhould anſwer to GOD.

David Cauty.
W. CALDERWOOD.

Alexander Binnie, Provoſt of *Forfar*, ſolemnly ſworn, purged, examined and interrogate, *deponed*, That while the Pannel was in Priſon within the Tolbooth of *Forfar*, he the Deponent did frequently viſit him, and he did hear *Finhaven* ſay, That there had been ſome Miſtakes and Miſunderſtandings betwixt him and my Lord *Strathmore*, on account of a Proceſs of Baſtardy that was depending before the Lords of Seſſion, but did not hear him ſpeak as if he was under any Grudge or Reſentment on that Account. *Deponed*, That about a Month before the ſaid Earl's Death, he the Deponent was occaſionally at a Burial with the ſaid deceaſed Earl and the Pannel, betwixt whom the Deponent obſerved nothing like Miſunderſtanding, but that their Carriage to one another was civil; and particularly remembers, that at the Time *Finhaven* drunk a Glaſs to the Health of the Counteſs of

* *Viz.* Paſſage from the Kitchen to the Chambers.

Strathmore, and after drinking, threw up the Glaſs, which broke with its Fall; and this happened in the Houſe of Clerk *Dickſon* in *Forfar*: And when the Earl of *Strathmore* went to take his Horſe, the Pannel and the Deponent waited of him. And being interrogate, If on that Day he heard the Earl of *Strathmore* invite the Pannel to viſit him? *Deponed negativè*; and, from a Letter put into the Clerk's Hands, apprehends that they were not in a Courſe of Viſiting. *Cauſa ſcientiæ patet.* And this is the Truth as he ſhould anſwer to GOD.

Alex. Binnie.
DA. ERSKINE.

[Follows the Letter relative to the above Depoſition.]

SIR,

" WE propoſe to have an Meeting at your Houſe, on *Tueſday* next, to " finiſh that Affair of Mr. *Martine*'s; wherefore, if your Conve- " niency could allow, I wiſh you would make an Viſit to my Lord *Strath-* " *more*, to ſatisfy him, and that he may ſend one Mandate, ſo as that every " Thing may go on as was propoſed. Your Anſwer is expected by, Sir,

" *Your moſt humble Servant*,
" JA. CARNEGIE."

Finhaven, Third May, One Thouſand Seven Hundred and Twenty-eight.

" Directed on the Back thus,"
To Provoſt " *Alexander Binnie* in *Forfar*."

Edinburgh, Second of *Auguſt*, One Thouſand Seven Hundred and Twenty-eight, This is the Letter to which *Alexander Binnie*, Provoſt of *Forfar*, his Depoſition of this Date relates.

AD. COCKBURNE.

CHarles Carnegie, Brother-german to *Patrick Carnegie* of *Lours*, ſolemnly ſworn, purged, examined, and interrogate, *deponed*, That he knew that there was not a very good Underſtanding betwixt the deceaſed Earl of *Strathmore* and the Pannel, and for the Space of two Years they had not viſited one another; but he never did hear the Pannel expreſs any Grudge or Reſentment againſt my Lord *Strathmore*. Did hear that about two Years ago or thereabouts, there fell out ſome Miſtakes in diſcourſing about a Bargain of Meal; and that the Pannel was, as he heard, that Night at *Glammis*, but went away next Morning about Four o'Clock; but he the Deponent was not preſent with them at ſaid time; but did hear, that what happened betwixt them at that time, gave riſe to ſome Miſunderſtandings. *Cauſa ſcientiæ patet.* And this is the Truth as he ſhould anſwer to GOD.

Charles Carnegie.
DA. ERSKINE.

SIR *Alexander Wedderburn* of *Blackneſs*, ſolemnly ſworn, purged, examined and interrogate, *deponed*, That about the End of *October*, One Thouſand Seven Hundred and Twenty-ſix, there was a Meeting of the Gentlemen of the Shire of *Angus*, concerning their Affairs, in the Town of *Forfar*, where the deceaſt Earl of *Strathmore* was choſen Preſes of the Meeting; and that the Laird of *Finhaven*, who was there alſo, called down the Deponent to the Street, and expreſt himſelf to this Purpoſe: That he had met with ſeveral Diſobligations from the Earl of *Strathmore*, of which there was juſt now an Inſtance, That the Earl being Preſes of the Meeting, had kept him out of a Committee that was then choſen; That the Earl was his Debitor, and was owing him ſeveral Years annual Rents; That he did not much notice, but that he would reſent, or make the Earl repent what he had met with, or Words to that purpoſe: And this he ſaid with an Aſſeveration, and deſired the Deponent to acquaint the Earl with what he had ſaid: But the Deponent refuſed it, and ſaid they were all Friends together, and he would forget it againſt To-morrow. And *deponed*, That he, the Deponent, that ſame Night did ſpeak to my Lord *Gray*, to ſpeak to my Lord *Strathmore*, to get *Finhaven* added to the Committee, ſaying, That would make all Things right; But my Lord *Gray* returned no Anſwer to the Deponent. *Cauſa ſcientiæ patet.* And this is the Truth as he ſhould anſwer to GOD.

Alex. Wedderburn.
WA. PRINGLE.

William Douglas, late Provoſt and Chirurgeon-Apothecary in *Forfar*, ſolemnly ſworn, purged, examined and interrogate, *deponed*, That upon the Ninth of *May* laſt, at Nine o'Clock at Night, the Deponent was called to the Earl of *Strathmore*, who had got a Wound; and having panſed and dreſſed the Wound, he found it went in about three Inches and a Half above the Navel, and came out to the Back-bone, about two Inches below; that he firſt dreſt the Wound in the Belly, and then that in the Back; that the Earl having aſked his Opinion of it; he ſaid he was not without great Hazard, and deſired more Aſſiſtance; whereupon an Expreſs was diſpatched to *Dundee* for Phyſicians; that the Deponent thought the Wound mortal, and did not think any could recover of that Wound; the Earl lived about forty-nine Hours thereafter, and died upon the *Saturday*'s Night, at Ten o'Clock, of the foreſaid Wound. *Deponed*, That the Earl ſaid to him, That *Finhaven* had given him that Wound, and that after he gave the firſt Thruſt, he preſſed the Pomel of the Sword forward with his Breaſt; and that it was the Deponent's Opinion, from what he obſerved, whatever Sword had given that Wound, was either ruſty or had a Nitch in, which brought out the *Omentum* without the Belly; and the Deponent afterward having ſeen the Sword, which was called *Finhaven*'s Sword, he perceived a Nitch in it, ſome more than a Hand-brode from the Hilt. *Cauſa ſcientiæ patet.* And this is the Truth as he ſhould anſwer to GOD.

William Douglas.
WA. PRINGLE.

THomas Crichton, Chirurgeon-Apothecary in *Dundee*, ſolemnly ſworn, purged, examined and interrogate, *deponed*, That upon the Evening of the Ninth of *May* laſt, the Deponent was ſent for from *Dundee*, to wait on the now deceaſt Earl of *Strathmore*, and arrived at *Forfar* next Morning about One o'Clock, and there ſaw the Wound the Earl had received, which appear'd to the Deponent to have been by a Sword, which had entered about three Inches and a half above the Navel, and had gone out at the Back, about four Inches from the Back-bone, a good deal lower than where the Sword entered; and the Deponent ſaid the Wound was mortal to his Apprehenſion; and that the Earl of *Strathmore* died thereof, in about two Days after the receiving of it. And *deponed*, That the Defunct told the Deponent, that *Finhaven* had given him that Wound; that he did not believe he deſigned it for him, and yet there was one Circumſtance which he could not account for, *viz.* That after the Sword had entered his Body, *Finhaven* preſſed it forward, till their Bodies were cloſe together. *Deponed*, That *Bridgeton* is a good deal taller than my Lord *Strathmore* was: And that my Lord *Strathmore* wore a fair Wig, and *Bridgeton* wore a black one uſually. *Cauſa ſcientia patet.* And this is Truth as he ſhould anſwer to GOD.

Tho. Crichton.
AND. FLETCHER.

DR. *John Wedderburn*, Phyſician in *Dundee*, ſolemnly ſworn, purged, examined and interrogate, *deponed*, That he was called to wait on the Earl of *Strathmore*, when he received the Wound upon the Ninth of *May* laſt; and the Deponent ſaw him next Morning early; and upon viewing the Wound, it appeared to the Deponent to have been given by a three-cornered Sword, which had entered about three Inches above the Navel, and went out in the Back on the Left-ſide, ſome Inches from the Back-bone, and about two Inches lower than where it had entered; and the Wound was to the Deponent's Aprehenſion mortal; and accordingly the Earl of *Strathmore* died of that Wound upon *Saturday* Night, about two Days after he had received it; and the Deponent thereafter ſaw the Defunct opened, whereby it appeared, that the Weapon had paſſed through the Caul, the Gut-Colon, and the *Plexus meſentericus*. And *deponed*, That the Defunct told him, that he had an Impreſſion, that the Perſon who gave him the Wound, had, by applying his Belly to the Pomel of the Sword, puſhed it forward upon him. *Deponed*, That *Bridgeton* is of a much taller Stature, than my Lord *Strathmore* was; and that my Lord *Strathmore* uſually wore a fair Wig, and *Bridgeton* a black one. *Cauſa ſcientiæ patet.* And this is the Truth as he ſhould anſwer to GOD.

John Wedderburn.
AND. FLETCHER.

DR. *Charles Fotheringhame*, Phyſician in *Dundee*, ſolemnly ſworn, purged, examined and interrogated, *deponed* conform to *Thomas Crichton*, the former Witneſs, *in omnibus*. *Cauſa ſcientiæ patet.* And this is the Truth as he ſhould anſwer to GOD.

Cha. Fotheringhame.
AD. COCKBURNE.

[Follows the Witneſſes for the Pannel's Exculpation.]

MArgaret Carnegie, Lady *Auchterhouſe*, ſolemnly ſworn, purged, examined and interrogate, *ut ſupra*, *deponed*, That on the Afternoon of the Ninth of *May* laſt, the Earl of *Strathmore*, *Bridgeton*, and *Finhaven*, were in the Deponent's Houſe; ſhe obſerved no manner of Difference betwixt the Earl of *Strathmore* and *Finhaven*; and that the Pannel and the other Company drunk my Lady *Strathmore*'s Health twice over, and the Pannel toſſed up the Glaſs; during that time *Bridgeton* was uſing rough Expreſſions to the Pannel, and was taking him by the Breaſt, and very rude to him; and that when a Glaſs of Brandy was brought, ſhe deſired *Bridgeton* to take a Dram, and he deſired it ſhould be given to *Finhaven*, her Brother; but ſhe ſaid no, for it did appear to her he did not want it, for he was then very drunk; and that *Bridgeton* took her the Deponent by the Wriſt, and ſqueezed it hard, and ſaid it would be no Difficulty to break it; and during the ſame Time, *Bridgeton* took *Finhaven* by the Arm, and ſtruck his Hand down to the Table, and ſaid, Will ye not agree to give one of your Daughters to *Roſehill?* And *Bridgeton* further ſaid, If he was a young Man, and if *Finhaven* refuſed him one of his Daughters, he would maul him, and with that ſhook his Hand over him. And *deponed*, She never knew nor heard of her Brother's being quarrelſome. *Cauſa ſcientiæ patet.* And this is the Truth as ſhe ſhould anſwer to GOD.

Margaret Carnegie.
AD. COCKBURNE.

DR. *John Kinloch*, Phyſician in *Dundee*, ſolemnly ſworn, purged, examined and interrogate, *ut ſupra*, *deponed*, That on the Ninth of *May* laſt, after *Lours*'s Daughter's Burial, the Deponent was in Clerk *Dickſon*'s Houſe in *Forfar*, in a Room with the Pannel, who aſked the Deponent, if he would go into another Room, where the Earl of *Strathmore* was, to ſee his Lordſhip; and accordingly they went into the Room where the Earl was, and ſtayed there about an Hour, and drunk ſeveral Bottles of Wine together; and during that time, he ſaw nothing but mutual Civilities in the Company, without the leaſt Appearance of Quarrels. *Cauſa ſcientiæ patet.* And this is the Truth as he ſhould anſwer to GOD.

John Kinloch.
W. CALDERWOOD.

DAvid Denune, Sadler, in *Canongate*, ſolemnly ſworn, purged, examined and interrogate, *ut ſupra*, *deponed*, That, in the End of *February*, or Beginning of *March* laſt, the deceaſed *Charles* Earl of *Strathmore*, and *Finhaven* the Pannel, with another Gentleman, whom the Deponent did not know, came to the Deponent's Houſe, called for a Dram, which the Deponent ſerved them with himſelf: and the Earl firſt drunk to *Finhaven* and his Family, and then *Finhaven* drunk the Earl of *Strathmore*'s Health and his Family's; and at ſeveral other times, when the Earl was not preſent, the Deponent ſaw and heard *Finhaven* drink to the ſaid Earl of *Strathmore*'s Health. *Deponed*, He has had Occaſion often to ſee *Finhaven*, and be in company with him, and obſerved him always to be of a good Temper, and no ways inclined to Quarrels. *Cauſa ſcientiæ patet.* And this is the Truth as he ſhould anſwer to GOD.

David Denune.
W. CALDERWOOD.

DAvid Ogilvie, Son to Sir *John Ogilvie* of *Inverquharrity*, ſolemnly ſworn, purged, examined and interrogate, *ut ſupra*, *deponed*, That he has had frequent Occaſions of being in company with the Pannel, and has oft-times heard him teſtify his Reſpect and Regard for the late Earl of *Strathmore*, by naming and drinking to his Health; and particularly did hear him do ſo at his own Houſe; in the Month of *March* or *April* laſt, when the Deponent was viſiting him; that is to ſay, did hear him drink both to the Earl's Health and his Counteſs's. *Deponed*, That for theſe three or four Years paſt, he has been intimately acquainted with the Pannel, and obſerved him

him always to be of a good and peaceable Temper; and the Character he always heard him get in the Country, was, That he was of a peaceable and good Temper, and no Ways quarrelsome. *Causa scientiæ patet.* And this is the Truth as he should answer to GOD.

David Ogilvie.
DA. ERSKINE.

MR. *John Martine*, Minister of the Gospel at *Othlo*, solemnly sworn, purged, examined and interrogate, *ut supra*, *deponed*, That he the Deponent having had some Affair to do with the deceased Earl of *Strathmore*, as one of the Heritors within the Deponent's Parish, on which Account the Deponent went to wait of his Lordship at his House of *Glammis*, but had the Misfortune to miss him; and upon his Return, having waited of the Pannel, and spoke to him of the Affair, telling him how he had missed my Lord, and desired that the Pannel would fall upon some Expedient to bring either his Lordship, or some from him, to meet with the rest of the Heritors. Upon which the Pannel advised the Deponent once more to wait of his Lordship at *Glammis*; and for his Recommendation and Introduction, he would write a Letter to the Earl, and acquaint him in it, that he was the Bearer. Accordingly the Pannel did write a Letter to the Earl to the foresaid Purpose, which he delivered to the Deponent; and with it he the Deponent did again go to *Glammis*, and at that Time also had the Misfortune to miss his Lordship: Upon which he the Deponent delivered the Letter to one Mr. *Greenhill*, the Earl's Servant; and the Meeting of the Heritors holding upon the *Wednesday* thereafter, the said Mr. *Greenhill* came from his Lordship, and attended the Meeting: And *deponed*, That the writing of the foresaid Letter, and delivering of it, was about the End of *March*, or Beginning of *April* last. *Deponed*, That the Deponent has for these three Years past been intimately acquaint with the Pannel; and during the whole Course of his Acquaintance, he observed him always to be regular in his Life, and of a peaceable Temper and Disposition, which is the Character he bears in the Country. *Causa scientiæ patet.* And this is the Truth as he should answer to GOD.

John Martine.
DA. ERSKINE.

MR. *James Maxwell*, Minister of the Gospel at *Forfar*, solemnly sworn, purged, examined and interrogate, *ut supra*, *deponed*, That soon after the Earl of *Strathmore* received his Wound, the Deponent waited of him, and from him he went to the Prison and visited the Pannel, whom he found in great Disorder, and under the Impressions of Drunkenness, his Cloaths being all covered with Mire, and his Face besmired with Dirt; the Deponent helped him to take off his Cloaths, and sent for a Coat and some Linens of his own to put on, at least the Coat was his own, which he helped to put on him, and to wash and clean his Face. The Deponent spoke to him suitably to the Occasion of his Visit, both in respect to his Drunkenness, and what was published abroad he had committed upon the Earl of *Strathmore*, by giving him a Wound; upon hearing whereof, and the Deponent further saying, That he had to his great Satisfaction heard the Earl of *Strathmore* pray to God to forgive him: Upon this the Pannel fell into the greatest Disorder, tossing himself backwards and forwards upon a Table, and hanging his Head downwards, cried out, Good GOD! have I wounded the Earl of *Strathmore*, a Person for whom I had great Kindness, and against whom I had no Design. *Causa scientiæ patet.* And this is the Truth as he should answer to GOD.

Ja. Maxwell.
DA. ERSKINE.

The Lords Justice-Clerk and Commissioners of Justiciary, ordained the Assize to inclose instantly, and return their Verdict, in this Place, against To-morrow at Twelve o'Clock, and the haill Fifteen to be then present, each under the Pain of Law, and the Pannel to be carried back to Prison.

Curia Justiciaria S. D. N. *Regis, tenta in novo Sessionis Domo Burgi de* Edinburgh, *tertio Die Mensis* Augusti, *Millesimo septingentesimo vigesimo octavo, per honorabiles Viros* Adamum Cockburne *de* Ormistoun, *Justiciarium Clericum*; *Dominum* Gulielmum Calderwood *de* Poltoun, *Magistrum* Davidem Erskine *de* Dun, *Dominum* Gualterum Pringle *de* Newhall, *et Magistrum* Andream Fletcher *de* Miltoun, *Commissionarios Justiciariæ dict.* S. D. N. *Regis.*

Curia legitime affirmata.

Intran.

James Carnegie of *Finhaven*, Pannel,
Indicted and accused, as in all the former Sederunts.

The foregoing Persons who passed upon the Assize of the above Pannel, returned their Verdict in Presence of the said Lords, and whereof the Tenor follows:

" *Edinburgh*, the Third of *August*, One Thousand Seven Hundred and Twenty-eight Years, the above Assize having inclosed, did choose Sir *Robert Dickson* of *Inveresk* to be their Chancellor, and *George Haliburton* of *Fordel* to be their Clerk: And having considered the Indictment pursued at the Instance of *Susanna*, Countess of *Strathmore*, and Mr. *James Lyon*, Brother-German and nearest of Kin to the deceast *Charles* Earl of *Strathmore*, with Concourse, and at the Instance of *Duncan Forbes*, Esq. his Majesty's Advocate, for his Highness's Interest, against *James Carnegie* of *Finhaven*, Pannel; the Lords Justice-Clerk and Commissioners of Justiciary their Interlocutor thereupon, with the Witnesses Depositions adduced for proving thereof; with the Witnesses Depositions adduced for the Pannel's Exculpation: They, by Plurality of Voices, find the Pannel Not Guilty. In Witness whereof thir Presents are subscribed by our said Chancellor and Clerk, in our Names, Place, Day, Month and Year of GOD above-written."

RO. DICKSON, *Chancellor.*

Geo. Haliburton, Clerk.

The Lords Justice-Clerk and Commissioners of Justiciary, having considered the foregoing Verdict of Assize returned against James Carnegie *of* Finhaven, *Pannel: They assoilzied, and hereby assoilzie him* simpliciter, *and dismissed, and hereby dismiss him from the Bar.*

AD. COCKBURNE.

ABSTRACT of some ACTS of PARLIAMENT, in the very Words of the Statutes themselves, referred to in the foregoing Arguments.

JAMES I. *Parl* 3. *Act* 51. intitled, OF FORETHOUGHT FELONY AND CHAUD MELLA; Statutes, " That as soon as any Complaint is made " to Justices, Sheriffs, Baillies, *&c.* they shall enquire diligently " *(i. e.)* without onie Favour, gif the Deed was done upon Forethought Felony, or throw sudden *chaud mella:* And gif it be " found forethought Felony——the Life and Goods of the Trespasser " to be in the King's Will:———And gif the Trespass be done of " sudden *chaud mella*, the Party skaithed shall follow, and the Party " Transgressor defend, after the Course of the old Laws of the Realm."

James I. *Parl.* 6. *Act* 95. intitled, THE MANSLAYER SULD BE PURSUED UNTIL HE BE PUT FURTH OF THE REALM, OR BROUGHT AGAIN TO THE PLACE OF THE SLAUCHTER; (the Act appointing the Method of pursuing Manslayers) statutes, " That quhairever he happenis " to be takin, that Schireffe, Stuart, or Bailie of the Regality, sall send " him to the Schireffe of the nixt Schireffdom, the quhilk sall receive " him, and send him to the nixt Schireffe, and swafoorth from Schi- " reffe to Schireffe, quhill he be put to the Schireffe of the Schire " where the Deede was done, and there sall the Law be ministred to " the Party: And gif it be forethought Felony, he sall die therefore."

James I. *Parl.* 6. *Act* 95. intitled, OF INQUISITION OF FORETHOUGHT FELONY TO BE TAKEN BY AN ASSIZE; it statutes, " That the Offi- " ciars (*i. e.* the Judges ordinary) shall give them the Knowledge of " an Assize, whether it be forethought Felony, or suddenly done: " And gif it be suddenly done, demain them as the Law treats of be- " fore:——And gif it be forethought Felony,——demain them as Law " will."

James III. *Parl.* 5. *Act* 35. intitled, OF SLAUCHTER, OF FORETHOUGHT FELONY, OF SUDDANTIE, AND FLYING TO GIRTH. *Item*, " Because " of the eschewing of great Slauchter quhich has been right commoun " amongst the King's Lieges, nowe of late, baith of forethought Fe- " lony, and of Suddantie: And because monie Persons commit " Slauchter upon forethought Felony, in truste they sall be defended " throw the Immunitie of the Halie Kirk and Girth, and passis and " remainis in Sanctuaries; it is thought expedient in this present Par- " liament for the stanching of the said Slauchters in Time coming, " quhairever Slauchter is committed on forethought Felony, and the " Committer of the said Slauchter passis and puttis him in Girth, for " the Saftie of his Person, the Schireffe sall come to the Ordinar, in " Places quhair he lies under his Jurisdiction, and in Places exempt to " the Lords Maisters of the Girth, and let them wit, that sick a Man " has committed sick a Crime, on forethought Felony, *tanquam insidi- " ator et per industriam*, for quhilk the Law grants not, nor leaves not " sick Persons to joyis the Immunities of the Kirk. And the Schireffe " sall require the Ordinar to let a Knowledge be taken be an Assize on " fifteen Days, quhidder it be forethought Felony, or not: And if it " be founden forethought Felony, to be punished after the King's " Laws: And if it be founden Suddantie, to be restorid again to the " Freedome and Immunity of Halie Kirk and Girth."

James IV. *Parl.* 3. *Act* 28. intitled, ANENT MANSLAYERS TAKEN OR FUGITIVE; statutes, " That where any happens to be slain within the " Realm, the Manslayer shall be pursued (in a certain Manner), and " wherever he happens to be overtane, that the Schireffe sall incontinent send him to the nixt Schireffe, and so furth, quhill he be put " to the Schireffe of the Schire quhair the Deed was done; and there " sall Justice be incontinent done. And gif it be forethought Felony, " to die therefore."

James V. *Parl.* 4. *Act* 23. intitled, THE MAISTERS OF THE GIRTH SULD MAKE DEPUTIS, QUHA SULD DELIVER MALEFACTURES, THAT MAY NOT BRUIK THE PRIVILEDGE THEREOF; statutes, " That they " should be holden in all Time comeing, to deliver all Committers of " Slauchter upon forethought Felony, that flies to Girth, and others " Trespassers that breaks the same, and may not bruik the Priviledge " thereof, conform to the common Law and the Act of Parliament " made thereupon of before, to the King's Officiars, askand and de- " sireand them to underly the Law."

Follows the intire Act of Charles II. *Parl.* 1. *chap.* 22. intitled, CONCERNING THE SEVERAL DEGREES OF CASUAL HOMICIDE.

" OUR Sovereign Lord, with Advice and Consent of the Estates of " this present Parliament, for removing of all Question and Doubt " that may arise hereafter in criminal Pursuits for Slaughter; STATUTES " and ORDAINS, That the Cases of Homicide after following, *viz.* casual " Homicide, Homicide in lawful Defence, and Homicide committed " upon Thieves and Robbers breaking Houses in the Night; or in Case " of Homicide the Time of masterful Depredation, or in the Pursuit of " denounced or declared Rebels for capital Crimes, or of such who assist " and defend the Rebels and masterful Depredators by Arms, and by " Force oppose the Pursuit and apprehending of them, which shall hap- " pen to fall out in Time coming, nor any of them, shall not be pu- " nished by Death; and that notwithstanding of any Laws or Acts of " Parliament, or any Practic made heretofore, or observed in punishing " of Slaughter: But that the Manslayer, in any of the Cases aforesaid, be " assoilzied from any criminal Pursuit, pursued against him for his Life, " for the said Slaughter, before any Judge criminal within this King- " dom. Providing always, That in the Case of Homicide casual, and of " Homicide in Defence, notwithstanding that the Slayer is by this Act " free from capital Punishment; yet it shall be leisum to the Criminal " Judge, with Advice of the Council, to fine in his Means, to the Use of " the Defunct's Wife and Bairns, or nearest of Kin, or to imprison him. " And his Majesty, with Advice foresaid, declares, That all Decisions given " conform to this Act, since the thirteenth of *February*, one thousand six " Hundred

" Hundred and Forty-nine Years, ſhall be as ſufficient to ſecure all Par-
" ties intereſted, as if this preſent Act had been of that Date: And that
" all Caſes to be decided by any Judges of this Kingdom, in relation to
" caſual Homicide in Defence, committed at any Time heretofore, ſhall
" be decided as is above expreſſed."

MAWGRIDGE's Caſe in the *Queen's-Bench, Term: Hill. 5 Annæ Reginæ.*

AT the Seſſions of the Peace held at *Guildhall, London*, on the Firſt of *July*, in the fifth Year of the Queen, *John Mawgridge* of *London*, Gent. was indicted, for that on the Seventh of *June*, in the ſame Year, he did feloniouſly, voluntarily, and of his Malice forethought, make an Aſſault upon *William Cope*, Gent and with a Sword on the left Part of his Breaſt, near the left Pap, did him ſtrike and pierce, giving him thereby a mortal Wound, of which the ſaid *William Cope* did inſtantly die. Which Indictment being delivered to the Juſtices of Gaol-Delivery for *Newgate*, he was arraigned thereupon, and pleaded Not Guilty.

The Jury found this Special Verdict:

That *William Cope* was Lieutenant of the Queen's Guards in the *Tower*, and the principal Officer then commanding there, and was then upon the Guard in the Guard-Room; and that *John Mawgridge* was then and there, by the Invitation of Mr. *Cope*, in company with the ſaid *William Cope*, and with a certain Woman of Mr. *Cope*'s Acquaintance, which Woman *Mawgridge* did then affront, and angry Words paſſed between them in the Room, in the preſence of Mr. *Cope* and other Perſons there preſent, and *Mawgridge* there did threaten the Woman; Mr. *Cope* did thereupon deſire *Mawgridge* to forbear ſuch Uſage of the Woman, ſaying that he muſt protect the Woman; thereupon *Mawgridge* did continue the reproachful Language to the Woman, and demanded Satisfaction of Mr. *Cope*, to the Intent to provoke him to fight: Thereupon Mr. *Cope* told him 'twas not a convenient Place to give him Satisfaction, but at another Time and Place he would be ready to give it to him, and in the mean time deſired him to be more civil, or to leave the Company: Thereupon *John Mawgridge* roſe up, and was going out of the Room; and ſo going, did ſuddenly ſnatch up a Glaſs-Bottle full of Wine then ſtanding upon the Table, and violently threw it at him, the ſaid Mr. *Cope*, and therewith ſtruck him upon the Head, and immediately thereupon, without any Intermiſſion, drew his Sword, and thruſt him into the Left Part of his Breaſt, over the Arm of one *Robert Martin*, notwithſtanding the Endeavour uſed by the ſaid *Martin* to hinder *Mawgridge* from killing Mr. *Cope*, and gave Mr. *Cope* the Wound in the Indictment mentioned, whereof he inſtantly died. But the Jury do farther ſay, That immediately, in a little Space of Time, between *Mawgridge*'s drawing his Sword and the giving the mortal Wound by him, Mr. *Cope* did ariſe from his Chair where he ſate, and took another Bottle that then ſtood upon the Table, and threw it at *Mawgridge*, which did hit and break his Head; That Mr. *Cope* had no Sword in his Hand drawn all the while; and that after *Mawgridge* had thrown the Bottle, Mr. *Cope* ſpake not. And whether this be Murder or Manſlaughter, the Jury pray the Advice of the Court.

A Day being appointed for the Reſolution of the Court, and the Marſhal required to bring the Priſoner to the Bar, returned he was eſcaped; which being recorded, the Chief-Juſtice gave the Opinion of the Judges in this Manner:

This Record being removed into this Court, the Caſe hath been argued before all the Judges; and all of us, except my Lord Chief-Juſtice *Trevor*, are of Opinion that *Mawgridge* is guilty of Murder.

This hath been a Caſe of great Expectation.

This Diſtinction between *Murder* and *Manſlaughter* only, is occaſioned by the Statute of 23 *H.* VIII. and other Statutes that took away the Benefit of Clergy from Murder committed by Malice prepenſed, which Statutes have been the Occaſion of many nice Speculations.

The Word *Murder* is known to be a Term or a Deſcription of Homicide committed in the worſt Manner, which is no where uſed but in this Iſland, and is a Word framed by our *Saxon* Anceſtors in the Reign of *Canutus* upon a particular Occaſion, which appears by an unconteſted Authority, *Lamb.* 141. In the Laws of *Edward* the *Confeſſor*: *Murdra quidam inventa fuerunt in diebus Canuti Regis, qui poſt acquiſitam Angliam & pacificatam, rogatu Baronum Angliæ remiſit in Daciam exercitum ſuum.* Thereupon a Law was made, That if any *Engliſhman* ſhould kill any of the *Danes* that he had left behind, if he were apprehended, he ſhould be bound to undergo the Ordeal Trial to clear himſelf; and if the Murderer were not found within eight Days, and after that a Month was given, then if he could not be found, the *Ville* ſhould pay forty-ſix Marks, which if not able to pay, it ſhould be levied upon the Hundred. *Bracton* 120. agrees with this Account.

Though this Law ceaſed upon the Expulſion of the *Danes*, yet *William* the *Conqueror* revived it for the Security of his *Normans*, as appears by his Laws, after he had confirmed King *Edward* the *Confeſſor*'s Laws. And *Henry* I. *Anno primo Regni*, afterwards by his Law (as appears in the Addition to *Lambert*) eſtabliſhes, " That if a Man be found ſlain, he ſhould be taken to be a *Frenchman*, if it was not proved that he was an *Engliſhman*, and the Country was bound to enquire whether the Perſon ſlain was an *Engliſhman* or a *Frenchman*." Theſe Inquiſitions were taken before the Coroner, and returned to the Juſtices in *Eyre*, and if the Jury found him an *Engliſhman*, then the Country was to be diſcharged, which Law was called *Engliſhire*, and the Juſtices in *Eyre* were alſo bound to enquire thereof, untill the Statute of 14 *E.* III. which, as it is mentioned in *Stamford*, was aboliſhed.

Hereby a Miſtake upon the Statute of *Marlebridge* is rectified, which is *cap.* 26. *Murdrum de cætero non adjudicatur coram juſticiariis, ubi per infortunium adjudicatum eſt, ſed locum habeat murdrum de interfectis per ſe oniam tantum, & non aliter.* This was not made upon a Suppoſition that he that killed the Perſon ſlain by Misfortune ſhould be hanged, but only to explain, or rather to take off the Rigor of the *Conqueror*'s Law, that the Country ſhould not be compelled to find out the Manſlayer; or if he were found out, he ſhould not undergo the Penalty of that Law. For as the Law ſtood, or was interpreted before that Statute, if a Man was found to be ſlain, it was always intended, 1. That he was a *Frenchman*. 2. That he was killed by an *Engliſhman*. 3. That Killing was Murder. 4. If any one was apprehended to be the Murderer, he was to be tried by Fire and Water, though he killed him by Misfortune; which was extended beyond Reaſon and Juſtice in favour of the *Normans*: But if an *Engliſhman* was killed by Misfortune, he that killed him was not in Danger of Death, becauſe it was not Felony. For, ſaith *Bracton* (who wrote the latter End of *H.* III.) *fol.* 136. " He that killed a Man by Misfortune, was to be diſcharged." 5. If the Malefactor was not taken, then the Country was to be amerced. But by the Statute of *Marlebridge*, if it was known that the Perſon ſlain was a *Frenchman*, and was killed by Misfortue, then the Country ſhould not be amerced if the Manſlayer was not taken; or if he were taken, he ſhould not be put to his Ordeal Trial. This ſeems to be the true Meaning of that Statute.

But, *ſecondly*, it will appear to a Demonſtration, That before that Statute, he that killed an *Engliſhman per infortunium* was never in any Danger of Death; for this Statute of *Marlebridge* was made 52 *H.* III. The Statute of *Magna Charta* was conſummate 9 *H.* III. and that ſuppoſes, " That every one impriſoned for the Death of a Man, and not thereof indicted, might of Right purſue the Writ *de odio & atia*; and if it was found that the Perſon impriſoned killed him *ſe defendendo*, or *per infortunium*, and not *per felonium*, then he was to be bailed." Which ſhews that he was not in danger of Death; for if he had, he would not have been let to Bail, 2 *Inſt.* 42.

Hereby I have given a true Account of the Senſe of the Word *Murder*, what it was when (firſt in the Time of *Canutus*) a *Dane*, and ſince (in *William* the *Conqueror*) when a *Frenchman* was killed; for, as it was then ſuppoſed in the Time of *Canutus*, the *Engliſhmen* hated the *Danes* upon the account of their Nation that had ſubdued them, and would upon all Occaſions ſeek their Deſtruction, as they did of a conſiderable Number of them in the Time of *Ethered*, the *Saxon* King that preceded *Canutus* next ſave one; ſo the *Conqueror* had the ſame Reaſon to ſuſpect the Safety of his *Normans*.

Afterwards, as appears by the *Confeſſor*'s Laws, *Lamb.* 141. the ſecret or inſidious killing of any other as well as a Foreigner was declared to be *Murder*. *Bracton* 120, 134, 135. Murder is thus defined, *Eſt occulta hominum extraneorum & notorum occiſio manu hominum nequiter perpetrata.* With which agrees the other old Books of *Britton* and *Fleta*: Only in caſe of a Foreigner it was penal to the Country; not of a Native.

Next, it may be neceſſary to ſhew what was to be underſtood by *Homicide* or *Manſlaughter*. *Bracton* 128. mentions the worſt Part of it, which is a *voluntary Homicide*, defined in this Manner: *Si quis ex certa ſcientia & in aſſultu præmeditato, ira, vel odio, vel cauſa lucri, nequiter & in felonia, ac contra pacem Domini Regis alquem interfecerit*: If one knowingly, and by a permeditated Aſſault, by Anger or Hatred, or for Lucre-Sake, ſhould kill another, this was accounted *Manſlaughter*; If it be done *clanculo*, ſaith *Bracton*, it is *Murder*: That was all the Difference there was between the one and the other.

It appears, that ſince that of *Bracton* the Notion of *Murder* is much altered, and comprehends all *Homicides*, whether privately or publickly committed, if done by Malice prepenſed. With this agrees *Stam. Pl. Cor.* 18. b. " At this Day *(ſaith he)* a Man may define Murder in another Manner than it is defined by *Bracton*, *Britton* and *Fleta*: If any one of Malice prepenſed doth kill another, be he *Engliſhman* or Foreigner, if ſecretly or publickly, that is Murder: This was the Definition long before the making of the Statutes of 4 & 23 *H.* VIII. and the other Statutes that took away Clergy." To define *Murder*, there muſt be *malitia præcogitata*, as alſo *murdravit*: So that if an Indictment be that the Party *murdravit*, and not *ex malitia præcogitata*, it is but *Manſlaughter*, *Yel.* 204. 2 *Cro.* 283. 1 *Bul.* 141. *Bradly & Banks.* So if it be *ex malitia præcogitata*, omitting *murdravit*, it is but *Manſlaughter*, *Dyer* 261. *Pl.* 26—304. *Pl.* 56. *Vide Stat.* 10 *E.* III. *cap.* 2. The Parliament complained that Murderers, *&c.* were encouraged to offend, becauſe Pardons of Manſlaughters were granted ſo eaſily; the Act therefore prohibits the granting thereof. 13 *R.* II. recites the ſame Miſchief, and great Damage by Treaſons, Murders, *&c.* becauſe Pardons have been eaſily granted: Therefore the Act doth provide, " That if a Charter for the Death of a Man be alledged before any Juſtice, in which Charter it is not ſpecified that he of whoſe Death any ſuch is arraigned was murdered or ſlain by Await, Aſſault or Malice prepenſed, it ſhall be enquired, whether he was murdered or ſlain by Aſſault, Await, or Malice prepenſed; and if it be ſo found, the Charter of Pardon ſhall be diſallowed." This is a plain Deſcription of *Murder*, as it was taken to be according to the common Underſtanding of Men.

Ever ſince the killing of a Man by Aſſault of Malice prepenſed hath been allowed to be Murder, and to comprehend the other two Inſtances. But becauſe that Way of killing by Poiſon did not come under the ancient Definition of *Bracton*, &c. which is ſaid to be *manu hominum perpetrata*, or of this Statute of 13 *R.* II. Therefore by the Statute of 1 *E.* VI. *c.* 12. it was enacted, " That wilful poiſoning of any Perſon ſhould be accounted wilful Murder of Malice prepenſed."

One Thing more is fit to be obſerved, That in all Indictments for Murder a Man is not charged poſitively, that he did murder the Perſon ſlain, but that he *ex malitia præcogitata, in ipſum inſultum fecit, ac cum quodam gladio*, he gave him a Wound whereof he died: *Et ſic ex malitia præcogitata ipſum murdravit*, ſo the Murder is charged upon him by way of Concluſion, and as a Conſequence from the antecedent Matter that is poſitively alledged. To come cloſe to a State of the preſent Queſtion, It doth appear that *Mawgridge* threw the Bottle at Mr. *Cope* without any Provocation given to him; for the Difference was between him and the Woman that was there in Company, and his Behaviour was ſo rude and diſtaſteful as did induce Captain *Cope* to deſire him to leave the Room, where he was only a Gueſt to him, and there by his Permiſſion; this *Cope* might reaſonably do, which could be no Cauſe to provoke *Mawgridge* to make the leaſt Aſſault upon him: Therefore I ſhall maintain theſe three Poſitions:

1. That in this Caſe there is expreſs Malice by the Nature and Manner of *Mawgridge*'s throwing the Bottle, and drawing his Sword immediately thereupon.

2. That Mr. *Cope*'s throwing a Bottle at *Mawgridge*, whereby he was hit and hurt before he gave Mr. *Cope* the mortal Wound, cannot make any Alteration in the Offence by reducing it to be of ſo low a Degree as Manſlaughter.

3. I ſhall conſider what is ſuch a Provocation, as will make the Act of killing to be but a Manſlaughter only.

1. He ce

1. Here is expreſs Malice, that appears by the Nature of the Action. Some have been led into a Miſtake, by not well conſidering what the Paſſion of Malice is; they have conſtrued it to be a Rancour of Mind lodged in the Perſon killing, for ſome conſiderable Time before the Commiſſion of the Fact, which is a Miſtake ariſing from the not well diſtinguiſhing between Hatred and Malice. Envy, Hatred, and Malice, are three diſtinct Paſſions of the Mind.

1ſt. Envy properly is a repining, or being grieved at the Happineſs and Proſperity of another, *Invidus alterius rebus macreſcit opimis.*

2dly, Hatred, which is *odium*, is, as *Tully* ſaith, *Ira inveterata*, a Rancour fixed and ſettled in the Mind of one towards another, which admits of ſeveral Degrees. It may arrive to ſo high a Degree, and may carry a Man ſo far as to wiſh the Hurt of him, though not to perpetrate it himſelf.

3dly. Malice is a Deſign formed of doing Miſchief to another; *Cum quis data opera male agit*, he that deſigns and uſeth the Means to do ill, is malicious, 2 *Inſt.* 42. *Odium* ſignifies Hatred, *atia* Malice, becauſe it is eager, ſharp, and cruel. He that doth a cruel Act voluntarily, doth it of Malice prepenſed, 3 *Inſt.* 62. By the Statute of 5 *Hen.* IV. If any one out of Malice prepenſed ſhall cut out the Tongue, or put out the Eyes of another, he ſhall incur the Pain of Felony. If one doth ſuch a Miſchief on a ſudden, that is Malice prepenſed; for, ſaith my Lord *Coke*, "If it "be voluntarily, the Law will imply Malice." Therefore when a Man ſhall, without any Provocation, ſtab another with a Dagger, or knock out his Brains with a Bottle, this is expreſs Malice, for he deſignedly and purpoſely did him the Miſchief. This is ſuch an Act that is malicious in the Nature of the Act itſelf, if found by a Jury, though it be ſudden, and the Words *ex malitia præcogitata* are not in the Verdict, 1 *Cro.* 131. *Halloway*'s Caſe, who was Woodward of *Oſterly-Park*, in *Middleſex*; a Boy came there to cut [ſteal] Wood, whom by Chance he eſpying, and the Boy being upon a Tree, he immediately calls to him to deſcend, which the Boy obeying, *Halloway* tied him to an Horſe's Tail with a Cord that the Boy had, then gave him two Blows, the Horſe ran away and brake the Boy's Shoulder, whereof he died. This was ruled to be Murder by all the Juſtices and Barons, except Juſtice *Hutton*, who only doubted thereof; and that was a ſtronger Caſe than this; for there was ſome Kind of Provocation in the Boy, who was ſtealing the Wood in the Park, of which *Halloway* had the Care; and it cannot be reaſonably thought, that he deſigned more than the Chaſtiſement of the Boy, and the Horſe running away in that Manner was a Surprize to *Halloway*; yet in regard the Boy did not reſiſt him, his tying him to the Horſe's Tail was an Act of Cruelty, the Event whereof proving ſo fatal; it was adjudged to be Malice prepenſed, though of a ſuddain, and in the Heat of Paſſion. This Caſe is reported in *Jones*, 198. *Pal.* 585. And there held, that the Court could determine it to be Malice prepenſed upon the ſpecial Matter found, *Crompton* 23. Two playing at Tables fall out in their Game, one upon a ſuddain kills the other with a Dagger: This was held to be Murder by *Bromley* at *Cheſter* Aſſizes, 27 *Eliz.* So in this Caſe, if the Bottle had killed Mr. *Cope* before he had returned the Bottle upon *Mawgridge*, that would have been Murder without all Manner of Doubt.

In the ſecond Place, I come now to conſider whether Mr. *Cope*'s returning a Bottle upon *Mawgridge* before he gave him the mortal Wound with the Sword, ſhall have any Manner of Influence upon the Caſe: I hold not. *Firſt*, Becauſe *Mawgridge* by his throwing the Bottle had manifeſted a malicious Deſign. *Secondly*, His Sword was drawn immediately to ſupply the Miſchief which the Bottle might fall ſhort of. *Thirdly*, The throwing the Bottle by Captain *Cope* was juſtifiable and lawful; and though he had wounded *Mawgridge*, he might have juſtified it in an Action of Aſſault and Battery, and therefore cannot be any Provocation to *Mawgridge* to ſtab him with his Sword. That the throwing the Bottle is a Demonſtration of Malice is not to be controverted; for if upon that violent Act he had killed Mr. *Cope*, it had been Murder. Now it hath been held, That if *A.* of his Malice prepenſed aſſaults *B.* to kill him, and *B.* draws his Sword and attacks *A.* and purſues him, then *A.* for his own Safety gives back, and retreats to a Wall, *B.* ſtill purſuing him with his drawn Sword, *A.* in his Defence kills *B.* This is Murder in *A.* For *A.* having Malice againſt *B.* and in purſuance thereof endeavouring to kill him, is anſwerable for all the Conſequences, of which he was the original Cauſe. It is not reaſonable for any Man that is dangerouſly aſſaulted, and when he perceives his Life in Danger from his Adverſary, but to have Liberty for the Security of his own Life, to purſue him that maliciouſly aſſaulted him; for "he that hath manifeſted that he hath Malice againſt another, is not fit to be truſted with a dangerous Weapon in his Hand *," *Dalt.* 292. *Hale* 42. And ſo reſolved by all the Judges, 18 *Car.* II. when they met in *Serjeants-Inn*, in Preparation for my Lord *Morley*'s Trial, *Dal.* 272. If *A.* of Malice prepenſed, diſcharge a Piſtol at *B.* and then runs away, *B.* purſues him, and *A.* turns back, and in his own Defence kills *B.* It is Murder. This I hold to be good Law; for *A.* had a malicious Intent againſt *B.* and his Retreat after he had diſcharged his Piſtol at *B.* was not becauſe he repented, but for his own Safety.

In a ſet Duel, there are mutual Paſſes made between the Combatants, yet if there be original Malice between the Parties, it is not the Interchange of Blows will make an Alteration, or be any Mitigation of the Offence of Killing. Therefore I hold, if *Mawgridge* had thrown the Bottle at Mr. *Cope*, and Mr. *Cope* had returned another upon him, and hit him, and thereupon *Mawgridge* had drawn his Sword and killed Mr. *Cope*, it would have been Murder. Some will ſay, that there is a Difference between the Caſes; for that the Aſſault by the Piſtol, and the fighting a Duel was expreſs Malice, but this is only Malice implied. Surely there is no Difference, for Malice implied is prepenſed, as much as if there had been a Proof of Malice, or Hatred for ſome conſiderable time before the Act; for the Stroke given, or an Attempt made by Malice implied, is as dangerous as a Stroke given upon Malice expreſſed, therefore may be as lawfully reſiſted. This very Point was alſo conſidered by the Twelve Judges at *Serjeants-Inn*, and by them reſolved to be Murder upon the Occaſion of my Lord *Morley*'s Caſe. When a Man attacks another with a dangerous Weapon without any Provocation; that is expreſs Malice from the Nature of the Act, which is cruel. The Definition of Malice implied is where it is not expreſs in the Nature of the Act; as where a Man kills an Officer that had Authority to arreſt his Perſon: The Perſon who kills him in Defence of himſelf from the Arreſt, is guilty of Murder, becauſe the Malice is implied, for properly and naturally it was not Malice, for his Deſign was only to defend himſelf from the Arreſt.

3. I come now to the third Matter propoſed, which is, to conſider what is in Law ſuch a Provocation to a Man to commit an Act of Violence upon another, whereby he ſhall deprive him of his Life, ſo as to extenuate the Fact, and make it to be a Manſlaughter only. *Firſt*, *Negatively*, what is not. *Secondly*, Poſitively, what is. *Firſt*, No Words of Reproach or Infamy are ſufficient to provoke another to ſuch a Degree of Anger as to ſtrike, or aſſault the provoking Party with a Sword, or to throw a Bottle at him, or ſtrike him with any other Weapon that may kill him; but if the Perſon provoking be thereby killed, it is Murder.

In the Aſſembly of the Judges, 18 *Car.* II. this was a Point poſitively reſolved.

Therefore I am of Opinion, That if two are in Company together, and one ſhall give the other contumelious Language (as ſuppoſe *A.* and *B.*), *A.* that was ſo provoked draws his Sword, and makes a Paſs at *B.* *B* (then having no Weapon drawn) but miſſes him. Thereupon *B.* draws his Sword, and paſſes at *A.* And there being an Interchange of Paſſes between them, *A.* kills *B.* I hold this to be Murder in *A.* for *A.*'s Paſs at *B.* was malicious, and what *B.* afterwards did was lawful. But if *A.* who had been ſo provoked, draws his Sword, and then before he paſſes, *B*'s Sword is drawn; or *A.* bids him draw, and *B.* thereupon drawing, there happen to be mutual Paſſes: If *A.* kills *B.* this will be but Manſlaughter, becauſe it was ſuddain; and *A.*'s Deſign was not ſo abſolutely to deſtroy *B.* but to combat with him, whereby he run the Hazard of his own Life at the ſame Time. But if Time was appointed to fight (ſuppoſe the next Day), and accordingly they do fight, it is Murder in him that kills the other. But if they go into the Field immediately and fight, then but Manſlaughter. Suppoſe upon provoking Language given by *B.* to *A.* *A.* gives *B.* a Box on the Ear, or a little Blow with a Stick, which happens to be ſo unlucky that it kills *B.* who might have ſome Impoſtume in his Head, or other Ailment which proves the Cauſe of *B.*'s Death, this Blow, though not juſtifiable by Law, but is a Wrong, yet it may be but Manſlaughter, becauſe it doth not appear that he deſigned ſuch a Miſchief.

2. *Secondly*, As no Words are a Provocation, ſo no affronting Geſtures are ſufficient, though never ſo reproachful; which Point was adjudged, 3 *Cro.* 779. *Wats* and *Braim*, in an Appeal of Murder.

There having been a Quarrel between *A.* and *B.* and *B.* was hurt in the Fray; and about two Days after *B.* came and made a wry Mouth at *A.* who thereupon ſtruck him upon the Calf of the Leg, of which he inſtantly died. It was Murder in *A.* for the affronting him in that Manner was not any Provocation to *B.* to uſe that Violence to *A.*

There hath been another Caſe, which I fear hath been the Occaſion of ſome Miſtake in the Deciſion of Queſtions of this Kind, *Jones* 432. *D. Williams*'s Caſe, he being a *Welſhman*, upon St. *David*'s Day having a Leek in his Hat, a certain Perſon pointed to a *Jack of Lent* that hung up hard by, and ſaid to him, Look upon your Countryman; at which *D. Williams* was much enraged, and took a Hammer that lay upon a Stall hard by, and flung at him, which miſſed him, but hit another and killed him: He was indicted upon the Statute of Stabbing. Reſolved, He was not within that Statute, but guilty of Manſlaughter at Common Law. I concur with that Judgment, that it is not within the Statute of Stabbing, for it is not ſuch a Weapon, or Act that is within that Statute, neither could he be found guilty of Murder, but only of Manſlaughter, for the Indictment was for no more. But if the Indictment had been for Murder, I do think that the *Welſhman* ought to have been convicted thereof, for the Provocation did not amount to that Degree, as to excite him deſignedly to deſtroy the Perſon that gave it him.

3. *Thirdly*, If one Man be treſpaſſing upon another, breaking his Hedges, or the like, and the Owner, or his Servant, ſhall upon Sight thereof take up an Hedge-ſtake, and knock him on the Head; that will be Murder, becauſe it was a violent Act, beyond the Proportion of the Provocation, which is ſufficiently juſtified by *Halloway*'s Caſe, who did not ſeem to intend ſo much the Diſtruction of the young Man that ſtole the Wood, as that he ſhould endeavour to break his Skull or knock out his Brains, yet uſing that violent and dangerous Action of tying him to the Horſe's Tail, rendered him guilty of Murder.

If a Man ſhall ſee another ſtealing his Wood, he cannot juſtify beating him, unleſs it be to hinder from ſtealing any more; (that is) that notwithſtanding he be forbid to take any, doth proceed to take more, and will not part with that which he had taken. But if he deſiſts, and the Owner or Woodward purſues him to beat him ſo as to kill him, it is Murder.

If a Man goes violently to take another Man's Goods, he may beat him off to reſcue his Goods, 9 *E.* IV. 281. b. 19 *Hen.* VI. 31. But if a Man hath done a Treſpaſs, and is not continuing in it; and he that hath received the Injury ſhall thereupon beat him to a Degree of Killing, it is Murder, for it is apparent Malice; for in that Caſe he ought not to ſtrike him, but is a Treſpaſſor for ſo doing.

4. *Fourthly*, If a Parent or a Maſter be provoked to a Degree of Paſſion by ſome Miſcarriage of the Child or Servant, and the Parent or Maſter ſhall proceed to correct the Child or Servant with a moderate Weapon, and ſhall by Chance give him an unlucky Stroke, ſo as to kill him; that is but a Miſadventure. But if the Parent or Maſter ſhall uſe an improper Inſtrument in the Correction; then if he kills the Child or the Servant, it is Murder: And ſo was it reſolved by all the Judges of the *King's-Bench*, with the Concurrence of the Lord Chief-Juſtice *Bridgman*, in a ſpecial Verdict in one *Gray*'s Caſe, found at the *Old Bailey*, 10th *October* 18 *Car.* II. and removed into this Court, *Kelyng*, p. 64 *Gray* being a Smith, *B.* was his Servant; he commanded *B.* his Servant to mend certain Stamps belonging to his Trade; afterwards he and his Servant being at

* Judge *Foſter*, in his Reports, p. 274—5. ſays, in *Mawgridge*'s Caſe, "He, upon Words of Anger between him and Mr. *Cope*, threw a Bottle with great Violence at "the Head of Mr. *Cope*, *and immediately drew his Sword*, Mr. *Cope* returned the Bottle with equal Violence; it was, ſaith Lord *Holt*, lawful and juſtifiable in Mr. *Cope* ſo "to do: *For*, as he argueth a little afterwards, *He that hath ſhewn that he hath Malice againſt another, is not fit to be truſted with a dangerous Weapon in his Hand.*"——Upon which the Judge obſerves, "It was upon this Principle I preſume (and poſſibly, too, upon the Rule laid down touching the Arreſt of a Perſon who had given a dangerous "Wound), that the Legiſlature in that Caſe of the Marquis *De Guiſcard*, who ſtabbed Mr. *Harley* ſitting in Council, (9 *Ann.* cap. 16.) diſcharged the Party who was ſup- "poſed to have given him the mortal Wound, from all Manner of Proſecution on that Account; and declared the Killing to be a *lawful* and *neceſſary Action.*"

Work at the Anvil, *Gray* asked his Servant whether he had mended the Stamps, as he had directed him. But *B* the Servant having neglected his Duty acknowledged it to his Master; upon which the Master was angry, and told him if he would not serve him, he should serve at *Bridewel*; to which the Servant replied, That he had as good serve in *Bridewel* as serve the said *Gray*; whereupon the said *Gray* took the Iron-Bar upon which he and his Servant was working, and struck his Servant with it upon the Skull, and thereby brake his Skull, of which the Servant died. This was held to be Murder; yet here was a Provocation on a sudden, as sudden a Resentment, and as speedy putting it in Execution; for though he might correct his Servant both for his Neglect and Unmannerliness, yet exceeding Measure therein, it is malicious. Every one must perceive that this last is a stronger Case than this at Bar.

1. *First*, *Gray* was working honestly and fairly at his Trade, and justly calling to his Servant for an Account of his Business: This Miscreant was in the actual Violation of all the Rules of Hospitality.

2. *Secondly*, *Gray*'s Action was right, as to the striking his Servant by way of Correction; but the Error was in the Degree, being too violent, and with an improper Weapon. This of *Mawgridge* was with a Resolution to do Mischief.

3. *Thirdly*, He had not the least Provocation from Mr. *Cope*, until after he had made the first and dangerous Assault, and then pursued it with the drawing his Sword to second it, before Mr. *Cope* returned the other Bottle. But *Gray* had a Provocation by the Disappointment his Servant gave him in neglecting his Business, and returning a saucy Answer.

The like in obstinate and perverse Children, they are a great Grief to Parents, and when found in ill Actions, are a great Provocation. But if upon such Provocation the Parent shall exceed the Degree of Moderation, and thereby in chastising kill the Child, it will be Murder. As if a Cudgel in the Correction that is used be of a large Size, or if a Child be thrown down and stamped upon: So said the Lord *Bridgeman* and Justice *Twisden*, and that they ruled it so in their several Circuits.

5. If a Man upon a sudden Disappointment by another shall resort violently to that other Man's House to expostulate with him, and with his Sword shall endeavour to force his Entrance, to compel that other to perform his Promise, or otherwise to comply with his Desire; and the Owner shall set himself in Opposition to him, and he shall pass at him, and kill the Owner of the House, it is Murder, 2 *Roll. Rep.* 460. *Clement* against Sir *Charles Blunt*, in an Appeal of Murder. The Case was, that *Clement* had promised a Dog to Sir *Charles Blunt*; and being requested accordingly to deliver him, refused, and beat the Dog home to his House: At which Sir *Charles Blunt* fetched his Sword, and came to *Clement*'s House for the Dog. *Clement* stood at the Door, and resisted his Entry. *Blunt* thereupon kills *Clement*. The Jury were merciful, and found this Fact in Sir *Charles Blunt* to be but Manslaughter. *Dodderidge* was clearly of Opinion it was Murder. But the Lord Chief-Justice was a little tender in his Direction to the Jury. But *Rolls* makes this Remark, that it was not insisted upon by the Appellant's Counsel, that *Clement* was in the Defence of his House, and that *Blunt* attacked *Clement* to force in: It was without all Question Murder, though of a sudden Heat, for there was no Assault made by *Clement* upon him nor on any of his Friends, but all the Violence and Force was on Sir *Charles Blunt*'s Side.

Having in these Particulars shewn what is not a Provocation sufficient to alleviate the Act of Killing, so as to reduce it to be but a bare *Homicide*, I will now, *secondly*, give some particular Rules, such as are supported by Authority and general Consent, and shew what are always allowed to be sufficient Provocations.

1. *First*, If one Man upon angry Words shall make an Assault upon another, either by pulling him by the Nose, or filliping upon the Forehead, and he that is so assaulted shall draw his Sword, and immediately run the other through, that is but Manslaughter; for the Peace is broken by the Person killed, and with an Indignity to him that received the Assault. Besides, he that was so affronted might reasonably apprehend, that he that treated him in that Manner might have some further Design upon him.

There is a Case in *Stiles*, 467. *Buckner*'s Case. *Buckner* was indebted, and *B* and *C* came to his Chamber upon the Account of his Creditor to demand the Money, *B* took a Sword that hung up, and was in the Scabbard, and stood at the Door with it in his Hand undrawn, to keep the Debtor in until they could send for a Bailiff to arrest him; thereupon the Debtor took out a Dagger which he had in his Pocket and stabbed *B*. This was a Special Verdict, and adjudged only Manslaughter, for the Debtor was insulted, and imprisoned injuriously without any Process of Law, and though within the Words of the Statute of Stabbing, yet not within the Reason of it.

2. *Secondly*, If a Man's Friend be assaulted by another, or engaged in a Quarrel that comes to Blows, and he, in the Vindication of his Friend, shall on a sudden take up a mischievous Instrument and kill his Friend's Adversary, that is but Manslaughter; so was the Case, 12 *Rep.* 87. If two be fighting together, and a Friend of the one takes up a Bowl on a sudden, and with it breaks the Skull of his Friend's Adversary, of which he died, that is no more than Manslaughter. So it is, if two be fighting a Duel, though upon Malice prepensed; and one comes and takes Part with him, that he thinks may have the Disadvantage in the Combat, or it may be that he is most affected to, not knowing of the Malice, that is but Manslaughter, *Pl. Com.* 101. *John Vaughan* and *Salisbury*.

3. *Thirdly*, If a Man perceives another by Force to be injuriously treated, pressed, and restrained of his Liberty, though the Person abused doth not complain, or call for Aid or Assistance; and others out of Compassion shall come to his Rescue, and kill any of those that shall so restrain him, that is Manslaughter, 18 *Car.* II. adjudged in this Court upon a Special Verdict found at the *Old-Bailey*, in the Case of one *Hugett*, 18 *Car.* II. *Kelyng*, p. 59. *A* and others in the time of the *Dutch* War without any Warrant impressed *B* to serve the King at Sea; *B* quietly submitted and went off with the Press-Masters; *Hugett* and the others pursued them and required a Sight of their Warrant; but they shewed a Piece of Paper, that was not a sufficient Warrant: Thereupon *Hugett* with the others drew their Swords, and the Press-Masters theirs, and so there was a Combat, and those who endeavoured to rescue the pressed Man killed one of the pretended Press-Masters. This was but Manslaughter; for when the Liberty of one Subject is invaded, it affects all the rest: It is a Provocation to all People, as being of ill Example and pernicious Consequence. All the Judges of the *King's-Bench*, viz. *Kelyng*, *Twisden*, *Wyndham* and *Moreton* were of Opinion, that it was Murder, because he meddled in a Matter in which he was not concerned: But the other Eight Judges of the other Courts conceived it only Manslaughter, to which the Judges of the *King's-Bench* did conform, and gave Judgment accordingly.

4. *Fourthly*, When a Man is taken in Adultery with another Man's Wife, if the Husband shall stab the Adulterer, or knock out his Brains, This is bare Manslaughter; for Jealousy is the Rage of a Man, and Adultery is the highest Invasion of Property, 1 *Vent.* 158. *Raymond* 213. *Manning*'s Case.

If a Thief comes to rob another, it is lawful to kill him. And if a Man comes to rob a Man's Posterity and his Family, yet to kill him is Manslaughter; so is the Law, though it may seem hard, that the Killing in the one Case should not be as justifiable as the other, *Lev.* xx. *Ver.* 10. *If one committeth Adultery with his Neighbour's Wife, even he the Adulterer and the Adulteress shall be put to Death.* So that a Man cannot receive a higher Provocation. But this Case bears no Proportion with those Cases that have been adjudged to be only Manslaughter, and therefore the Court being so advised doth determine that *Mawgridge* is guilty of Murder. More might be said upon this Occasion; yet this may at present suffice to set the Matter now in question in its true Light, to shew how necessary it is to apply the Law to exterminate such noxious Creatures.

Upon this Conviction the Court did direct that Process should be issued against *Mawgridge*, and so to proceed to Outlawry if he cannot be retaken in the mean time.

The Case was, Mr. *Cope* (a younger Branch of the *Copes* of *Bramsel*, in *Hampshire*, Barts.) having got a Lieutenant's Commission in the Guards, invited some Officers and other Gentlemen to dine with him at the *Delphin* Tavern in *Tower-Street*, *June* 17, 1706, in order to wet his Commission; one of the Gentlemen took *Mawgridge* along with him, telling him he would be as welcome to Mr. *Cope* as any of the Company; upon that he went, and after Dinner was over, and paid for by Mr. *Cope*, they all staid a while longer, and had more Wine brought in, and paid Half a-Crown each for their Club; then they broke up, and most of them went away; but Mr. *Mawgridge* and the rest being invited by Mr. *Cope* to the Guard-Room in the *Tower*, went with him, and called for Wine. Two Bottles were accordingly brought; and as they were drinking, a Coach came to the Guard-Room Door with a Woman in it (of no very modest Behaviour), and asked for Capt. *Cope*; whereupon he and *Mawgridge* went to the Coach-Door, and brought her into the Guard-Room; where having been a-while, she cried, *Who shall pay for my Coach?* Upon this Mr. *Mawgridge* said, *I will*, and so discharged the Coach; then he offered *to salute her*, but she rejected him, and gave him ill Words; to which he made Returns of the like Kind; on which Lieut. *Cope* took the Woman's Part; and then *Mawgridge* demanded Satisfaction of Mr. *Cope*, in order to provoke him to fight, *&c. &c.* and killed Mr. *Cope*. Upon this *Mawgridge* was tried at the *Old-Bailey* in *July* 1706, for the Murder, and a Special Verdict found, wherein all the Particulars are related, as before-mentioned:—But before the arguing the Special Verdict, he made his Escape out of the *Marshalsea*, where he was confined; and that Night went to his Father, Major *Mawgridge*, who with his Wife (*Mawgridge*'s Mother-in-Law) washed and rubbed him all over with green Walnut Shucks and Walnut Liquor to disguise him, and then all three set out in the Night, and walked above 30 Miles into *Essex*, where the Father gave One Hundred Guineas to a Master of a Vessel, near *Colchester*, to carry him safe to *Holland*, which he did; there he was concealed above a Year and half; for though he was a very handsome Man, he was so disfigured scarce any one knew him; he spoke *French* and *Spanish* generally and mighty well; but at last being at a Tavern at *Ghent* in *Flanders*, and a little too merry, he spoke *English* so fluently, and by some Expressions he dropt, became suspected, seized (a large Reward having been offered for apprehending him), and on Examination found to be the Man who killed Mr. *Cope*, was brought over to *England* in *March* 1707-8, and being brought to the *King's-Bench* Bar, received Sentence of Death, and was executed at *Tyburn*, on *Wednesday*, *April* 28, 1708, with *William Gregg*, for High-Treason (whose Case will be inserted in the *Appendix*). The Ordinary says, *Mawgridge* went in a Coach with him (and *Gregg* in a Sledge) to *Tyburn*; "That he submitted willingly "to his Sentence, owning the Justice of it, tho' he declared he had no "premeditated Malice against the Gentleman he so unfortunately killed. "He said, he heartily repented of it, and prayed that God would wash "away the Stain, and deliver him from the Guilt of that Blood which "he had so shed. He owned that he had been a very great Sinner, but "was sorry that he had any ways offended God and Man, and begged "Pardon of both. That he hoped God would shew him Mercy in another World, because he was always grieving for his Sins, and particularly for this, ever since he had made his Escape; and tho' he had no "Apprehension of being brought to Condemnation here for it, it was still "continually before him, and the Remembrance of it was painful to him. "He made strong Resolutions to live otherwise, and was always praying "to God to pardon him, and to keep him for the future. He acknowledged the Justice of God had overtaken him, and would not suffer him "to live long unpunished for this heinous Crime: He declared his being "in charity with all the World, even with those who had brought him to "this his Punishment, and prayed for the Conversion of all wicked Persons, desiring they would take Warning by him. He told me, he was about "40 Years of Age, born at *Canterbury* of good Parents, and brought up "in the Church of *England*; that both his Father and Ancestors had had "the Honour to serve the Crown for above 200 Years as Drum-Major; "and that he himself had received a very good Education, and brought up "genteelly, tho' he was for a considerable time Kettle-Drummer to the "First Troop of Guards, and was a going with a Commission into the "Army when this melancholy Accident happened."——Major *Mawgridge*, on his Son's Execution, which had so great an Effect on him, could not be prevailed on either to eat or drink for three Nights and three Days, and raved about like a Madman; he afterwards behaved at times like one distracted, drawing his Sword, and threatning to murder his Wife, obliging her to kneel down for him to stab her, *&c.* and then relenting. In short, he was never after easy or in his right Senses; moving about from place to place, though he lived to near fourscore Years of Age.

IV. The ſeveral Trials of Mr. WILLIAM HALES and Mr. THOMAS KINNERSLEY, Clerk, at the *Seſſions-Houſe* in the *Old-Bailey*, on *Jan.* 20 and 21, 1728-9, before the Lord Chief-Baron *Pengelly*, Mr. Juſtice *Reynolds* (afterwards Lord Chief-Baron), Sir *William Thomſon* (afterwards Baron), Serjeant *Raby*, and ſeveral of his Majeſty's Juſtices, for Miſdemeanours, in Forging ſeveral Notes and Indorſements in the Name of *Samuel Edwards*, Eſq. and Publiſhing the ſame, knowing them to be Forged.

Clerk of Arraigns.

OYEZ. All Manner of Perſons that have any Thing to do at the Seſſions of *Oyer* and *Terminer*, held for the City of *London* and County of *Middleſex*, draw near, and give your Attendance.

Oyez. You good Men of the City of *London*, ſummoned to appear here this Day, upon the Trial between our Sovereign Lord the King and *William Hales*, anſwer to your Names, as called upon, *&c.*

James Wilmer.	*Thomas Court.*	*John Sellidge.*
Samuel Cranmer.	*Ralph Knox.*	*William Selwyn.*
Richard Knollys.	*Thomas Ford.*	*Samuel Craighead.*
William Howard.	*Cornelius Maſon.*	*Frederick Staunton.*
Henry Rogers.	*John Pote.*	—— *Hoſkyns.*
Abraham Fowler.	*Richard Chauncy.*	*John Jenkyns.*
Robert Knapſack.	*James Coulter.*	*Nicholas Beresfield.*
Robert Kendal.	*Henry Spragg.*	*Edward Tay.*
John Hearne.	*Joſeph Jackſon.*	*Peter Crouch.*
Thomas Swaine.	*Henry Aſhhurſt.*	

Clerk. You ſhall well and truly try this Iſſue between our Sovereign Lord the King and *William Hales.* So help you God.

Samuel Cranmer, ſworn.	*Thomas Ford*, ſworn.
Richard Knollys, ſworn.	*Ralph Knox*, ſworn.
William Howard, ſworn.	*Cornelius Maſon*, ſworn.
Abraham Fowler, ſworn.	*John Pote*, ſworn.
Robert Knapſack, ſworn.	*Richard Chauncy*, ſworn.
Thomas Swaine, ſworn.	*Joſeph Jackſon*, ſworn.

Clerk. Oyez. If any Man can inform our Sovereign Lord the King, the King's Juſtices, the King's Attorney, the King's Serjeants, in this Cauſe between our Sovereign Lord the King and *William Hales*, let him now come forth.

Mr. Attorney-General, Sir *Philip York* (afterwards Earl of *Hardwick*). My Lord, we deſire that thoſe that were ſummoned on the Jury, who happened not to be ſworn, ſhould ſtay, leſt when Mr. *Kinnerſley* is arraigned there ſhould be a Defect of Jurymen.

It was ordered accordingly by the Court.

Clerk of Arraigns. Gentlemen of the Jury, *William Hales* ſtands indicted, by the Name of *William Hales*, late of *London*, Goldſmith, for that he being a Perſon of evil Fame and Converſation, and endeavouring *Samuel Edwards*, Eſq. and divers others willingly to defraud, on the 1ſt of *June*, in the Pariſh of , had in his Cuſtody a certain Note, bearing date *May* 17, 1728, by which Note it was ſuppoſed, that Mr. *Robert Hales* * did promiſe to pay unto *Samuel Edwards*, Eſq. the full Sum of Eight hundred Pounds; and that, on the ſame Note, with an Intent to defraud, in the Pariſh aforeſaid, he did fraudulently and deceitfully, on the 13th of *June*, forge and counterfeit a certain Indorſement, to the great Damage of the ſaid *Samuel Edwards*, Eſq. to the Breach of his Majeſty's Peace, and the ill Example of his Majeſty's Subjects in like Caſe offending.

Mr. *Strange.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, the Priſoner at the Bar, *William Hales*, ſtandeth indicted for forging, counterfeiting, and publiſhing an Indorſement of *Samuel Edwards*, Eſq. on a Promiſſory Note. The Indictment ſets forth, that the Priſoner did endeavour to deceive and defraud *Samuel Edwards*, Eſq. and others his Majeſty's Subjects, having in his Poſſeſſion a certain Promiſſory Note, under the Hand of *Robert Hales*, bearing Date *May* 17, 1728, by which Note, this *Robert Hales* is ſuppoſed to promiſe to pay to *Samuel Edwards*, Eſq. or Order, a certain Sum of Eight hundred Pounds, having this Note in his Cuſtody, did forge and counterfeit, and cauſed to be forged counterfeited, a certain Indorſement on the ſame Note, *viz.*

Pray pay to *for* Samuel Edwards.

and having in his Cuſtody the ſaid Note for Eight hundred Pounds, payable to *Samuel Edwards*, Eſq. on which there was ſo forged an Indorſement in the Name of the ſaid *Samuel Edwards*, Eſq. did publiſh it to be a true Indorſement, knowing the ſame to be ſo forged and counterfeited. This is ſaid to be to the great Damage of the ſaid *Samuel Edwards*, Eſq. the Breach of his Majeſty's Peace, and the ill Example of his Majeſty's Subjects in like Caſe offending. To this the ſaid Defendant hath pleaded, Not Guilty.

Mr. Attorney-General. My Lord, and Gentlemen of the Jury, I am Counſel on the ſame Side, for my Lord the King. The Charge againſt the Defendant, *William Hales*, is for forging an Indorſement on a Promiſſory Note to *Samuel Edwards*, Eſq. for the Sum of Eight hundred Pounds. The Note was made in the Name of *Robert Hales*, for Eight hundred Pounds, payable to *Samuel Edwards*, Eſq. or Order. And, Gentlemen, it will appear, that the Priſoner hath been guilty both of forging this Indorſement, and of publiſhing of it, knowing it to be ſo forged. Gentlemen, this *Samuel Edwards*, Eſq. hath a conſiderable Employment in the Exchequer, and is beſides a Member of the Houſe of Commons, and by that hath the Privilege of ſending his Poſt-Letters free. It was his Misfortune to live in the Neighbourhood of Mr. *Hales*, in *Duke-ſtreet*, in *Weſtminſter*. The Opportunity for committing of this Fraud ſeems to have been in this manner: Mr. *Hales* uſed frequently to apply to Mr. *Edwards*, ſometimes by himſelf, ſometimes by a Servant, for Frank-Covers of Letters to ſend News into the Country. The Gentleman's Good-nature induced him to accommodate him according to his Deſire with them, ſuppoſing that they were only deſigned to ſend News to his Friends in the Country. He having poſſeſſed himſelf of ſeveral Papers thus ſubſcribed, it will appear, that moſt probably he made uſe of one of theſe Franks to commit this Forgery. The Forgery is an Indorſement on a Note of *Robert Hales*. The Note is this:

May 17, 1728.

I promiſe to pay to Samuel Edwards, *Eſq. or Order, Eight hundred Pounds, three Months after Date, Value Received.*

ROBERT HALES.

The Indorſement is thus:

Pray pay the Value of this to , *for Value received.*

SAMUEL EDWARDS.

This Indorſement being thus wrote over the Name *Samuel Edwards*, Gentlemen, it appears by the Face of this Indorſement, that it is cut off from another Writing. There is the Tail of a Letter, which manifeſtly appears. The Word *the* is wrote with an Abbreviation *y^e*. That will appear to be a Word altered from ſomething elſe. It is difficult to tell whether to read it for *y^e*, or, which looks like the Truth of the Caſe, for *ye*. It will appear to be very probable, that the Manner of forging was this: Having poſſeſſed himſelf of theſe Franks, he cut off a Piece of one of theſe Franks proper for a Promiſſory Note to be wrote on it, which would have on the Back of it the Name of *Samuel Edwards*. When he had done this, he did not think proper to write the Note himſelf, but got another Gentleman to write a Promiſſory Note on the Back of this Paper, payable to *Samuel Edwards*, Eſq. or Order. When this was done, the Name *Samuel Edwards* ſerved for an Indorſement on the Note. And the Alteration ſeems to have been made in the following manner: There being the Word *Free* wrote over the Name, there is the Letter *o* crowded in between the *f* and the *r*. As to the *ee*'s after the *r*, the Uſe made of them is this: Out of the one of them is drawn the ſtroke for the Letter *y*, the latter *e* ſtands on one Side, or rather above the *y*, and makes *y^e*. Having done this, it appears, that here is a Promiſſory Note, in the Name of *Robert Hales*, to *Samuel Edwards*, Eſq. and here is an Indorſement of Mr. *Samuel Edwards*, which, by Virtue of an Act of Parliament, which makes theſe Notes current, and the Indorſer liable, Mr. *Edwards* is made liable to the Payment of this Note. The Uſe made of this Note is this, to raiſe Money upon it, and ſtake the Credit of Mr. *Edwards* as a Security for this Money. Gentlemen, having done this, he applies to Mr. *Harle*, to borrow of him a certain Sum of Four hundred and fifty Pounds. He knew very well, that his Credit would not ſerve for that Purpoſe, he being a known Bankrupt; but deſired that Mr. *Harle* would lend him Four hundred and fifty Pounds, upon the Credit of this Note. Mr. *Harle* knew that Mr. *Edwards* was a Gentleman of great Credit: It was a Promiſſory Note of Eight hundred Pounds, payable to *Samuel Edwards*, Eſq. and indorſed by *Samuel Edwards*: Mr. *Harle* made therefore no doubt of advancing the Money deſired upon it. The Manner of advancing this Money was by Mr. *Harle*'s making a Draught upon his Goldſmiths, Meſſ. *Caſwal* and *Mount*, where Mr. *Hales* received this Money. Gentlemen, there will be Evidence to charge this upon Mr. *Hales*. Gentlemen, the Occaſion of diſcovering this Forgery was this, Mr. *Hales* having been taken up in *September* laſt, on another Diſcovery of forging a Note of Mr. *Gibſon*'s, for which he was convicted laſt Seſſions †, that cauſed a pretty deal of Noiſe.

And,

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† William Hales, *for* Forgery, *at the* Old-Bailey, *Dec.* 7, 1728.

William Hales was indicted for a Miſdemeanour, in forging and counterfeiting a certain Writing, or Note of Hand, in theſe Words:

Auguſt 27, 1728.

I promiſe to pay to George Watſon, *Eſq. or Order, the Sum of Six thouſand four hundred Pounds, upon Demand, the like Value received,*

For myſelf and Partners, THOMAS GIBSON.

* This *Robert Hales*, Eſq. *Jan.* 27, 1728-9, was tried at the *King's-Bench* Bar, *Weſtminſter*, by a Special Jury of the County of *Middleſex*, of which Sir *George Walters*, Knt. was Foreman, on an Indictment for a Miſdemeanour, for that the ſaid *Robert Hales*, Eſq. would have defrauded *Samuel Edwards*, Eſq. of Eight hundred Pounds, by means of a Note, drawn by the ſaid *Robert Hales*, Eſq. for Eight hundred Pounds, payable to *Samuel Edwards*, Eſq. or Order. The Paper, on which the ſaid Note was drawn, having the Name of the ſaid *Samuel Edwards* on the Back thereof, only as a Frank of a Letter to be ſent by the Poſt; he, the ſaid *Robert Hales*, having no Dealings with the ſaid *Samuel Edwards*. The Trial laſted ſeven Hours, when the Jury brought him in Guilty. But in *June* following, he pleaded his Majeſty's moſt gracious Pardon in the Court of *King's-Bench*, for the ſaid Offence.

Mich. Term, Geo. II.

Dominus Rex verſ. *Robertum Hales.*

" *Mr. Attorney* moved for a Trial at Bar on an Information filed by him for Forgery. But it not being carried on at the Expence of the Crown, but of a private Proſe-
" cutor, the Court held, that he muſt make out the uſual Requiſites to bring it to the Bar: So the Motion was denied. And, at another Day, *Mr. Attorney* moved, on an
" Authority from the King, to proſecute, and it was granted as of Right to the King in his own Cauſe. And in *Hil. ſequen'.* it was tried, and the Defendant convicted.
" And in *Trin. ſequen'.* being called to Judgment, he produced a Pardon, which was allowed; and being only for a Miſdemeanour, he was not put to go to the Bar, or
" plead it upon his Knees." *Strange*, Vol. II. p. 816.

And

And, Gentlemen, such as had Notes of Mr. *Hales* for their Security were alarmed; Mr. *Harle* heard of this among others, and the Thing thus coming to be inquired into, it appeared plain Mr. *Edwards* had no dealing with them, but it was a Forgery and an Imposition both upon Mr. *Edwards* and Mr. *Harle*. We will call the Witnesses, and then we apprehend, that the Thing will speak for itself, and will appear a plain Forgery.

Mr. Serjeant *Whitaker*. My Lord, there are a pretty many Indictments, and *Mr. Attorney* hath opened the Cause: Therefore we shall immediately call the Witnesses.

Thomas Maddocks *called and sworn.*

Mr. Serj. *Whit.* Whom do you live with?---*Th. Mad.* Mr. *Edwards*, Sir.

Mr. Serj. *Whitaker*. Where doth he live?

Th. Maddocks. In *Duke-Street, Westminster*.

Mr. Serj. *Whitaker*. Where doth Mr. *William Hales* live?

Th. Maddocks. Within a few Doors over-against my Master's.

Mr. Serj. *Whitaker*. Will you give us an Account, whether Mr. *Hales* hath ever sent for any Franks to your Master?

Th. Maddocks. Yes, Sir, several Times.

Mr. Serj. *Whitaker*. What manner of Franks were they?

Th. Maddocks. There was always some Superscription.

Mr. Serj. *Whitaker*. Who had them of you?

Th. Maddocks. His Man had them of me. They were sent by him to Mr. *Hales*.

Mr. Serj. *Whitaker*. Will you recollect whether there was ever any Request to you, that there might be some only *free* without any Superscription?

Th. Maddocks. Yes, Sir; there was in the Beginning of *July* last.

Mr. Serj. *Whitaker*. How many were there of them?

Th. Maddocks. There were half a Dozen.

Mr. Serj. *Whitaker*. What came of them?

Th. Maddocks. I have five of them here. The other, I believe, is torn.

Mr. Serj. *Whitaker*. Did you give them to Mr. *Edwards?*

Th. Maddocks. Yes, Sir.

Mr. Serj. *Whitaker*. What Answer did he give?

Th. Maddocks. He said, when I delivered him that Message, that he never did such a Thing; and that he would not do them without a Superscription.

Mr. Serj. *Whitaker*. Were there any afterwards sent without a Superscription?

Th. Maddocks. About a Week after he came again, and I told him, that my Master would not do it without a Superscription.

Mr. Serj. *Whitaker*. Were they afterwards left?

Th. Maddocks. They were left with a young Woman that is now in Court.

Mr. Serj. *Whitaker*. Are those them that were delivered to you by her?

Th. Maddocks. Yes, Sir: One is, I believe torn. Those are the other five.

Mr. *Hungerford*. Have you been long acquainted with your Master's Business?—*Th. Maddocks*. Yes, Sir.

Mr. *Hungerford*. Have you ever known it to be his Practice to give promissory Notes?—*Th. Maddocks*. No, Sir.

Lord Chief Baron *Pengelly*. It is proper you should give an Account where Mr. *Edwards* lives.---*Th. Mad.* In *Duke-Street, Westminster*.

Lord-Chief-Baron. And where doth Mr. *Hales* live?

Th. Mad. Within a few Doors, almost over-against Mr. *Edwards*.

Lord-Chief-Baron. How long since was it?

Th. Mad. I believe that it might be three or four Years ago.

Mr. Attorney General. There were (I apprehend you say) several that were franked?---*Th. Mad.* Yes, Sir, there were frequently.

Mr. At. Gen. How long might this continue?

Th. Mad. I believe several Years. It was since the Time of his living in our Neighbourhood, which I believe, may be about three or four Years.

Mr. At. Gen. Do you know of any other Business transacted between them?—*Th. Mad.* No, Sir.

Mr. *Strange*. You say that these Covers were brought, and left with the Maid. Do you?

Th. Mad. Yes, Sir, these are the same that were left with the Maid.

Mr. *Strange*. You say, you delivered the Franks to Mr. *Hales*'s Servant. Do you not?—*Th. Mad.* Yes, Sir.

Mr. *Strange*. What was his Name?

Th. Mad. Robert Hunsdon, Sir.

Mr. *Strange*. Did you ever deliver any to him himself?

Th. Mad. No, Sir.

Mr. *Lacy*. Had the Franks that you delivered the whole Superscription?

Th. Mad. Yes, Sir.

Mr. *Lacy*. They asked you, whether there were any Dealings between your Master and Mr. *Hales*, besides this of Letters. I would enquire of you, whether your Master acquaints you with his Dealings with any other Persons?—*Th. Mad.* No, Sir.

Anne Clarke *called and sworn.*

Mr. Serj. *Whitaker*. Had you a Note of Directions for Letters to be franked by Mr. *Edwards?*---*Anne Clarke*. Yes, Sir.

Mr. Serj. *Whit.* Who brought it?---*Anne Clarke*. Mr. *Hales*'s Servant.

Mr. Serj. *Whit.* What was his Name?

Anne Clarke. *Robert*, I think they called him.

Mr. Serj. *Whit.* Do you know whose Writing it was?

Anne Clarke. No, Sir.

Mr. Serj. *Whit.* We shall, my Lord, call another Witness to prove that it was Mr. *Hale*'s.

Mr. Serj. *Whit.* When was it?---*Anne Clarke*. I cannot say.

Mr. Serj *Whit.* Was it Summer or Winter?---*Anne Clarke*. Summer.

Mr. Serj. *Whit.* In what Month was it?

Anne Clarke. I believe that it was in *July* last.

Mr. Serj. *Whit.* Did you deliver them to Mr. *Edwards?*

Anne Clarke. Yes, Sir.

Mr. Serj. *Whit.* What did you say to him, or he to you?

Anne Clarke. I told him, that Mr. *Hales*'s Servant had left that Paper of Directions for the Franks that he had desired; and said that his Master understood that he would not frank them without a Superscription, and there-

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with an Intent to defraud *Thomas Gibson*, Esq. and other his Majesty's Subjects; and for publishing the said false and counterfeit Note, as a true Note, he knowing the same to be false and counterfeit, *Nov.* 7.

The Counsel for the King having opened the Indictment, and the Evidence against the Prisoner, proceeded to call and examine the Witnesses.

Philip Booth, Servant to Mr. *Gibson*. I have known the Prisoner for some Time. He came to me about a Year and a half ago, and desired me to get my Master (who is a Member of Parliament) to frank two Letters for him; for he said, that the Gentleman, who used to frank his Letters, was gone out of Town. He then gave me two large Sheets of Paper, folded up in a large Size, for Letters, and desired that they might be directed, *To Robert Booth, Esq. at Bristol*. These were accordingly done by Mr. *Gibson*; and under the Directions he wrote,

Free,

THO. GIBSON.

Counsel. Are you acquainted with Mr. *Gibson*'s Hand?

Ph. Booth. Yes, very well.

Counsel. Look on that Note.

Ph. Booth. This is a Note for 6400*l*. signed *Tho. Gibson*.

Counsel. Do you take it to be all of Mr. *Gibson*'s Writing?

Ph. Booth. I take the Name to be his Writing, but I believe the Body of the Note was writ by another Person; and, that it is Part of one of the Letters that Mr. *Gibson* franked for the Prisoner, the Note being written in the Space between the Direction, which is cut off, and Mr. *Gibson*'s Name.

Counsel. Why do you think so?

Ph. Booth. For several Reasons.---I am well satisfied, that this Word *For*, was originally *Free*; and that the two *ee*'s have been taken out; and it is plain, that the *o* is crowded in between the *F* and the *r*; and that the Words, *myself and Partners*, are added a little below; for over the *m*, there appears the Bottoms of the two *ee*'s; and the *o*, and these following Words, are writ with Ink of a different Colour from the *F*, the *r*, and Mr. *Gibson*'s Name. Indeed the Words, *Myself and Partners*, are a faint Imagination of Mr. *Gibson*'s Hand: But I am so well acquainted with his Writing, that I could easily distinguish the true from the counterfeit, though I had nothing to judge by but the Form of the Letters. But what is more, this Note is not drawn after Mr. *Gibson*'s Manner: I never knew him write, *For myself and Partners*, but always, *For Self and Co.* Nor did I ever remember to have seen a Note of his with such Words in it, as *the like Value received*. Besides, the Note appears to have been folded like Part of a Letter, and I can never believe, that Mr. *Gibson* would draw a Note of such Consequence upon such a Scrap of Paper.

Robert Booth of *Bristol*, Esq. I never received any Letter, either franked or otherwise, from the Prisoner; and there is no Person in *Bristol*, but myself, who goes by the Name and Title of *Robert Booth*, Esq.

Thomas Remsey. I have been acquainted with the Prisoner above a Year, but more intimately from last *June*, to the 7th of last *September*, on which Day I was at his House, in *Duke-Street, Westminster*. I had then got on a light Coat, a red Waistcoat and Breeches, and a broad open Silver-laced Hat. He bid me change my Dress, and put on a Suit of plain Cloaths that I had by me. I did so, but not having a plain Hat, he bid me put on one of his. When I had thus dressed myself, I went with him into the City; but, by the Way, to make me look the more like a Man of Business, he furnished me with a Letter-Case, and, in *Middle-Row* in *Holborn*, he bought me a dark Wig, and made me put my light one in my Pocket. When all this was done, we went to *John*'s Coffee-House, in *Sheer-Lane*, where we had not been long before a Porter came in. The Prisoner asked him, if he did not want Mr. *Romsey?* meaning me. The Porter said, *Yes*, and delivered a Letter to the Prisoner, who immediately gave it to me, and bade me open it, which I did, and found a Note in it for 6400*l*. signed, *Thomas Gibson*.

Coun. Is that the Note?

Remsey. Yes, I know it very well.

Coun. What followed?

Remsey. In the Body of the Letter there was writ, *To the Lady Harriot Elliot*, 4300*l*. and, *To to Sir John Hind Cotton*, 2100*l*. And, under this last, the Prisoner bade me write, *To James Moreton, Esq. or Bearer*, 70*l*. which I did, and the Prisoner gave me three *Bank* Notes, one for 40*l*. and two of 25*l*. each. These *Bank* Notes, the Letter and the counterfeit Note for 6400*l*. the Prisoner put into my Letter-Case, and bade me go to Mr. *Snow*, the Banker's, and desire them to change those Notes for Notes of their own, for such Sums, and payable to such Persons as were mentioned in the Letter. The Prisoner shewed me the Shop, and stood within Sight of it. I went in, and first produced *Bank* Notes, and desired Mr. *Peltzck* to change them according to my Directions. He did it very readily. Then I pulled out the 6400*l*. and prayed him to change that too, but he refused; for he said it was not all of Mr. *Gibson*'s Hand-Writing, and therefore he would not meddle with it.

I returned to the Prisoner, and told him what had been done: And then he went again to *John*'s Coffee-House in *Sheer-Lane*, where he ordered me to write on a Piece of Paper, *To Sir Richard Grosvenor*, 4300*l*. and *To Sir John Hind Cotton*, 2100*l*. And, when I had done so, he went out with me again, and shewed me Mr. *Hoare*'s Shop, and bid me, if I could, to change that Note of 6400*l*. for *Hoare* and Company's Notes, payable to Sir *Richard Grosvenor*, and Sir *John Hind Cotton*, for the Sums I had set down. He likewise gave me another Note of about 70*l*. to change there, and ordered me, if any Body should ask my Name, to say, that my Name was *Fowler*. So I went into Mr. *Hoare*'s Shop, and got all the Notes changed, and then, going to the Prisoner, who waited for me at a Fruit-Stall hard by; we took Coach, and drove to the *Royal-Exchange*, and thence we went to *Janeway*'s Coffee-House, where the Prisoner bade me write, 3100*l*. and 1200*l*. payable to *Samuel Palmer*,

therefore he had ſent that Paper of Directions. He ſaid then that he did not care to frank them, becauſe Mr. *Hales* had both a Brother and a Nephew that were Members of Parliament, and therefore had no need to apply to him for Franks.

Mr. Serj. *Whit.* My Lord, we ſhall now prove the Paper of Directions to be Mr. *Hales*'s Hand-Writing.

Mr. Booth *called and ſworn.*

Mr. Serj. *Whit.* Sir, Are you acquainted with Mr. *William Hales*'s Hand-Writing?—Mr. *Booth.* Yes, Sir.

Mr. Serj. *Whit.* Whoſe Writing do you take that Paper of Directions to be?—Mr. *Booth.* I verily believe it to be Mr. *William Hales*'s.

Mr. Serj. *Whit.* My Lord, there is ſomething very worthy of Obſervation as to theſe directions and Covers. The Covers are very large. The Directions are extremely ſhort, *e. g.* for *John Pratt*, Eſq. *Briſtol.* The whole Direction is but one Line, which would conſequently leave a great deal of Room. Another is to Mr. *Levett* of *Huntingdon.* And there are two to each of theſe. The other two to *Steven Mitford*, Eſq. at *Exeter.* The Man gave an Account of ſix Covers ſent to be franked; there are two to each of theſe, which very well agree.

Mr. Serj. *Whit.* You ſay, Sir, that this is the Hand-Writing of Mr. *William Hales?*—Mr. *Booth.* Yes, Sir.

Mr. Serj. *Whit.* I would aſk, whether it is common for a Perſon that hath a promiſſory Note to write his Name thereon?

Mr. *Booth.* I know not, Sir, that it is common.

Note of Directions read.

Two to *John Pratt*, Eſq. *Briſtol.*
Two to Mr. *Levett*, *Huntingdon.*
Two to *Stephen Mitford*, Eſq. *Exeter.*

Mr. Harle, *called and ſworn.*

Mr. Serj. *Whit.* Let the Gentlemen of the Jury ſee the Directions and Covers.

Mr. Serj. *Whit.* Gentlemen, you will obſerve the Size of the Covers, and the Shortneſs of the Directions juſt fitted for the Purpoſe.

Mr. Serj. *Whit.* Mr. *Harle*, pleaſe, Sir, to take that Note in your Hand, and give us an Account who you received it from?

Mr. *Harle.* From Mr. *Hales.*

Mr. Serj. *Whit.* When was it?

Mr. *Harle.* To the beſt of my Remembrance it was *June* 13th laſt.

Mr. Serj. *Whit.* Will you give us an Account on what Account it was, and what Mr. *Hales* ſaid to you when he brought that Note?

Mr. *Harle.* Mr. *Hales* on the 13th of *June* laſt came to me, and brought me that Note from a Gentleman.

Mr. Serj. *Whit.* Where was you?

Mr. *Harle.* To the beſt of my Remembrance, at *Baker*'s Coffee-houſe in *Exchange Alley.* He deſired to borrow of me four hundred and fifty Pounds upon the Credit of that Note: I accordingly made him a Draught on Meſſ. *Caſwal* and *Mount*, with whom I left my Caſh for that Sum; for a Security for which he left that Note, and he promiſed that he would pay it in a few Days.

Mr. Serj. *Whit.* Did he take any particular Notice of the Indorſement?

Mr. *Harle.* Not much, Sir.

Mr. Serj. *Whit.* Was it then indorſed?

Mr. *Harle.* Yes, Sir, I am ſure it was; for I was deſired to lend the Money on a Note ſo indorſed.

Mr. Serj. *Whit.* The Note then, upon this Occaſion, was left in your Hands after that it was ſo indorſed, Was it not?—Mr. *Harle.* Yes, Sir.

Mr. Serj. *Whit.* Upon what Occaſion did it happen to be ſuſpected or diſcovered? Did you pay it yourſelf, or your Goldſmith?

Mr. *Harle.* Meſſ. *Caſwal* and *Mount*, on whom I made a Draught.

Mr. Serj. *Whit.* Have you that Draught?—Mr. *Harle.* Yes, Sir.

Mr. Serj. *Whit.* It hath been delivered up, hath it?

Mr. *Harle.* Yes, Sir, and cancelled.

Mr. Serj. *Whit.* On what Occaſion?—Mr. *Harle.* When I ſettle my Accounts with my Goldſmiths, I take up my Notes.

Mr. *Strange.* You was going to give us an Account how you came to ſuſpect this Note?

Mr. *Harle.* I think it was on *Sept.* 9, 1728, I was in *Exchange Alley* all the Morning, my Buſineſs calling me thither. At Two I went home as uſual. It ſeems there was a Meſſage left with my Servant by Mr. *William Hales*, that he had paid to my Goldſmith four hundred and fifty Pounds, Part of the Money which he owed me; for he owed me other Money on Security. He went to them and paid them this Money for which he took a Memorandum that he had paid them ſo much Money upon Account. Going then to *Bethnall Green*, when I came home Mr. *Caſwal* told me what had happened. There is (ſaid he) a ſad Thing hath happened; Mr. *William Hales*, with whom you have Tranſactions, is taken up for Forgery. He hath paid to us To-day four hundred and fifty Pounds upon your Account, which is attached in our Hands. It ſeems there was found in his Pocket-book a Memorandum which gave an Account of his paying that Sum to them.

Mr. Serj. *Whitaker.* Was this the firſt Occaſion of your Suſpicion?

Mr. *Harle.* Yes, Sir.

Mr. Serj. *Whitaker.* What did you do upon that?

Mr. *Harle.* I had aſked a Gentleman, now in Court, ſome Days before, knowing him well acquainted with Mr. *Edwards*, and the Affairs of the *Exchequer*, whether he knew Mr. *Edwards*'s Hand-writing, and whether he knew that to be Mr. *Edwards*'s Hand-writing? He ſaid, he believed that it was. I indeed myſelf believed that it was. After that Mr. *Hales* was taken up (I think that it was the *Wedneſday* or *Thurſday* after); I went up to the *Exchequer* to that Gentleman to get him to go with me to Mr. *Edwards.* He went up, but Mr. *Edwards* was not there. We then went into the Hall, where we met with Mr. *Edwards*, who ſeemed to be very much ſurprized. As to the Note (ſaid he) I know nothing of it. As to the Hand-writing, he could not poſitively ſay whether it was his own or not; if (ſaid he) it is mine Hand, it is made an ill Uſe of. We went immediately to the Coffee-houſe to inquire after Mr. *Robert Hales*, thence to the Cock-pit, and thence to his Houſe; but met not with him. I then left Mr. *Wright* and Mr. *Edwards.* I told them that my Buſineſs required me to go into the City. They reſolved to meet Mr. *Robert Hales*, and inquire of him whether it was his Note or not.

Lord Chief Baron. Read the Note diſtinctly.

Note Read. May 13, 1728.

I promiſe to pay to Samuel Edwards, *Eſq. or Order, the Sum of eight hundred Pounds within three Months after Date, for Value received.*

Robert Hales.

Indorſement.] *Pray pay to the Order of* *for the Value received.*

Samuel Edwards.

Draught read. 51.] *Meſſ.* Caſwal *and* Mount.

June 13, 1728. *Pay to Mr.* William Hales *or Bearer, on Demand, four hundred and fifty Pounds.* Robert Harle.

Lord Chief Baron. Sir, you ſay that you are acquainted with the Hand-writing of Mr *Edwards*, Do you not?—Mr. *Harle.* No Sir.

Mr. *Attorney General.* My Lord, we beg that the Gentlemen of the Jury will look upon the Indorſement. But before it be put into their Hands, I would make an Obſervation thereon. It appeareth by the End of the Paper that it is cut off from ſomething elſe. It is not ſtraight as it would be naturally, but ſeems cut off obliquely: And there is the Tail probably of a Letter of the Direction of the Cover whence we preſume it cut off. Then the Words, 'Pray pay to the Order of,' at a Diſtance from the other Words, 'for the Value received.' There is this Material alſo, that the Words 'for the Value received' are not uſual Words in an Indorſement; when the Words 'Value received' are mentioned, ſtill more unuſual to put in the Word *the.* But the Word *free* being there, there muſt be ſome Way contrived to uſe thoſe Letters: An *o* is therefore crouded in between the *f* and the *r:* And then the *y* ſeems to be a much blacker Ink than the reſt: And then as to the two *ee*'s, the one of them the *y* is drawn from, and the other of them ſtands for the other Part of the Contraction.

Mr. Serj. *Whit.* Look on it, Gentlemen, and you will find it as mentioned.

Mr. Att. Gen. Obſerve, Gentlemen, over it there is a Stroke or Hook.

Mr. John Spicer *called and ſworn.*

Mr. Att. Gen. Mr. *Spicer*, What Employment are you in under Mr. *Edwards?*—Mr. *Spicer.* A Clerk, Sir, in the *Exchequer.*

Mr. Att. Gen. How long in that Capacity?

Mr. *Spicer.* About ten Years in that Capacity: But in all I have ſerved him for four-and-twenty Years.

Palmer, Eſq. or Bearer, and then ſent me to Mr. *Woodward*'s, there to change *Hoare* and Company's Note for 4300 *l.* payable to Sir *Richard Groſvenor*, for *Woodward*'s Notes for 3100 *l.* and 1200 *l.* to *Samuel Palmer*, Eſq. at the ſame time the Priſoner ordered me, if any Body enquired who I was, to ſay, that my Name was *Thomas Fowler*; and, if they aſked any Queſtions about *Samuel Palmer*, Eſq. I might ſay, that he lived in *Manſell-Street*, in *Goodman's Fields.* I accordingly went to Mr. *Woodward*'s; but his Door being ſhut, I ſtepped back to the Priſoner, who thereupon ſent me to Mr. *Bracy*'s, and there I got Mr. *Bracy*'s Notes to *Samuel Palmer*, Eſq. in lieu of *Hoare*'s Note to Sir *Richard Groſvenor.*

This was on *Saturday* Night, and, it being now too late to do any more ſuch Buſineſs, we went Home to the Priſoner's Houſe, where I lodged. He bade me be ready in the ſame Dreſs on *Monday* Morning, which I accordingly was. We went again to *Janeway*'s Coffee-Houſe, from whence the Priſoner ſent me to Alderman *Hankey*'s, where I changed the Notes again. From Mr. *Hankey*'s I went to Mr. *Halſey*, and turned theſe Notes into *South-Sea* and *India* Bonds, and the Bonds were afterwards converted into *Bank* Notes. The Priſoner employed another Agent to get off ſome of theſe *Bank* Notes, and he had better Luck than I met with: For, unknown to me, Mr. *Gibſon*'s Caſhier had diſcovered the Forgery, and traced out the Places where we had been; ſo that I, going to the *Bank* with two Notes, each for 200 *l.* I was ſtopped. The Priſoner then waiting for me in the *Old-Jury*, he was preſently taken into Cuſtody.

Mr. *Maddox.* I had Inſtructions to ſtop any Perſon who brought Notes of ſuch a Number to the *Bank*; and *Romſey* coming ſoon after with ſuch Notes, I ſtopped him. He ſent a Letter, directed to Mr. *Hales*, at *Robin*'s Coffee-Houſe; we went thither, and found the Priſoner, and brought him to the *Bank.* He confeſſed there, and likewiſe before Mr. Alderman *Bellamy*, that the Note for 6400 *l.* came from him, but he ſaid he had it of one *Samuel Palmer.* The Money and Notes that were found upon the Priſoner and *Romſey*, made up the whole Sum of 6400 *l.*

Mr. *Poltock*, Mr. *Richard Hoare*, Mr *Turner*, Mr. *Hankey*, Mr. *Cole*, Servant to Mr. *Halſey*, and Mr. *George Lee*, confirmed the Particulars of *Romſey*'s changing the Notes.

Robert Hall. I am the Priſoner's Taylor, and by his Directions I took Notes and Money for him at Mr. *Bracey*'s on *Monday* Morning, and from thence I went to the *Bank*, and received Money for the *Bank* Notes I had taken at Mr. *Bracey*'s.—The Priſoner ordered me, if any Body ſhould aſk my Name, to ſay it was *John Roberts*, and that I lived in the *Hay-Market*, —or in any other Place that I could remember.

Counſel for the Priſoner. We will not pretend to prove, that the Note in diſpute is not counterfeit; but we ſhall endeavour to ſhew, that he received that Note of *Samuel Palmer*, Eſq. with whom he had very conſiderable Dealings. And, as Mr. *Hales* has been a Bankrupt for theſe twenty Years paſt, and has not been able to obtain his Certificate, he has been obliged to tranſact his Affairs under other People's Names, or perhaps to make uſe of fictitious Names, in order to ſecure his Effects.—— Here, Mr. *Granper*, do you know one *Samuel Palmer?*

Mr. *Granper.* I did know ſuch a Man: He was employed by the *Eaſt-India* Company. They ſent him abroad, and I remember he came back again, but I don't know where he is now.

Counſel. Had not Mr. *Hales* conſiderable Dealings with him?

Granper. Dealings? I never knew they had any Dealings with one another.

The Jury found the Priſoner guilty.

He was a ſecond Time indicted for a Miſdemeanor, in fraudulently, and by falſe Tokens, procuring the Notes of *Benjamin Hoare* and *Henry Hoare*, to the great Damage of the ſaid *Benjamin* and *Henry.*

The Evidence was to the ſame Effect, as in the laſt Trial, and the Jury found him guilty.

But Judgment againſt him was reſpited till the next Seſſions, there being other Indictments againſt him.

Mr. Att. Gen. Have you known in all that Time any Money-dealings between Mr. *Edwards* and Mr. *Robert*, or Mr. *William Hales?*

Mr. *Spicer.* No, Sir.

Mr. Att. Gen. If there had been any, do you think that you should have known it?

Mr. *Spicer.* Yes, Sir, I believe that I should; for, as to Affairs of that Nature, I believe that I know as much as any except himself.

Mr. Att. Gen. Look upon that Note. Do you take any Part of that Note to be his Hand-writing?

Mr. *Spicer.* The Name is his; and the *f* I believe is his. As to the other Letters they are so altered that I cannot say. *Value received* is not his.

Mr. Att. Gen. Are you acquainted with his Writing?

Mr. *Spicer.* Very well, Sir.

Mr. Att. Gen. Have you seen his frank Letters?—Mr. *Spicer.* Yes, Sir.

Mr. Att. Gen. What is his Method of franking?

Mr. *Spicer.* Free *Samuel Edwards.*

Mr. Att. Gen. Doth he write the Word *free?*—Mr. *Spicer.* Yes, Sir.

Mr. Att. Gen. What Sort of *f* doth he make?

Mr. *Spicer.* A Sort of double *f* just such as is here.

Mr. Att. Gen. Do you take the Letter *e* to be his Hand-writing?

Mr. *Spicer.* It is an altered Letter. It was something else turned into an *o.*

Mr. Att. Gen. The *r* what is that, doth it not seem to have been another Letter?

Mr. *Spicer.* Yes, it seems altered from another Letter; but bunglingly done.

Mr. Serj. *Whitaker.* We will, my Lord, call one of Mr. *Caswal*'s Apprentices to prove that this Draught hath been complied with.

(*Mr.* George Branthwait *called and sworn.*)

Mr. Serj. *Whitaker.* Do you look upon that Draught. Do you remember whether it was ever brought to you, and by whom?

Mr. *Branthwait.* I believe it was brought by Mr. *Hales.*

Mr. Serj. *Whitaker.* To you?

Mr. *Branthwait.* Yes, Sir, and it was marked by me.

Mr. Serj. *Whitaker.* What had he for it?

Mr. *Branthwait.* He had of me two Notes. One was for 250*l.* the other for 220*l.* which was 470*l.* and he brought besides this Draught two Notes of *Wanley*'s for 20*l.* which made the Balance.

Mr. Serj. *Whitaker.* Whom were they payable to?

Mr. *Branthwait.* One to one *Calthrope*, and the other to himself.

Lord Chief Baron. You say there were two Notes you gave him. Whom was the 250*l.* Note payable to?

Mr. *Branthwait.* To Mr. *William Hales.*

Lord Chief Baron. And who was the 220*l.* Note made payable to?

Mr. *Branthwait.* To one *Charlton Thrup.* He gave me this Draught of Mr. *Harle*'s for 250*l.* and Notes of twenty Pounds.

Lord Chief Baron. Whom did you say the 220*l.* Note was made payable to?—Mr *Branthwait.* To one *Charlton Thrup.*

Mr. Att. Gen. My Lord, we have done with our Evidence.

Lord Chief Baron. Well, What do you say to this?

Mr. Serj. *Darnell.* I have nothing material in mine Instructions; therefore, I shall not trouble your Lordship.

Mr. *Lacy.* I take leave to observe, that it doth appear that no Prejudice is done by this Note. The 450*l.* borrowed on it hath been repaid.

Mr. Att. Gen. Mr. *Hales* owed Mr. *Harle* Money upon other Accounts, and he had it upon Account: And besides, it is attached in the Goldsmith's Hands, and it was on the very same Day that he was taken.

Lord Chief Baron. Gentlemen of the Jury, This is an Indictment against *William Hales*, Goldsmith, for a very great Misdemeanour. It is for forging an Indorsement on a promissory Note for eight hundred Pounds; for the charging of the Person indorsing with the Payment of this Sum; and the publishing of this Indorsement as a true one, knowing it to be so forged. It is a very great Offence, a Misdemeanour of the highest Nature; not only as it affects particular Persons, and charges the Person whose Name is made use of with the Payment, but as it is destructive to all Commerce: You are therefore to consider what Account the Defendant can give of it. The Indictment sets forth that the Defendant had in his Custody a certain Note or a Writing, purporting to be a promissory Note, with the Name of *Robert Hales*; by which Note it was supposed, that *Robert Hales* promised to pay to *Samuel Edwards*, Esq. or his Order, the Sum of eight hundred Pounds, within three Months after Date. And upon this, the Charge by the Indictment is, that the Defendant, with an Intention to charge Mr. *Edwards* with the Payment of the Money contained in this indorsed Note, and to defraud and deceive him and others, on the 13th Day of *June* did falsely and deceitfully forge and counterfeit a certain Indorsement on this Note in these *English* Words following:

'Pray pay to the Order of for the Value received,' over the Name of *Samuel Edwards*, as if subscribed to that Indorsement; and, that knowing the same to be a forged and counterfeit Indorsement, he published the same in order to deceive several Persons, the King's Subjects, as a real Indorsement, as well as to defraud the said *Samuel Edwards*, Esq. Now in order to prove this, the Counsel gave some Account of the Circumstances of the Defendant, the Character of Mr. *Edwards*, the Acquaintance between them as Neighbours. And to shew you the Circumstances of the Fact, they have called several Witnesses: First, they called a Servant of Mr. *Edwards*'s, who mentioned that he had lived some considerable Time in Mr. *Edwards*'s Service; during which Time the Defendant, Mr. *Hales*, hath frequently, for several Years, sent to Mr. *Edwards* to have Franks delivered him in the Name of Mr. *Edwards*, who hath for some Years been a Member of Parliament, in order to send these free of the Postage. It appears that this hath been done for several Years; and the usual Way was, when Mr. *Edwards* had received the Direction of the Name of the Person, he himself wrote the whole Superscription, and then subscribed to frank it *Free Samuel Edwards.* He tells you, that in the Beginning of *July* last, several Covers were brought to him for Franks, made up as you may perceive pretty large. The Covers were brought over to Mr. *Edwards*'s House by a Servant of Mr. *Hales*'s. The Message was, that Mr. *Hales* desired some Franks upon these Covers, particularly desiring them to be franked without any Superscription. He saith, that these were left in this Manner, and were all delivered to a Servant of Mr. *Edwards* with this Desire, that he would only write thereupon *Samuel Edwards free*; that the rest might be left to be filled up by Mr. *Hales* as he thought fit. He tells you, that when his Master came home, his Master having, as he observes, always wrote himself the whole Superscription, his Master refused to do this; and therefore these Covers remained without franking: Mr. *Edwards* would not accommodate the Defendant, Mr. *Hales*, in that manner with his Hand, and leave the rest blank for another Person to fill up as he thought fit. This was very prudently done; Mr. *Edwards*, who is a Gentleman in Business, might well apprehend that an Opportunity might be hereby given to serve Purposes that it might not be in his Power to controul. This, Gentlemen, is made use of as Proof of an Attempt by the Defendant, to get such Sort of Franks into his Power to make use of to such a Purpose as this. The next Witness that they called is *Anne Clarke*, who saith that she is likewise a Servant to Mr. *Edwards*, and she produceth a Note written by Mr. *Hales*; and saith, that this was brought to the House of Mr. *Edwards*, with a Desire to have some Franks directed to each of those Persons, two to each of these three several Persons: She saith, that it was some Time last Summer, she thinks about *July.* She saith, that when her Master, Mr. *Edwards*, came home, she shewed it to him; and Mr. *Edwards* declined giving or accommodating Mr. *Hales* with Franks to these Persons. The Reason that he gave was this: Mr. *Hales* (said he) hath both a Brother and a Nephew that are Members of the House of Commons; and therefore he need not send to me for Franks, when he may have them from his own Relations; he therefore declined it at that Time. These were the Directions: Two to Mr. *Levett* of *Huntingdon*, two to *John Pratt*, Esq. at *Bristol*, two to *Stephen Mitford*, Esq. at *Bristol.* Gentlemen, to corroborate this Evidence that this Note came from the Defendant, Mr. *Hales*, Mr. *Booth* is called. He is asked, Whether he is well acquainted with the Hand-writing of the Defendant Mr. *Hales?* He saith that he is, and that he verily believes that this Note is his Hand-writing. It hath been observed by *Mr. Atterney*, that there seems to have been some Design, the Form wherein it is wrote being very proper to give an Opportunity for an Alteration; that each of these Directions is very short, and would take up at most but one Line on the Superscription or Outside of the Cover; that there would have been a considerable Space left, so that when *Free, Samuel Edwards*, was wrote, there would have been a sufficient Space of Paper to write a Note or any thing over it. This is the Observation that hath been made upon this Note of Directions. After this they produce Mr. *Robert Harle*, who is Secretary to the Million Bank, to witness to the particular Fact. He saith, that this Note was on the 13th of *June* last brought and delivered to him by the Defendant Mr. *William Hales.* He saith, that he was then at *Baker*'s Coffee-house in *Exchange Alley*; that the Defendant, Mr. *Hales*, came to him, and produced this very Note of eight hundred Pounds payable to *Samuel Edwards*, Esq. within three Months, subscribed *Robert Hales*, and indorsed in the Name of *Samuel Edwards*, and desired him to advance him four hundred and fifty Pounds upon the Credit of that Note; that seeing a promissory Note made payable to *Samuel Edwards*, Esq. and indorsed by the said *Samuel Edwards*, Esq. this appeared to him sufficient Security to lend four hundred and fifty Pounds upon; that he did thereupon comply with the Request of the Defendant, Mr. *William Hales*, to advance him that Sum; that he drew a Draught for it on *Caswal* and *Mount*, who were his Goldsmiths for this Sum, which Draught he took up afterwards, and allowed in his settling of his Accounts with his Goldsmiths; that at that Time when the Defendant brought this Note to him, this very Note was delivered to him, with this very Indorsement that is now upon it,

Pray pay to the Order of *for y^e Value received*
Samuel Edwards.

He saith, that he is sure that it was thus indorsed when it was left with him, he being desired to lend the Money on a Note so indorsed; that it hath been in his Custody ever since, so that he is sure there hath been no Alteration made thereon since that it was delivered unto him. You may remember that he was particularly asked, Are you sure that it was indorsed when it was delivered you? He saith that he is sure; and indeed the Thing bespeaks itself. 'When a Note is made payable to a particular Person, if any other Person brings it, every one expects that there should be an Indorsement to intitle any Person that is not the very Person to whom it was made payable. I am therefore sure (saith he) that it was so indorsed: And as Mr. *Edwards* was a Person of very great Dealings and considerable Substance, and so likely to have such a Note made payable to him, I therefore gave Credit to this Note as a sufficient Security to reimburse me the four hundred and fifty Pounds which I advanced thereupon.' This Fact he tells you was thus transacted at that Time; and he is sure that he received it from the Defendant thus indorsed, and that the Defendant hath had the Benefit of the Draught which he gave him on the Credit thereof. Mr. *Harle* hath allowed this in settling his Accounts with his Goldsmith. Upon this the Note hath been read to shew you the Purport thereof, and the Indorsement thereon. The Note is this,

May 13, 1728.

I promise to pay to Samuel Edwards, *Esq. or Order, the Sum of Eight Hundred Pounds, within three Months after Date, for Value received,*
Robert Hales.

Then upon the Back of the Note there is this Indorsement,

Pray pay to the Order of *for y^e Value received,*
Samuel Edwards.

Mr *Harle* goeth on in the Account which he gives you, and saith that this Note was left in his Hands in *June*; and that on *Sept.* 9 after, he was in *Exchange-Alley* all the Morning till about two; that there was a Message left for him at *Baker*'s Coffee-house, but he received it not there; that he went

Home, and heard that there was a Meſſage left for him bythe Defendant, Mr. *Hales*, at *Baker*'s Coffee-houſe; that he went out in the Afternoon, and had not a particular Account of the Meſſage till he came Home. The Meſſage was from Mr. *Hales*, that he had that Morning paid to his Goldſmiths *Caſwal* and *Mount* Four Hundred and Fifty Pounds on his Account: Mr. *Harle* tells you that there was more Money due to him on Security. So much Money was then paid in Diſcharge of ſo much, Part of Money advanced by him to Mr. *Hales*, and it was the exact Sum which had been advanced on the 13th of *June* on the Credit of this Note. He tells you, that in the Evening Mr. *Caſwal* came to him, and told him there was a melancholy Account, that a ſad Accident had happened: For Mr. *William Hales*, the Perſon that had paid them this Money on his Account, was taken up for Forgery, and this Money was attached in their Hands for to prevent his iſſuing it out. Mr. *Harle* tells you, that this was the firſt Diſcovery that he had of the particular Fact, that gave him Occaſion to make the more particular Inquiry: He had indeed two or three Days before ſpoke to a Gentleman of the *Exchequer*, one Mr. *Wright*, had ſhewed him the Indorſment; and having ſome Suſpicion, aſked him whether he was acquainted with Mr. *Edwards*'s Hand, and whether he thought that that was his Hand-writing? Mr. *Wright* thought it was a little odd, was ſomething diffident, but believed that it was Mr. *Edwards*'s Hand, as Mr. *Harle* himſelf alſo thought that it was. He ſaith, that after that the Defendant was apprehended, he went to Mr. *Wright* to deſire him to go with him, that they might have from Mr. *Edwards* more particular Satisfaction. They went and met with Mr. *Edwards*, in *Weſtminſter-Hall*, ſhewed him the Note, aſked him whether he knew of it, and whether it was his Indorſement? Mr. *Edwards* was very much ſtartled, and ſaid, that he never gave any ſuch Note, and knew nothing of it. Mr. *Harle* aſked him whether the Name was his Hand-writing? He ſaid that if it was, an ill Uſe was made of it. Mr. *Edwards* took a Copy of it, and kept it by him. The Note hath been read to you, and appears to be a promiſſory Note in the Name of Mr. *Robert Hales*, for Eight Hundred Pounds, payable in three Months, to *Samuel Edwards*, Eſq. The Indoſement is

Pray pay to the Order of *for the Value received*,
Samuel Edwards.

Gentlemen, upon the producing and reading of this Note, *Mr. Attorney* hath made ſeveral Obſervations on the Manner of writing it. You have had the Inſpection of it, and ſomething very particular appears to every one's View. It is by the Counſel for the Proſecutor ſuppoſed, that this Note muſt be formed from Part of a Frank Cover ſigned *ffree Samuel Edwards*, *ffree* being turned into *for ye* Value received; that there is the Remainder of another Letter. And you may obſerve whether there is a Selvedge, or any Thing of that Nature, that ſheweth it to have been the Outſide of a Sheet of Paper. All the Edges indeed ſeem to be ſmooth and clean as a Paper that is cut. The Indorſement begins, 'Pray pay to the Order of for' then comes *ye*, and then a large Diſtance between that and 'Value received.' So that it ſeems pretty extraordinary that if any one was honeſtly writing, and had a Paper not written on before, that they ſhould write in this Manner that the Word *ye* ſhould be tacked to the Word *for*, and put at ſuch a Diſtance from 'Value received.' *Received* follows *Value* immediately in a more plain Writing: Beſides, it is unuſual to make uſe of the Word *ye* before 'Value received;' but they ſay it is more generally 'Value received.' You have an Inſtance in the Note itſelf; the Concluſion of the Note is 'Value received:' and I believe the Obſervation is juſt; that it is not ſo uſual to ſay 'For *ye* Value received.' But the Obſervation of the Counſel was this, that there was a Neceſſity of this in order to accommodate the Letters to the Forgery; as the Words now ſtand they exactly ſuited. And, Gentlemen, the *f* is of a paler Ink than the *or*, and theſe Letters thicker, and ſeem of a deeper Ink. If there were two *ee*'s before, the Alteration and making the other Letters muſt occaſion the Thickneſs of theſe Letters, and their ſeeming of a blacker Ink. Other Letters being to be ſuperinduced, they muſt of Neceſſity be thicker and deeper than the firſt Letters. Here is a very ſtrange Sort of an *r*, and the *o* ſeems very odd. At the End of the *r* is ſomething made uſe of to aſſiſt to make the upper Part of the *y*, which doth not ſtand cleverly. And you will find that Part which is the Head of the *y* much thicker than the other Part that makes up the *y*. And then on the Side or one Shoulder of the *y* there is a Sort of *e* put. You may ſee how improperly it ſtands. It is not an *e* directly over the *y*, which is the Way ſometimes of writing *the* ſhort; but it comes to the Bottom of the Head of the *y*. So that, Gentlemen, theſe are the Obſervations that have been made by the Counſel. You have ſeen this Note, and may obſerve upon it, whether you think theſe Obſervations plain, proper and juſt? Upon this Occaſion, another Servant of Mr. *Edwards* is called, one Mr. *Spicer*. He ſaith, that he hath been a Clerk in the *Exchequer* above ten Years, but in the whole in Mr. *Edwards*'s Service upwards of twenty Years; that he is well acquainted with his public Dealings and private Tranſactions in Money-Matters: and that he never knew or heard that he had any Money-Dealings with the Defendant, which he believes he ſhould, if there had been any, being his Clerk, and acquainted with his Money-Dealings. And he ſaith, that as to the Name *Samuel Edwards*, he believes it to be Mr. *Edwards*'s proper Hand-Writing, being very well acquainted with his Hand. And he ſaith, that as to the Indorſement, he believes that the *f* is his, but not the other Letters; that he is ſatisfied that 'Value received' is not Mr. *Edwards*'s Writing. And he ſaith, that the *o* and *r* he doth not take to be Mr. *Edwards*'s Hand-Writing, but an Alteration from ſomething that Mr. *Edwards* had wrote before; that the uſual Way of Mr. *Edwards* franking is *free* with a *ff* as here *ffree*; and that the *o* appears to be made out of an altered Letter. So that this is a proper Obſervation, that there is an Alteration, as they believe upon their Oaths. He ſaith, that it is bunglingly done; that he apprehends it done as hath been mentioned. Well, another Witneſs is called, Mr. *George Branthwaite*, a Servant to Meſſ. *Caſwal* and *Mount*. He ſaith, that this Draught was brought to their Office by the Defendant himſelf, becauſe he hath put his Mark upon it, as is proper for Perſons of ſuch Dealings; that that Mark of his at the Bottom reminds him that the Defendaht brought it. Upon the bringing of this Draught, he had two Notes from this Witneſs on account of his Maſter; one was for Two Hundred and Fifty Pounds, the other for Two Hundred and Twenty: That came to Four Hundred and Seventy Pounds: Therefore the Deficiency of this Draught was to be ſupplied with another to make up that Sum complete. Therefore, he ſaith, that he brought Notes of *Wanley*'s for Twenty Pounds, which made up the Balance. The Note for Two Hundred and Fifty Pounds, he ſaith, was made payable to the Defendant himſelf; and that for Two Hundred and Twenty Pounds to one *Charlton Thrup*; and that at this Time the Draught and *Wanley*'s Notes were delivered to him for theſe Notes on Account of Meſſ. *Caſwal* and *Mount*. This is the Account given by them. The Defendant himſelf and his Counſel are here. Nothing material is ſaid by them in Defence, only Mr. *Lacy* mentioned that there is no Damage done by this Note, the Four Hundred and Fifty Pounds borrowed on it being repaid. To this it was replied by *Mr. Attorney*, that the Money was paid upon Account, there being other Monies due to Mr. *Harle* on Security; and beſides it is attached in Mr. *Harle*'s Goldſmiths Hands, to prevent its being iſſued out. Gentlemen, you will obſerve, that if this was a real Indorſement, it would be an Aſſurance of paying the whole Debt. Whoſoever indorſeth a Note, whereof no Part is paid, is liable to the whole. Therefore the Queſtion is not, Whether or not this Money was paid? but whether here is not an Engagement to pay the Note, which the Re-payment of the Money borrowed thereon is no Fence againſt? Therefore if the Money had been repaid, that had been no acquitting of the Crime. That will no more diſcharge a Perſon, than if a Felon ſhould ſay that he is acquitted becauſe the Goods are reſtored. The Behaviour afterwards is not a ſufficient Acquittal of a Crime. And conſider when that was. It was not before, but upon the *Monday*, the very Day that he was apprehended. Then the Meſſage was left, and the Money paid. You are to conſider, therefore, whether this did not ariſe from an Apprehenſion and Fear of a Diſcovery, in order to clear Things as well as he could? Gentlemen, as there is ſufficient Evidence to fix this upon the Defendant, ſo hath he not proved how he came by this Note. He hath not called one Witneſs to ſhew that he had any Money-Dealings with Mr. *Edwards*, or that he received it of any other Perſon; but it is left on the Evidence given by the Proſecutor. Therefore, there can be no Doubt in the Matter. If a Perſon is ſilent to the Charge, and cannot give you any Satisfaction as to it, it ſtands as fully fixed upon him as if any had ſeen him write the Indorſement. Therefore, Gentlemen, you are to conſider, whether any Thing appears to afford the leaſt Preſumption that this was a true Indorſement made by Mr. *Edwards*, for Value received by him? It is, Gentlemen, an Offence of a very heinous Nature, and, if not ſuppreſſed, muſt tend to hinder all Commerce by Bills and Paper-Credit. If this be ſuffered to increaſe, none can take ſuch a Note, unleſs he goeth to the Perſon himſelf. It will render it inſecure to carry on Commerce by Notes or Bills. As to an Indorſement of this Nature, though it was not mentioned, it is proper for me to take notice, that tho' the Name be not named, it may be made to any Perſon. The Perſon, in whoſe Poſſeſſion it is, can go and receive the Money. So that the Indorſement is complete Authority to impower the Perſon in whoſe Poſſeſſion the Note is, to receive the Money, and likewiſe to charge the Perſon that ſo indorſed it with the Re-imburſement of the Money. Therefore, Gentlemen, the Crime and Offence ſeems complete. Upon this Evidence, it doth not ſeem to me that there can be any doubt with you, whether he be guilty of this Fact or not.

V. William Hales was indicted for a Miſdemeanour, in obtaining the Sum of Four Hundred and Fifty Pounds, from Mr. *William Harle*, by falſe Tokens *.

Jury ſworn over again.

Clerk. OYEZ, Oyez, if any one can inform, *&c.* Gentlemen of the Jury, *William Hales* ſtands indicted by the Name of *William Hales*, &c. for falſely and deceitfully obtaining the Sum of Four Hundred and Fifty Pounds of Mr. *William Harle* by a falſe Token, *to wit*, a Promiſſory Note in the Name of Mr. *Robert Hales*, whereby the ſaid *Robert Hales* is ſuppoſed to engage to pay within three Months after Date, the Sum of Eight Hundred Pounds to *Samuel Edwards*, Eſq. with a counterfeit Indorſement on this Note to the great Damage, *&c.* To this Indictment he hath pleaded Not Guilty.

Mr. *Strange*. This likewiſe is an Indictment againſt the Defendant Mr. *William Hales*, and is for falſely and deceitfully obtaining a Sum of Money of Mr. *William Harle* by a falſe Token. And it ſets forth, that the Defendant having in his Poſſeſſion a Promiſſory Note of Mr. *Robert Hales*'s for Eight Hundred Pounds, payable in three Months after Date to *Samuel Edwards*, Eſq. with a forged Indorſement thereon in the Name of the ſaid *Samuel Edwards*, Eſq. did falſely and deceitfully obtain of one Mr. *William Harle*, the Sum of Four Hundred and Fifty Pounds on the ſaid Note. This is laid to be the great Damage, *&c.*

Mr. *Hungerford*. May it pleaſe your Lordſhip, the Fact charged is the very ſame as in the former Cauſe already heard, only upon a different Law, 33 *Hen.* VIII. There was, it ſeems, ſo long agone an abominable Practice of obtaining Money by falſe Tokens. The Act of Parliament hath prohibited that Practice, and made it penal. There is but one Witneſs that we ſhall trouble your Lordſhip with.

Mr. Harle *called and ſworn.*

Mr. *Hungerford*. Mr. *Harle*, pray give an Account to my Lord, and the Jury, when you firſt ſaw that Note, and what Money you paid upon it.

Mr. *Harle*. On the 13th of *June*, Mr. *Hales* applied to me, to lend him Four Hundred and Fifty Pounds upon this Note. I accordingly made a Draught on my Goldſmiths, which I ſuppoſe was paid the ſame Day, having taken up the Draught on ſettling mine Accounts.

Lord Chief Baron *Pengelly*. Mr. *Lacy*, do you expect that they ſhould go on further in their Evidence?

Mr. *Lacy*. No, my Lord.

* Theſe Trials were taken in Short-Hand by Order of Mr. *Edwards*.

Lord.

Lord Chief Baron *Pengelly*. This Indictment is against *William Hales*, Goldsmith. It is for obtaining upon this Note a Draught equivalent to Money, and which afterwards produced Money, by this false Token. If the Note was forged, it was a false Note. He brought this Note as a good Note, to induce Mr. *Harle* to accommodate him with Four Hundred and Fifty Pounds thereupon. That is the Description of the Act of Parliament, that if any one by a false Token doth obtain or get any Thing or any Goods of another's, corporal Punishment shall be inflicted. If this appear to be a forged Indorsement; this being a false Token, he must be guilty. So that the Evidence is the same as to both these Indictments.

The Officer sworn to keep the Jury.

Clerk. Gentlemen, answer to your Names.

Jury called over.

Clerk. Are you all agreed in your Verdict?

Jury. Agreed.

Clerk. Who shall say for you?

Jury. Our Foreman.

Clerk. How say you, Is *William Hales* guilty of the Misdemeanour wherewith he is charged, in forging and publishing an Indorsement on a Promissory Note, or not Guilty?

Foreman. Guilty.

Clerk. How say you, Is *William Hales* guilty of the Misdemeanour wherewith he stands charged in obtaining Money by a false Token, or not Guilty?

Foreman. Guilty.

VI. William Hales and Thomas Kinnersley, Clerk, were indicted for Forging and Counterfeiting a Note of Hand, bearing Date *Aug.* 16, 1727, for Twelve Hundred and Sixty Pounds, payable to *Samuel Edwards*, Esq. or Order, signed *Thomas Kinnersley*, and indorsed *Samuel Edwards*.

Jury called over again, and sworn.

Cryer. OYEZ, Oyez. If any one can inform my Lord the King's Justice, the King's Serjeants, Attorney, &c. in this Cause between our Sovereign Lord the King and *William Hales* and *Thomas Kinnersley*, let them come forth, &c.

Here the Indictment was read.

Mr. *Strange*. Gentlemen of the Jury. This is an Indictment against the two Prisoners at the Bar, *William Hales* of *London*, late Goldsmith, and *Thomas Kinnersley*, Clerk. The Indictment sets forth that these two Defendants, being Persons of ill Fame and Reputation, and devising and intending to defraud *Samuel Edwards*, Esq. and divers other his Majesty's Subjects, in *March* last had in their Custody a certain Note or a Writing purporting to be a Promissory Note signed by *Thomas Kinnersley*, and dated *Aug.* 16, 1727. In this Note *Thomas Kinnersley* is supposed to promise to pay Twelve Hundred and Sixty Pounds to *Samuel Edwards*, Esq. within three Months after Date, for Value received; that on this Note which they had in their Custody, they forged an Indorsement in these Words, 'Pray pay to the Order of for Value received, *Samuel Edwards*;' That thus having in their Custody this Note with this forged Indorsement thereupon, and knowing this to be a forged Indorsement, they did afterwards publish it to be a true one. These Offences are laid to be to the great Damage of the said *Samuel Edwards*, Esq. the Breach of his Majesty's Peace, and the ill Example of other his Majesty's Subjects in like Case offending. To this Indictment they have pleaded Not Guilty.

Mr. *Attorney General*. My Lord, and Gentlemen of the Jury, I am of Counsel on the same Side for my Lord the King. Gentlemen, the Charge against the Defendant is for forging an Indorsement on a Promissory Note for Twelve Hundred and Sixty Pounds. Likewise they are charged with publishing the said counterfeit Indorsement for a true one, knowing the same to be forged and counterfeit. Gentlemen, this is not the first of several Facts of this Nature that have come to be considered with regard to the Defendant Mr. *Hales*: But the first that hath come to be examined in this Place charged upon the other Defendant, Mr. *Kinnersley*, a Clergyman: And it is a very melancholy Thing that when a Scene of Forgery of this Nature is going on, which as you have been told is of a very pernicious Nature to Trade and Commerce, we should see one charged therewith that hath a Right to appear in that Habit, and thinks fit to appear here in it. But it will appear that there is just Ground to charge not only the Defendant *Hales*, but the Defendant *Kinnersley*. Gentlemen, as to the Fact, it will seem that it took rise in the same manner as the former Fact; that by that Correspondence that Mr. *William Hales* thought fit to let himself into with Mr. *Edwards*, by applying for Frank Covers to send News into the Country, he took occasion to make Use of such a Paper; and that there being an Intimacy between him and Mr. *Kinnersley*, Mr. *Hales* having by this Means possessed himself of a Frank Cover with the Name of *Samuel Edwards free* thereon, that upon a Piece of that Paper cut off from the rest, a Promissory Note is written. I take it that the Note will appear to be the Hand-writing of Mr. *Kinnersley*, dated in a different Hand, *Aug.* 16, 1727. The Words are these:

I promise to pay to Samuel Edwards, *Esq. or his Order, three Months after Date, the Sum of Twelve Hundred and Sixty Pounds, for the Value received.*
THOMAS KINNERSLEY.

On the Back of the Paper these Circumstances will appear: First, The Edge of the Paper on that Side of it where the Indorsement is wrote appears cut off; and as in the former Case, so here there are the Tails of two or three Letters still remaining plainly to be seen. And it will appear that here is an Irregularity and Unevenness in the cutting; the Edge in one Place smoother being turned in, and an Hook or Dent made in the Paper. Under this, pretty near the Top of the Paper, is written 'Pray pay to the Order of,' then there is a wide Blank as in the former Instance; then follow the Words, 'For the Value received, *Samuel Edwards*.' It appears that the Words *for the* are written in a stronger and blacker Ink than the former; the *f* of the former Sort, probably Mr. *Edwards*'s. The Word *the* is not written in a Contraction as before, but at length. Here, instead of changing Letters, erasing or turning, are Letters written over in a blacker Ink: The other Letters, as the two *e*'s, appear in a paler Ink; so that it will appear to a Demonstration that this was a Frank turned to this Use. Other Observations will likewise appear as to the Manner of penning it: This Note being written, and the Indorsement upon it, it will appear what Use was made of it; and it will appear by strong Circumstances, if not by the Confession of the Defendant *Kinnersley*, that the Name of *Samuel Edwards* was there when he wrote the Note: If so it will appear clear against *Kinnersley*. It will thus appear a Circumstance to charge the Defendant; as first, it appears that there never was any Dealing between *Kinnersley* and Mr. *Samuel Edwards*: I know not that it will appear that they were so much as known to each other; and yet here is a Note wrote by Mr. *Kinnersley*, whereby he engageth to pay Twelve Hundred and Sixty Pounds, within three Months after Date, to him or his Order. It is very extraordinary that any Gentleman should write a Promissory Note, especially should write such a Note to pay such a Sum to another, to one with whom he had no Dealings. It is incumbent therefore on *Kinnersley* to shew any such Dealings, and upon what fair Occasion it can be made appear to be given. Gentlemen, as this will appear to you to be the Nature of the Note and the Manner of indorsing it, and that there were no Dealings between them, and consequently no Reason for putting it in Mr. *Edwards*'s Name, but that his Name was there, and to make him the Indorser; so the Use made of it was to carry it to Mr. *Bird*, an Officer to the *Hudson's Bay* Company. Mr. *Hales* delivered it to him as a true Note and Indorsement; and desired that Mr. *Bird* would accommodate him with Seven Hundred and Fifty Pounds upon it. I think that Mr. *Hales* gave his own Note for that Sum: But as the principal Security this Note of Mr. *Edwards*'s was left with Mr. *Bird*. It was on the 20th of *March* 1727 that this Note was left and thus deposited with Mr. *Bird*. And, Gentlemen, in *April* following there was the Sum of Four Hundred and Fifty Pounds, as Part of the Seven Hundred and Fifty Pounds paid by Mr. *Hales*. Gentlemen, the Residue not being paid in such a Time as it was expected, Mr. *Bird* directed one Mr. *Tomkins* to write to *Kinnersley* to demand the Money, and to threaten to sue for it. After this Mr. *Kinnersley* came to him at *Fenchurch-Street*, the *Hudson's Bay* House. Mr. *Bird* told him that there was such a Note which was left with him for a Security for Money borrowed; that there was so much thereof that remained due, and desired the Money. It will appear that at that Place and Time when the Note was shewed to Mr. *Kinnersley*, he owned that he had wrote this Note, and said that he was an undone Man, and that Mr. *Bird* must not expect the Money from him, but apply to Mr. *Edwards* who indorsed the Note. Gentlemen, after this Declaration had been made by Mr. *Kinnersley*, in *September* there was a Discovery made of Mr. *Gibson*'s Note, upon which Mr. *Hales* was committed, *September* 9 last: That gave occasion to every one that had received of Mr. *Hales*'s Notes for their Security to look about them, which produced a particular Inquiry about this Note. Mr. *Edwards* was informed that such a Note was in the Hands of Mr. *Bird*; upon his applying to Mr. *Bird*, it appeared in the manner that I have opened unto you: When that appeared, and that the Note was wrote by Mr. *Kinnersley* on a Paper signed by Mr. *Edwards*, Mr. *Kinnersley* was taken up. I think that there was some Difficulty at first for the Constable to apprehend him; but at length he was apprehended, and carried before Sir *Richard Hopkins*. It will appear that he was then in great Confusion, and appeared to have some Sort of Inclination to make the only Reparation that Guilt of such a Crime could admit of, *viz.* making a full Discovery. He said, that he would confess every thing, and owned that both the Body of the Note and the Subscription to it was his Hand-writing. He confessed likewise, if my Brief be right, that he knew that Mr. *Edwards*'s Name was on the Back of it; that Mr. *Edwards* was a Stranger to him, and that he had no Dealings with him. It happened at that Time that there was one *Mitford* present, something of an Attorney or Solicitor, and a Relation of Mr. *Kinnersley*'s. He found that Mr. *Kinnersley* was on a dangerous Point when he declared, that he knew that Mr. *Edwards*'s Name was there when he wrote the Note. He stopt him short, bade him confess nothing, asked him what he meant? He took his Advice, and, I think, denied his own Hand-writing. Upon that Occasion a Discovery was prevented: He was then committed, and that is the Occasion of the present Prosecution. We shall call the Witnesses. As to Mr. *Hales*, the Evidence that we shall lay before you in his usual Practice of applying to Mr. *Edwards* for Franks, the Manner of making this Note and Indorsement, the Use he made of it, his publishing and depositing of it as a true Indorsement, when it appears on the Face of it to be a forged one. It will appear plainly against him that he was concerned in the Forgery, and in the Publication of it. As to the other of the Defendants, Mr. *Kinnersley*, the Circumstances that I have mentioned will make it appear to be his, and be as strong Evidence against him as against the other.

Mr. Serj. *Whit*. I will not take up any of your Lordship's Time, there being more Indictments; but shall immediately call our Witnesses.

Thomas Maddox *and* Anne Clark *were called and sworn.*

N. B. Their Examination was in Substance the same as in the former Trial, p. 69, 70. therefore need not be inserted over again.

Mr. John Spicer *called and sworn.*

Mr. Serj. *Whit*. Look upon that Note. Are you acquainted with Mr. *Edwards*'s Hand-writing?—Mr. *Spicer*. Yes, Sir.

Mr. Serj. *Whit*. How long have you been acquainted with it?

Mr. *Spicer*. Twenty-four Years, Sir.

Mr. Serj. *Whit*. How long have you been a Clerk to him?

Mr. *Spicer*. Between ten and eleven Years, Sir.

Mr. Serj. *Whit*. How much is his Hand?

Mr. *Spicer*. *Samuel Edwards* and the *f*.

Mr. Serj. *Whit*. Very well. As to the other Letters, What are they?

Mr. *Spicer*. Some of them seem to be written over other Letters, which I suppose were Part of the Word *free*. The *r* seems visible between the *o* and *r*.

Mr. *Strange*. What was his Method of writing the Word *free*?

Mr. *Spicer*. With a double *f*, juſt as it is here, *ffree*.

Mr. *Strange*. Did you ever know him uſe the Word *Frank?*

Mr. *Spicer*. Never, Sir.

Mr. Serj. *Whitaker*. You ſay that you have been concerned as Clerk between ten and eleven Years. Was you concerned before for him?

Mr. *Spicer*. Yes, Sir.

Mr. Serj. *Whitaker*. In what Buſineſs?

Mr. *Spicer*. As to his private Affairs in Town, Caſh in Town, and many of his Rents.

Mr. Serj. *Whitaker*. During the Time that you was acquainted with his private Tranſactions, did you ever underſtand that there were any Tranſactions in Money Affairs between him and Mr. *Hales?*

Mr. *Spicer*. No, never any whatever. I never ſo much as heard his Name in the Family.

Mr. Serj. *Whitaker*. Did you ever know that Mr. *Edwards* uſed to make a Practice of indorſing any other Perſon's Notes, or of giving promiſſory Notes?———Mr. *Spicer*. No, Sir.

Mr. Serj. *Whitaker*. I believe you will all be convinced that it is his Hand-writing.

Mr. *Kinnerſley*. I admit, Sir, the whole Body of the Note to be mine own Hand-writing.

Mr. *Strange*. Look upon it before you do that. We deſire nothing but what is fair.

Mr. *Kennerſley*. Yes, Sir, I admit both the Figures on the Top, and the whole Note to be mine.

Mr. Serj. *Whitaker*. Gentlemen, you will obſerve that there were but three Months mentioned in the Note. The Note is drawn *Aug*. 16. and was not brought till *March* 20 after, ſo that the whole Time was long expired before the Note was left with Mr. *Bird* for the Money which he lent upon it.

Mr. *Strange*. I verily believe, my Lord, the Indorſement and Note to be both the ſame Hand.

(*Mr.* William Wright *called and ſworn.*)

Mr. Serj. *Whitaker*. Sir, was you at any Time with Mr. *Kinnerſley* and Mr. *Edwards*, and was there any Diſcourſe paſſed between them about this Note?

Mr. *Wright*. When Mr. *Kinnerſley* was examined before Sir *Richard Hopkins*, he there owned it to be his own Hand-writing, both the Note and Indorſement.

Mr. Serj. *Whitaker*. But give us an Account whether he was going to make a Confeſſion, and what was ſaid upon it?

Mr. *Wright*. As ſoon as he ſaid that the Note was all his Hand-writing——

Lord Chief-Baron *Pengelly*. And what did he ſay beſides?

Mr. *Wright*. What he ſaid, my Lord, as to the Indorſement was afterwards. As ſoon as he ſaid that the Note was all his Hand-writing, Mr. *Edwards* aſked him, Why he drew the Note payable to him, when there never had been any Dealings or Negotiations between them?

Mr. Serj. *Whitaker*. What ſaid Mr. *Kennerſley* to that?

Mr. *Wright*. He ſaid that there never had been any Dealings between them, either before or ſince the making of the Note payable to him; that he did not know Mr. *Edwards*, nor, except that Time before Sir *Richard Hopkins*, had not ſeen him.

Mr. Serj. *Whitaker*. Pray, Sir, give us an Account how he was prevented going on.

Mr. *Wright*. He opened himſelf in this Manner: That he was indebted to Mr. *Hales* in that Sum, and more, and that Mr. *Hales* deſired him to give a Note of his Hand; that he aſked Mr. *Hales* to whom it ſhould be made payable? I replied, It is very unuſual to aſk that. It is ſure natural for a Man to make it payable to a Perſon that he oweth the Money to. I ſaid, Sir, you ſeemed before to declare yourſelf an unhappy Perſon, an undone Man. I aſked him the Reaſon; and upon that Mr. *Mitford*, who was with him, ſaid, You ſhall not go on to declare any thing further, you may do yourſelf an Injury.

Mr. *Strange*. Did he ſay at that Time, that he ſaw any thing on the Back of that Note?

Mr. *Wright*. As ſoon as he had declared the Note to be his Hand-writing to Mr. *Edwards*, and Mr. *Bird* had ſhowed the Note to Mr. *Kinnerſley*, he was aſked, Whether he knew of that Indorſement of Mr. *Edwards*'s Hand before he ſaw the Note? He ſaid, he did know of the Indorſement thereof, but know not how it came there.

Mr. *Strange*. How did Mr. *Edwards* aſk the Queſtion?

Mr. *Wright*. He aſked Mr. *Bird*, Did Mr. *Kinnerſley* own the Indorſement before you ſhowed him the Note?

Mr. *Strange*. Sir, you do not apprehend the Queſtion aſked you. What was the Queſtion that Mr. *Edwards* aſked Mr. *Kinnerſley?*

Mr. *Wright*. Whether he knew of the Indorſement before that Mr. *Bird* ſhowed him the Note?

Mr. *Strange*. What did he ſay?—Mr. *Wright*. He anſwered that he did.

Lord Chief Baron. Was that all that he ſaid?

Mr. *Wright*. He ſaid that he had had ſeveral Dealings with Mr. *Hales*, which was the Cauſe of his drawing that Note in that Manner.

Lord Chief Baron. But what did he ſay concerning the Indorſement?

Mr. *Wright*. Mr. *Bird* ſaid, That before he ſhewed Mr. *Kinnerſley* the Note, Mr. *Kinnerſley* ſaid that there was ſuch a Note of his Hand, with ſuch an Indorſement.

Lord Chief Baron. But what was the Anſwer that Mr. *Kinnerſley* gave Mr. *Edwards?*

Mr. *Wright*. That he knew of the Indorſement, but knew not how it came there.

Mr. *Strange*. Did he, Mr. *Kinnerſley*, mention the Indorſement himſelf? Did he ſay, whether he ſaw the Name before his writing the Note?

Mr. *Wright*. Not at that Time, Sir.

Mr. *Strange*. Did he at any other in your Hearing?

Mr. *Wright*. No, Sir.

Mr. *Strange*. When Mr. *Mitford* ſtopt him, was there any Diſcourſe afterwards whoſe Hand-writing the Note might be; was there any Diſpute?

Mr. *Wright*. Sir, the Company broke up then, when Mr. *Mitford* had given him that Caution.

(*Sir* Richard Hopkins *ſworn.*)

Mr. Serj. *Whitaker*. Sir *Richard*——

Mr. *Lacy*. I would beg firſt to aſk Sir *Richard*, whether this Examination was reduced into Writing?

Sir *Richard Hopkins*. I always take a Memorandum in my Book of what is ſaid upon an Examination. There was none other Examination in Writing, but my Memorandum of what I thought ſufficient to occaſion the Commitment that I made.

Mr. Serj. *Whitaker*. When was it?

Sir *Richard Hopkins*. It was ſome time about September. I remember that he was charged before me about two Notes. One was a Note of Twelve Hundred and Sixty, the other was a Note of Sixteen Hundred and Fifty Pounds, which of theſe you deſire me to ſpeak to, I know not.

Mr. Serj. *Whitaker*. That of Twelve Hundred and Sixty Pounds.

Sir *Richard Hopkins*. There was ſuch a Note drawn by *Thomas Kinnerſley*, payable within three Months after Date to *Samel Edwards*, Eſq. and indorſed by *Samuel Edwards*. I looked upon it; and, turning over the Indorſement, it ſeemed to me to be an altered and forged Thing. Upon this I examined Mr. *Bird*, whom they offered as an Evidence. Mr. *Bird* told me, that he had lent Money upon that Note of Twelve Hundred and Sixty Pounds, and that he had received ſome Money in Part of Payment of what he had lent: That hearing that Mr. *Hales* was taken up, he made Application to Mr. *Kinnerſley* for what Money remained due to him; that when he made ſuch Application to Mr. *Kinnerſley* for this Money, Mr. *Kinnerſley*, before he ſaw the Note, told him, that he had a Note of his for his Twelve Hundred and Sixty Pounds, payable in three Months after Date to *Samuel Edwards*, Eſq. or Order, and indorſed by *Samuel Edwards*. This I laid my Finger upon before him, thinking it ſufficient to commit him, and repeated the Words to Mr. *Bird*, Are theſe the Words that you ſay? If they are, repeat them; which he did. I aſked Mr. *Kinnerſley*, whether he had any Dealings with Mr. *Edwards?* He ſaid, that he had not. I aſked then, How he came to make a Note for twelve Hundred and Sixty Pounds payable to him, a Perſon with whom he had no Dealings. He ſaid, That he did it at the Requeſt of Mr. *Hales*, to whom he was indebted in that Sum of Money. He ſaid, That as to the Indorſement he knew not how it came there. He ſeemed ready to make an ample Confeſſion; but there was a Perſon there, who was (I think) one Way or other related to the Law, who ſtopt him directly, and had oft interrupted. I ſaid to him, Sir, this is not becoming here: I expect to examine any Perſon without your interrupting. I will afterwards aſk any Queſtion that——

Mr. Serj. *Whitaker*. Sir, when Mr. *Kinnerſley* had owned the Note, was there afterwards a Denial?

Sir *Richard Hopkins*. Afterwards, Sir, there was a Denial. It might be as to the other Note; and not that which you are now aſking me about.

(*Mr.* Richard Davis, *the Conſtable, called and ſworn.*)

Mr. Serj. *Whitaker*. *Richard Davis*, I think that you was the Conſtable ſent to apprehend Mr. *Kinnerſley*. Will you give us an Account how often you went to apprehend him, whether he was to be met withal, and what paſt when he was apprehended?

Mr. *Richard Davis*. My Lord, on *September* 12, there was a Warrant iſſued out to take up the Rev. Mr. *Kinnerſley*, and was given to me to execute. Accordingly I went in the Afternoon, and took a Porter with me. We went to the *Magpy* Tavern without *Aldgate*. I ſent the Porter thence to Mr. *Kinnerſley*'s Houſe in *Manſel-Street*, to tell him, that there was a Gentleman there to ſpeak with him; becauſe, he living in *Manſel-Street* in *Middleſex*, I could not there execute my Warrant. When the Porter came back, he told me, that the Daughter came to the Door, and ſaid, that the Reverend Mr. *Kinnerſley* was not in Town. After I had paid for what I had called for, I went from thence to the Clerk of the Pariſh, and aſked him, whether the Rev. Mr. *Kinnerſley* was in Town? He anſwered, No; and ſaid, that he went out of Town on *Tueſday*, I think it was, and that he did not know when he would be in Town. He aſked me what I wanted with him? I told him that a Couple wanted to be married, and wanted a Licence. Won't (ſaid he) the Curate do? No (ſaid I), the young Gentlewoman will not be married by any but the Doctor, and at his Church: So the Perſon having no Apprehenſion, ſent me to *London-Houſe* in *Aldersgate-Street*, to enquire for Mr. *May*, who would tell me when the Doctor would be in Town. He told me, that he would be in Town next *Thurſday* Night. Accordingly I went the next *Friday* Morning, took a Porter with me, went directly to the Doctor's Houſe. When I came there I rung hard at the Gate. Out came the Daughter. I aſked to ſpeak with the Doctor; ſhe ſaid that he was not at Home, and enquired what I would have with him. I told her the ſame about my wanting a Licence that I had told the Clerk before. I will (ſaid ſhe) go and call my Mamma. Accordingly Madam *Kinnerſley* came out: I told her that I wanted a Licence, was informed that the Doctor generally kept Licences by him, or at leaſt could help me to one. She deſired me to walk into the Parlour, ſaid that the Doctor had been out of Town, was very much fatigued, which was the Reaſon that he was denied. Out came the Doctor, Sir, (ſaid he) where is the Gentlewoman? Sir, (ſaid I) ſhe is hard by, at the *Magpye* Tavern by *Aldgate*. Who (ſaid he) is ſhe, and who are her Friends? I told him that her Name was *Bird*. Where (ſaid he) lives ſhe? I ſaid in *Fleet-Street*. I do not (ſaid he) remember that Name. You do, Sir, (ſaid I) know her Father very well. What Age (ſaid he) is ſhe? I told him her Age. Have her Friends given Conſent (ſaid he), without that I would not do it for an hundred Pounds: The Penalty is fifty Pounds; I told him that it had been done to my Knowledge. Aye (ſaid he) it may be at the *Fleet*. I deſired him to go to the Tavern, where her Brother was with her, and he would be ſatisfied. My Intent was to decoy him into the Liberties of the City. He ſaid, No, he wou'd not go with me: So I had no Opportunity then. But having ſeen him once, and ſo knowing him, I afterwards watched for him, and ſaw him come out, and go through the *Minories*. I watched him till he came to *Aldgate*; I then paid my Reſpects to him. I think (ſaid he) that you are the Perſon that came to me about a Marriage. Yes, Sir, (ſaid I) but I have now another Affair to ſpeak to you of. I have a Warrant againſt you for Forgery of a Note of twelve hundred and ſixty Pounds. He ſaid, God forbid. He aſked to ſee my Warrant. He ſaid, had the Gentleman ſent to him, he woul readily have come. I aſked him why he denied himſelf? He ſaid, that he apprehended an Arreſt. I deſired him to go with me to the *White Hart* Tavern in *Biſhopſgate-Street*. He there owned the Note.

Mr. Serj. *Whitaker.* Was it within or without the Bars?

Mr. *Davis.* It was within.

Mr. Serj. *Whitaker.* Did you go with him to Sir *Richard Hopkins?*

Mr. *Davis.* Yes, Sir.

Mr. Serj. *Whitaker.* My Lord, there is another Thing that we shall prove; for all is Circumstance. We shall shew that Mr. *Kinnersley* and Mr. *Hales* have been often together for four or five Months in a private Manner. As soon as the one hath come in, the other hath gone with him into a private Room, and they have stayed some Time together; and this was about the Time that these Transactions have been. When these Matters are laid together, you will judge that Mr. *Kinnersley* hath not been so kind to Mr. *Edwards* as to give him Twelve Hundred and Sixty Pounds; but that there was a plain formed Design to raise this Money upon his Credit. Join this together with his owning, that he knew that Mr. *Edwards*'s Hand was on the Back of the Note before he drew the Note, and that he knew of the Indorsement, though he said he knew not how it came there. Considering these Things, none will doubt but that there was a Contrivance between them. We shall call several Witnesses.

Mr. *Lacy.* We submit it to my Lord, whether it be proper. It is foreign to this Indictment; and we should have nothing offered but what we may be supposed to come prepared to defend. We cannot be supposed to come prepared to defend this, by shewing how he came there, and upon what Account.

Lord Chief Baron. It is an Indictment against both the Defendants. The Note was indeed subscribed by the Defendant *Kinnersley:* But then it was delivered out by the other Defendant *Hales.* Now, they say, that they will shew by several Witnesses that they were very conversant together about that Time, and they are acquainted with the private Manner of their conversing together. You hear what is the Use they make of it. I see not that we can refuse their giving this Account. What Use is to be made of it must be left to the Jury.

Mr. *Mather.* Are these Things to be proved by Circumstances?

Mr. Serj. *Whitaker.* Can Forgery be proved any otherwise?

Mr. Bab *called and sworn.*

Mr. *Strange.* Pray, where do you live?

Mr. *Bab.* At *Peel*'s Coffe-house, in *Fleet-street.*

Mr. *Strange.* Do you keep that House?

Mr. *Bab.* Yes, Sir.

Mr. *Strange.* Have you ever observed that Mr. *Hales* and Mr. *Kinnersley* ever frequented that House, and in what Manner?

Mr. *Bab.* Last Summer, the greatest Part of the Summer, sometimes twice or thrice in a Week, till near the Time that the Gentleman was taken up, Mr. *Hales* would sometimes come thither, and sometimes be there an Hour or two. Sometimes he would ask whether a Minister had been there to ask for him? We hardly knew the Name of either of them, but knew whom he meant. Mr. *Hales* would often be in our Room, and see sometimes Mr. *Kinnersley* coming, out of the Window. Mr. *Hales* would hardly take any Notice of him; but as soon as he came in Mr. *Hales* would go into a private Room, and the other afterwards go to him. And sometimes as soon as one came in at one Door, the other went out at the other, and he followed him.

Mr. Serj. *Whitaker.* How often was this?

Mr. *Bab.* Twice or thrice in a Week.

Mr. *Strange.* Do you remember on what Occasion, and how they left off coming to your House?

Mr. *Bab.* Mr. *Kinnersley* was not at the House for two or three Weeks or a Month before Mr. *Hales* was taken up. Mr. *Hales* was there a few Days before.

Mr. *Strange.* Do you remember that Mr. *Kinnersley* passed by?

Mr. *Bab.* Once he did. He went down *Fleet-street:* Mr. *Hales* rose up, went out, and went after him.

Mr. *Strange.* How long was this before Mr. *Hales* was apprehended?

Mr. *Bab.* It was three Weeks or a Month, I believe, before he was apprehended.

Mr. *Strange.* I ask, Whether at any Time they sat down in the publick Room?

Mr. *Bab.* Very seldom: They generally went into the private Part.

Mr. *Strange.* Was that distinct from the rest of the House?

Mr. *Bab.* Yes, Sir, quite separate.

Mr. John Brooks *called and sworn.*

Mr. *Strange.* Where do you live?

Mr. *Brooks.* I keep a Coffee-house in *Downing-street*, in *Westminster.*

Mr. *Strange.* What Name doth your Coffe-house go by?

Mr. *Brooks.* My own Name.

Mr. *Strange.* Do you know that you have ever observed that Mr. *Hales* and Mr. *Kinnersley* ever frequented your House, and in what Manner?

Mr. *Brooks.* Mr. *Kinnersley* hath sometimes come to the Coffee-house; sent for a Porter; gave him a Note to Mr. *Hales*, who hath come, and they have gone to a private Part of the Room.

Mr. *Strange.* Was there any other with them?

Mr. *Brooks.* No, Sir, never.

Mr. *Strange.* Was it often that they met thus?

Mr. *Brooks.* About four or five Times in a Month.

Mr. *Strange.* How long have they stayed?

Mr. *Brooks.* Several Hours. When I have asked the Servant why a Candle was not carried them, he hath said, that they refused it.

Mr. *Strange.* How long was it before Mr. *Hales* was taken up?

Mr. *Brooks.* About a Month.

Mr. *Strange.* Was there any Observation made upon his being taken up?

Mr. *Brooks.* I observed it the more, having often seen them together.

Thomas Janeway *called and sworn.*

Mr. *Kinnersley.* I admit, my Lord, that we have been together at several Coffee-houses.

Lord Chief Baron. Well, now the Man is sworn, we will go on with him.

Mr. *Strange.* Do you know Mr. *Kinnersley* and Mr. *Hales?*

Mr. *Janeway.* Yes, Sir.

Mr. *Strange.* Do you keep a Coffee-house?---Mr. *Janeway.* Yes, Sir.

Mr. *Strange.* Where?----Mr. *Janeway.* In *Cornhill*, Sir.

Mr. *Strange.* Do you remember that they have frequented your House together, and in what Manner?

Mr. *Janeway.* I believe they may have been there together several Times.

Mr. *Strange.* What Company had they with them?

Mr. *Janeway.* I take no Notice what Company is there. I observed them not.

Mr. *Strange.* How often have you observed them retire up Stairs together?

Mr. *Janeway.* I take no Notice of such Things. They might for an hundred Times, for aught I know.

Mr. Serj. *Whitaker.* My Lord, we shall rest the Evidence here. We submit it to your Lordship and the Jury, when such a Note is drawn by such a Man upon such a Paper, by which he promiseth to pay such a Sum to a Person with whom he had no Dealings, to what End can it be. Can it be with any other Intention than to charge an innocent Man with it? I think it is a plain Case. It is certain that Mr. *Hales* carried this Note, and borrowed a Sum of Money upon it; and Mr. *Kinnersley* made Preparation for it by making a Note for so much Money payable to Mr. *Edwards.* Doth a Man so easily give Twelve Hundred and Sixty Pounds to a Stranger with whom he hath had no Dealings? To what Purpose could it then be thus drawn? Why, to be indorsed. And this Mr. *Kinnersley* did, and he owned that the Name was there, and he knew that Mr. *Edwards* was a rich Man. Well, if Mr. *Edwards* was a rich Man, and the other not worth a Groat, as he owned himself to be an undone Man, to what Purpose then can it be? Well, I think it clearly appears that this was a Contrivance between them two. If you think not this plain, I think that it is impossible to convict any Man on a stronger Evidence.

Mr. Serj. *Darnell.* My Lord, I am Counsel for the Prisoner at the Bar, Mr. *Hales.* And I think it doth appear that there was a Transaction beween Mr. *Hales* and Mr. *Kinnersley*; and that this Money was due from Mr. *Kinnersley* to him. And we apprehend, notwithstanding what hath been offered, that the Confession of Mr. *Kinnersley*, is a proper Justification of Mr. *Hales.* It is not, my Lord, Mr. *Kinnersley*'s being a Defendant that shall deprive Mr. *Hales* of the Benefit of this Confession. It appearing that he was indebted to Mr. *Hales*, this Note was given in Satisfaction: We apprehend that it was given upon this Account to Mr. *Hales.* In Confirmation of what Mr. *Hales* saith, we can produce a Person to shew that there was an Account between them, and Mr. *Kinnersley* acknowledged such a Balance, in Satisfaction of which this Note was given. And we think that it could not be drawn as a Note of Mr. *Kinnersley*'s payable to Mr. *Hales*, not only because the Account would be as good against Mr. *Kinnersley* as such a Note of his Hand, but also because of Mr. *Hales*'s own Circumstances. Mr. *Hales* applied to a Gentleman that recommended him to Mr. *Bird* to borrow Money upon this Note. And, Gentlemen, it was this Note thus drawn that recommended him. Mr. *Hales* had the Misfortune to be concerned with Sir *Stephen Evance*; he could not therefore appear himself; and, therefore, by the Assistance of this Note, borrowed the Money. When Difficulties came upon it, he went and paid Part of the Money, and I believe would have taken care to have paid the whole: It doth not appear that this hath affected Mr. *Edwards.* His name indeed hath been exposed as a Man would not be willing that it should; Money hath been raised upon the Credit of his Name; but he hath not been affected thereby. This therefore lieth on the unhappy Circumstances of Mr. *Hales.* We will call one Witness, and then this Confession of Mr. *Kinnersley* we hope will avail.

Mr. *Lacy.* My Lord, I apprehend that there is a Circumstance that lessens the Weight of, if it not wholly sets aside what they go upon. What they have gone on was, that Mr. *Edwards*'s Franks were used to this ill Purpose. *Maddox*, a Servant of Mr. *Edwards*, is produced, who tells us of a Parcel of Franks that were delivered in *July* last. Mr. *Bird* gave an Account that this Note was brought to him in *March:* So that it was brought him before these Franks were delivered. And though it may be apprehended that there were other Franks, we think that there ought to be a Proof of some Franks that were delivered before.

Mr. *Strange.* There have been, Mr. *Lacy*, (as hath been deposed) for several Years. Those that were brought in *July* last, are those that never were franked, but were only Covers left for that Purpose.

Mr. Robert Burkit *called and sworn.*

Mr. Serj. *Darnell.* Do you know, Sir, of any Account stated between Mr. *Hales* and Mr. *Kinnersley?*

Mr. *Robert Burkit.* No, Sir, none at all.

Mr. Serj. *Darnell.* No! What doth the Man mean?

Mr. *Strange.* What, none in *Newgate*, nor no where else? Do you know of none?——Mr. *Robert Burkit.* No, Sir.

Mr. *Strange.* Do you know of any Money that was at any Time due from Mr. *Hales* to Mr. *Kinnersley?*

Mr. *Robert Burkit.* No, Sir, none at all.

Lord Chief Baron. Have you any other Witness?

Mr. Serj. *Darnell.* My Lords, there are two Witnesses to this Account stated.

Mr. Serj. *Eyre.* My Lord, and Gentlemen of the Jury, I am Counsel for Mr. *Kinnersley.* I apprehend that he is innocent. I readily agree with *Mr. Attorney*, that the Affair of Notes, established by Act of Parliament, is of great Moment, and their Security necessary to Commerce; and that the Forgery of such Notes and Indorsements thereupon is very pernicious to the Publick: I therefore apprehend that there ought to be strong Evidence for the convicting of such a Crime. I humbly submit it, that before a Man be convicted of so infamous an Affair, there ought to be strong Evidence; and the rather because he is a Clergyman of the Church of *England*, and his Capacity of Service depends upon his Credit: And it doth appear that he hath behaved himself with all possible Caution. You see that the Contrivance that the Officer sent to apprehend him made use of, was a Pretence of a Marriage. You see, Gentlemen, and I am glad to see it, and wish that all others used the same Caution, that upon his Inquiry what Age the young Woman was of, understanding that she was not of Age, and her Parents not being there, notwithstanding that he was told that her Brother was there with her, yet he absolutely refused and said, that he would not be concerned for an hundred Pounds without the Parents Consent: That is such a Point in his Favour, that I think that it is a stronger Circumstance

for him, than the other Circumſtances are againſt him. As to the Offence that is charged upon him, it is, I ſuppoſe, that he ſhould give out a Note made in his Name payable to Mr. *Edwards*, and indorſe ſuch a Note in Mr. *Edwards*'s Name, in order to charge Mr. *Edwards* with the Payment of the Money. They lay a great Streſs upon this, and ſay, that Mr. *Kinnerſley* was wholly unacquainted with Mr. *Edwards*. One of the Witneſſes ſaith, that Mr. *Kinnerſley* himſelf owned that he had never ſeen Mr. *Edwards* before in his Life. How therefore (ſay they) is it likely, that there ſhould be any fair Reaſon for a Man to make ſuch a Note payable to one that he had no Dealing nor Acquaintance with, nor had ſo much as ever ſeen before in his Life? I ſubmit it to you, whether in the Courſe of Buſineſs it is a material Thing whom a Note is made payable to. If a Man owe a Sum of Money, and give a Note for it, it is natural to enquire to whom it ſhould be made payable. It was the more natural in this Caſe, as Mr. *Hales*, having the Misfortune to have a Commiſſion of Bankruptcy ſtanding out againſt him, could not negotiate Notes in his own Name, but muſt act in ſome Friend or Neighbour's Name. And it is no great Wonder that Mr. *Kinnerſley*, whoſe Character directed his Studies another Way, and who was not acquainted much with theſe Affairs, ſhould be impoſed upon to give ſuch a Note; and the leſs ſo for this plain Reaſon: Sir *Stephen Evance* and Mr. *Hales* formerly lived in Mr. *Kinnerſley*'s Pariſh; received him with a great deal of Civility: It can be no Wonder therefore that he afterwards continued an Acquaintance with him. Notwithſtanding his Misfortunes, it is plain that Mr. *Hales* was ſtill acquainted with ſeveral very worthy Gentlemen: Mr. *Gibſon* and Mr. *Edwards* both furniſhed him with Franks; Sir *Biby Lake* recommended him to Mr. *Bird*, to borrow of him a conſiderable Sum of Money. If ſuch Gentlemen as theſe thus correſponded with him after his Misfortunes, no Wonder that Mr. *Kinnerſley*, who had been the Miniſter of the Pariſh where Mr. *Hales* had lived, ſhould keep up an Acquaintance with him; and ſo no Wonder that he ſhould be ſo impoſed on. In fact, we ſhall ſhew you that he was indebted for ſuch a Sum to Mr. *Hales*. It is impoſſible to give a particular Account of the whole Affair; Mr. *Hales* being alſo a Defendant, and therefore no Evidence: But that he was indebted in ſome ſuch Sums is plain. Gentlemen, it is very innocent if a Man give a Note where there is no Conſideration. It is no Injury to the Publick. The Perſon that gives the Note may injure himſelf, but not the Publick. There is no Act of Parliament againſt the giving of ſuch Notes. Well, if the giving of the Note be not culpable, conſider how the Fact of the Indorſement comes about. And if you conſider how that comes about, no doubt but that he muſt be cleared of the Fact. How muſt this be done to affect Mr. *Kinnerſley?* It muſt be on the Back of the Note when he wrote the Note, and he muſt know it to be there. Now, with great Submiſſion, have they given any Proof, or Colour of Proof, that it was then there, or, that if it was, he knew it to be there? They have given you the Proof of Mr. *Bird* and the Conſtable, who was preſent when he was examined. According to the firſt of theſe, it is plain that he knew not. He ſaid that he knew that the Name was there, but knew not how it came there. This, I think, inſtead of a Confeſſion, is an avoiding of it, by ſaying, that he knew nothing at all how it came there: But conſider the Nature of the Thing, how it is ſuppoſed to be done from a Frank of Mr. *Edwards*'s. Mr. *Edwards* had never franked a Letter for him, but many for Mr. *Hales*. Is it not moſt natural to ſuppoſe then that *Hales* was concerned? How doth it follow, that this being done from a Frank, the Name muſt be there before the Note was wrote? A Man that is capable of drawing ſuch a Note for ſuch an End, might he not give it to be franked? Is it not eaſy to conceive, that if I give ſuch a Note on a Quarter of a Sheet of Paper doubled up to a Perſon to be franked, that he ſhall do this ſo as to make the Name ſtand for an Indorſement? I would make this further Obſervation, it hath been counted doubtful, whether the making uſe of a Man's Name to a different Purpoſe from what he deſigned it for, ſhall be counted a Forgery. I think that the Doubt ariſeth upon a Diſtinction of my Lord *Cowper*, on the Statute of 8 *Eliz.* between forging and making a Falſe Deed. I do not pretend to ſay but that the Opinion of the *King's-Bench* was right. It was in the Affair of *Ward* and *Bridge*.

Lord Chief Baron. No, *Bridge* and *Dutton:* There was an Alteration. The Queſtion was, Whether it could be accounted a Forgery within the Act of Parliament? The Words of the Deſcription in the Act of Parliament are, "If any one forge or eraſe, *&c.*" whether he could be charged with forging of that Note? I was one of the Counſel. It appeared their Opinion, that he forged it as much as if he had wrote the whole Note.

Mr. Serj. *Eyre.* My Lord, I agree it to be as your Lordſhip puts it. I only mention it as a Doubt not ſettled by the printed Books. My Lord, a Man may alter a Deed, *e.g.* a Perſon oweth me Money on Bond; if I alter the Bond to mine own Damage, that is no Forgery; but when he doth it to the Injury of the Perſon to whom the Money is owing, then it is Forgery: The Forgery therefore lieth in the Deſign of defrauding another. Now, whoſe Good is it that this Note was drawn for? It appears that my Client had no Benefit at all by it. The Money was all received by Mr. *Hales*, and the whole Tranſaction about paying the Money was by Mr. *Hales:* He was therefore to receive the Benefit, moſt likely therefore that the Forgery was his. And as to this Promiſſory Note, what was the Effect of it? No one will pretend to ſay, but that if Mr. *Edwards* was to bring an Action he might recover his Money of Mr. *Kinnerſley:* He hath, therefore, only wrote a Note, which, without Controverſy, hath ſubjected him to the Payment of ſuch a Sum of Money. Mr. *Hales* hath received the Money, and gained by this Note. We ſubmit it therefore to your Lordſhip.

Mr. *Mather.* My Lord, with relation to the Tranſactions between Mr. *Kinnerſley* and Mr. *Hales*, we ſhall call Evidence to ſhew the Reaſons of thoſe private Meetings that were between them.

(*Mr.* Peter Marſh *called and ſworn.*)

Mr. *Mather.* Sir, do you know the Defendants, Mr. *Hales* and Mr. *Kinnerſley?*

Mr. *Peter Marſh*, I have, Sir, known Mr. *Hales* many Years.

Mr. *Mather.* But have you known Mr. *Kinnerſley?*

Mr. *Peter Marſh.* Not ſo many Years.

Lord Chief Baron. What is your Buſineſs or Employment?

Mr. *Peter Marſh.* I am an Attorney, my Lord.

Mr. *Mather.* Do you know of any Tranſactions between Mr. *Hales* and Mr. *Kinnerſley?*

Mr. *Peter Marſh.* About ten or eleven Years ago, Mr. *Hales* brought me a Bond of fifty Pounds, payable by Mr. *Kinnerſley* to me. Mr. *Kinnerſley* owed him the Money, and had given him a Bond payable to me. He deſired me to get it.

Mr. Serj. *Whitaker.* This is not Evidence. What ſignifieth it what the Defendant told him?

Mr. *Mather.* What was done upon that? What came of the Bond?

Mr. *Peter Marſh.* I delivered it to Mr. *Hales* again.

Mr. *Mather.* Did Mr. *Hales* owe you any Money?

Mr. *Peter Marſh.* No, Sir, none at all.

(*Mr.* Cropley *called and ſworn.*)

Mr. *Lacy.* Mr. *Cropley*, What do you know of any Money-matters between Mr. *Hales* and Mr. *Kinnerſley?*

Mr. *Cropley.* I received about ſixty Pounds at *Janeway*'s Coffee-houſe, a Debt which was due to me from Mr. *Kinnerſley:* They were there together; Mr. *Kinnerſley* was the Debtor, Mr. *Hales* had given me a Note for it. Mr. *Kinnerſley* had prevailed on me to lend him an hundred and odd Pounds upon but a ſlight Acquaintance: He brought another Gentleman to be Security with him for the paying it me; ſo I forbore him for ſix Months. I then enquired of him after it: When he had led me a Dance from Coffee-houſe to Coffee-houſe for ſome Months, I was forced at laſt to ſue for it. He deſired me to ſue the other Party, and forbear him: I recovered Half from the one, then I came upon him for the other. When I came to ſerve him with a Notice of a Writ of Enquiry, he met me with Mr. *Hales* at ſome Tavern in *Holborn*, about *June* or *July* laſt was a Twelvemonth. Then Mr. *Hales* ſaid to me, I am to receive about ſix or ſeven hundred Pounds within about three Months Time; and then I ſhall be ready to pay that Money: Upon that I ſtopt my Procedure upon the Writ of Enquiry; and, as Mr. *Hales* requeſted me, I took Mr. *Hales*'s and Mr. *Kinnerſley*'s Note for the Payment of it within three Months. When that Time was expired, or within about four Months, I got it. What was his Part to pay I received at *Janeway*'s Coffee-houſe: They were together; which paid me I cannot ſay. The Money was in half and quarter broad Pieces; I refuſed to take it in thoſe Pieces, being to tranſact it in the Alley. Upon that he took me to a Banker's about *Temple-Bar*, and there changed it.

Lord Chief Baron. When was this?

Mr. *Cropley.* It was in *February*. Mr. *Kinnersley* gave me a little Note at the ſame Time for the Damages that I had ſuſtained in ſeeking it; about fifty Shillings, or thereabouts.

Mr. *Strange.* Hath there been any Application made, Sir, to you to appear as a Witneſs?

Mr. *Cropley.* Yes, Sir, Mrs. *Kinnersley* ſent to deſire me; and Mr. *Kinnersley* alſo ſent me a Letter, and beſides that ſent me a *Subpœna*.

Mr. *Strange.* Can you produce that Letter?

Mr. *Cropley.* I have it not here, Sir.

Mr. *Strange.* You cannot ſay which paid you the Money, Sir?

Mr. *Cropley.* No, Sir, but they were both together.

Mr. *Kinnersley.* Sir, one Word I beg. Did not Mr. *Hales* give you a Note for it?

Mr. *Cropley.* Yes, Sir, you and Mr. *Hales* joined in it.

Mr. Peter Beart *was called, but did not appear.*

(*Mr.* John Wells *called and ſworn.*)

Mr. *Lacy.* What do you know, Sir, of any Money due from Mr. *Kinnersley* to Mr. *Hales?*

Mr. *John Wells.* No, Sir, I know not of any.

Mr. *Lacy.* Or of any Money lent, particularly an hundred Pound? Was Mr. *Kinnersley* indebted to you?

Mr. *John Wells.* Yes, Sir, an hundred Pound.

Mr. *Lacy.* Who lent him the Money to pay you?

Mr. *John Wells.* Mr. *Hales*, as Mr. *Kinnersley* told me.

Mr. *Lacy.* Who paid you the Money?

Mr. *John Wells.* Mr. *Kinnersley.*

Mr. *Lacy.* Was Mr. *Hales* preſent?

Mr. *John Wells.* I do not know, Sir. It was paid to my Attorney.

(*Mr.* John Simpſon (*Banker*) *called and ſworn.*)

Mr. *Lacy.* Sir, what do you know of Money due from Mr. *Kinnersley* to Mr. *Hales?*

Mr. *Simpſon.* I know not Mr. *Hales*, Sir. I never ſaw him out of Court.

Mr. *Lacy.* Was Mr. *Kinnersley* indebted to you?

Mr. *Simpſon.* Some Months ago he borrowed of me thirty Pounds on ſome Lottery Tickets.

Mr. *Lacy.* Who paid it you off?

Mr. *Simpſon.* I was not at the Shop when the Money was paid.

Mr. *Lacy.* But do you not know how it was diſcharged, whether by Money or Notes, and by whom?

Mr. *Simpſon.* No, Sir, I cannot ſay. It doth not appear by our Books.

Mr. *Lacy.* Do you know or not that Mr. *Hales* paid it, or gave a Note for it?——Mr. *Simpſon.* I do not know, Sir.

Mr. *Lacy.* Doth any Note by your Books appear given for it, or by whom paid?

Mr. *Simpſon.* No, Sir; if it had been paid by any other Hand than Mr. *Kinnersley*'s, I believe that it would have appeared by our Books.

(*Mr.* Fowler (*Banker*) *called and ſworn.*)

Mr. *Kinnersley.* Sir, I beg you to ſay whether you remember that I gave you a Note from ſome Friend of Mr. *Hales*'s?

Mr. *Fowler.* You never mentioned his Name. I lent you Money upon Lottery Tickets; but know nothing of that you mention.

Mr. *Kinnersley.* Did not Mr. *Hales* come to your Shop, take up the Note, and pay it?

Mr. *Fowler.* No, Sir, not that I know of. I never ſaw him there.

(*Mr.* John Hall *called and ſworn.*)

Mr. *Lacy.* Did you ever, Sir, give a Note upon Mr. *Hales*'s Account and for his Money?

Mr. *Hall.* Not that I know of.

Mr. *Lacy.* Did you at his Deſire pay any Money?

Mr. *Hall.* No, Sir.

Mr. *Lacy.* Do you know any Perſon that did?—Mr. *Hall.* No, Sir.

Mr. Serj. *Whitaker.* Do you know Mr. *William Hales?* Will you give us an Account of his paying you a Bill in broad Pieces, and whether he

aſked

asked you to write his Name *Wells*. He can tell very well I know what this means. Did you give any Note, or set your Name?

Mr. *Hall*. I set my Name.

Mr. Serj. *Whit*. Do you know your Name again?---Mr. *Hall*. Yes, Sir.

Mr. Serj. *Whit*. Is that your Name?---Mr. *Hall*. Yes, Sir, it is.

Mr. Serj. *Whit*. When did they get it of you?

Mr. *Hall*. On *August* 17 last.

Mr. Serj. *Darnell*. I see not how my Brother makes this Evidence against Mr. *Hales*. He is not brought for him but for Mr. *Kinnersley*; and they would cross-examine him as to Mr. *Hales*.

Mr. Serj. *Whit*. I agree with you that we could not have called him: But my Brother *Eyre* called him to shew that there was a promissory Note, he denies it. Well, I submit it.

Mr. Serj. *Eyre*. My Lord, we have gone through the Evidence opened: But I would mention this as to the Examination before Sir *Richard Hopkins*. It is suggested that Mr. *Kinnersley* would have confessed, but that he was interrupted by Mr. *Mitford*. It is plain that he had spoke to all that was material both as to the Note and the Indorsement: I think that it is therefore wrong for them to say that he would have confessed more, but that he was interrupted. But we will call a Gentleman to shew in what a candid Manner he behaved, and that he was not interrupted in the Manner that hath been suggested.

(*Rev. Mr.* John Hayes *called and sworn.*)

Mr. Serj. *Eyre*. Was you present, Sir, at Sir *Richard Hopkins*'s, when Mr. *Kinnersley* was examined?---Mr. *Hayes*. Yes, Sir.

Mr. Serj. *Eyre*. What did you observe about his being stopped, or did he fully speak his Mind?

Mr. *Hayes*. I remember, Sir, that Mr. *Mitford* desired him to be cautious, and not too free in making his Reply.

Mr. Serj. *Eyre*. I only ask you, whether he had not then spoke both as to the Note and the Indorsement?

Mr. *Hayes*. He said that the Note was his. He said that as to the Indorsement, he had heard that it was indorsed by Mr. *Edwards*, but knew not how it came.

Mr. Serj. *Eyre*. Do you apprehend that his being cautioned was to be careful in his Answer, or that referred to the Answers that he had already made?

Mr. *Hayes*. I apprehended that the Caution was to be careful in his Answers.

(*Mr.* Grants *called and sworn.*)

Mr. Serj. *Eyre*. Was you present at the Examination of Mr. *Kinnersley* before Sir *Richard Hopkins*?

Mr. *Grants*. Yes, Sir, Mr. *Kinnersley* sent for me when he was first taken up. I suppose it was because I married a Relation of his; for I knew nothing of any Transactions between him and Mr. *Hales*.

Mr. Serj. *Eyre*. I ask you, whether he fully spoke his Mind about the Note and the Indorsement, or whether he was interrupted therein?

Mr. *Grants*. Sir *Richard* asked him, whether he knew the Note and the Indorsement? There then passed a Sort of a Squabble between him and Mr. *Mitford*.

Mr. Serj. *Eyre*. Did you observe that any Gentleman interrupted Mr. *Kinnersley*, or cautioned him as to his Answers?

Mr. *Grants*. There was an Interruption: But what it was I could not particularly hear.

Lord Chief-Baron. Have you done?---Mr. Serj. *Eyre*. Yes, my Lord.

Mr. Serj. *Whit*. My Lord, I observe that the Defence that they have made is for one to throw it upon another. Mr. *Kinnersley* thinks that Mr. *Hales* is as deep as he can be, and therefore may bear the Load: But then, my Lord, Mr. *Hales* wants to retort it upon Mr. *Kinnersley*; but the Drift of both is, that Mr. *Kinnersley* may get out as he can. You will observe the Defence: There is a Pretence of mutual Dealings, and that this Note was given in Discharge of the Balance of the Account. I submit whether there hath been any Evidence of any Dealings to any such Sum: If not, to what Purpose was it given? If it was to raise Money, was it for a fraudulent Purpose, or not? If it was, they are both equally guilty. But the Pretence now is this, Mr. *Hales* was a Bankrupt; and it was therefore proper for them to have a third Person, in whose Name to transact. Now how could that be proper, if it was a Person over whom they had no Power? Would any one be willing to take Notes in the Name of a Stranger? Is a Stranger to be trusted with such a Sum? No. If not, how then? Here is one Man to write such a Note for another in Mr. *Edwards*'s Name, to what Purpose? Why, in order to charge Mr. *Edwards* with the Money: Else, what signifieth the Indorsement. The Question then is, Was Mr. *Edwards*'s Hand there? And did Mr. *Kinnersley* know it? They that would have it that Mr. *Kinnersley* was very innocent, say, that he knew nothing at all that Mr. *Edwards*'s Hand was there. Well, when he comes to be called upon and importuned for the Money by Mr. *Bird*, what doth he say? Why, Mr. *Edwards* is a rich Man; I am an undone Man: You must therefore resort unto him. This was said not only upon the Sight of the Note, but before it was shewed to him. He then told Mr. *Bird* that he knew that he had such a Note of his so indorsed. Gentlemen, Things of this Nature are only to be detected by Circumstances. They will not call Persons to be Witnesses to these Transactions. If this was a fair Dealing, it was proper to have called some one honest Man to give an Account that he was present thereat, and privy to this Transaction: But instead of that, which is the wickedest I cannot tell; but it is plain that here is a Contrivance to charge an innocent Person; and such little Things as Evidences of Transactions of a Note of fifty or thirty Pounds, or the like, are not to go against it. Circumstances will not make a plainer Proof than here is of Forgery. A Note drawn on such a little Paper, in so slovenly a Manner, detects itself. Here is a plain Forgery. The Question is, who is guilty of it; and whether there is not sufficient Proof that the Defendants are the Persons guilty of it?

Mr. *Strange*. My Lord, I beg it may be considered, whether it is not criminal to give such a Note. At several Times he declared before he saw the Note, that the Name of Mr. *Edwards* was on the Back of it. If the Jury are of my Mind, as to one Fact, it is a Demonstration that the Name was upon it when the Note was given. If the Jury will look upon the Note, it will appear that something was written upon the Note, and nothing more probable than *free*. Can any imagine, that Mr. *Edwards*, whose name is there, would ever write a Frank upon a Note? If therefore, the Jury is of my Opinion in this Observation, that there was at first *free Samuel Edwards*, it is impossible to imagine but that it was wrote there before the Note was drawn. My Lord, that the Jury will take on their View. My Lord, there have been several Things said as to whose Benefit this should be for, that it is plain that Mr. *Kinnersley* received no Benefit by it, that therefore it could not probably be his Forgery. My Lord, it is plain by the Account that we have given you of their Correspondence, that there was something carrying on between them, which must be of a very private Nature. Doth it not appear for whose Benefit it was? I am (said he) an undone Man; you cannot expect it of me, but must apply to Mr. *Edwards* who indorsed it: And therefore, though he made himself liable, that signified not, as he was at the same Time liable to many more Actions. It appears that they were obliged to give the Note in the Name of another Person who was responsible, having no Credit of their own. As to that Objection, for whose Benefit, we apprehend it of no Consequence; they might probably share it between them. There was another Thing endeavoured to be proved, *viz.* such a Debt due from Mr. *Kinnersley* to Mr. *Hales*. Since they thought it necessary to attempt a Proof of that Kind, if they have failed in that Proof, I apprehend that their Opinion was that they stood in Need of a Proof of that Kind, which hath failed them. What have they gained? Notwithstanding a Note given of twelve hundred and sixty Pounds (a very great Sum to be due from a Clergyman in his Circumstances), they have pretended to prove nothing but one Bond of fifty Pound, which hath not been proved, but only Mr. *Hales* came to Mr. *Marsh* and told him this, which I apprehend to be no Evidence: Had they brought the Bond, it would have appeared whether true or not: This is no Proof that Mr. *Kinnersley* was indebted to Mr. *Hales*. What Mr. *Cropley* saith, amounteth to no more than about fifty-nine or sixty Pounds. I must submit it, whether they have given a reasonable Account of this Affair. My Lord, it is an Happiness that there are such general Circumstances as tend to detect them.

Mr. *Kinnersley*. My Lord, I desire to speak.

Lord Chief-Baron. You were called on before. You should advise with your Counsel whether it be proper: I would only acquaint you that it is not regular. If you would be heard, or call any Witness, if you have any Thing material for your Defence, it shall be heard: But if you produce any Thing new, the Counsel for the King must have Liberty to answer; or if you bring any Witness, they must have Liberty to cross-examine, or to bring any other Evidence on their Side.

Mr. *Kinnersley*. My Lord, I shall call no other Evidence. I shall leave it to your Justice; and this Gentleman I believe will acquiesce. Mr. *Hales* lent me fifty Pounds; he took it in that Gentleman's Name that was called for a Witness: Next, Mr. *Took* had one hundred and fifty Pound Note: Another Gentleman (Mr. *Burton*) hath Notes of one hundred Pound, which Mr. *Hales* gave him to discharge a Debt.

Lord Chief-Baron. Mr. *Kinnersley*. You intimated that you should bring nothing new.

Mr. *Kinnersley*. My Lord, at a Publick Coffee-House he desired me to lay down twenty-five Pounds, and the Policies are now in Court which were actually insured for so much Money. And as to this Note, I call God to Witness, that this Note I gave him upon no other Account but on settling the Account in Exchange for other Notes which amounted to that Sum. He directed me how to do it; took the Paper out of his Book, and held it double, whence I now apprehend that Mr. *Edwards*'s Name was then on the Back. I never was privy to his altering any Letters: I gave him that Note for want of Money, for a Debt which is still due, and call upon him to declare what is true.

Mr. At. Gen. My Lord, whatever Mr. *Kinnersley* hath avowed is without Witness.

Lord Chief-Baron. When Persons are prosecuted capitally, the Law alloweth him not Counsel as to Fact: Therefore, what a Person alledges himself must be taken Notice of. Upon a Charge of Misdemeanour you make your Defence by Counsel, and they state the Case. It doth not avail in Proof what a Person saith himself, and what they say avails not, except supported by Proof. What you say will have no Weight as proved, except proved.

Mr. *Kinnersley*. My Lord, are Policies no Proof? Here is a Certificate from the proper Officer. Sir, I insist upon it that you do me Justice in this Matter. I will be content to suffer Death if this be not so.

Lord Chief-Baron. You are not to be now regarded.

Lord Chief-Baron. Gentlemen of the Jury, this is an Indictment against *Thomas Kinnersley*, Clerk, and *William Hales*, late of *London*, Goldsmith, for forging and publishing an Indorsement on a promissory Note, for the Payment of Twelve Hundred and Fifty Pounds to *Samuel Edwards*, Esq. And the Indictment sets forth, That the Defendants, having in their Custody a promissory Note subscribed by *Thomas Kinnersley*, and bearing Date *August* 16, 1727, whereby *Kinnersley* promised to pay Twelve Hundred and Sixty Pounds to *Samuel Edwards*, Esq. within three Months; that the Defendants, having this Note in their Custody with an Intention to deceive and defraud the same *Samuel Edwards*, Esq. and being Persons of evil Fame and Reputation, did falsly and fraudulently forge and counterfeit on this Note for Twelve Hundred and Fifty Pounds, payable within three Months after Date to *Samuel Edwards*, Esq. or his Order, an Indorsement to this Effect,

Pray pay to the Order of *for the Value received*,
SAMUEL EDWARDS.

thereby intending to charge Mr. *Edwards* as the Indorser of that Note with the Payment of the Twelve Hundred and Sixty Pounds contained in the Body of the said Note; that after they had forged and counterfeited this Indorsement upon this Note, and knowing it to be a Counterfeit, they did publish the said Note so indorsed. Gentlemen, the Counsel on the Behalf of the Prosecution have acquainted you that they look upon this as a Contrivance of both Defendants to carry on this Forgery upon what they suppose at first merely a Frank; that the Name of Mr. *Edwards* upon the Cover of a Letter with the Word *ffree*; that the Word *ffree* hath been at the Time of the Indorsement altered and made for *the*, and the Word *Value received* added to that, and made the Indorsement to this Note. For the corroborating of this they have called

called ſeveral Witneſſes. Firſt, *Thomas Maddox* was called a Servant to Mr. *Edwards*. He tells you that Mr. *Edwards* lives in *Duke-ſtreet, Weſtminſter*, and that the Defendant *Hales* lived near over-againſt him; that the Defendant *Hales* frequently ſent Covers over, upon which he had ſeveral Franks directed to ſeveral Perſons; that this hath been the Cuſtom for ſeveral Years; that Mr. *Edwards* uſed to ſend them over indorſed with his Name *Samuel Edwards, ffree*. He ſaith, that his uſual Way was to indorſe the whole Superſcription; but that laſt Summer, ſome Time about *July*, there were ſix Covers ſent over by the Defendant to Mr. *Edwards*'s Houſe by the Defendant *Hales*, deſiring that they might be franked with only *Samuel Edwards ffree*, without writing the whole Superſcription; that Mr. *Edwards* declined that, ſaying that he never did it: He therefore refuſed him, and thoſe Covers were not indorſed, but were produced here. He hath been aſked, Whether he knew of any Correſpondence beſides this of franking Letters between Mr. *Edwards* and Mr. *Hales*; and whether he knew of any between Mr. *Edwards* and Mr. *Kinnerſley?* He anſwered, That he doth not know of any whatſoever. Another Servant, one *Anne Clarke*, comes and produceth a Paper of Names that was brought over from the Defendant *Hales* to Mr. *Samuel Edwards*'s Houſe, in order for him to frank Letters to thoſe Perſons, and write the whole Superſcription as at other Times. She produced the Paper in Court, which ſhe ſaid that ſhe received from Mr. *Hales*'s Servant. And Mr. *Booth* being examined thereto declares it to be the proper Hand of the Defendant *Hales*, with whoſe Writing he hath been well acquainted, eſpecially ſince his Bankruptcy, he being a Clerk in that Commiſſion. In this Paper is wrote,

Two to *John Pratt*, Eſq; *Briſtol*.
Two to Mr. *Levett*, *Huntington*.
Two to *Stephen Mitford*, Eſq; *Exeter*.

They make uſe of this Evidence to ſhew that there was a Sort of an Attempt to get Covers with theſe Names franked, hoping or ſuppoſing that there might be a Space left ſufficient to write a Note of this Nature. Mr. *Booth* who was called to prove the Hand-writing of Mr. *Hales*, was croſs-examined by the Counſel for the Defendant, whether he knew of any Traffick of Mr. *Hales* ſince his Bankruptcy. He ſaith, That he doth not know of any, but that he was well acquainted with his Hand-writing, being employed in the Affair of the Commiſſion of Bankruptcy. Mr. *Thomas Bird* was next called and examined as to the Circumſtances of the Publication of this Note. He tells you that this Note, dated *Aug.* 16, 1727, for the forged Indorſement whereof both the Defendants are proſecuted, was brought to him, in order to take up Money upon this Note, and further Security, which Mr. *Hales* gave in *March* laſt; that it was brought in the Manner that it now is, and no Alteration made either in the Body of the Note or in the Indorſement, but it ſtands and remains in the ſame Manner as when he firſt received it; that when Mr. *Hales* came to him, he propoſed to borrow of him ſeven hundred and fifty Pounds upon the Credit of this Note for his Security, and likewiſe upon his own Note for the Payment of this Money; that he had been requeſted by a Friend of his in the Morning before to accommodate Mr. *Hales* with this Money upon the Credit of a Note which the Perſon had in his Hand, and which was the ſame Note; and that on the Afternoon of the ſame Day [*March* 20], while he was at the *Hudſon's-Bay* Houſe, in *Fenchurch-Street*, Mr. *Hales* came to him with the Note, and he then lent him the Money for fourteen Days; that he then deſired Mr. *Hales* to write ſome Paper to teſtify the Reciept of the Money, and be a further Security to him; and that the ſaid Mr. *Hales* thereupon wrote a promiſſory Note dated the ſame Day, wherein he promiſed the Re-payment of this Seven Hundred and Fifty Pounds in fourteen Days, which Note was ſubſcribed by the Defendant *Hales* himſelf; that the Sum of Money was made up in ſeveral Bank Notes; that he delivered theſe to the ſaid Defendant *Hales*, and took this Note and Mr. *Hales*'s own Note, as a Security for the ſaid Money; that *April* 3 following Mr. *Hales* brought four hundred Pounds, which he indorſed upon his own Note; and that the reſt of the Money remains due. He tells you, that when he heard that the Defendant *Hales* was apprehended in *September* laſt, he ſent to one *Tomkins*, an Attorney, delivered this Note to him to go to Mr. *Kinnerſley*, to get this Money for him. The Account that he received was, that Mr. *Kinnerſley* was out of Town, ſo that he could not meet with him. At length Mr. *Tomkins* intimated that Mr. *Kinnerſley* cared not to ſee him, but would come the next Day to Mr. *Bird* himſelf upon this Affair. Accordingly on or about the 16th of *September*, the Defendant, *Kinnerſley*, came to Mr. *Bird* at his Compting-houſe: Mr. *Bird*, not knowing who he was, ſeeing a Clergyman come in his Gown, and looking a little at him, he ſaid his Name was *Kinnerſley*. He hereupon ſaid that he had a Note of his Hand left with him for a Security; to which he replied, I know, Sir, that you have, and it is for Twelve Hundred and Sixty Pounds, payable in three Months to Mr. *Edwards* or his Order; that he ſaid that the Note was of his own Hand-writing; but immediately added, How it came to be indorſed by Mr. *Edwards* I know not. This, Gentlemen, you muſt take particular Notice of, becauſe this was the firſt Mention of Mr. *Edwards*'s Indorſement: At that Time Mr. *Bird* had not mentioned that, nor ſhewed him the Note; when Mr. *Kinnerſley* having owned the Note to be his Hand-writing, immediately added, but how it came to be indorſed by Mr. *Edwards* I know not; naming thus the particular Perſon who was the Indorſer of this Note. He ſaith, that Mr. *Kinnerſley* was in a great Conſternation at that Time, and ſaid that he was an undone Man, among other Expreſſions. And he ſaid likewiſe, that Mr. *Edwards* was a Gentleman of Subſtance; and this he declared, tho' Mr. *Bird* had not ſhewn him the Note at that Time: I am (ſaid he) an undone Man; Mr. *Edwards* is a Man of Subſtance. This he ſaid before that the Note was ſhewn to him, or any Declaration was made by Mr. *Bird* relating to Mr. *Edwards*'s being the Indorſer of this Note. He ſaid further that he was not in a Capacity to pay this Money; and that they muſt apply to Mr. *Edwards*, who was a ſubſtantial Man, for it. Gentlemen, this was made uſe of as a Sort of Defence at this Time to avoid this Thing, to put it off from himſelf by this Argument, why *Bird* ſhould not come upon *Kinnersley* himſelf, who was uncapable of paying him, but take his Remedy againſt Mr. *Edwards*, who was a ſubſtantial Man. He was croſs-examined: The Counſel for the Defendant aſked who was the Perſon that recommended Mr. *Hales* to him as the Borrower of this Money? It was anſwered, That it was Sir *Biby Lake*. He was aſked on whoſe Credit he lent the Money, Mr. *Hales*'s or Mr. *Edwards*'s? It was anſwered both, as it muſt be in ſuch a Caſe. Gentlemen, upon this the Note was read; for it being received directly from the Hands of the Defendant *Hales*, that was ſufficient Cauſe to read the Note, and lay it before you. Accordingly it appears to bear Date *Aug.* 16, 1727, and is a promiſſory Note, running thus:

I promiſe to pay to Samuel Edwards, *Eſq; or his Order, within three Months after Date, the Sum of Twelve Hundred and Sixty Pounds, for Value received,*
£. 1260. Thomas Kinnerſley.

Then comes the Indorſement: And there, there is wrote on the Top, 'Pray pay to the Order of,' then there is a large Blank, then comes 'for Value received', and then there is the Subſcription 'Samuel Edwards.' Gentlemen, upon this it is proper to take notice of the Obſervations made by the Counſel for the Proſecution on the Manner of the writing of this Indorſement. They obſerve that this muſt be a Subſcription by Mr. *Edwards* of his Name for a Frank for the paſſing of a Letter free: It appears very probable from the Manner of his writing a Frank. *Free* and not Frank is the Word that he makes uſe of: And upon what appears by what remains in this Note, they ſay, that by the Top it appears that it muſt be cut off from ſome other Note, and that there is an Indenture where they ſuppoſe that ſome other Letters were; that there is the Appearance of ſomething not a Blot, but the Appearance of the Remainder of a Letter or Figure on this Place, and ſome Appearance of a little Daſh from it. But they ſay that *for the* is ſubſtituted for the Word *free*; that it appears by the Thickneſs of the Letters, by the Ink, and by the Manner wherein the Letters are put there, and by the Form of the *ff* which Mr. *Edwards* makes in the Word *ffree*; and that there is ſtill the Appearance of the Remainder of one or both the *ee*'s. Upon this, Gentlemen, you will conſider whether the *o* and the *r* have not the Appearance of ſome other Letters under them, and between the *f* and the *r*. It is plain upon Sight whether the other Letters ſeem wrote of the ſame Strength and Thickneſs with the *f* and *r*. The *ff* ſeems paler and thinner, and of a different Ink from the other Letters. And then, Gentlemen, the Word *the* is here written at Length. You will conſider whether this ſeems not to have been from a Neceſſity to put ſome other Word to fill the whole Compaſs of the Word *free*. Now *the* ſeems not wrote at the ſame Time, and with the ſame Ink with *Value received*. If this had been wrote all at the ſame Time, it is pretty extraordinary that it ſhould not have been wrote even. The *f* is wrote in a ſtraight Line even with *Value received*, but the *o* ſinks a little, and the *r* comes under. You will conſider, Gentlemen, whether there was ſufficient Room, and whether this was the Cauſe of putting it ſo. Theſe Conſiderations are made uſe of to make it probable that it was wrote at different Times: If ſo, it is moſt probable that it was at firſt *ffree*, and that the other Words were ſubſtituted afterwards. So that theſe are the Obſervations as to the Manner of writing it, which you are to conſider whether they are true, and there be a Foundation for them or not. Mr. *Spicer* then was called, who hath been a Clerk to Mr. *Edwards* in the *Exchequer* between ten and eleven Years, but hath been in his Service about twenty-four Years. The Note was ſhewn to him, and he tells you, that as to the Name, he takes it to be the proper Hand-writing of Mr. *Samuel Edwards*, his Maſter: The *f* he alſo counts to be his. Upon his Obſervation and Oath, which is Evidence to be left to you, the Word *for* is wrote over other Letters, and he believes, upon his Oath, that the firſt Word was *ffree*. He ſaith, that Mr. *Edwards*, when he maketh a Frank, makes uſe of a *ff* as in the Manner that it here ſtands. If it was made for *Value received* at firſt, it is pretty extraordinary that a *ff* ſhould be written, and not a ſingle *f* as uſual. Why (ſaith he) it is my Maſter's uſual Way of Writing *ffree*. And then he ſaith that he always wrote *ffree* and not *frank*; which is material, as the Word *frank* might not ſo well correſpond with this Alteration. He ſaith that the *r* ſeeems viſible, and to ſtand between the *o* and *r*. You will ſee whether there be the Remainder of any ſuch Letter or no; ſince he ſaith that he doth think that the *r* is viſible. He tells you, that as he is Clerk to Mr. *Edwards*, ſo he is acquainted with his private Affairs, relating to his Eſtate and the like, and that he doth not know of any Money Tranſactions between his Maſter and either of the Defendants; that he is ſo well acquainted with his Affairs, and the Nature of his Employment under Mr. *Edwards* ſuch, that he believes that if any ſuch Dealings had been, it would have come to his Cognizance. He tells you, likewiſe, that Mr. *Edwards* is not a Perſon that uſeth to deal this Way: It was very proper to aſk him this, becauſe it is common for many Perſons to indorſe Notes in this Manner. He ſaith that it is not his uſual Cuſtom: It cometh not into his public Buſineſs; and, as to his private Tranſactions, he never knew him to do it. They were then going to call a Witneſs to prove the Body of the Note to be Mr. *Kinnersley*'s Hand-writing. Upon this, Mr. *Kinnersley* took upon him to admit that it was all his own Hand-writing. So then it is to be taken for confeſſed, that the Body of the Note was his writing. It is written in this Manner,

Auguſt 16, 1727.
I promiſe to pay to Samuel Edwards, *Eſq; or his Order, three Months after Date, the Sum of Twelve Hundred and Sixty Pounds, for Value received,*
£. 1260. Thomas Kinnerſley.

Well, Gentlemen, after this, the Counſel for the Proſecution ſay, that Mr. *Kinnersley* hath in effect confeſſed as much as amounts to what they ſtand in need of to convict him of this Forgery. Firſt, They call Mr. *Wright*, who was preſent at the Examination of Mr. *Kinnersley* before Sir *Richard Hopkins*. Mr. *Wright* tells you, that at that Time the Defendant *Kinnersley* owned that the Note was all his own Hand-writing; that Mr. *Edwards* thereupon aſked him why he drew the Note payable to him, when there never had been any Dealings between them. Mr. *Wright* ſaith, That the Defendant *Kinnersley* owned at that Time that there never had been any Dealings between them, and likewiſe that he did not know Mr. *Edwards*, nor had, to the beſt of his Knowledge ever, ſeen him till then before Sir *Richard*. But he ſaid, that the Reaſon of his doing it was this: That he was indebted to the other Defendant *Hales* in a Sum of ſuch an Amount and more; and that *Hales* deſired him, the Defendant *Kinnersley*, to write him a promiſſory Note for that Sum; that he aſked Mr. *Hales* whom he ſhould make the Note payable to, and Mr. *Hales* ſaid to *Samuel Edwards*, Eſq; and

that accordingly he wrote the Note in that Manner that it now appears in to you upon the Request of Mr. *Hales*. Mr. *Wright* tells you, that at that Time he had heard what had past relating to the Discourse with *Bird*; and he told him, Why you have expressed yourself as if you was a ruined and undone Man; why did you say that, if Mr. *Hales* requested your writing, him a Note for such a Sum as Twelve Hundred and Sixty Pounds? Upon this, one *Mitford* said to Mr. *Kinnersley*, 'You shall not go on to declare yourself any further, you may do yourself an Injury.' This is made use of as a Circumstance by the King's Counsel, that Mr. *Kinnersley* was going to explain himself further if he had not been prevented by his Friend or Solicitor, who knew the Consequence of a Confession of this Nature. Mr. *Wright* tells you, that at this Time when Mr. *Bird* was examined, and said that he had not at that Time shewed the Note to *Kinnersley*, when he said, that how it came to be indorsed by Mr. *Edwards* he could not tell. Mr. *Edwards* hereupon asked him whether he knew of this Indorsement before Mr. *Bird* shewed him the Note? That he answered that he did, but that how it came there he could not tell. So that that is the Substance of his Confession in that Respect, that he did know of it, though he said he knew not how it came there. Sir *Richard Hopkins* likewise was called to give an Account of what passed before him: He saith, that he took Minutes of what passed; that it was in the latter end of *September* that he was brought before him charged with Forgery of two Notes, this of Twelve Hundred and Sixty Pounds, and another of Sixteen Hundred Pounds; that as to this Note, it seemed to him an altered Note, which was the Occasion of his more strict Examination of the Matter. He saith, that he examined Mr. *Bird*, who advanced this Money, who said that before he had shewn this Note to Mr. *Kinnersley*, when he had only told him that he had a Note of his Hand left with him for a Security, he answered, I know that you have: It is for Twelve Hundred and Sixty Pounds, payable in three Months to *Samuel Edwards*, Esq. or his Order, and is indorsed by *Samuel Edwards*. Sir *Richard* hereupon asked Mr. *Edwards* if he had had any Dealings with Mr. *Kinnersley*? Who said that he had not. *Kinnersley* also said the same, but said that he drew this Note payable to Mr. *Edwards* at the Request of the other Defendant *Hales*, to whom he was indebted in that Sum, and more; but that he did not know Mr. *Edwards*, nor to the best of his Knowledge had ever seen him before that Time. He saith, that upon his observing that it was very strange that he should make such a Note payable to a Person with whom he owned that he had no Dealings, and who was an utter Stranger to him, *Kinnersley* was going further to open his Mind, but one *Mitford* stopt and prevented him from going on. *Richard Davis*, who is the Constable that apprehended him, was next called to give an Account of what passed when the Warrant was issued out, and given him to be executed. He tells you, that because Mr. *Kinnersley* lived out of the City, he went to a publick House within the Jurisdiction of the City, and sent a Porter to desire to speak with him; but received Answer that he was not in Town. He inquired when he would be in Town, and went himself, and made a Pretence of a Couple wanting to be married. At first came out the Daughter, and then the Mother, whom he acquainted with his Business: At first they seemed to say that he was not at Home, or did not readily say where he was; but after that he had given an Account of his Business, he was carried into the Parlour, and then Mr. *Kinnersley* came to him. He told him the Business of the Marriage: The Defendant thereupon asked him several Questions; and, among the rest, how old the Lady to be married was? This is necessary to be mentioned, because they have insisted upon it as a Proof of his Honesty, that he asked whether she was of Age or not? And being told that she was not, then asked whether there was Consent of Relations or not? If (said he) there be not, I will not be concerned in a Thing of this Nature for an hundred Pound. He was told that the Brother was with her at the *Magpye* Tavern, and asked to go thither for Satisfaction, but would not go. Upon this the Constable saith, that he went away, and made it his Business to watch and see when Mr. *Kinnersley* came out. In an Hour or two he came out, he dogged him up the *Minories*, then when he was come within *Aldgate*, he told him that he had a Warrant against him for Forgery of a Note of Twelve Hundred and Sixty Pounds. He then desired him to go into a House with him, where he asked to see the Warrant: Upon seeing it, he said, that if the Gentleman had sent for him he should readily have come to him. Being asked why he denied himself? He answered, that he was afraid of being arrested for Debt, and that was the Reason of his denying himself when the Constable came to inquire for him. He then owned that the Note was his own Hand-writing; but said that he knew not how the Indorsement came there. This agrees with what was said by the Counsel, and proved by the Witnesses, concerning what was said by him upon his Examination before Sir *Richard Hopkins*, and to Mr *Bird* at his Compting-house when he came to him. This is the Evidence, as to the Fact. The Counsel for the Prosecution go on and say, that there hath been a private Correspondence carried on between these two Defendants, which they insist on as a Circumstance to make it likely that they joined herein. They called to this, first, Mr. *Thomas Bab*, who saith, that both the Defendants used to meet frequently at his House; that Mr. *Hales* frequently came there early in the Morning, would sometimes walk about a considerable Time, would ask sometimes if the Minister had been there without naming him, but they knew whom he meant, having frequently seen them together; that some Time before *Kinnersley* came in, *Hales* sitting by the Window, saw him go by and went to him; sometimes *Kinnersley* came in and went through the Coffee-room into a back Room, and *Hales* would follow after him, and they would stay there together; *Kinnersley* sometimes would go out at one Door, and *Hales* immediately go out at the other; that this continued for about a Month or three Weeks before Mr. *Hales*'s Apprehension; that one Time particularly, Mr. *Kinnersley* passed by and went down *Fleet-street*, and Mr. *Hales* seeing him, rose up and went out after him: This, he saith, was about a Month before the Defendant *Hales* was taken up. He saith, that they seldom sat down in the publick Room, but went into a private Room. *John Brooks* was next called, who saith, that he keeps a Coffee-house in *Downing-street*, in *Westminster*. He said, that Mr. *Kinnersley* used to come sometimes to his Coffee-house, send for a Porter, and give him a Note for Mr. *Hales*, who hath come to him, and they have gone into a private Part of the Room, and there they have staid for three or four Hours together; that it being in the Evening he hath thought them in the dark, and asked the Servant why a Candle was not carried them? Who hath answered, that he had carried them one but they refused it, not caring to be interrupted; that they met thus about three or four Times in a Month, a litttle while before Mr. *Hales* was apprehended. Mr. *Janeway* also was called, who saith, that he hath seen the two Defendants several Times retire up Stairs together at his Coffee-house. This, Gentlemen, is relied upon, and given in Evidence, to shew that there was a Correspondence between them about some Affairs not so proper to be managed in Publick. This is the Substance of the Evidence on the Side of the Prosecution: And the Counsel for the King tell you, that as to Things of this Nature, they must be done in a very private Way in order to prevent a Discovery; it cannot be expected that they would call Persons to see such a Thing done; that the only Evidence, therefore, that can be given is Circumstance. Well, Gentlemen, the Defendants come upon their Defence: They appear by different Counsel, and make a separate Defence. The Counsel on the Behalf of the Defendant *Hales* insist that there was a Debt due from *Kinnersley* to *Hales*, for which this Note was given; that this doth appear from the several Declarations made by Mr. *Kinnersley* from time to time. They rely upon this as Evidence of such a Debt for Money advanced to him, and that this Note was given by the Defendant *Kinnersley* for such a Debt. They tell you, that Mr. *Hales* being a Bankrupt, and therefore it not being proper to have such a Note in his own Name, because it would be liable to be claimed by the Assignees in the Commission of Bankruptcy against him, that therefore it was proper to make use of the Name of another Person; that Mr. *Edwards* was never affected or injured hereby; that Part of the Money hath been paid, and if they had had a little Patience, as Four Hundred Pounds was paid, so the rest would have been paid. And though they admit that the making of such a Note in the Name of another to advance Credit without his Leave was criminal, yet it did not, they say, really affect or injure him. And then to shew that there was a Reason or Foundation for the giving of this Note, they said that they would call Witness that there was an Account stated, upon which this Money appeared to be due. They called *Robert Burkit* to it: But he saith that he knoweth of no such Account, it is all Imagination; that his Name was made use of without his Knowledge; that he knew nothing of any Money ever due between them: So that it is plain, that that Witness is lost in the Examination as to any Benefit to them. They said that they had another Witness who happened not to be here: This is the Substance of the Defence of the Defendant *Hales*. *Kinnersley* then comes on his Defence. His Counsel insist that he is not evidenced to be concerned and knowing of this Forgery; that as this is a Crime of a very heinous Nature, and deserves the greatest Punishment, so it is necessary that the clearest Proof should be given you before you convict him. They say that his Character likewise requires stronger Evidence than others; that his Credit is more concerned than others, because the very Exercise of his Function depends upon his Credit, without which he will be of no Use in the Parish where he doth or may minister. And they say, that it appears by the Evidence on the Side of the Prosecution, that he is very careful in the Discharge of his Function, which they insist on from his Refusal to be concerned in a Marriage without a Licence and Consent of Friends, it being contrary to Acts of Parliament and to the Canons of the Church, and that they suppose him as cautious in other Things. They say, that the Thing itself is usual, and that it is an innocent and harmless Thing; that no Person is hurt by another's engaging to pay him a Sum of Money by such a Note; that the Person, indeed, who gives such a Note is liable to an Action for the Money, but that there is no Injury done to the Person to whom it is made payable; that therefore as to Mr. *Kinnersley*'s subscribing a Note for so much Money payable to *Samuel Edwards*, Esq. especially when it was done upon the Request of the Defendant *Hales*, upon account of a Debt which was due from him to *Hales*, and for the Convenience of *Hales*, it was an innocent Thing; that *Kinnersley* was to pay *Hales* so much Money, and *Hales* himself desired a Note for it in this Name. They say that *Kinnersley* might be induced to do this from the Credit and Character of *Hales*, and from their former Acquaintance; that he was the Minister in his Parish when the Partnership was between him and Sir *Stephen Evance*; that notwithstanding his Misfortunes since that first Acquaintance, it is plain that he hath been corresponded with by Persons of Credit, therefore there can be no Reflection on that Head on Mr. *Kinnersley*. And they say, that as there was nothing culpable in giving of the Note, so nothing amiss hath happened thereupon; that if Mr. *Hales* hath done any thing amiss, it does not affect Mr. *Kinnersley*. Though they raise Mr. *Hales*'s Credit at first, yet afterward they sink it, and seem to throw the Blame upon him. They plead also, that there is no Evidence that the Indorsement was upon the Note when it was subscribed by Mr. *Kinnersley*. If it was afterwards (say they) indorsed with or without Authority from Mr. *Edwards*, it will not affect *Kinnersley*, except there be express Proof that he did it. They say also, that there is no Proof of any Franks delivered to *Kinnersley* but only to *Hales*; that he had not therefore the Opportunity that *Hales* might have; that therefore he is not involved in that Circumstance of the Inducement hereto, that Proof or Evidence given is nothing against him. And then (say they) to what Purpose should the Note be contrived to be indorsed with the Privity of *Kinnersley*, when he hath no manner of Benefit thereby, *Hales* having received the Money? They ask the Question *cui bono*, and thence infer that *Kinnersley* could not do this And they insist upon it in point of Law, that the writing of this Note can be no Fraud in him, he having done what renders him liable to an Action. And to shew that the Money was due from *Kinnersley* to *Hales*, they have called several Witnesses to shew that there was a Foundation for this Note. Mr. *Peter Marsh* was called. He saith, that about ten or eleven Years ago he brought a Bond of Fifty Pounds to him made by Mr. *Kinnersley* payable to him. Mr. *Hales* told him, that Mr. *Kinnersley* owed him this Money, and had given him this Note made payable to him, which he desired him therefore to get for him. He knew nothing of the Matter, was surprised that his Name was made use of, and so returned the Bond again. This is insisted upon, Gentlemen, to shew that there

were Tranſactions between *Kinnerſley* and *Hales*. Now whether this proves a Debt due from the one to the other, or proves an extraordinary Method of taking Bonds in the Names of Perſons without their Conſent, you are to conſider; eſpecially when you muſt know that if this Bond had been put in ſuit by *Peter Marſh*, he would have been liable to recover the Money. Well, then *William Cropley* is next called. He ſaith, that he received at *Janeway*'s Coffee-houſe about Sixty Pounds, a Debt that was due from *Kinnerſley* to him. He received it of the Defendant *Hales*, and *Kinnerſley* was there with him at that Time. He ſaith, that *Kinnerſley* was the original Debtor for the Money, and that *Hales* gave him his Note for it. He ſaith, that *Kinnerſley* had borrowed of him an Hundred and odd Pounds; that he brought another Gentleman to be Security with him for it; that at the End of ſix Months he could not get his Money; that he enquired of *Kinnerſley* for it, who led him a Dance from Place to Place after him for a conſiderable Time; that at laſt he was forced to ſue for the Money; and recovered half from the other Gentleman; that he then proſecuted *Kinnerſley* for the reſt; that then *Kinnerſley* met him with Mr. *Hales* at ſome Tavern, and then *Hales* told him that he was to receive about ſix or ſeven hundred Pound within about three Months Time, and then he would pay him. He ſaith, that upon that Offer of *Hales* he took a Note of *Hales*, and a new one of *Kinnerſley* for the Money; and that in *February* laſt he got the Money as before-mentioned, and received it at *Janeway*'s Coffee-houſe. And he ſaith, that ſome little Matter (about fifty Shillings or thereabouts) was due for the Charges, for which he gave him his Note. *Hales* gave his Note for the Payment of a Debt of *Kinnerſley*'s, a Debt of Fifty Pounds, and he gave this Reaſon for it, that he was to receive within ſix Months about Six or Seven Hundred Pounds for him, and therefore he could venture being Security for *Kinnerſley*. This is a Tranſaction of quite another Nature. It is ſo far from proving a Debt from *Kinnerſley* to *Hales*, that it rather proves *Hales* indebted and becoming Security for the other. Well, then *John Wells* is called. He ſaith, that he knoweth not of any Money due from *Kinnerſley* to *Hales*, but that *Kinnerſley* owed him an Hundred Pound; that afterwards this Money was paid to his Attorney, by whom or how he could not tell. Mr. *Simpſon*, who is a Partner with Mr. *Fowler*, is then aſked concerning Thirty Pounds borrowed upon ſome Lottery Tickets of Mr. *Fowler*, and is aſked concerning this Money, how, where, and by whom it was diſcharged? He ſaith, that he was not at the Shop, and knoweth not by whom and how it was diſcharged. Mr. *Kinnerſley*, upon this, applies himſelf to one of the Gentlemen of the Jury, and interrogates him how this Money was paid. Mr. *Fowler* was hereupon ſworn to give Evidence. Upon his Oath, he ſaith, that he never knew of any Tranſaction in the Name of *Hales*; that he never ſaw him at his Shop. That as to *Kinnerſley* there was a Tranſaction of Money borrowed on Lottery Tickets, but he knoweth nothing of *Hales*'s being concerned. Another Perſon is examined whether he ever gave a Note on Mr. *Hales*'s Account, or at his Requeſt paid any Money? He ſaith, that he never did, nor knoweth that any other did. They tell you alſo, that the Witneſſes for the Proſecution have in a great meaſure proved the Denial of Mr. *Kinnerſley* of his knowing of the Indorſement: But they call themſelves for further Proof, Evidence of it. They call Mr. *John Hayes*, who ſaith that he was preſent at the Examination of Mr. *Kinnerſley* before Sir *Richard Hopkins*; that at that Time the Defendant *Kinnerſley* owned his writing the Body of the Note, but at the ſame time ſaid, that how the Indorſement came there he could not tell. He tells you that the Caution that was given to the Defendant *Kinnerſley*, was after this Declaration made by him; that then there was an Admonition that he ſhould be cautious in the Anſwers that he gave. One *Andrew Grants* likewiſe was preſent at that Examination. He ſaith, that that was all that paſſed at that Time, and that he was not ſtopped by Mr. *Mitford*, but only a reaſonable Caution given him that he ſhould not be too much in an Hurry, or the like. This is the Subſtance of the Defence made by the Counſel for both the Defendants. It is the Right of the Counſel for the King to reply. They ſay, that there hath been no Evidence of Tranſactions between *Kinnerſley* and *Hales* to the Amount of any ſuch Sum as the Note is for; that if the Note was given with a Deſign to defraud, both muſt be equally guilty; and that it is a very extraordinary Thing that this Note ſhould be written by Mr. *Kinnerſley* as a Promiſſory Note for ſuch a Sum payable to *Samuel Edwards*, Eſq. when it doth not appear, on the Defendant's Part, that there was any Correſpondence between *Edwards* and *Kinnerſley*, and on their Side it hath been proved that there was no ſuch Correſpondence; that it was very extraordinary if this Note was given for a Debt due, that it ſhould be taken in the Name of one with whom they had no Money-dealings whatſoever, and over whom they could not be ſuppoſed to have any Power; that this therefore ſeems to be only to give a Credit to the Note; that it could not be of any Uſe whatſoever without having the Name of ſome Perſon of Circumſtance and Condition to it who would be obliged to pay the Note; that this Note muſt have been thrown upon Mr. *Edwards*, appears (they ſay) from the Declaration of *Kinnerſley*, that he was an undone Man. If then it was of any Uſe to borrow Money upon or in any other Way, it muſt be from the Subſtance of Mr. *Edwards*, and not from the Poverty and Deficiency of *Kinnerſley*. They inſiſt upon that Circumſtance, and the Declaration of *Kinnerſley*, that he knew of that Indorſement, though how it came there, he ſaid that he knew not. And further they ſay, that as the Name was Mr. *Edwards*'s own Hand-writing, if that the Word *ffree* was wrote upon the Paper, it muſt be before the writing of the Body of the Note. It cannot be imagined that the Words were not there before. It cannot be ſuppoſed that Mr. *Edwards* would ſet his Name to the Word *ffree*, or to any other Word on the Back of a Note promiſing the Payment of Twelve Hundred and Sixty Pounds, within ſix Months, to him or his Order. They inſiſt, therefore, that this Name and the Word *ffree* were upon the Paper before the Note was wrote, and that this is a ſtrong and reaſonable Evidence that *Kinnerſley* muſt be privy to the Name *Edwards*, and the Indorſement at that Time. After that, Mr. *Kinnerſley* deſired to be heard, and he was indulged: But as to that you have been informed, that in Indictments for Miſdemeanours, whatever the Defendant ſaith for himſelf, it will have no further Validity than as the Counſel inſiſt, and Evidence is brought for him. The Circumſtance, therefore, is very different from what is allowed when Perſons are proſecuted in capital Caſes. However, you have heard how he hath declared in the moſt ſolemn Manner his Innocence. You are to conſider whether that is of any Validity, unleſs there was Evidence of ſuch a Debt due from the Defendant *Kinnerſley* to *Hales* the other Defendant, whether you will take it upon his Word. This being the Evidence on both Sides, the firſt Queſtion is, whether the Indorſement is forged, becauſe, till you determine that it is a forged Indorſement, there can be no Proſecution for the Publication of it. If it be a true Indorſement, no Perſon can be guilty of the Publication, much leſs can Mr. *Kinnerſley*, who did not deliver the Note: That therefore lieth upon the Defence of Mr. *Hales*, which is not made but by the Defence of *Kinnerſley*. You are to conſider then the Opportunity that the Defendant might take hold of from the receiving of Franks for ſeveral Years from Mr. *Edwards*; and you will conſider whether there is any clear Proof, or ſo much as the Colour of it, that Mr. *Edwards* was privy to an Indorſement of this Nature, or there was any Occaſion for ſuch an Indorſement. If no ſuch Money was indeed due, to what Purpoſe ſhould the Note be indorſed? Upon the beſt Obſervations that I can make, I ſee not any Evidence to raiſe a reaſonable Preſumption from, that this was a fair and juſtifiable Indorſement. If it was not an Impoſition on Mr. *Edwards*, becauſe it makes him liable as an Indorſer for the Sum mentioned in the Note, if you ſhould find that, yet you are to conſider whether it is fair to make uſe of another's Name in a Note; for Mr. *Kinnerſley*, who by his own Confeſſion is a poor, undone Man, and whoſe Living is under a Sequeſtration, to make a Note indorſed by another Perſon who can never be reimburſed by this Perſon who ſubſcribed the Note, it is a very extraordinary Way; though they ſay that it is an innocent Way of raiſing Money, for a Perſon in Cuſtody, or liable to it, to make uſe of the Name of a ſubſtantial Perſon in ſuch a Note, whoſe Credit muſt be at Stake for the Money. And then as to the Nature of the Note: If it was only a Promiſſory Note for ſo much Money payable to *Samuel Edwards*, Eſq. it was not of ſuch Conſequence, for then he was not liable: But he is liable to the Payment only upon the Indorſement of ſuch a Note. Why then, Gentlemen, you are to conſider, whether this Note, when Mr. *Kinnerſley* had wrote it, could be of any Uſe in the World unleſs it was indorſed afterwards. Why then this Note is either a Preparation to obtain Mr. *Edwards*'s voluntary Indorſement for a Security, or an Impoſition upon him. Hath any Evidence been produced to ſhew a Probability that Mr. *Edwards* would give him that Liberty to tranſfer his own Inſufficiency and Poverty upon him, and make him liable to Mr. *Edwards*, which can have no Effect but by an Indorſement; doth not Mr. *Kinnerſley* put it into the Power of *Hales* to negociate this Note? Therefore I muſt inform you, if two Perſons contrive together to draw ſuch a Note, and make uſe of it, both Perſons concerned in the Tranſaction, in my Opinion, will be guilty. Forgery is an intire Fact. Though one Perſon doth one Part, and another the other, both are equally guilty. Gentlemen, it is material, as hath been obſerved, to conſider when this Indorſement was made; and if it was a forged Indorſement, you will conſider when it will appear to have been indorſed. You have been truly told that this can be only known by Circumſtances: Therefore you are to conſider, whether the Name of *Samuel Edwards* can be ſuppoſed to be ſet there after the Note was wrote. Well then, what is the proper and natural Way of underſtanding this Tranſaction? If there be the Name of a Perſon on any Paper, where there is Room for making an Alteration, what is natural? Why, to tranſact on the other Side what is neceſſary to ſupply and make that complete, without which the Name would be to no Purpoſe. Therefore, that is a material Conſideration; if it is impoſſible that the Name could be wrote after the making of the Note, whether that be not a reaſonable Preſumption that he ſaw this Indorſement when he wrote this Note. Suppoſe the Words only *ffree Samuel Edwards*, it was not proper to write this Note on the Back of it. If this Indorſement was made without his Privity, how came he to know of it when he came to Mr. *Bird*? And upon Mr. *Bird*'s telling him that he had a Note of his left with him, immediately anſwer'd, 'I know that you have; it is for ſo much, payable in three Months to Mr. *Edwards*, but how it came indorſed by him I know not;' when Mr. *Bird* ſwears that he had not then acquainted him with the Indorſement, nor ſhewed him the Note at that Time. No Evidence hath been produced to ſhew how he came to know that it was indorſed. He declared, indeed, that he knew not how it came to be indorſed: But you are to conſider, whether that Part wherein he declares his Knowledge is to be regarded, or what he declares he knows not of. A Declaration of this Nature will be taken moſt ſtrongly againſt him. Conſider, therefore, whether this latter Part of his Declaration be ſufficient to diſcharge him. If he knew that it was indorſed, you ſhould have ſome Evidence upon what Account it was. As to the reſt, as to the Character, his Coat, or the like, you are to try him upon the ſame Law with *Hales*. I know not why the Habit he wears ſhould exempt him from the common Rules of Proof. As to the particular Circumſtance of his Uſefulneſs depending on his Credit, that is left to you. But the ſame Law is made for one that is for another: You are therefore to conſider of it. If this be a fair Indorſement you muſt acquit both. If you are ſatisfied that it is not, but the Indorſement is a forged Indorſement, whether either, and which of the Defendants ſeems to be guilty. You are to conſider the Nature and Circumſtances of the Tranſaction, and whether there appears any thing to diſtinguiſh the one from the other, and accordingly give your Verdict againſt the one or the other. If you deſire it, the Note will be given to you.

Jury. My Lord, If your Lordſhip pleaſe, we will take the Note up with us.

Mr. *Kinnerſley.* I deſire to be heard——

L. C. Baron. Not in caſe of a Miſdemeanour. I know not any Inſtance in which it hath been allowed.

Mr. *Kinn.* I beg leave, my Lord. I take the Lord to witneſs——

L. C. Baron, All I can ſay is, if you have a mind to aver or affirm any thing, the Court would rather be irregular than abridge you of any thing.

Mr. Serj. *Whitaker.* My Lord, it never was allowed; after your Lordſhip has ſummed up the Evidence, and the Jury going out; it is ſtrange Mr. *Kinnersley* will behave ſo.

Mr. Att. Gen. Is it, my Lord, to be allowed?

L. C. Baron. The Gentlemen have inſiſted upon it. You cannot be heard.

Mr.

Mr. *Kinnersley*. By the living God, I know nothing of it!

Clerk of Arraigns. [Calling over the Jury] Are you all agreed in your Verdict?---*Jurymen*. All.

Clerk. Who shall speak for you?---*Jurymen*. Our Foreman.

Clerk. How say you, Is *William Hales* Guilty of the Misdemeanour wherewith he stands charged, in forging an Indorsement on a Promissory Note for Twelve Hundred and Sixty Pounds in the Name of *Samuel Edwards*, Esq. and publishing the same knowing it to be forged; or Not Guilty?---*Foreman*. Guilty.

Clerk. How say you, Is *Thomas Kinnersley* Guilty of the said Misdemeanour wherewith he stands charged, or Not Guilty?

Foreman. Guilty.

VII. The Trial of William Hales, for a Misdemeanour, in obtaining from *Thomas Bird* the Sum of Seven Hundred and Fifty Pounds by false Tokens, *&c.*

The Jury called over again.

Clerk. OYEZ, OYEZ. If any one can inform, *&c. &c.*

Indictment.] *William Hales* stands indicted by the Name of *William Hales*, &c. for falsly and deceitfully obtaining the Sum of Seven Hundred and Fifty Pounds of *Thomas Bird* by a false Token, *viz.* a Promissory Note, in these Words following:

Aug. 16, 1727.

I promise to pay to Samuel Edwards, *Esq. or his Order, within three Months after Date, the Sum of Twelve Hundred and Sixty Pounds, for Value received,* Thomas Kinnersley.

On which Note there is the following Indorsement,

Pray pay to the Order of *for Value received,*

Samuel Edwards.

to the great Damage of *Samuel Edwards*, Esq. *&c.* To this Indictment he hath pleaded Not Guilty.

Mr. *Strange*. May it please your Lordship, this is an Indictment against the Prisoner *William Hales* only. It sets forth that he, having in his Possession a certain Writing purporting to be a Promissory Note made in the Name of *Thomas Kinnersley*, wherein the said *Thomas Kinnersley* is supposed to promise to pay the Sum of Twelve Hundred and Sixty Pounds to *Samuel Edwards*, Esq. within three Months, with a forged Indorsement of Mr. *Edwards* on that Note, did, in *March* last, falsly and deceitfully obtain of Mr. *Thomas Bird*, the Sum of Seven Hundred and Fifty Pounds by that false Token. This is laid to be contrary to the Statute in that Case made, to the Damage of *Samuel Edwards*, Esq. *&c.* to the Breach of his Majesty's Peace, and to the ill Example of his Majesty's Subjects in like Case offending.

Mr. At. Gen. My Lord, this is an Indictment against Mr. *William Hales*, for obtaining a Sum of Money by the false Token of this Note. For this we will only call Mr. *Bird*.

Mr. Bird *called and sworn*.

Mr. At. Gen. Mr. *Bird*, look upon the Note, and give an Account who brought it to you, and what Money you paid upon it?

Mr. *Bird*. Mr. *William Hales* brought it to me on *March* 20th, last.

Mr. At. Gen. What did he say?

Mr. *Bird*. He said, that at the Request of a Gentleman, I was to lend him Seven Hundred and Fifty Pounds upon that Note.

Mr. At. Gen. Did he produce the Note?

Mr. *Bird*. Yes, Sir, I had it then of him.

Mr. At. Gen. Was it then indorsed as it is now?

Mr. *Bird*. Yes, Sir, in the Manner as now.

Mr. At. Gen. How much Money did you deliver him upon it?

Mr. *Bird*. Seven Hundred and Fifty Pounds.

Lord Chief-Baron *Pengelly*. Did you deliver it, when he delivered you this Note?---Mr. *Bird*. Yes, my Lord.

Mr. At. Gen. Should you have let him have this Money if he had not produced this Note?—Mr. *Bird*. No, Sir.

Mr. At. Gen. What was it paid in?--Mr. *Bird*. In one or more Bank Notes.

Mr. Serj. *Eyre*. I submit this, my Lord: They have laid this Indictment but singly for obtaining Money, whereas in the former they layed doubly for obtaining Money, or other valuable Things. It lieth therefore upon them to prove that this Mr. *Hales* did receive in Money. Though I know that generally Bank Notes are received as so much Money, yet I know not that according to Law they are reckoned Money. They should therefore have laid it for Money or other valuable Things, it being two Bank Notes, and not Money: And in this manner, I suppose, in case of a Tender of Money, it is not, as I apprehend, thought that a Tender of Bank Notes is a sufficient Plea: The Consequence then is, that the giving of Seven Hundred and Fifty Pounds, and the giving of such Notes is not tantamount. They ought to indict him as the Fact really was.

Mr. At. Gen. Do you know, Mr. *Bird*, of the receiving of this Money? Did he complain of his not receiving of this Money?---Mr. *Bird*. No, Sir.

Mr. Serj. *Whit*. Did he pay back any of the Money?

Mr. *Bird*. Yes, Sir, Four Hundred Pounds.

Mr. Serj. *Whit*. Was it upon the Account of those Bank Notes?

Mr. *Bird*. Yes, Sir.

Lord Chief-Baron. Then when he paid you back that Money, did he complain that he had not received it?---Mr. *Bird*. No, my Lord.

Mr. Serj. *Eyre*. Pray, Sir, did he say that he had received it?

Mr. *Bird*. Yes, Sir.

Lord Chief-Baron. Mr. Serjeant *Eyre*, I suppose you do not insist upon it as necessary that he should receive so much Money of Mr. *Bird*. If he received the Produce of those Notes it was sufficient.

Mr. Serj. *Eyre*. My Lord, I apprehend that though he did receive the Money from the Bank for those Notes, he received not the Money from the Hands of Mr. *Bird*. He received, indeed, what I should have taken for Money. Especially as the Act of Parliament hath added, *or any valuable Thing*, as Jewels or the like. I think it should have been so laid. I observe the Words used are, *by Colour or Means of a false Token*. I would ask, Suppose Mr. *Bird* had ordered him to receive it of his Cashier, or sent the Note to his Goldsmith, whose Payment would it have been? Suppose he had sent him to the Bank to receive that Money before he delivered up the Note, certainly he had obtained the Money by Colour or Means of that Note.

——— My Lord, I admit that if it had been paid by his Servant or by his Cashier upon a Note drawn upon him for it, I take it that it might have been laid either Way.

Mr. Serj. *Whit*. The Bank in that Respect are but Cashiers for the Gentlemen that have their Notes.

Mr. Serj. *Eyre*. The other Indictment laid it doubly.

Judge *Reynolds*. Though they might do that by Way of Caution, yet it might have been laid the other Way as this is.

Lord Chief-Baron. Gentlemen of the Jury, you are to consider whether the Indorsement on this Note was a forged Indorsement: For if it was not forged, the Defendant cannot be said to obtain the Money by a false Token. And further you are to consider, as he obtained this of Mr. *Bird* by this false Token, whether it ever came to his Hands or not. You are to consider upon the Evidence that he never complained that he had not received the Money for those Bills, but, on the contrary, paid back Four Hundred Pounds, Part of the Money, whether he would have paid it if he had not received the Money. Therefore, if you apprehend that Indorsement of the Note was not a forged Indorsement, or that the Money was not paid, you are to acquit him. But if you judge that the Indorsement upon the Note was forged, and the Money paid, whether it was paid by Mr. *Bird* in Money, or in Bills upon which he afterwards received Money, I think that that makes no Difference.

Jury called over.

Clerk. Are you all agreed in your Verdict?---*Jury*. Agreed.

Clerk. Who shall speak for you?---*Jury*. Our Foreman.

Clerk. How say you, Is *William Hales* Guilty of the Misdemeanour whereof he stands indicted in obtaining a Sum of Money by this false Token, or Not Guilty?—*Foreman*. Guilty.

VIII. William Hales and Thomas Kinnersley, Clerk, were indicted for a Misdemeanour, for fraudulently Forging a Promissory Note, &c. in the Name of *Samuel Edwards*, Esq. for Sixteen Hundred and Fifty Pounds, and publishing the said Note, knowing the same to be forged.

Jury called and sworn over again.

Clerk. OYEZ! Oyez! If any Man can inform, *&c.*

Indictment.] Gentlemen of the Jury, *William Hales* and *Thomas Kinnersley* stand indicted by the Name, *&c.* for fraudulently forging a Note or a Writing, purporting to be a Promissory Note, on the second of *March*, in the first Year of his Majesty's Reign, in the Words following:

I promise to pay to Mr. Thomas Kinnersley, *or his Order, within six Months after Date, the Sum of Sixteen Hundred and Fifty Pounds, for the Value received,* Samuel Edwards.

and knowingly and wittingly publishing of this as a true Writing, knowing it to be so forged and counterfeited.

Mr. *Strange*. May it please your Lordship, and you Gentlemen of the Jury, this is an Indictment against the two Prisoners *William Hales* and *Thomas Kinnersley*. This Indictment sets forth, that they being Persons of ill Fame, and intending to deceive Mr. *Edwards*, &c. on the second of *March*, in the first Year of his Majesty's Reign, did forge a Writing purporting to be a Promissory Note, *&c.* The Indictment further sets forth, that the Defendants did likewise produce and publish this Promissory Note of Mr. *Edwards*'s for Sixteen Hundred and Fifty Pounds; that knowing this to be a forged Note, they did publish the said Note for a true one. It is laid in other Words, that they forged a Note of *Samuel Edwards*'s, whereby he is supposed to promise to pay to *Thomas Kinnersley*, within six Months, the Sum of Sixteen Hundred and Fifty Pounds, *&c.* To all these Facts they both have pleaded Not guilty.

Mr. At. Gen. My Lord and Gentlemen of the Jury, I am Counsel for the King. Gentlemen, this is an Indictment against both the Defendants, for forging a Promissory Note in the Name of *Samuel Edwards*, Esq. for Sixteen Hundred and Fifty Pounds, payable to *Thomas Kinnersley*, or Order, within six Months after Date, and also for publishing the same. And, Gentlemen, though it is laid several Ways in the Indictment, the Note is one and the same. There are not several Notes. Gentlemen, it will appear to you that this Forgery of this Note was by the same Opportunity taken by Mr. *Hales*, in conjunction with Mr. *Kinnersley*, that the former was. It hath been observed already, that in Cases of this Kind Facts are to be proved only by Circumstances. Plain and positive Proof is not to be expected: But such Circumstances speak the Truth often more plainly than the other Way of Proof doth. As to Mr. *Hales*, Mr. *Edwards* being too obliging to him, he made use of it to much the same Purpose as in the former Case. But it was not now to indorse, but to make a Promissory Note for Sixteen Hundred and Fifty Pounds, payable by Mr. *Edwards* to Mr. *Kinnersley*, within six Months after Date, and dated *March* 30, 1728. And, Gentlemen, this Note is signed on the Back with the Hand-writing of *Thomas Kinnersley*. The Manner

Manner of this Forgery will appear to have been like the other: But it will appear on the very Face of it manifeſtly a Forgery. Gentlemen, the Note is wrote on a very ſmall Piece of Paper, which appears plainly to have been cut off from another Paper. And, Gentlemen, the Words, *for the Value received*, are not wrote upon the Line with the other Words, but a little below the Line. The Words *for the* appear done in the ſame Manner as in the former Note that before came under your Conſideration. Here is a *ff* ſuch as before, and as Mr. *Edwards* always uſeth, then an *r* which appears to be of the ſame Hand, then an *o* crowded in between them which ſeems not of the original Writing. One of the *ee*'s is made to ſerve for the firſt Stroke of the *y*, and a long Stroke between the two *ee*'s, then the other *e* makes up the Word *ye*. Then *Value received* is wrote in another manner of Hand. This ſeems to be the Nature of the Forgery; and none can doubt it a Forgery that inſpects it. This appears to be done from a Frank Cover obtained from Mr. *Edwards*. And this is ſomething remarkable: It is ſomething odd that *for the Value received* ſhould be wrote on another Line. It is plain that the Words are ſet thus odd becauſe of the Word wrote before, and that the *ff* beginning another Line may make the better Appearance. This Note is made payable to Mr. *Kinnerſley*. He was an abſolute Stranger to Mr. *Edwards* as it appeared in the former Caſe. There was no Dealing between Mr. *Edwards* and Mr. *Kinnerſley*, nor no Colour of any ſuch Dealing, by which a Debt of ſuch a Sum as this ſhould become due from Mr. *Edwards* to *Kinnerſley*. But, Gentlemen, this Note thus made for Sixteen Hundred and Fifty Pounds, payable within Six Months from Mr. *Edwards* to *Kinnerſley*, without any Dealings between them to give a Foundation for it, in the manner I have ſhewed you, which is ſufficient to make it appear to any a Forgery, is indorſed by Mr. *Kinnerſley*. That will appear a clear Evidence of the Forgery being by Mr. *Kinnerſley*. No Man in his Senſes would do this. If a forged Note for Sixteen Hundred and Fifty Pounds was made in the Name of any Perſon, and appeared in all theſe Circumſtances of a plain Forgery, no Man in his Senſes, and deſigning to act a fair Part, would make an Indorſement thereto. No other Purpoſe, therefore, ſeems aimed at in the indorſing but to ſet the Note a going. If ſuch a Note was offered to a fair and honeſt Man to indorſe would he not ſtartle at it? Would he ever have indorſed it? Therefore, this Indorſement is a ſtrong Evidence againſt him. The Uſe made of this Note, thus forged and indorſed, was this: It being in the Hands of Mr. *Hales*, Mr. *Hales* wanting a Sum of Money applied to one Mr. *Thrup*, deſiring him to lend him his Note of Four Hundred Pounds. Upon his doing this with Difficulty, Mr. *Hales* depoſited this Note as a Security for his Money, and hereupon this Note continued in the Hands of Mr. *Thrup*. Gentlemen, upon the Diſcovery that was made of another Forgery, whereupon Mr. *Hales* was apprehended, there was a Suſpicion: Hereupon Mr. *Edwards*, being informed that this Note was in the Hands of Mr. *Thrup*, inquired of him about it. The Thing upon this appeared, and Mr. *Kinnerſley* thereupon was apprehended and carried before Sir *Richard Hopkins*. At firſt he ſeemed willing to make a Diſcovery; afterward he went back, and denied (I think) what he ſeemed before to have owned: That will be proved to you. I think that this will appear plainly to have been a Forgery, and to have been done by Mr. *Hales* and Mr. *Kinnerſley*.

Mr. Serj. *Whit.* My Lord, we will go on in the ſame Method as before, by calling two or three Witneſſes.

Thomas Maddox *and* Anne Clarke *were called, ſworn, and depoſed as before.*

As alſo Mr. Booth. *Vide* p. 78.

Mr. Charlton Thrup *called and ſworn.*

Mr. At. Gen. Look, Sir, on that Note, and tell us when you firſt ſaw it before.

Mr. *Thrup.* On *May* the 22d.

Mr. At. Gen. Who brought it to you?

Mr. *Thrup.* Mr. *Hales.*

Mr. At. Gen. What did he ſay to you?

Mr. *Thrup.* He brought it to me, and deſired me that I would give him on it three Notes of five hundred Pounds. I refuſed him at firſt, alledging that it was not for my Credit. At length I put into his Hand a promiſſory Note for four hundred Pounds payable within ſix Months.

Mr. At. Gen. Look on that Note, and ſee whether it now is in the ſame Caſe that it then was. Was the Indorſement then upon it?

Mr. *Thrup.* I cannot ſay: For I took no Notice of the Indorſement till I delivered it to Mr. *Booth* at the Requeſt of Mr. *Edwards*.

Mr. At. Gen. In whoſe Cuſtody was it till you delivered it to Mr. *Booth?*

Mr. *Thrup.* In mine, Sir.

Mr. At. Gen. Did you make any Alteration in it?

Mr. *Thrup.* No, Sir.

Mr. At. Gen. And when you gave it to Mr. *Booth* you minded the Indorſement. Did you not?

Mr. *Thrup.* Yes, Sir.

Mr. At. Gen. How came you not to mind it before? What Security was Mr. *Edwards*'s Note if it had not been indorſed?

Mr. *Thrup.* I had ſuch an Opinion of Mr. *Hales* that I ſuſpected nothing, and therefore gave him the Note; I did not think he would have been guilty of ſo vile an Action.

Mr. At. Gen. When was it that you delivered this Note to Mr. *Booth?*

Mr. *Thrup.* It was in *September* laſt.

Mr. At. Gen. How much had you lent upon it?

Mr. *Thrup.* Four Hundred Pounds, Sir.

Mr. *Lacy.* What is become of that Note?

Mr. *Thrup.* I know not, Sir. I am not yet poſſeſſed of it: But I believe it to be in the Hands of Mr. *Maddox* of the *Bank*.

Mr. John Spicer *ſworn.*

Mr. At. Gen. Do you know Mr. *Edwards*'s Hand-writing?

Mr. *Spicer.* Yes, Sir.

Mr. At. Gen. Look on that Note, and tell us what of it you take to be his Hand-writing?

Mr. *Spicer.* The Name is his and the *ff*. And I think the plaineſt *ffree* that I have ſeen is remaining.

Mr. At. Gen. Is the *o* Mr. *Edwards*'s?

Mr. *Spicer.* No, Sir; it hath been ſomething elſe.

Mr. At. Gen. Was it Part of the original Word?

Mr. *Spicer.* No, Sir, to the beſt of my Judgment it is altered. It is ſo crouded between the Letters, that it ſeems as if it was Part of them.

Mr. At. Gen. Look on the *r*. Whoſe is that?

Mr. *Spicer.* I believe it to be Mr. *Edwards*'s.

Mr. At. Gen. And you obſerve two *ee*'s. Do you not?

Mr. *Spicer.* Yes, Sir. One of the *ee*'s is brought to make Part of the *y*, which with the other *e* makes the *y*.

Mr. At. Gen. How doth Mr. *Edwards* write his Franks?

Mr. *Spicer.* Free with a double *f*, as it is here *ffree Samuel Edwards*.

Mr. At. Gen. In what manner are you concerned for Mr. *Edwards?*

Mr. *Spicer.* I am a Clerk in his Office.

Mr. At. Gen. How many Years in his Service?

Mr. *Spicer.* I have been his Clerk between ten and eleven Years: But I have been in all in his Service about twenty-four Years.

Mr. At. Gen. Do you know that he had any Money Tranſactions with either Mr. *Hales* or Mr. *Kinnerſley?*

Mr. *Spicer.* No, Sir, none at all.

Mr. At. Gen. Did you ever know him give ſuch Notes?

Mr. *Spicer.* No, Sir. I never knew him give any Notes for Time, nor ever give any Note but when he wrote himſelf the whole Note.

Mr. John Williams *called and ſworn.*

Mr. At. Gen. Mr. *Williams*, look upon the Hand at the Bottom of that Paper. Whoſe do you take that to be?

Mr. *Williams.* It is very like Mr. *Kinnerſley*'s.

Mr. At. Gen. Have you ever ſeen him write?

Mr. *Williams.* Yes, Sir, I have his Writing here.

Mr. At. Gen. What are you?

Mr. *Williams.* I am his Church-warden.

Mr. At. Gen. Have you ſeen him write? Look upon that Paper, and tell us whether you believe it his Hand-writing or not?

Mr. *Williams.* The Letters have a certain Cut very like his Hand-writing.

Judge *Reynolds.* Upon your Oath, Do you or do you not believe it to be his Hand-writing?

Mr. *Williams.* I think that it is very like his Hand, my Lord.

Judge *Reynolds.* Is it ſo like that you believe it to be his Hand?

Mr. *Williams.* Yes, my Lord, I believe it to be his.

Judge *Reynolds.* You are not called to ſwear, whether you ſaw him write it, or can ſay poſitively whether it is his Hand-writing; but whether from his Manner of Writing that you have ſeen, you believe, or do not, that it is his Hand-writing?

Mr. *Williams.* Yes, to the beſt of my Belief it is his.

Mr. Serj. *Eyre.* Pray, Sir, how often have you ſeen him write?

Mr. *Williams.* Three or four Times.

Mr. Serj. *Eyre.* How long ſince?

Mr. *Williams.* Laſt Year.

Mr. Serj. *Eyre.* Do you remember his Hand for the Compaſs of a Year, ſo as to take it upon you, upon your Oath, to ſay that you judge it his Hand?

Mr. *Williams.* Doth it depend upon my Judgment?

Judge *Reynolds.* Yes, it doth. Look on it.

Mr. *Williams.* It is more like his Hand than any other's that I ever ſaw.

Judge *Reynolds.* But is it ſo like that you really believe it to be his Hand?

Mr. *Williams.* Yes, my Lord.

Mr. John Lincoln *called and ſworn.*

Mr. Serj. *Whitaker.* Sir, pleaſe to look on that Paper. Have you ever ſeen Mr. *Kinnerſley* write his Name?

Mr. *Lincoln.* Yes, Sir.

Mr. Serj. *Eyre.* Frequently, or only once?

Mr. *Lincoln.* Several Times, Sir.

Mr. Serj. *Whitaker.* You ſay that you have ſeen him write ſeveral Times. Upon your Oath, according to the beſt of your Judgment, do you take that to be his Hand or not?

Mr. *Lincoln.* There is a great deal to be ſaid on that Subject.

Judge *Reynolds.* Yes. But little needs to be ſaid about it. Is it ſo like that you believe it to be his Hand?

Mr. *Lincoln.* Yes, my Lord it is.

Mr. Serj. *Whitaker.* Then, my Lord, having proved that this is his Hand-writing, we deſire that it may be read againſt both the Defendants.

Note read.] *I Promiſe to pay to Mr.* Thomas Kinnerſley, *or his Order, within ſix Months after Date, the Sum of Sixteen Hundred and Fifty Pounds, for ye Value received,*

March 30, 1728. Samuel Edwards.

Indorſement. Thomas Kinnerſley.

Mr. Serj. *Whitaker.* The Gentlemen of the Jury ſhould ſee it now.

Mr. At. Gen. My Lord, we deſire that the Jury may ſee it now. And, Gentlemen, you will obſerve, if you caſt your Eye upon the Note, that there is this one Obſervation that may be added to the others that were made, that the Note is all written with a Secretary *e*, but the *e* in for *ye*, which plainly ſeems to anſwer to Mr. *Edwards*'s Hand, and ſhew that that is an old *e*.

Mr. Thomas Bird *ſworn.*

Mr. At. Gen. Sir, whoſe Hand is that?

Mr. *Bird.* Mr. *Kinnerſley*, Sir, owned that to be his Hand-writing?

Mr. At. Gen. Was it ſhewed by you to Mr. *Kinnerſley* at that Time when he owned it?

Mr. *Bird.* Yes, Sir.

Mr. *Kinnerſley.* And did I own it, Sir?

Mr. At. Gen. Why you owned it in Court. This is the old Note.

Mr. *Kinnerſley.* I beg your Pardon, Sir; I did not underſtand that.

Mr. At. Gen. Give that Note to the Jury to compare it with the other Note that is now before them.

Mr. Serj. *Whitaker.* Mr. *Lincoln*, thoſe Receipts which you produced, did Mr. *Kinnerſley* actually write them?

Mr. *Lincoln.* I ſaw him write them all.

Mr. Serj. *Whitaker.* Shew them to the Jury.

Judge *Reynolds.* Gentlemen of the Jury, in that Book you will find ſome Receipts wrote by Mr. *Kinnerſley*, which Mr. *Lincoln* ſwears that they are his Hand; that he ſaw him write them all.

Mr. At. Gen. The next Witneſs that we will call is *Thomas Bab.*

Bab *not appearing nor* Thomas Brooks, *who was next called, Sir* Richard Hopkins *was sworn.*

Mr. Att. Gen. Sir *Richard*, we must trouble you to give an Account upon what Account Mr. *Kinnersley* was brought before you, and what he said?

Sir *Richard Hopkins.* He was brought before me about two Notes, one of Twelve hundred and sixty Pounds, and this Note.

Mr. Att. Gen. When he was before you, was there any particular Mention made of this Note of sixteen hundred and fifty Pounds?

Sir. *Richard Hopkins.* It was given to me to examine Mr. *Kinnersley* about it.

Mr. Att. Gen. Sir *Richard*, can you recollect whether that is the Note?

Sir *Richard Hopkins.* I made no Mark upon it: But I verily believe that this was the Note.

Mr. Att. Gen. Was it shewed to Mr. *Kinnersley?*

Sir *Richard Hopkins.* This Note was put into my Hand to examine Mr. *Kinnersley* upon. I looked upon it, and it seemed to me to be a Forgery. Before I could say any thing to Mr. *Kinnersley* about it, I saw one *Mitford* there. Before Mr. *Kinnersley* could answer what I had not fully asked him, 'Hold, Sir (said he), say nothing; this is not your Hand.' I thought this very odd Treatment of a Justice of Peace. I said then to Mr. *Kinnersley*, Is this your Hand or not? He said, No; I had the other Note in my Hand, I desired him therefore to recollect himself; for I thought that they seemed clearly to be the same Hand.

Mr. *Strange.* I think he owned the one to be his Hand-writing, and the other not. I ask, Whether that which he did own, was owned before that Mr. *Mitford* interrupted him, or after?

Sir *Richard Hopkins.* It was before. Upon that Mr. *Mitford* interrupted him.

Mr. Serj. *Whitaker.* Upon the Question, when Inquiry was made whether he had had any Dealings with Mr. *Edwards*, what did he say?

Sir *Richard Hopkins.* Both Mr. *Edwards* and I asked him, whether he ever had had any Dealings with Mr. *Edwards?* To which he replied No, he never had had any, nor ever to the best of his Knowledge had seen him before. I then asked him how he came to draw that Note payable to Mr. *Edwards*, when there never had been any Dealings between him and Mr. *Edwards?* He answered, That he did it at the Request of Mr. *Hales*, to whom he was indebted in that Sum, and more.

Judge *Reynolds.* The first Question I suppose was general, whether there had been any Dealings between them? Afterwards, when the Notes were shewn him, he owned the one, and denied the other. Was it not so?

Sir *Richard Hopkins.* Yes, my Lord.

Mr. Att. Gen. The next Witness that we shall call is *Thomas Bab*, to shew that there was a private Correspondence and several Meetings between *Kinnersley* and *Hales.*

Thomas Babb *was called and sworn, and deposed as before.*

Mr. *Kinnersley.* Sir, did we ever call for Pen, Ink and Paper?

Mr. *Bab.* No, Sir, never.

Mr. Brooks *called and sworn, deposed as before.*

Mr. *Kinnersley.* There could not be much done at Night without a Candle.

Mr. *Brooks.* No, Sir; but you had been there a considerable Time before.

Mr. Wright *called and sworn.*

Mr. Serj. *Whitaker.* Was you present, Sir, at the Examination of Mr. *Kinnersley* before Sir *Richard Hopkins?*---Mr. *Wright.* Yes, Sir.

Mr. Serj. *Whitaker.* When Mr. *Edwards* asked him, whether there had been any Dealings between them, what did he reply?

Mr. *Wright.* He replied, that there never had been any Dealings between them, and that he never had seen him till that Time.

Mr. Serj. *Whitaker.* Did you observe any Interruption?

Mr. *Wright.* Mr. *Kinnersley* was saying, I will tell you all if you will give me leave. Mr. *Mitford* laid his Hand upon him and said, Hold your Tongue, be careful what you say.

Mr. Serj. *Whitaker.* I ask whether he had there related any thing as to the Note now in question before the Interruption?

Mr. *Wright.* He had declared that that Note was not his.

Mr. *Kinnersley* I beg leave to speak, my Lord. Both Sir *Richard Hopkins* and that Gentleman have made a Mistake. Mr. *Edwards* asked me, How oft have you visited Mr. *Hales* in *Newgate?* Upon this it was that he said, Hold your Peace.

Mr. Serj. *Whitaker.* What was the Question that was asked Mr. *Kinnersley*, when you say that Mr *Mitford* interposed?

Mr. *Wright.* I cannot say what was the Question that was asked immediately before.

Mr. Serj. *Whitaker.* But you say, that it was after that he had denied this Note?---Mr. *Wright.* Yes, Sir.

Mr. *Kinnersley.* I would only ask, Sir, whether Sir *Richard Hopkins* desired me to hold my Tongue as well as Mr. *Mitford?*

Judge *Reynolds.* Did he bid Mr. *Kinnersley* make no Discovery?

Mr. *Wright.* No, my Lord.

Mr. *Kinnersley.* No, my Lord: But he bade me take the Gentleman's Advice. I appeal to Sir *Richard.*

Sir *Richard Hopkins.* The Gentleman hath appealed to me. I take it that the Question is, Whether I advised him to take the Gentleman's Advice? It would be very strange that I should reprove Mr. *Mitford* for Misbehaviour, and yet should at the same Time advise you to take his Advice.

Mr. *Wright.* Sir *Richard* asked Mr. *Bird*, whether Mr. *Kinnersley* owned that he knew of the Notes being indorsed that was in his Hands? He said that he did. Then he was asked when and how he knew this? This was before Mr. *Mitford* interposed.

Judge *Reynolds.* You have appealed to Sir *Richard Hopkins*, that he advised you to take the Gentleman's Advice. Sir *Richard* denies this.

Mr. *Kinnersley.* But he cannot deny that he said, Take your Friend's Advice.

Mr. John March *called and sworn.*

Mr. Serj. *Whitaker.* Was you present, Sir, at the Examination of Mr. *Kinnersley* before Sir *Richard Hopkins?*---Mr. *March.* Yes, Sir.

Mr. Serj. *Whitaker.* Pray, will you give us an Account of all that past there at that Time.

Mr. *March.* My Lord, I was attending upon Mr. *Richard Hopkins* as his Clerk, when Mr. *Kinnersley* was brought before him with relation to these Notes. When the first Note was produced, he was asked, whether that Note was his Hand-writing or not? To which he answered, That it was. When that was gone through, the second Note was produced, being a promissory Note made in the Name of Mr. *Edwards* payable to Mr. *Kinnersley.* When that Note in the Name of Mr. *Edwards* was produced, we perceived on the Back of it the Name of Mr. *Kinnersley* wrote. Mr. *Kinnersley* having denied this Note, Sir *Richard*, upon comparing the Name on the Back of this Note, with the other Note which he had owned to be his own Hand-writing, said to him, 'I would have you, Sir, consider very well whether you did not write that too; for it is very like that 'which you have owned.' Upon that Mr. *Mitford* interposed.

Mr. Serj. *Whitaker.* What was it that Mr. *Mitford* did say?

Mr. *March.* Mr. *Mitford* upon that said, 'Mr. *Kinnersley*, I would not have you answer that Question;' or to that Purpose.

Mr. Att. Gen. Did Sir *Richard Hopkins* advise him to take his Friend's Advice?---Mr. *March.* No, Sir.

Mr. Att. Gen. Did he reprove Mr. *Mitford* for interposing?

Mr. *March.* Yes, Sir. He desired him to be quiet, and told him that he would ask whatever Questions were desired, but desired that he would not interrupt.

Mr. Att. Gen. Was his denying of the Note before or after the Interruption?

Mr. *March.* He had first interrupted during the Examination on the first Note, and he afterwards interposed during that on the second Note.

Mr. Att. Gen. Well. But I ask you as to the second Interruption, whether it was before or after his denying his Hand?

Mr. *March.* It was after.

Mr. Serj. *Eyre.* You was saying, Sir, that Sir *Richard* bade him recollect himself, and consider well whether this was not his Hand too, for that it was very like that Note which he had owned to be his own Hand-writing. Had not Mr. *Kinnersley* before that said, that he did not sign that Note?

Mr. *March.* Yes, Sir.

Mr. Att. Gen. We rest it here, my Lord, and leave the Consideration hereof to the Jury.

Mr. *Mather.* I would ask, whether Mr. *Mitford*'s Advice was not that he should not speak too fast?

Mr. *March.* No, Sir; it was that he should not answer to that Question.

Mr. *Kinnersley.* They contradict one another; and Mr. *Bird* will swear any thing.

Judge *Reynolds.* You may prove that to be his Character if you can: But without that you ought not to aver it.

Mr. *Bird.* It is well known, my Lord, what my Character is. I have Persons of good Credit that have known me these twenty-six Years: I have never falsified my Word.

Mr. *Lacy.* My Lord, I have nothing material in my Instructions; and therefore I shall not trouble your Lordship.

Mr. Serj. *Eyre.* My Lord, I am Counsel for Mr. *Kinnersley.* I admit that they have proved that there was an Intimacy between them. It is detrimental to my Client that there was such an Acquaintance when the one was Parishioner formerly to the other, and that this Acquaintance was kept up to the last: But it doth not follow that they are to be considered as one: If Mr. *Hales* be never so guilty, it doth not appear that Mr. *Kinnersley* is guilty. As to this Indictment, the Charge is forging a Note in the Name of Mr. *Edwards*, and indorsing the same. It is admitted that Mr. *Kinnersley* had no Acquaintance with Mr. *Edwards:* But on the other hand it is pretty plain, by the Evidence that hath been given, that there was an Acquaintance between Mr. *Edwards* and Mr. *Hales.* They were near Neighbours: Mr. *Edwards* hath indulged him with Franks for several Years. Mr. *Hales* is a Man under Misfortunes for many Years, hath had a Commission of Bankruptcy awarded against him: It is very natural for such Persons to deal rather in another Person's Name than in his own; if therefore there be an Intimacy between Mr. *Hales* and Mr. *Edwards*, Mr. *Hales* should apply to Mr. *Edwards*, and he upon his Request should give him such a Note, I do not wonder that any Gentleman of Character should indorse such a Note signed by a Person of such Figure. It doth not seem very unnatural, that after their long Acquaintance a Note payable to Mr. *Kinnersley*, in Trust for Mr. *Hales*, should be indorsed by Mr. *Kinnersley:* This may be supposed the Case, if actually he did indorse the Note. I do not see why he may not be supposed as easily imposed upon as the other Gentleman, *viz.* Mr. *Thrup.* It is not so plain a Fallacy as that Mr. *Thrup*, who is a Gentleman in Business, could discern it. Why must we suppose then that Mr. *Kinnersley* must discern it? If then Mr. *Hales* is guilty of the Forgery, it doth not follow that Mr. *Kinnersley* must be so. As to the other Point, it is no Wonder that there should be the Name of Mr. *Kinnersley* on the Back of the Note: Any that would forge a Note will not scruple to forge an Indorsement. It is as like as possible, that the Man that would forge a Note in Mr. *Edwards*'s Name for such a Sum, may be as easily supposed to forge an Indorsement on this Note. How have they proved that it was indorsed by Mr. *Kinnersley?* Two or three Gentlemen have been produced as Witnesses, that have seen his Hand several Times, and from the Similitude of the Letters they believe it to be his Hand: But there is such Evidence to be every Day given of one Man's writing like another, that a Similitude of Hands is not to be wondered at. It is not to be wondered at that he that would be guilty of forging the whole Note would indorse it: Whether there is any Difference in the Hand between the Writings that have been produced and this Note and Indorsement, must be left to the Jury.

Judge *Reynolds.* Have you any Witnesses?

Mr. *Kinnersley.* I beg a Word, my Lord.

Judge *Reynolds.* Not till we have heard the whole that the Counsel say.

Mr. *Mather.* I take Notice, my Lord, that there hath been a Variance among the Witnesses as to what past at his Examination before Sir *Richard Hopkins.* The only Caution that was given him was, that he should not be too rash in his Answers, as your Lordship hath (I believe) thought him very rash in his Conduct here. We shall only call Witness as to this.

Rev. Mr. John Hayes *called and sworn*

Mr. *Mather.* Mr. *Hayes*, please to give my Lord and the Jury an Account what passed as to this Note of Sixteen hundred and fifty Pounds?

Mr. *Hayes.* When this Note was produced before Sir *Richard Hopkins*, and shewed to Mr. *Kinnersley*, upon shewing him the Name on the Back of the Note, he absolutely denied it to be his Hand.

Mr. *Mather.* Did you hear Mr. *Mitford* interrupt?

Mr. *Hayes.* I remember that there was a Diſpute between Sir *Richard Hopkins* and Mr. *Mitford.* There were Minutes taken of Mr. *Bird*'s Examination: Upon the reading of theſe Minutes, Mr. *Mitford* apprehended them not to be rightly taken according to the Evidence that was given. Upon this Mr. *Bird* was re-examined, and then there was another Queſtion propoſed concerning Mr. *Kinnerſley*'s going to *Newgate* to viſit Mr. *Hales.* Then Mr. *Mitford* again interpoſed.

Mr. *Mather.* Was that the Reaſon of the Interruption?

Mr. *Hayes.* Yes, Sir, I believe it was.

Mr. *Mather.* Was there ſome other Part in which he had alſo interpoſed?—Mr. *Hayes.* Yes, Sir.

Mr. Ward *called and ſworn.*

Mr. *Mather.* Sir, was you preſent at the Examination of Mr. *Kinnerſley* before Sir *Richard Hopkins?*

Mr. *Ward.* Yes, Sir.

Mr. *Mather.* Give us an Account of the Interruption by Mr. *Mitford.*

Mr. *Ward.* Mr. *Kinnersley* was examined as to the Note of twelve hundred and ſixty Pounds: Mr. *Kinnersley* being examined as to that, there happened ſome Words to paſs between him and Mr. *Bird:* After ſome Heſitation and Diſpute, he having acknowledged that Note, it was put down in the Minutes. After that he was examined as to this Note of ſixteen hundred and fifty Pounds: Upon his denying that it was his Hand, Mr. *Kinnersley* was aſked ſome Queſtion by Sir *Richard Hopkins* concerning ſomewhat that he had formerly ſaid; whereupon he deſired to be examined in the Court of Aldermen. Mr. *Mitford* hereupon deſired him not to deſire this.

Mr. *Mather.* My Lord, the Reaſon that we bring this Witneſs is to ſhew, that he had confeſſed all that he could at that Time, and there was Reaſon therefore for Mr. *Mitford* to interpoſe for the preventing Mr. *Kinnersley*'s making a Diſcovery.

Mr. *Kinnersley.* My Lord, when this Note was ſhewed me before Sir *Richard Hopkins,* it was the firſt Time that I ever ſaw it: I therefore denied it to be my Hand; but by looking upon it more cloſely, I own that it is like my Hand. Though none can oblige me to ſay any Thing, I would be content to be examined; and therefore have, though not regarded, ſolemnly averred that I was not privy to his getting of that Note or Money. As to the other Note, I owed him at that Time the twelve hundred and ſixty Pounds; I gave him that Note for it, and would not with that Solemnity ſay that it is not mine. He hath got it ſome other Way indorſed: But as to this Note it is not my Hand. Had Mr. *Hales* brought Mr. *Edwards*'s Note to me, and deſired me to indorſe it; though I own that I think that it hath the Marks of Forgery, yet if Mr. *Thrup* and others were impoſed upon, why might not I? Why ſhould I ſuſpect him more than others? I own that I had a great Confidence in him. Suppoſing this, will you condemn me for an unjuſt Thing? I take God to witneſs, that I never ſet my Hand to that Note, nor never took any Money. I beg Pardon, I will ſay one Word more: The Gentleman hath taken notice rightly that I have ſpoken raſhly; it is an Oppreſſion, and the Wiſe Man ſaith, that *Oppreſſion will make a wiſe Man mad,* which is worſe than raſh.

Mr. Att. Gen. My Lord, he hath intimated that this is an unjuſt and oppreſſive Proſecution: I ſubmit it. Proper Evidence hath been given, and he hath replied to it by his Counſel. The Counſel ſuppoſe, that if the whole Note was Mr. *Hales*'s Hand-writing, it was very likely that he would not ſcruple the Indorſement. Mr. *Kinnersley* himſelf ſeems to admit, that for aught he knows he might have indorſed ſuch a Note; but the Turn that he gives it is this: If ſuch a Note was wrote in the Name of Mr. *Edwards* payable to him, he might indorſe it, being brought by a creditable and honeſt Perſon. If a Note was made payable to him by a Gentleman of ſuch Figure and Character, and ſo brought to him, he thinks that he might indorſe it, and would ſo have done: But it is impoſſible that it could be fairly done; there muſt be ſomething fraudulent in it. The Evidence on the Side of the King ſhews, that there muſt have been a Conſpiracy between theſe two Perſons to defraud ſeveral Perſons: As the other Note was, without any Colour for it, made payable to Mr. *Edwards,* his Name being indorſed upon it, he being a Perſon of Ability to credit the Note: So this ſecond, on the other hand, without any Foundation alſo, becauſe no Colour of Dealings between them, is made in the Name of Mr. *Edwards,* payable to Mr. *Kinnersley,* and Mr. *Kinnersley*'s Name indorſed. Why ſhould Mr. *Kinnersley*'s Name be put to it, but only to give a Currency to this Note? When a Note is made payable to any Perſon, it cannot be negociated by any other without his Hand being put to it: His Hand therefore was not ſo much to give a Credit to the Note, he being a Man of no Subſtance, as to give a Currency to the Note, it being in his Name. When that appears to you, it is (I think) ſufficient to convince your Judgments that Mr *Kinnersley* is a Partner in this Forgery, otherwiſe would not have indorſed this Note in theſe Circumſtances.

Mr. Serj. *Whitaker.* My Lord, it is very extraordinary for a Perſon to pretend ſuch a Note belonging to him, that never had had any Dealings with Mr. *Edwards.* What Proof hath he given that he did not indorſe it? What Colour is there to ſay that this is a raſh Proſecution?

Mr. *Kinnersley.* My Lord, I beg a Word. I ſay not that it is raſh, as to the whole Proſecution; but I never was privy to any Wickedneſs in this Note, nor in any other: If I had, I would never have appeared here in my Gown. My Character ought not to exempt me if I am guilty; I ought to abſtain from all Appearance of Evil: When I have forfeited that Character, I deſire to live no longer among Mankind. I aſked Mr. *Hales* on what Account I was ſent for, and whether there were any Note of mine? He ſaid, Yes; there was a Note of Sixteen Hundred and Fifty Pounds payable by Mr. *Edwards.* Is it (ſaid I) a true Note? Is it wrote by Mr. *Edwards?* He ſhook his Head and ſaid, juſt as true as the other. I aſked him whether it was indorſed? To which he replied, Yes. Had I known, my Lord, that the Note was indorſed, I need not have aſked Mr. *Hales.* He is ready to do me Juſtice, though he muſt thereby take it upon himſelf. Your Lordſhip knows that I have no ſuch Character in *Suffolk.*

Judge *Reynolds.* We ſhall not need, Mr. *Kinnersley,* to go to *Suffolk* for your Character *.

Judge *Reynolds.* Gentlemen of the Jury, *William Hales,* late of *London,* Goldſmith, and *Thomas Kinnersley,* Clerk, ſtand indicted for forging a Note under the Hand of Mr. *Samuel Edwards,* for Sixteen Hundred and Fifty Pounds, payable within three Months to *Thomas Kinnersley,* or Order, after the Date thereof, for Value received: And another Part of the Indictment chargeth them with publiſhing the ſame. To this Indictment they have pleaded Not Guilty: The Queſtion you are now to determine. Gentlemen, the Foundation of this which hath been inſiſted on by the Counſel on the Side of the Proſecution is, that theſe Gentlemen, or rather the one of them, Mr. *Hales,* having an Acquaintance with Mr. *Edwards,* and being indulged by him the Liberty of applying to him for Franks, they have made a wrong Uſe of this, and by converting ſome of the Letters of the Word *ffree* into *for the,* and by adding ſome other Words, they have now formed it into a negociable Note for the Sum of Sixteen Hundred and Fifty Pounds, payable within ſix Months to Mr. *Kinnersley,* or his Order: And then Mr. *Kinnersley,* to give a Circulation to the Note, and make it negociable, hath, in Combination with Mr. *Hales,* indorſed his Name: Mr. *Edwards* is reſponſible to any body to whom this Note is transferred over. Gentlemen, to make out this to be the Caſe, they have firſt endeavoured to ſhew that Mr. *Hales,* for ſome Time, on ſeveral Pretences, procured a Number of Superſcriptions to be written for Franks by Mr. *Edwards,* who is a Member of Parliament, and particularly ſome Superſcriptions in ſuch Circumſtances as were moſt accommodated to ſerve a Deſign of this Nature. And to this End they have produced *Thomas Maddox,* a Servant of Mr. *Edwards*'s. He ſaith, that Mr. *Hales,* living near Mr. *Edwards* in *Duke-ſtreet,* in *Weſtminſter,* hath ſeveral Times applied to him for Frank Covers to ſend News into the Country; that Mr. *Edwards* hath given him ſeveral for that Purpoſe, but generally wrote the whole Superſcription himſelf, purſuant to the Directions that were given him; that in *July* laſt there came a Parcel of Franks, ſix of them, whereof five have been produced, to be franked, but without any Direction to whom to ſuperſcribe them. Mr. *Edwards* was deſired to frank them without any Superſcription: Mr. *Edwards* refuſed to frank them, unleſs directed to whom to ſuperſcribe them: Thus theſe Covers, upon that, were not done at that Time. But then to ſhew you what paſt afterwards upon Occaſion of theſe Blanks ſent to be franked, *Anne Clarke,* a Servant alſo to Mr. *Edwards* was called. She ſaith, that ſome time after this, Mr. *Hales*'s Servant came again over to Mr. *Edwards*'s Houſe, and told her that Mr. *Edwards* having refuſed to frank his Maſter's Covers without Superſcriptions, he had brought from his Maſter a Paper of Directions what Superſcriptions he deſired Mr. *Edwards* to put to them. That Paper of Directions hath been produced, and hath been ſworn by Mr. *Booth* to be Mr. *Hales*'s own Hand-writing. They were very ſhort Directions:

Two to Mr. *Levett,* of *Huntington.*
Two to *John Pratt,* Eſq. at *Briſtol.*
Two to *Stephen Miſford,* Eſq. *Exeter.*

And they would infer, that as theſe Superſcriptions were very ſhort, and ſo would not take up much Room, a vacant Space would have been left ſufficient to write any thing of this Nature. That is the Reaſon of their producing an Account of this Tranſaction, which doth not immediately affect this Cauſe, but only as they are inclinable to believe that ſome ſuch Frank may have been made uſe of to ſuch an End as theſe ſeem to have been deſigned for. And then, Gentlemen, to ſhew you the Uſe which they made hereof, the Note upon which this Indictment is immediately founded. The Note is in theſe Words,

I promiſe to pay to Mr. Thomas Kinnerſley, *or his Order, within ſix Months after Date, the Sum of Sixteen Hundred and Fifty Pounds, for the Value received,*

March 30, 1728. Samuel Edwards.

And on the Back it is indorſed with the Name *Thomas Kinnersley.* Gentlemen, they have inſiſted upon it that the Note itſelf carries the evident Marks of Forgery upon it. They ſay that this is ſo plainly derived from the frank Cover of a Letter, that the Word *ffree* is not wholly covered, but that ſtill ſome of it appears; that the Stile is unuſual *for the Value received. The* in a large Hand, and then afterwards *Value received,* the *ee*'s of a Round Hand, whereas all the other *ee*'s are of a quite different Figure, in a Secretary Hand. Other Obſervations they have alſo made, which you that have viewed the Note can eaſily judge of. They then apply themſelves to bring Evidence as to Mr. *Hales,* the one of the Defendants: And for that Purpoſe they have produced Mr. *Charlton Thrup.* He ſaith, that on *May* 22d laſt this Defendant, Mr. *Hales,* brought this Note to him, deſiring him to lend him three Five Hundred Pound Notes upon it; that he, not caring to have his Credit engaged to ſuch a Degree, refuſed to do it; but upon his Importunity, did at laſt conſent to give him a promiſſory Note of Four Hundred Pounds upon the Security of this Note, which Mr. *Hales* thereupon then depoſited in his Hands; that it was a Note for Sixteen Hundred and Fifty Pounds, ſigned by Mr. *Edwards,* payable to *Kinnersley,* and indorſed. He ſaith, indeed, that he did not then obſerve the Indorſement. Seeing this Note ſigned with Mr. *Edwards*'s Hand, and knowing him to be a Man of great Sufficiency, he was not ſo attentive to the other. He ſaith, that he kept this Note in his Hand till after that Mr. *Hales* was taken up, and then he delivered it by the Direction of Mr. *Edwards* to Mr. *Booth*; that before it

* In Trinity Term 5 *Geo.* there was an Information againſt this Mr. *Kinnerſley* and one *Moore,* as being evil-diſpoſed Perſons, in order to extort Money from my Lord *Sunderland,* did conſpire together to charge my Lord with endeavouring to commit Sodomy with the ſaid *Moore*; and that in Execution of this Conſpiracy, they did, in the Preſence and Hearing of ſeveral Perſons, falſely and maliciouſly accuſe my Lord, that he *conatus fuit rem veneream habere* with the Defendant *Moore,* and ſo to commit Sodomy. *Kinnerſley* only appeared, and pleads to Iſſue, and is found Guilty; and ſeveral Exceptions were taken in Arreſt of Judgment, *ſee Strange's Reports,* Vol. I. p. 193. but the Court over-ruled them all. Whereupon Judgment was given for the King, and afterwards the Court proceeded to Sentence, and told the Defendant *Kinnerſley,* nothing but his being a Clergyman protected him from a Corporal Puniſhment; they fined him 500*l.* a Year's Impriſonment, and to find Sureties for his good Behaviour for ſeven Years. In *Eaſter* Term, 5 *Geo. Moore* was convicted and ſentenced to ſtand in the Pillory, ſuffer a Year's Impriſonment, and to find Sureties for ſeven Years. And this Term, *Kinnerſley,* on Affidavits of his being indiſpoſed, moved the Court that he might be admitted to the Benefit of the Rules. *Sed per Curiam,* we never do it for one in Execution, which differs from the Caſe of a Perſon committed for High Treaſon, who have been bailed on account of Illneſs. *Ibid.* 196.

went out of his Hands, he observed the Indorsement. He swears also, that it received no Alteration in the intermediate Space between its coming into his Hands and its going out: It must be therefore indorsed before. He saith, that as to his own Note, he knoweth not what is come of it, but believes that it is in the Hands of Mr. *Maddox*, at the *Bank*. To shew that this is a forged Note they have called Mr. *Spicer*, who hath been above twenty Years concerned for Mr. *Edwards*; about ten or twelve as his Clerk. He saith that the Name is Mr. *Edwards*'s, and that the *ff* is also his; that it is his Master's constant Custom, when he franks a Letter, to write the Word *ffree*, and not *frank* over his Name, in the Manner wherein this originally stood, and that always with a *ff*. He saith, that he likewise thinks that the *r* is his Master's Hand-writing, but that the *o* is since crouded in between those Letters. He thinks that there are plain Footsteps, which shew that the first of the two *ee*'s, which joined to form the Word *ffree*, hath been made use of to form the first Part of the Head of the *y*, and the other Stroke being drawn between that and the other *e* it forms the Word *ye*, but then it doth not stand as usual over the *y*. And then he observes that he the rather believes this to be his Master's *e*, for that he always writes such an Hand, and all the rest here are in quite another Hand. And he saith, that he believes, that being acquainted with his Master's Affairs, he should have known of it, if that there had been any such Transaction of his Master's, and that this Note too is of a quite different Form from any that his Master ever delivered, and in a Manner wherein his Master doth not usually transact his Affairs: For that, as he is a Man of great Credit, he never knew him give a Note for Time; and in the next Place he is so very cautious, that he never knew him give a Note but that he wrote the whole Body of it with his own Hand, whereas the Body of this Note is not his own Hand, and therefore contrary to the Method that he usually observes. Thus far the Evidence is produced, in order to charge Mr. *Hales*, the one of the Defendants: But then in order to prove Mr. *Kinnersley* a Partner in this Transaction, they have afterwards observed upon the Indorsement, that this Note being made payable to Mr. *Kinnersley*, it could be of no Use till indorsed by him to give it a Currency. They have shewed the Hand upon the Back, and in order to prove his Name wrote there to be his Hand, as in Cases of this Nature nothing but an Observation of the Similitude of Hands can be expected, they have called on those that have seen his Hand, to give their Opinion thereof. The first Man expresseth himself with a great deal of Caution, seeming to apprehend at first that he was called to swear positively that it was his Hand: He saith, that he hath seen him write several Times, particularly at least three or four Times the last Year; that this is so like that he verily believes this to be his Hand, and cannot alter his Judgment as to it. To the same Purpose they have also produced another Person, one Mr. *John Lincoln:* He saith, that he hath seen him write several Times, and put his Name to Receipts in a Book; and that he cannot believe but that this is his Hand-writing. Some of you having desired to see and compare with this Note the other Note which was formerly proved, it hath been again proved; and as the Person aforementioned produced several Receipts which he saw him write, you have had them also to look upon: Which how far it will help you in forming a Judgment you are to judge. Further, they say, that Mr. *Kinnersley* was a Stranger to, and had no Transactions with Mr. *Edwards*. They have called several Persons that were present at the Examination of Mr. *Kinnersley* before Sir *Richard Hopkins*, as well as Sir *Richard* himself, who all say that Mr. *Kinnersley* himself owned this, and was going to say something further, had he not been interrupted by Mr. *Mitford*. Sir *Richard Hopkins* hath been produced. He saith, that in the latter End of *September* last, Mr. *Kinnersley* was brought before him, charged with two Notes, *viz.* one of Twelve Hundred and Sixty Pounds, and this Note of Sixteen Hundred and Fifty Pounds; that they entered into the Examination of the first Note, which he owned very frankly to be his Note, written with his own Hand; that they then entered upon the other Note, which he verily believes to be the same that hath been here produced; that Mr. *Kinnersley* having denied this Indorsement to be his Hand, he desired him to recollect whether this Indorsement was not his Hand too, for that he observed a very great Likeness of the Hand between that and the Note which he had owned to be his Hand-writing, and delivered the Note to the Defendant *Kinnersley* to look upon; that upon this Mr. *Mitford* came up to him, and said, 'Answer nothing: This not your Hand-writing.' He saith, that upon this Mr. *Kinnersley* said the same Thing, that this was not his Hand-writing. He saith, that he asked him, whether he had had any Dealings with Mr. *Edwards?* That he replied that he had not, and that till this Time he was an utter Stranger to his Person. He saith, that Mr. *Mitford* and he had some high Words upon this Occasion; he reproving him for interposing when he apprehended that a further Discovery might have been made. They next endeavour to shew, that there was a Correspondence carried on in a private Manner between the two Defendants. In order to shew this, they have produced several Persons at whose Houses they have met: One of them is *Thomas Bab*; he saith that he keeps *Peel*'s Coffee-house, in *Fleet-street*; that the latter End of last Summer Mr. *Hales* very frequently came thither, and would sometimes be there for an Hour or two; that he often asked whether the Minister had been there to ask for him, not asking for Mr. *Kinnersley* by Name, they knowing whom he meant, having often seen them there together; that when Mr. *Kinnersley* came in, they used to retire into a private Room, and stay there together for some Time; that one Time Mr. *Hales* observed Mr. *Kinnersley* going down *Fleet-street*, went out and went after him; that sometimes they went away together, sometimes asunder; sometimes one went out at the one Door into *Fleet-street*, and the other at the other into the Passage to *Fetter-lane*. He saith, that this their Resort to his House was till about a Month before that Mr. *Hales* was taken up, and was then discontinued. Mr. *Kinnersley* asking him, whether they ever called for Pen, Ink and Paper? To this he replied, No. Of the same Nature is the Evidence of *Thomas Brooks*; he saith, that he keeps a Coffee-house at *Downing-street*, in *Westminster*; that Mr. *Kinnersley* used to come to his House, send for a Porter, and give him a Note to Mr. *Hales*, who thereupon hath come thither to him, and they have gone together by themselves to the further End of the Room; that this they did several Times, and stayed together sometimes several Hours. He saith, that once particularly they staid there till it was so dark that he asked his Servant why he had not carried the Gentlemen a Candle; who said that he had carried them one, but they refused it. Gentlemen, they have then again had Resort to the Examination before Sir *Richard Hopkins:* They have, as to this, called Mr. *Wright*. He saith, that he was present at that Examination; and that Mr. *Kinnersley*, being pressed to answer several Questions put to him, was in some Emotion, and said, I will tell you all, give me leave; seeming desirous to take Time to digest his Thoughts: That then one Mr. *Mitford* came up to him, and bade him hold his Tongue, or he would do himself some Mischief, or Words to that Effect. He being examined as to some Particulars that Mr. *Kinnersley* affirmed to have passed between Sir *Richard Hopkins* and Mr. *Mitford*, and that Sir *Richard* advised him to take his Friend's Advice, he denieth this, as doth also Sir *Richard Hopkins* himself, to whom Mr. *Kinnersley* hereupon appealed. He saith, that he thinks that this Interruption was after that having owned the other Note to be his Hand-writing, he had denied this Indorsement to be his, whereas Sir *Richard* thought it before, and designed to prevent his answering him on that Head. They have also produced Mr. *March*, who is Sir *Richard Hopkins*'s Clerk; he gives you much the same Account. He saith, that Mr. *Kinnersley* having owned the other Note, and denied this Indorsement to be his Hand, Sir *Richard* observing the Likeness of the Hand, advised him to recollect himself, and consider well whether that Indorsement was not his Hand too as well as the other Note, for that the Hands were very like; that Mr. *Mitford* upon that interposed, and said, 'I would have you cautious, and not answer that Question.' He denies that Sir *Richard* advised Mr. *Kinnersley* to take his Friend's Advice; but on the contrary saith, that Sir *Richard* was a little warm, and reprehended him for his interposing, as being an Interruption of Justice. This is the Evidence that hath been laid before you as to this Note, both to prove the Forgery of this Note, and to shew the Use that was made of it both by Mr. *Hales* and Mr. *Kinnersley*, who is charged with the indorsing this Note in order to make it current. They are called upon to make their Defence: Mr. *Hales* stands mute, and saith nothing. The Facts bear very hard upon him, he being supposed to procure these Franks: It behoved him therefore to give some Account how he came by this Note. So as to that I apprehend that there is no Difficulty, Mr. *Hales* making no Defence. But the Question is, How far Mr. *Kinnersley* is proved to be concerned? His Counsel have endeavoured to soften the Evidence, or make it not applicable to Mr. *Kinnersley*. They own that there was a Familiarity between him and Mr. *Hales:* But then they say, that there was also a Familiarity between Mr. *Hales* and Mr. *Edwards:* They say therefore, that Familiarity with Mr. *Hales* is not a criminal Thing. In itself it is not: But the Question is, Whether a criminal Use hath been made of it? They suppose it to be a forged Indorsement; but say, that the same Person that forged the Note might also forge the Indorsement: And they say, that supposing it to be Mr. *Kinnersley*'s Hand-writing, it may be well supposed that he was easily imposed upon. And they would also have it believed, that this is an usual Thing for one Person to indorse another's Notes among common Acquaintance. But how were they common Acquaintance, when Mr. *Kinnersley* hath acknowledged that he had never seen Mr. *Edwards* in his Life till after this? They say, that it may be the easier supposed that Mr. *Kinnersley* did thus give Credit to this as a true Note, and not take it to be a Forgery, since Mr. *Thrup*, who is a Man in Business, was imposed upon by it, and lent Four Hundred Pound upon it. They have called also some Evidence, not directly to controvert the Fact, but to contradict some Things given in Evidence, relating to the Examination taken before Sir *Richard Hopkins*. To this Purpose they have called Mr. *John Hayes*. He saith, that whether this Indorsement was his Writing was not the Question proposed to Mr. *Kinnersley*, when Mr. *Mitford* interposed, he having before denied that; but that there was another Question, that was then proposed to him to answer; Whether and how often he had been to visit Mr. *Hales* in *Newgate?* And he saith, that as to that it was that Mr. *Mitford* interposed, and advised him not to answer to that Question. They have called also Mr. *Ward*, who was present at the same Time, and gives you much the same Account. He apprehends that there was a Dispute about the Minutes that were taken of what had passed, and that Mr. *Kinnersley* was in a Passion, and desired to be examined in the Court of Aldermen; and that then Mr. *Mitford* interposed, and advised him not to desire this; that the Interruption was upon that extravagant Offer of his, and that upon that possibly Sir *Richard* might advise him to take his Friend's Advice, that is, to be clear and not so rash in answering the Questions put to him. Mr. *Kinnersley* himself hath laid before you what he thought proper. The Witnesses that were called (you have doubtless observed) as to that Examination, both of them say, that he had denied it before the Interposure. Mr. *Kinnersley* speaks himself and seems to say, that he doth not know but that it may be his Hand, though how it came to be obtained he cannot well tell. Indeed it is an extraordinary Thing how his Name should be obtained on the Back of a Note signed by Mr. *Edwards*. Gentlemen, if any other Particulars, material for their Defence, have slipped me, you have heard them, and they ought to have their Weight. The Question is, Whether and how far he is a Party in this Transaction? If he be a Party, though he doth but the one Part, he is equally guilty: Every Man that takes Part of these Things is equally guilty of the whole, and stands undefended. The Note then must be taken for a forged Note, and probably in the Manner that they have shewn. The Thing in Question is, How far Mr. *Kinnersley* is concerned? The Name *Kinnersley*, you see, is upon it: If his Name had not been upon it, the Note had been of no Avail; for there having been no Transactions between them, he could not have demanded the Money. But the main Business was to indorse it, that other Persons that knew not but there might have been such Transactions between them, might credit it, and lend Money upon it. Whether the Proof that is given you that this is his Hand, coupled with his own Apprehension that it is very like his Hand, will satisfy you of it, you must judge. If you judge that it is his Hand, the next Question before you will be, How far it could be put to a Note of Mr. *Edwards*'s? It is plain that there could be no Foundation for it: If then you think it satisfactorily proved that his Hand was put on the Back of this Paper by him, knowing it to be a Note of such Value, and there be no Reason given you for it, you must look on

him

him as a Party; but if you ſuppoſe it put to the Back of the Note without his Privity, in that View of the Thing you muſt acquit him.

(Jury called over.)

Clerk. Are you all agreed in your Verdict?——*Jury.* Agreed.

Clerk. Who ſhall ſpeak for you?——*Jury.* Our Foreman.

Clerk. How ſay you: Is *William Hales* guilty of the Meſdemeanour wherewith he ſtands charged, in forging a Note for Sixteen Hundred and Fifty Pounds, and indorſing the ſame, and in publiſhing the ſame as a true Note and Indorſement, knowing it to be ſo forged and counterfeited, or not guilty?

Foreman. Guilty.

Clerk. How ſay you, Is *Thomas Kinnerſley*, &c.

Foreman. Guilty.

Mr. *Strange.* My Lord, we deſire that Mr. *Kinnerſley*, may be now committed.

Judge *Reynolds.* Whence was he brought hither?

Mr. *Strange.* From the *Compter*.

Judge *Reynolds.* Well, now that he is convicted, he muſt be committed.

Mr. *Kinnerſley.* Whither, my Lord?—Judge *Reynolds.* To *Newgate*.

Mr. *Kinnerſley.* But, my Lord, there are two Writs againſt me which fix me to the *Compter*.

Judge *Reynolds.* They will follow you doubteſs to *Newgate*.

Mr. *Kinnerſley.* But, my Lord, the Order of the Lord Chief-Juſtice was, that I ſhould be committed to the *Compter* till diſcharged.

Judge *Reynolds.* Your being ordered to *Newgate*, is a Diſcharge from the *Compter*.

Mr. *Kinnerſley.* I bleſs God that I go back innocent of the Charge againſt me.

Judge *Reynolds.* If you do in your own Apprehenſion, it is not ſo in the Apprehenſion of the Jury.

Mr. *Kinnerſley.* My Lord, I thought I had cleared that Matter. If Mr. *Hales* had brought me that Note to ſign, I believe that I ſhould have ſigned it: But I ſhould not have done it, if I had known that Mr. *Edwards*'s Name was fraudulently obtained to it. May I never ſee the Face of Almighty God, if I was ever privy to any of Mr. *Hales*'s Forgeries! If your Lordſhip pleaſe to direct me to *Newgate*, I deſire it may be immediately, for I am ill, having been here ſo long.

Judge *Reynolds.* It will be preſently, for the Court is going to adjourn.

IX. The Trial of William Hales, for fraudulently forging and counterfeiting a Writing, purporting to be a Promiſſory Note of *Samuel Edwards*, Eſq. to *Samuel Lee*, for Four Thouſand Seven Hundred Pounds.

The Jury called over and ſworn.

Clerk. OYEZ. OYEZ. If any one can inform, &c. *Indictment.*] Gentlemen of the Jury, *William Hales* ſtands indicted by the Name of *William Hales*, of *London*, late Goldſmith; for that on the firſt of *Auguſt*, in the ſecond Year of his Majeſty's Reign, he did fraudulently forge and counterfeit a Writing, purporting to be a promiſſary Note, in theſe Words following,

March 30, 1728.

Six Months after Date, I promiſe to pay to Samuel Lee, *or his Order, the Sum of Four Thouſand Seven Hundred Pounds, for ye Value received,*

Samuel Edwards.

and that he did knowingly and wittingly publiſh the ſame as a true Note, knowing the ſame to be ſo forged and counterfeited.

Mr. *Strange.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, this is an Indictment againſt Mr. *William Hales*, for forging a Note in the Name of *Samuel Edwards*, Eſq. and publiſhing the ſame. It ſets forth, that on the firſt of *Auguſt*, in the ſecond Year of his Majeſty's Reign, he forged a Note in theſe Words following, &c.

And it further ſets forth, that the Defendant publiſhed the ſaid forged Note as a true Note of Mr. *Edwards*'s, knowing the ſame to be forged and counterfeited.

Mr. Serj. *Whitaker.* May it pleaſe your Lordſhip, I am Counſel in this Cauſe for the King. Gentlemen, this Matter is of the ſame Nature with ſome former Indictments: I ſhall therefore take up but little of your Time. It appears, Gentlemen, to us, that this is the Effect of ſome Frank Covers, that Mr. *Hales* hath fraudulently obtained of Mr. *Edwards*. I need not now acquaint you, that Mr. *Edwards* did for ſome Time indulge Mr. *Hales* with Frank Covers, which Mr. *Hales* pretended that they were deſigned for ſending News into the Country. This Note, Gentlemen, is even a groſſer Forgery than the others can be ſuppoſed to be. Here is a Sum of Four Thouſand Seven Hundred Pounds, which Mr. *Edwards* is ſuppoſed to promiſe to pay within ſix Months after Date to *Samuel Lee*. This *Lee* we have inquired into the Character of. He is one that is worth nothing: He is a ſea-faring Man, and his Wife was Nurſe to Mr. *Hales*'s Children: This Man is not very likely to have a promiſſory Note for Four Thouſand Seven Hundred Pounds. Gentlemen, when you come to look upon this Note, you will ſee on it the plaineſt Marks of Forgery that can be. When you come to look upon it, you will plainly ſee that *ffree Samuel Edwards* ſtill remains viſible. There is the double *f* which Mr. *Edwards* generally uſeth, which we ſhall prove by Witneſs. And then between the *ff* and the *r* there is an *o* ſtruck in, which you will plainly ſee is not the ſame Writing with the *ff*, nor the ſame with *Samuel Edwards*. And then to make out the *ye* you will ſee the two *ee*'s are contrived to make a *y* with a Stroke at the Bottom of the *e*, but that ſtill the two *ee*'s ſeem viſible, and to be wrote by the ſame Party that wrote the *ff*. I will appeal herein to your own Eye-ſight. Then there is a Dot at the End of the *y*, and then *Value received*. You will ſee a conſiderable Depth beneath, and that it muſt be cut off from ſomething elſe. How it was, it concerns Mr. *Hales* to ſhew. As to the Method wherein this came to be diſcovered, it is ſufficient to tell you, that this had been occaſioned by the Diſcovery of a Note forged in the Name of Mr. *Gibſon*, an Apprehenſion and Commitment of Mr. *Hales*; that this gave occaſion for ſeveral Perſons to inquire into the Validity of thoſe Notes which they had received from Mr. *Hales*. As upon Inquiry ſeveral other Notes that have been before you were diſcovered, ſo at length it came to be diſcovered, that Mr. *Hales* had delivered to Sir *Biby Lake* this promiſſory Note, made in the Name of *Samuel Edwards*, Eſq. payable within ſix Months after Date to *Samuel Lee*, for Four Thouſand Seven hundred Pounds. It was upon this Occaſion that it came to be delivered to Sir *Biby Lake*: Mr. *Hales* had been harraſſed with ſeveral Judgments againſt him: To keep off the evil Day as long as poſſible, it was neceſſary to procure ſome ſubſtantial Perſon to be Bail for him; Sir *Biby Lake* was applied to, being a very ſubſtantial Gentleman. It being on a Writ of Error, and for a conſiderable Sum, that he was deſired to be Bail for Mr. *Hales*, he made a Scruple, and refuſed it at firſt: At length to induce him to it, Mr. *Hales* ſaid to him, Sir, you ſhall be at no manner of Riſk; I have a promiſſory Note for Four Thouſand and Seven Hundred Pounds, which is made by Mr. *Edwards*, who is a ſubſtantial Man, payable within ſix Months: This will be an ample Security, if an Execution ſhould come upon you for the affirming of this Judgment. Upon this Sir *Biby Lake* was induced to be his Security; thus he came to have this Note delivered to him. Gentlemen, when we ſhew you, as we muſt, it being a freſh Caſe, how he had Franks from Mr. *Edwards*, the Method wherein he hath made this Uſe thereof, and then that this Note was thus delivered to Sir *Biby Lake*; and you have conſidered the ſeveral Circumſtances of the Caſe, it will appear both that this is a forged Note, and by whom it was forged; that Mr. *Hales* was the Perſon on whom it muſt be charged.

Mr. *Strange.* Gentlemen, I would obſerve to you, which you will plainly ſee, that here is Mr. *Edwards*'s double *ff*, and then an *o* crouded in between that and the *r*; and that there not being ſufficient Room, therefore the Word *Pound* is crouded in, in a narrow Manner, and then follows the *ff*, ſo that it is not poſſible to ſuppoſe that if any Gentleman had wrote it before the *ff* was wrote, he would have crouded the Word *Pound* into ſo narrow a Room. But there was then a Neceſſity for it.

Thomas Maddox, Anne Clarke, *and Mr.* Booth *were called, ſworn, and depoſed as before; and the Note of Directions was again read.*

(Mr. Spicer *ſworn.)*

Mr. *Strange.* Pleaſe to look on that Note, and tell us how much thereof you take to be Mr. *Edwards*'s?

Mr. *Spicer.* The Name is his, the *ff* and the *r* is alſo his. The *o* ſeems not to be of the ſame Ink, and is afterwards crouded in. The *y* is not his.

Mr. *Strange.* What is Mr. *Edwards*'s Way of franking?

Mr. *Spicer. Free Samuel Edwards. Free* he uſually writes with a *ff*.

Mr. *Strange.* Did you ever know him in franking, make uſe of the Word *Frank?*

Mr. *Spicer.* No, Sir.

Mr. *Strange.* How long have you been acquainted with him?

Mr. *Spicer.* About twenty-four Years, Sir.

Mr. *Strange.* Did you ever know him any ways concerned with *Samuel Lee?*

Mr. *Spicer.* No, Sir.

Mr. *Strange.* Do you know him?——Mr. *Spicer.* No, Sir.

Mr. *Strange.* Do you think, that being acquainted with Mr. *Edwards*'s Concerns, you ſhould have known if there had been any Money Concerns between them?

Mr. *Spicer.* Yes, Sir, I believe that I ſhould.

Mr. *Strange.* What further Reaſons have you to believe this not to be his Note?

Mr. *Spicer.* I can never believe this to be his Note, for he never gives any promiſſory Note for Time, nor any Note at all, without writing the whole Note with his own Hand.

(Sir Biby Lake *called and ſworn.)*

Mr. Serj. *Whitaker.* Sir, pray pleaſe to give us an Account, when you ſaw that Note firſt, upon what Occaſion it was brought to you, and by whom it was delivered to you?

Sir *Biby Lake.* About this Time Twelvemonth Mr. *William Hales* ſent Mr. *Kinnerſley* to me at my Houſe in *Croſby Square*, who told me that Mr. *Hales* was arreſted upon account of a Bond given by him, and Mr. *Robert Hales*, to Dr. *Mapleton* of *Canterbury*; that the Doctor having arreſted Mr. *William Hales*, he deſired that I would be Bail for him. I deſired Mr. *Kinnerſley* to meet me in the Evening: We then went to the Judges Chambers, and gave Bail to the Action. I thought, that there being no Difficulty in the Gentleman's Appearance, there would be no Damage in doing that for a Friend. Afterwards Mr. *Hales* came himſelf to me, and deſired me that I would be Bail again for him. I told him that it was ſomewhat extraordinary; but that however I would meet him at Mr. *Turner*'s at *Staples Inn*, to conſider what to do. He came to me there about Four or Five, and brought a Gentleman with him, who he told me was his Attorney. At firſt, he told me not: But afterwards, we underſtood that it was to a Writ of Error that I was deſired to be put in Bail. I was then told by Mr. *Turner*, that if I was Bail to that, I muſt pay the Money if they did not. Upon this, I told Mr. *Hales* that I cared not to be Bail in ſuch a Matter as this, unleſs he would give me good Security. He told me that he was going to *Peel*'s Coffee-houſe, deſired that I would conſider of it, and come to him again. I ſtaid to conſult Mr. *Turner*, and told him that I would not be Bail except Mr. *Hales* would give me good Security. I then went to *Peel*'s Coffee-houſe, and there found Mr. *Hales* and Mr. *Kinnerſley* together. I took Mr. *Hales* to another Part of the Room, and told him, that I would not endanger myſelf and my Family ſo far as to engage for ſuch a Sum, it being about Fifteen Hundred Pounds, unleſs he would give me good Security. Upon this he put his Hand in his Pocket, took out his Pocket-Book, and took out of it this Note. He looked upon it, and ſaid, that it was a promiſſory Note for Four Thouſand and odd Pounds, and was payable within two or three Months after. He put it into my Hand: I looked upon it, and thought it was very good Security to me for ſuch a Sum. He deſired that I would keep it in my own Hand till the Money that I was Security for was paid; but ſaid, that he would pay the Money long before I could be called upon: I thought I had ſufficient Satisfaction,

Satisfaction, and went thereupon before the Lord Chief-Justice *Raymond*, and gave Bail to the Writ of Error.

Mr. Serj. *Whit.* Sir, I would desire you to look on the Note, and on the Back of it, and tell us whether it hath had any Alteration?

Sir *Biby Lake.* None, Sir, that I know of. But I must give you a particular Account of one Thing. It was not all the Time in the same Custody. Before I came there, my Servant went and waited for me with my Horse in *Holborn*, I being going out of Town. Going therefore to Mr. *Turner*'s, I desired him to lay it by for me in his Drawer, where he hath other Papers of mine. Accordingly he did lay it up; and from that Time it was (I suppose) in Mr. *Turner*'s Custody, till after the Time that Mr. *Hales* was taken up. When that happened, Mr. *Harle* of the *Million Bank* sent me Word thereof. Upon that, when I came in, I went to Mr. *Harle*, and told him that I had such a Note of Mr. *Edwards*'s in my Hand; and (said I) hearing that you have a Suspicion that the Note that is in your Hands is a bad Note, I have some Reason to desire you to go to Mr. *Edwards*, and acquaint him, that I have such a Note in Mr. *Turner*'s Custody, who is now in *Derbyshire*. All that I could then do, was to desire Mr. *Turner*'s Clerk to send to him for the Key, that we might take out the Note and shew it. The Clerk did so; and after some Time had the Key sent him, took out the Note, and I desired him to carry it to Mr. *Edwards*. It was the same Day that the Note became due.

Mr. Turner *called and sworn.*

Mr. Serj. *Whit.* Mr. *Turner*, pray please to look upon that Note, and give us an Account when you first saw it?

Mr. *Turner.* I believe it was one Day in the Beginning of *July* last, about five or six o'Clock in the Afternoon: I cannot be particular as to the Day, but I believe that it was the same Day that Sir *Biby Lake* gave Bail to the Writ of Error. He then brought me the Note to lay by for him. I verily believe this to be the same Note.

Mr. Serj. *Whit.* Hath it had any Alteration since?

Mr. *Turner.* No, Sir. He desired me to put it for him in a Drawer, where I had other of his Papers: Accordingly I did: I went out of Town in *August*. Afterwards my Clerk sent me Word, that Sir *Biby Lake* desired that I would send up the Key of the Drawers, in order to his Notes being taken out. Upon that I sent up the Key to my Clerk, directed him in which Drawer the Note was, desired that he would take it out, and carry it to Sir *Biby Lake*.

Mr. More *called and sworn.*

Mr. *Strange.* Do you remember, Sir, to have received a Key from Mr. *Turner?*---Mr. *More.* Yes, Sir.

Mr. *Strange.* Did you thereupon find this Note in the Drawer?

Mr. *More.* Yes, Sir; in the Drawer of the Desk.

Mr. *Strange.* Did you make any Alterations in it?

Mr. *More.* No, Sir; I took it out, and carried it to Mr. *Edwards*.

Mr. *Strange.* Mr. *Spicer*, you are acquainted with Mr. *Edwards*'s Way of Dealing. When he gives a Promissory Note, doth he write the whole Note?

Mr. *Spicer.* Yes, Sir; I never knew him give any but that he wrote the whole Note.

Mr. *Strange.* Doth he use to give Notes for Time?

Mr. *Spicer.* No, Sir, never.

Mr. *Strange.* My Lord, we now desire that the Note may be read.

Note read. March 30, 1728.

Six Months after Date, I promise to pay to Samuel Lee, *or his Order, the Sum of Four Thousand Seven Hundred Pounds, ffor the Value received,*

Samuel Edwards.

Indorsed Samuel Lee.

Mr. *Strange.* You will observe, Gentlemen, the Word *ffrte* is legible still, and observe how the Word *Pounds* is crouded in.

Mr. Bird *called and sworn.*

Mr. Serj. *Whit.* Sir, do you know Mr. *Samuel Lee?*

Mr. *Bird.* Yes, Sir.

Mr. Serj. *Whit.* What is he?---Mr. *Bird.* A sea-faring Man.

Mr. Serj. *Whit.* Do you know his Wife?---Mr. *Bird.* Yes, Sir.

Mr. Serj. *Whit.* Did she nurse a Child for Mr. *Hales?*

Mr. *Bird.* Yes, Sir; two for several Years.

Mr. Serj. *Whit.* Is he a Man of Worth?

Mr. *Bird.* No, Sir; he is not worth five Pounds in the World.

Mr. Serj. *Raby.* What say you to this, Mr. *Hales?* You see that they have given an Account of the Method that you took to procure Frank Covers. This Note they say, that you published as a true Note, how should it come to pass, that such a poor Person as this *Lee* is should indorse over such a Note to you?

Mr. *Hales.* Mr. *Lee* gave it me, there being Monies due to me.

Mr. Serj. *Raby.* If you can prove any Transaction between you and that *Lee*, to induce the Jury to believe that it was given you upon that Consideration, it will be proper now to do it.---Mr. *Hales.* He is gone abroad.

Mr. Serj. *Raby.* Is there any Person that can be Witness of any such Transaction?---Mr. *Hales.* No, Sir.

Mr. Serj. *Raby.* Gentlemen of the Jury, *William Hales* of *London*, late Goldsmith, stands indicted for forging a Note for Four Thousand and Seven Hundred Pounds, payable within six Months after Date to *Samuel Lee*, or Order, in the Name of *Samuel Edwards*, Esq. and for publishing the same as a true Note. You see, Gentlemen, that there have been several Witnesses produced to shew how he got Possession of Frank Covers, on Pretence of sending News into the Country; and that he sent a Paper of Directions for some, which Directions were very short, and so convenient for the writing in the intermediate Space over the Name, such a Note as this. And they have sworn that these Directions are his Hand, which were sent over by his Servant to Mr. *Edwards* for Franks. Now to shew you that this Note was published by this Man as a true Note, and that he is guilty hereof, Sir *Biby Lake* hath appeared. He tells you, that there were two several Applications to him to be Bail for Mr. *Hales*; that he complied readily with the one, but the other he made more Scruple of, because it was more dangerous; it being to a Writ of Error, and for about Fifteen Hundred Pounds. He was therefore more cautious, and would not do it without Security. He tells you, that upon this, this Note was offered and deposited in his Hands by the Prisoner. This, if you are satisfied of it, fixed the Note upon the Prisoner. It appears hereby, that it was in the Hands of the Prisoner. He cannot shew you how he came by it: That then is a strong Proof to fix the Charge in this Indictment upon him. Where a forged Note is found in a Person's Possession, and it appears that he offered it as a true one, and cannot give an Account how he came by it, that fixeth the Charge of forging it upon him. This Note was published in the City of *London*, and therefore the Forgery in the Indictment is fixed there: For it is impossible to know certainly where a Note is forged, since no one calls Evidence to see him forge a Note. Thus it appears to have been in his Custody, and it cannot otherwise be proved. Other Witnesses have been produced, to shew that the Note hath not been altered since it was delivered by him. Mr. *Turner* tells you, that he received it from Sir *Biby Lake* the Day that he received it from Mr. *Hales*, and laid it by for him in his Drawer; so that from the Time that it was published, it continueth in the same State that it then was. Other Circumstances have been laid before you, as the Manner of Mr. *Edwards*'s making out any Notes. He doth not give out any Promissory Note made for Time, nor doth he ever give out any whatsoever but such as are all of his own Hand-writing. Another Circumstance that hath been laid before you, relates to the Person to whom this Note is made payable. It looks like a Contrivance to have it all in his own Management, in the Hands of his Servant, and within his own reach; that this Note should be made payable to a poor Man, whose Wife was Nurse to Mr. *Hales*'s Children, and the Witness believes him not to be worth five Pounds in the World. How should he be intituled to this Bill for such a Sum, which he might have indorsed to any other Person? No one sure would trust such a Note with such a Person. He could not be possessed of it in his own Right, and no other Person would intrust a Man, not worth five Pounds, with a Note of this Value. This Circumstance they offer to your Consideration: And they take Notice of some Letters which shew that there was originally *ffree*, which is now turned into *for the* before *Value received.* It appears that it was *ffree Samuel Edwards:* And it is almost legible notwithstanding the Alteration that hath been made. He hath said nothing in his Defence to shew how he came by that Note. He saith that *Lee* gave it him. Is it likely that a Man not worth five Pounds in the World should give out such a Note as this? Though there is no direct Evidence of his forging it, that makes no Alteration: If he directed it to be done, it is the same Thing as if he did it himself; nor doth it appear that any but himself is concerned therein. He having published it, is guilty not only of the Publication, but of the forging of it: If you believe it to be a forged Note, he is guilty of the Forgery. His publishing of the Note is a sufficient Evidence of it. If a Man had received such a Note, he would readily say, I received it of such a Person on such an Occasion: But there hath been no Evidence of this Nature given. If you ask a Man, how he came by this or that Thing, he saith another gave it him: That may be said in every criminal Case; it is often said, but never regarded except proved. You are then to consider all these Circumstances, and to judge thereupon whether it is a forged Note; whether it is likely that *Lee* should have a Note of this Value, and that there should be any Reason for his delivering such a Note? There have been no Pretence of any Transactions between this *Lee* and Mr. *Edwards*, nor any Colour of Proof on what Consideration the Gentleman should write such a Note payable to such a Man, and give it him. Gentlemen, here is as full and plain Proof as can be expected, if the Evidence swear true; so I leave it to you.

Clerk. Are you all agreed in your Verdict?---*Jury.* Agreed.

Clerk. Who shall speak for you?---*Jury.* Our Foreman.

Clerk. How say you, Is *William Hales* Guilty of the Misdemeanour whereof he stands indicted in forging a Note in the Name of *Samuel Edwards*, Esq. for Four Thousand Seven Hundred Pounds, and publishing the same, or Not Guilty?---*Foreman.* Guilty.

Mr. Serj. *Whit.* My Lord, the Note being found to be forged, we desire that Sir *Biby Lake* may deliver it to Mr. *Edwards*.

Sir *William Thompson.* That is but common Justice.

Mr. *Strange.* My Lord, there is another Indictment: But we will not trouble your Lordship with that; therefore the Jury may be discharged.

Mr. Serj. *Whit.* My Lord, we think it proper to take notice, that upon the three Indictments whereof he hath been found guilty on the Statute of King *Henry* VIII. for obtaining Money by false Tokens, there can be no Fine in the Case: We must therefore crave corporal Punishment.

Sir. *William Thompson.* The Question is, What corporal Punishment? To be sure he will be pilloryed.

Mr. Serj. *Whit.* The Pillory, my Lord, is nothing. The Gentleman hath endeavoured to get many Thousand Pounds of several Gentlemen: Now he is only to look through a wooden Casement, and this is to make Recompence. We humbly hope, that according to the Words of the Act of Parliament, some Punishment will be ordered, not only ignominious but corporal Punishment, as the Words are very extensive.

Sir *William Thompson.* The Court to be sure will order Imprisonment, as well as the Pillory, and Security afterward.

Mr. Serj. *Whit.* But should not the Punishment left to the Discretion of the Court be extended to something further?

Sir. *William Thompson.* I am not for extending it to Torture. I know not any Precedent; nor would I begin any Thing of that Nature. The King himself is limited by our Law.

Mr. Serj. *Whit.* The Penalty seems left to the Discretion of this Court.

Sir *William Thompson.* I would not extend it. I do not know but that the Parliament may think of something else afterwards.

Mr. Serj. *Whit.* Well, Sir, I have laid it before you. I submit it.

The Judgment of the Court.

That *Willam Hales* and *Thomas Kinnersley* should stand twice in the Pillory; once in *Fleet-Street*, at the End of *Fetter-Lane*, and once at the *Royal-Exchange*, in *Cornhill*.

That *Hales* should pay a Fine of fifty Marks, suffer five Years Imprisonment, and give Security for his good Behaviour for seven Years afterwards. And

That *Kinnersley* ſhould pay a Fine of Two Hundred Pounds (an Hundred on each Indictment), ſuffer two Years Impriſonment, and give Security for his good Behaviour for three Years longer.

Mr. *Hales* begged that two Years of his Impriſonment might be remitted on account of his Age; but it was not granted.

February 11 following, *Hales* and *Kinnersley* ſtood in the Pillory at the *Royal-Exchange* in *Cornhill*.

February 15. They both ſtood again in the Pillory at *Fetter-Lane* End, in *Fleet-Street*. *Kinnersley* ſtood both Times in his Canonical Habit, thinking to draw Compaſſion and Reſpect from the Populace, but it had the contrary Effect.

Feb. 18th following, died in the *Preſs-Yard* in *Newgate* the ſaid *William Hales*; and *April* 7, 1729, died in the ſame Place, of a Fever, *Thomas Kinnersley*, Clerk.

Forgery is now made Felony, without Benefit of Clergy; as is likewiſe the publiſhing any forged Deed, Will, Bond, Note, Indorſement, *&c.* knowing them to be forged, by the Stat. 2. *Geo.* II. and 7 *Geo.* II. which ſee for the ſeveral particular Caſes there mentioned.

X. Proceedings againſt John Huggins, Eſq. Warden of the *Fleet*, Thomas Bambridge, Eſq. Warden of the *Fleet*, Richard Corbet, one of the Tipſtaffs of the *Fleet*, and William Acton, Keeper of the *Marſhalſea* Priſon.

A Report from the Committee of the *Houſe of Commons* appointed to enquire into the State of the Gaols of this Kingdom, ſo far as relates to the cruel Uſage of the Priſoners; which occaſioned the following Trials.

Jovis, 20 *Die Martii*, 1728.

MR. *Oglethorpe*, from the Committee appointed to inquire into the State of the Gaols of this Kingdom, made a Report of ſome Progreſs which the Committee had made in their Inquiry into the State of the *Fleet* Priſon, with the Reſolutions of the Committee thereupon; and he read the Report in his Place, and afterwards delivered the ſame in at the Table, viz.

The Committee find, That the *Fleet* Priſon is an ancient Priſon, and formerly uſed for the Reception of the Priſoners committed by the Council-Table, then called the *Court of the Star-Chamber*, which exerciſed unlimited Authority, and inflicted heavier Puniſhments than by any Law were warranted.

And as that aſſumed Authority was found to be an intolerable Burden to the Subject, and the Means to introduce an Arbitrary Power and Government, all Juriſdiction, Power, and Authority belonging unto, or exerciſed in the ſame Court, or by any the Judges, Officers, or Miniſters thereof, were clearly and abſolutely diſſolved, taken away, and determined, by an Act made in the ſixteenth Year of the Reign of King *Charles* the Firſt.

And thereby the Committee apprehend all Pretences of the Warden of the *Fleet* to take Fees from Archbiſhops, Biſhops, Temporal Peers, Baronets, and others of lower Degree, or to put them in Irons, or exact Fees for not doing ſo, were determined, and aboliſhed.

That after the ſaid Act took Place, the *Fleet* Priſon became a Priſon for Debtors, and for Contempts of the Courts of *Chancery*, *Exchequer*, and *Common-Pleas* only, and fell under the ſame Regulations as other Gaols of this Kingdom.

That by an Act of the 22d and 23d of King *Charles* the Second, the future Government of all Priſons was veſted in the Lords Chief-Juſtices, the Chief-Baron, or any two of them, for the Time being; and the Juſtices of the Peace in *London*, *Middleſex*, and *Surry*; and the Judges for the ſeveral Circuits; and the Juſtices of the Peace, for the Time being, in their ſeveral Precincts: And purſuant thereunto, ſeveral Orders and Regulations have been made, which the preſent Warden of the *Fleet* hath not regarded or complied with, but hath exerciſed an unwarrantable and arbitrary Power, not only in extorting exorbitant Fees, but in oppreſſing Priſoners for Debt, by loading them with Irons, worſe than if the *Star-Chamber* was ſtill ſubſiſting, and contrary to the great Charter, the Foundation of the Liberty of the Subject, and in Defiance and Contempt thereof, as well as of other good Laws of this Kingdom.

It appears by a Patent of the third Year of Queen *Elizabeth*, recited in Letters Patents bearing Date the nineteenth Year of King *Charles* the Second, That the *Fleet* Priſon was an ancient Priſon, called *Priſona de le Fleet*, alias, *The Queen's Gaol of the Fleet*; and that certain Conſtitutions were then eſtabliſhed by Agreement between *Richard Tyrrell*, Warden, and the Priſoners of the *Fleet*, and a Table of Fees annexed, in which the Fees to be paid by an Archbiſhop, Duke, Marquis, Earl, or other Lord Spiritual or Temporal, are particularly mentioned, and the Fine aſcertained which they are to pay for the Liberty of the Houſe and Irons; and that theſe Conſtitutions and Orders were confirmed by the ſaid Letters Patent of King *Charles* the Second: Which Letters Patent grant the Office of Warden of the *Fleet*, and of the Keeper of the Old Palace at *Weſtminſter*, the Shops in *Weſtminſter-Hall*, certain Tenements adjoining to the *Fleet*, and other Rents and Profits belonging to the Warden, to Sir *Jeremy Whitchcot* and his Heirs for ever. And the ſaid Sir *Jeremy* rebuilt the ſaid Priſon at his own Expence, as a Conſideration for the Grant thereof. But the ſaid Priſon, and the Cuſtody of the Priſoners, being a Freehold, and falling by Deſcent or Purchaſe into the Hands of Perſons incapable of executing the Office of Warden, was the Occaſion of great Abuſes, and frequent Complaints to Parliament, till at length the Patent was ſet aſide.

And a Patent for Life was granted to *Baldwyn Leighton*, Eſq. in Conſideration of his great Pains and Expences in ſuing the former Patentees to a Forfeiture; and he ſoon dying, *John Huggins*, Eſq. by giving 5000*l.* to the late Lord *Clarendon*, did, by his Intereſt, obtain a Grant of the ſaid Office for his own and his Son's Life.

That it appeared to the Committee, That in the Year 1725, one Mr. *Arne*, an Upholder, was carried into a Stable which ſtood where the ſtrong Room on the Maſter's Side now is, and was there confined (being a Place of cold Reſtraint) till he died, and that he was in good State of Health before he was confined to that Room.

That the ſaid *John Huggins* growing in Years, and willing to retire from Buſineſs, and his Son not caring to take upon him ſo troubleſome an Office, he hath for ſeveral Years been engaged in continual Negotiations about the Diſpoſal of the ſaid Office, and in *Auguſt* laſt concluded a final Treaty with *Thomas Bambridge* and *Dougal Cuthbert*, Eſqrs. and for 5000*l.* to be paid unto him, obliged himſelf to ſurrender the ſaid Patent for his and his Son's Life, and procure a new Patent for the ſaid *Bambridge* and *Cuthbert*, which the ſaid *Huggins* did accordingly obtain, and *Cuthbert* paid in Money, or gave good Security to pay 2500*l.* for one Moiety of the ſaid Office of Warden; and *Bambridge* gave Land and other Security, which the ſaid *Huggins* was then content with, for 2500*l.* being for the other Moiety of the ſaid Office.

That Mr. *Huggins* being examined touching an Inſtrument ſigned by him in *November* 1724, appointing *Richard Corbett*, one of the five Tipſtaffs of or belonging to the *Fleet* Priſon, acknowledged that he had no Power by Virtue of any Patent from the Crown to conſtitute ſuch Tipſtaff but that when he came to his Office he found that ſuch an Officer had been ſo conſtituted, and he took that for a Precedent to do the ſame.

That ſince the ſaid *Thomas Bambridge* has acted as Warden, the Books belonging to the Office of the Warden have been very negligently kept, and the Diſcharges not duly entered, to the great Prejudice of many of his Majeſty's Subjects; and he hath not regularly taken Charge of the Priſoners committed to his Care by his Patent; and hath not, as he himſelf confeſſeth, ever had any authentick Liſt of the Priſoners in the Rules delivered him, ſo he cannot have executed the Truſt of keeping his Priſoners in ſafe Cuſtody, when he did not know who or where they were.

The Commiteee find that the ſaid *Thomas Bambridge*, who for ſome Years acted as Deputy-Warden of the *Fleet*, and is now actually Warden of that Priſon, hath himſelf been aiding and aſſiſting in an Eſcape: That he cauſed a private Door to be made through the Walls of the Priſon out of the Yard where the Dogs are, the Key of which Door was kept by himſelf, and he with his own Hands opened the Door and let out *Boyce*, the Smuggler, charged at the King's Suit with upwards of 30,000*l.* and was afterwards ſeen at *Iſlington*, and hath been ſeveral Times let out of the Priſon by *Bambridge*.

The Committee find that the ſaid *Bambridge* hath by himſelf and his Agents often refuſed to admit Priſoners into the Priſon, though committed by due Courſe of Law; and in order to extort Money from them, hath often, contrary to an Act of the Twenty-ſecond and Twenty-third of King *Charles* II. without their free and voluntary Conſent, cauſed them to be carried away from the Priſon Gate unto a publick Victualling or Drinking-Houſe, commonly called a Spunging-Houſe, belonging to him the ſaid *Bambridge* as Warden, and rented of him by *Corbett* his Tipſtaff, and hath there kept them at exorbitant Charges, and forced them to call for more Liquor than they were inclined to, and to ſpend more than they were able to afford, to the defrauding of their Creditors, and the diſtreſſing of their Families, whoſe Subſtance they are compelled there to conſume; and for the more effectual making them ſtretch their poor Remains of Credit, and to ſqueeze out of them the Charity of their Friends, each Priſoner is better or worſe treated according to his Expences, ſome being allowed a handſome Room and Bed to themſelves, ſome ſtowed in Garrets, three in one Bed, and ſome put in Irons.

That theſe Houſes were further uſed by the ſaid *Bambridge*, as a Terror for extorting Money from the Priſoners, who on Security given have the Liberty of the Rules; of which Mr. *Robert Caſtell* was an unhappy Inſtance, a Man born to a competent Eſtate, but being unfortunately plunged in Debt, was thrown into Priſon; he was firſt ſent (according to Cuſtom) to *Corbett's*, from whence he by Preſents to *Bambridge* redeemed himſelf, and, giving Security, obtained the Liberty of the Rules; notwithſtanding which he had frequently Preſents, as they are called, exacted from him by *Bambridge*, and was menaced, on Refuſal, to be ſent back to *Corbett's* again.

The ſaid *Bambridge* having thus unlawfully extorted large Sums of Money from him in a very ſhort Time, *Caſtell* grew weary of being made ſuch a wretched Property, and reſolving not to injure farther his Family or his Creditors for the ſake of ſo ſmall a Liberty, he refuſed to ſubmit to further Exactions; upon which the ſaid *Bambridge* ordered him to be recommitted to *Corbett's*, where the Small-Pox then raged, though *Caſtell* acquainted him with his not having had that Diſtemper, and that he dreaded it ſo much, that the putting him into a Houſe where it was would occaſion his Death, which, if it happened before he could ſettle his Affairs, would be a great Prejudice to his Creditors, and would expoſe his Family to Deſtructioon; and therefore he earneſtly deſired that he might either be ſent to another Houſe, or even into the Gaol itſelf, as a Favour. The melancholy Caſe of this Poor Gentleman moved the very Agents of the ſaid *Bambridge* to Compaſſion, ſo that they alſo uſed their utmoſt Endeavours to diſſuade him from ſending this unhappy Priſoner to that infected Houſe: But *Bambridge* forced him thither, where he (as he feared he ſhould) caught the Small-Pox, and in a few Days died thereof, juſtly charging the ſaid *Bambridge* with his Death; and unhappily leaving all his Affairs in the greateſt Confuſion, and a numerous Family of ſmall Children in the utmoſt Diſtreſs.

It appeared to the Committee, That the Letting-out of the *Fleet* Tenements to *Victuallers* for the Reception of Priſoners hath been but of late practiſed, and that the firſt of them Lett for this Purpoſe was to *Mary Whitwood*, who ſtill continues Tenant of the ſame, and that her Rent has from 32*l. per Ann.* been increaſed to 60*l.* and a certain Number of Priſoners ſtipulated to be made a prey of, to enable her to pay ſo great a Rent; and that ſhe, to procure the Benefit of having ſuch a Number of Priſoners ſent to her

her House, hath, over and above the increased Rent, been obliged to make a Present to the said *Bambridge* of Forty Guineas, as also of a Toy, (as it is called) being the Model of a *Chinese* Ship, made of Amber, set in Silver, for which Fourscore Broad-Pieces had been offered her.

This is the first Method of extorting Money from the unhappy Prisoners; and when they can no longer bear the Misery and Expence of a Spunging-House, before they can obtain the Privilege of being admitted into the Prison, they are obliged to comply with such exorbitant Fees as the said *Bambridge* thinks fit to demand, which, if they do not, they are sure, under various Pretences, of being turned down to the Common-Side, if not put in Irons and Dungeons; and this has been done to those who were willing and offered to pay the Fees established by the Regulation made by the Judges of the *Common-Pleas* in *Trin. Term* 1727, which ought to have been hung up in some publick Place in the Prison, to which the Prisoners might have free Access, but was secreted by the said *James Barnes*, pursuant to Orders of the said *Bambridge*; which Table of Fees seems to be unreasonable, because it obliges Men who are committed for not being able to pay their Debts, to pay such Sums of Money as their Circumstances render them altogether unable to comply with.

And notwithstanding the Payment of such large Fees, in order to extort further Sums from the unfortunate Prisoners, the said *Bambridge* unjustly pretends he has *a Right, as Warden*, to exercise an unlimited Power of changing Prisoners from Room to Room; of turning them into the Common-Side, though they have paid the Master's Side Fee; and inflicting Arbitrary Punishments by locking them down in unwholsome Dungeons, and loading them with torturing Irons; some Instances of which follow; *viz.*

Jacob Mendez Solas, a *Portuguese*, was, as far as it appeared to the Committee, one of the first Prisoners for Debt that ever was loaded with Irons in the *Fleet*; The said *Bambridge* one Day called him into the Gate-House of the Prison, called the *Lodge*, where he caused him to be seized, fettered, and carried to *Corbett*'s, the Spunging-House, and there kept for upwards of a Week, and when brought back into the Prison, *Bambridge* caused him to be turned into the Dungeon, called the *Strong Room of the Master's Side*.

This Place is a Vault like those in which the Dead are Interr'd, and wherein the Bodies of Persons dying in the said Prison are usually deposited, till the Coroner's Inquest hath passed upon them; it has no Chimney nor Fire-place, nor any Light but what comes over the Door, or through a Hole of about Eight Inches square. It is neither paved nor boarded; and the rough Bricks appear both on the Sides and Top, being neither wainscotted nor plastered: What adds to the Dampness and Stench of the Place is, its being built over the Common-Sewer, and adjoining to the Sink and Dung-hill where all the Nastiness of the Prison is cast. In this miserable Place the poor Wretch was kept by the said *Bambridge*, manacled and shackled for near Two Months. At length, on receiving Five Guineas from Mr. *Kemp*, a Friend of *Solas*'s, *Bambridge* released the Prisoner from his cruel Confinement. But though his Chains were taken off, his Terror still remained, and the unhappy Man was prevailed upon by that Terror, not only to labour *gratis* for the said *Bambridge*, but to swear also at Random all that he hath required of him: And the Committee themselves saw an Instance of the deep Impression his Sufferings had made upon him; for on his surmising, from something said, that *Bambridge* was to return again, as Warden of the *Fleet*, he fainted, and the Blood started out of his Mouth and Nose.

Captain *John Mackpheadris*, who was bred a Merchant, is another melancholy Instance of the cruel Use the said *Bambridge* hath made of his assumed Authority. *Mackpheadris* was a considerable Trader, and in a very flourishing Condition until the Year 1720, when being bound for large Sums to the Crown, for a Person afterwards ruined by the Misfortunes of that Year, he was undone. In *June* 1727 he was a Prisoner in the *Fleet*, and altho' he had before paid his Commitment-Fee, the like Fee was extorted from him a second Time; and he having furnished a Room, *Bambridge* demanded an extravagant Price for it, which he refused to pay; and urged, that it was unlawful for the Warden to demand extravagant Rents, and offered to pay what was legally due: Notwithstanding which, the said *Bambridge*, assisted by the said *James Barnes* and other Accomplices, broke open his Room, and took away several Things of great Value, amongst others, the King's Extent in Aid of the Prisoner (which was to have been returned in a few Days, in order to procure the Debt to the Crown, and the Prisoner's Inlargement), which *Bambridge* still detains. Not content with this, *Bambridge* locked the Prisoner out of his Room, and forced him to lie in the open Yard, called the *Bare*. He sat quietly under his Wrongs, and getting some poor Materials, built a little Hut to protect himself, as well as he could, from the Injuries of the Weather. The said *Bambridge* seeing his Unconcernedness, said, *Damn him! he is easy. I will put him into the Strong Room before To-morrow*; and ordered *Barnes* to pull down his little Hut, which was done accordingly. The poor Prisoner being in an ill State of Health, and the Night rainy, was put to great Distress. Some time after this he was (about Eleven o'Clock at Night) assaulted by *Bambridge*, with several other Persons his Accomplices, in a violent Manner; and *Bambridge*, though the Prisoner was unarmed, attacked him with his Sword, but by good Fortune was prevented from killing him; and several other Prisoners coming out upon the Noise, they carried *Mackpheadris* for Safety into another Gentleman's Room; soon after which *Bambridge* coming with one *Savage*, and several others, broke open the Door, and *Bambridge* strove with his Sword to kill the Prisoner: But he again got away, and hid himself in another Room. Next Morning the said *Bambridge* entered the Prison with a Detachment of Soldiers, and ordered the Prisoner to be dragged to the Lodge, and ironed with great Irons; on which he desiring to know for what Cause, and by what Authority he was to be so cruelly used? *Bambridge* replied, *It was by his own Authority, and Damn him he would do it, and have his Life.* The Prisoner desired he might be carried before a Magistrate, that he might know his Crime before he was punished; but *Bambridge* refused, and put Irons upon his Legs which were too little, so that in forcing them on, his Legs were like to have been broken; and the Torture was impossible to be endured. Upon which the Prisoner complaining of the grievous Pain and Straitness of the Irons, *Bambridge* answered, *That he did it on Purpose to torture him*: On which the Prisoner replying, *That by the Law of* England *no Man ought to be tortured*; Bambridge declared, *That he would do it first, and answer for it afterwards*; and caused him to be dragged away to the Dungeon, where he lay without a Bed, loaded with Irons so close rivetted that they kept him in continual Torture, and mortified his Legs. After long Application his Irons were changed, and a Surgeon directed to dress his Legs, but his Lameness is not, nor ever can be cured. He was kept in this miserable Condition for three Weeks, by which his Sight is greatly prejudiced, and in danger of being lost.

The Prisoner, upon this Usage, petitioned the *Judges*, and after several Meetings, and a full Hearing, the *Judges* reprimanded Mr. *Huggins* and *Bambridge*, and declared, *That a Gaoler could not answer the Ironing of a Man before he was found guilty of a Crime*; but it being out of Term, they could not give the Prisoner any Relief or Satisfaction.

Notwithstanding this Opinion of the Judges, the said *Bambridge* continued to keep the Prisoner in Irons till he had paid him Six Guineas; and to prevent the Prisoner's recovering Damages for the cruel Treatment of him, *Bambridge* indicted him and his principal Witnesses at the *Old Bailey*, before they knew any Thing of the Matter; and to support that Indictment, he had recourse to Subornation, and turned two of his Servants out of Places which they had bought, because they would not swear falsly that the Prisoner had struck the said *Bambridge*, which Words he had inserted in Affidavits ready prepared for Signing, and which they knew to be false. As soon as they were apprized of it, they applied to the Lord-Mayor, who ordered the Grand-Jury down to the *Fleet*, where they found that *Bambridge* was the Aggressor. But the Bill against the Prisoners being already found, the second Inquiry was too late.

The Prisoners being no longer able to bear the Charges of Prosecution, which had already cost 100*l.* and being softened by Promises, and terrified by Threats, submitted to plead Guilty, on a solemn Assurance and Agreement made with *Bambridge* before Witnesses, of having but One Shilling Fine laid upon them; but so soon as they had pleaded Guilty, *Bambridge* took Advantage of it, and has continued harrassing them and their Securities ever since.

The Desire of Gain urged the said *Bambridge* to the preceding Instances of Cruelty; but a more diabolical Passion, that of *Malice*, animated him to oppress Captain *David Sinclair* in the following Manner.

At the latter End of *June* or Beginning of *July* last, the said *Bambridge* declared to the said *James Barnes*, one of the Agents of his Cruelties, *That he would have* Sinclair's *Blood*; and he took the Opportunity of the first Festival Day, which was on the first of *August* following, when he thought Captain *Sinclair* might, by celebrating the Memory of the late King, be warmed with Liquor so far as to give him some Excuse for the Cruelties which he intended to inflict upon him. But in some measure he was disappointed; for Captain *Sinclair* was perfectly sober, when the said *Bambridge* rushed into his Room with a dark Lanthorn in his Hand, assisted by his Accomplices *James Barnes* and *William Pindar*, and supported by his usual Guard, armed with Muskets and Bayonets, and without any Provocation given, run his Lanthorn into Captain *Sinclair*'s Face, seized him by the Collar, and told him he must come along with him: Captain *Sinclair*, though surprized, asked for what, and by what Authority he so treated him? Upon which *Barnes* and the rest seized Captain *Sinclair*, who still desiring to know by what Authority they so abused him? *Bambridge* grossly insulted him, and struck him with his Cane on the Head and Shoulders, whilst he was held fast by *Pindar* and *Barnes*. Such base and scandalous Usage of this Gentleman, who had in the late Wars always signalized himself with the greatest Courage, Gallantry, and Honour in the Service of his Country upon many the most brave and desperate Occasions, must be most shocking and intolerable; yet Captian *Sinclair* bore it with Patience, refusing only to go out of his Room unless he was forced; whereupon the said *Bambridge* threatened to run his Cane down his Throat, and ordered his Guard to stab him with their Bayonets, or drag him down to the said Dungeon, called the *Strong Room*; the latter of which they did, and *Bambridge* kept him confined in that damp and loathsome Place, till he had lost the Use of his Limbs and Memory, neither of which has he perfectly recovered to this Day. Many aggravating Cruelties were used to make his Confinement more terrible; and when *Bambridge* found he was in danger of immediate Death, he removed him, for fear of his dying in Duress, and caused him to be carried in a dying Condition from that Dungeon to a Room where there was no Bed or Furniture; and so unmercifully prevented his Friends having any Access to him, that he was four Days without the least Sustenance.

It appeared to the Committee by the Evidence of a Surgeon and others, who were Prisoners in the House, that when Captain *Sinclair* was forced into that loathsome Dungeon he was in perfect Health.

Captain *Sinclair* applied for Remedy at Law against the said Cruelties of *Bambridge*, and had procured a *Habeas Corpus* for his Witnesses to be brought before the Sessions of *Oyer* and *Terminer*, when the said *Bambridge*, by Colour of his assumed Authority as Warden, took the said Writs of *Habeas Corpus* from the Officer whose Duty it was to make a Return of them, and commanded him to keep out of the Way, whilst he himself went to the *Old Bailey*, and immediately indicted Captain *Sinclair*, and such of his Witnesses as he knew he could not deter by Threats, or prevail with by Promises to go from the Truth.

Captain *Sinclair* had Temper enough to bear patiently almost insupportable Injuries, and to reserve himself for a proper Occasion, when Justice should be done him by the Laws of the Realm.

But the said *Bambridge* has forced others by Wrongs and Injuries beyond human Bearing, to endeavour the avenging Injuries and Oppressions which they could no longer endure.

And it appeared to the Committee, that the said *Bambridge*, in order to avoid the Punishment due to these Crimes, hath committed greater, and hath not only deny'd Admittance to the Sollicitors, who might procure Justice to the injured Prisoners, and in open Defiance to the Law, disobey'd the King's Writs, but hath also seduced some by indulging them in Riot, and terrified others with fear of Duress, to swear to and subscribe such false Affidavits as he thought fit to prepare for them, on several Occasions; in all which Wrongs and Oppressions *John Everett* also acted as one of the said *Bambridge*'s wicked Accomplices.

That

That the ſaid *Bambridge* being asked by the Committee, *By what Authority he pretended to put Priſoners into Dungeons and Irons?* Anſwered, *That he did it by his own Authority as Warden*, to preſerve the Quiet and Safety of the Cuſtody of the Priſon.

But it appeared to the Committee by the Examinations of many Witneſſes, that before the Time when *Gybbon* and the ſaid *Bambridge* acted as Deputy-Wardens under Mr. *Huggins*, the Quiet and Safety of the Cuſtody were very well preſerved without the Uſe of Irons or Dungeons.

That the two Dungeons, called The Strong Room on the Maſter Side, and The Strong Room on the Common Side, were both built within theſe few Years; and that the old Method of puniſhing drunken and diſorderly Perſons was putting them in the Stocks; and the Puniſhment of thoſe who had eſcaped, or attempted to eſcape, was putting them upon a Tub at the Gate of the Priſon, by way of publick Shame, or ſecuring them without Irons, in their proper Rooms for ſome Days.

And that the ſaid Dungeons were built in Defiance of, and contrary to the Declaration of the Lord *King*, when Lord Chief Juſtice of the *Common-Pleas*; who, upon an Application made to him on Behalf of the Priſoners of the *Fleet*, when Mr. *Huggins* and *Gybbon* urged that there was Danger of Priſoners eſcaping, DECLARED, *that they might raiſe their Walls higher, but that there ſhould be no Priſon within a Priſon.*

That upon the ſtricteſt Inquiry, the Committee could not find that any Priſoners in the *Fleet* for Debt had been put in Irons before the ſaid Mr. *Huggins* had the Office of Warden.

That it is not the only Deſign of the ſaid *Thomas Bambridge* to extort Money from his Priſoners, if they ſurvive his inhuman Treatment, but he ſeems to have a farther View, in caſe it cauſes Death, of poſſeſſing himſelf of their Effects. One remarkable Proof of which the Committee think proper here to inſert, *viz.*

Mr. *John Holder*, a *Spaniſh* Merchant, was a Priſoner in the *Fleet*, and had a Room which he fitted up with his own Furniture, and had with him all his Books, Accounts and Writings, and other Effects, to the Value of about 30,000*l.* which he declared by Affidavit, upon the following Occaſion:

The ſaid *Thomas Bambridge*, by Force, turned the ſaid Mr. *Holder* over to the Common Side, and took Poſſeſſion of his Room, in which all his Effects were.

Mr. *Holder* remonſtrated ſtrongly againſt this Uſage, and *Bambridge* refuſing to reſtore him to his Room, or Poſſeſſion of his Effects, he made a proper Affidavit in order to apply to the Judges for Relief, and declared that he feared his Effects might be imbezzled whilſt he was thus unjuſtly forced from them, and that he feared *Bambridge*'s cruel Treatment of him would be the Cauſe of his Death: The Miſeries of the Common Side, which he dreaded, had ſuch an Effect upon him (being a Man of an advanced Age, and accuſtomed to live in Eaſe and Plenty), that it threw him into ſuch a Fit of Sickneſs as made his Life deſpaired of, and in his Illneſs he often declared, *That the Villain* Bambridge *would be the Occaſion of his Death.* Which proved true; for *Bambridge* finding Mr. *Holder* like to die in the Dureſs which he had put him into, (for his own Sake, to avoid the Puniſhment inflicted by Law upon Gaolers who ſo inhumanly deſtroy their Priſoners) permitted him to be carried back to his Room, where in a few Days he died of the ſaid Sickneſs, contracted by the ſaid forcible Removal of him to the Common Side by *Bambridge*, as aforeſaid.

Mr. *Holder* by his laſt Will appointed Major *Wilſon* and Mr. *John Pigott* Truſtees for his Son, a Youth of about thirteen Years of Age, who had accompanied him in the Time of his Confinement.

This young Gentleman, after his Father's Death, locked up his Effects in ſeveral Trunks and Boxes, and delivered the Keys thereof to Mr. *Pigott* as his Truſtee, who locked up the Room and took the Key with him; but the ſaid *Thomas Bambridge* cauſed the ſaid Room to be broke open by *Thomas King*, another of his Accomplices, and cauſed the ſaid Effects to be ſeized, after that he, *Bambridge*, had forced Mr. *Pigott* out of the Priſon, (though a Priſoner in Execution) and locked down Major *Wilſon* (the other Truſtee) in the Dungeon, to prevent their taking any Inventory in Behalf of the Heir at Law, then an Orphan.

Theſe evil Practices of letting out Priſoners, extorting exorbitant Fees, ſuffering Eſcapes, and exerciſing all Sorts of Inhumanity for Gain, may in a great meaſure be imputed to the Venality of the Warden's Office; for the Warden who buys the Privilege of puniſhing others, does conſequently ſell his Forbearance at high Rates, and repair his own Charge and Loſs at the wretched Expence of the Eaſe and Quiet of the miſerable Objects in his Cuſtody.

Upon the whole Matter the Committee came to the following Reſolutions, *viz.*

Reſolved, That it appears to this Committee, That *Thomas Bambridge*, the Acting Warden of the Priſon of the *Fleet*, hath wilfully permitted ſeveral Debtors to the Crown in great Sums of Money, as well as Debtors to divers of his Majeſty's Subjects, to eſcape; hath been guilty of the moſt notorious Breaches of his Truſt, great Extortions, and the higheſt Crimes and Miſdemeanours in the Execution of his ſaid Office; and hath arbitrarily and unlawfully loaded with Irons, put into Dungeons, and deſtroyed Priſoners for Debt under his Charge, treating them in the moſt barbarous and cruel Manner, in high Violation and Contempt of the Laws of this Kingdom.

Reſolved, That it appears to this Committee, That *John Huggins*, Eſq. late Warden of the Priſon of the *Fleet*, did, during the Time of his Wardenſhip, wilfully permit many conſiderable Debtors in his Cuſtody to eſcape, and was notoriouſly guilty of great Breaches of his Truſt, Extortions, Cruelties, and other High Crimes and Miſdemeanours in the Execution of his ſaid Office, to the great Oppreſſion and Ruin of many of the Subjects of this Kingdom.

The Reſolutions of the Committee being ſeverally read a ſecond Time, were, upon the Queſtion ſeverally put thereupon, agreed unto by the Houſe, and are as follow, *viz.*

Reſolved, Nemine contradicente, That *Thomas Bambridge*, the Acting Warden of the Priſon of the *Fleet*, hath wilfully permitted ſeveral Debtors to the Crown in great Sums of Money, as well as Debtors to divers of his Majeſty's Subjects, to eſcape; hath been guilty of the moſt notorious Breaches of his Truſt, great Extortions, and the higheſt Crimes and Miſdemeanours in the Execution of his ſaid Office: And hath arbitrarily and unlawfully loaded with Irons, put into Dungeons, and deſtroyed Priſoners for Debt under his Charge, treating them in the moſt barbarous and cruel Manner, in high Violation and Contempt of the Laws of this Kingdom.

Reſolved, Nemine contradicente, That *John Huggins*, Eſq. late Warden of the Priſon of the *Fleet*, did, during the Time of his Wardenſhip, wilfully permit many conſiderable Debtors, in his Cuſtody, to eſcape; and was notoriouſly guilty of great Breaches of his Truſt, Extortions, Cruelties, and other High Crimes and Miſdemeanours in the Execution of his ſaid Office, to the great Oppreſſion and Ruin of many of the Subjects of this Kingdom.

Reſolved, That it appears to this Houſe, That *James Barnes* was an Agent of, and an Accomplice with the ſaid *Thomas Bambridge* in the Commiſſion of his ſaid Crimes.

Reſolved, That it appears to this Houſe, That *William Pindar* was an Agent of, and an Accomplice with the ſaid *Thomas Bambridge* in the Commiſſion of his ſaid Crimes.

Reſolved, That it appears to this Houſe, That *John Everett* was an Agent of, and an Accomplice with the ſaid *Thomas Bambridge* in the Commiſſion of his ſaid Crimes.

Reſolved, That it appears to this Houſe, That *Thomas King* was an Agent of, and an Accomplice with the ſaid *Thomas Bambridge* in the Commiſſion of his ſaid Crimes.

Reſolved, Nemine contradicente, That an humble Addreſs be preſented to his Majeſty that he will be graciouſly pleaſed to direct his Attorney-General forthwith to proſecute, in the moſt effectual Manner, the ſaid *Thomas Bambridge* for his ſaid Crimes.

Reſolved, Nemine contradicente, That an humble Addreſs be preſented to his Majeſty that he will be graciouſly pleaſed to direct his Attorney-General forthwith to proſecute, in the moſt effectual Manner, the ſaid *John Huggins* for his ſaid Crimes.

Reſolved, That an humble Addreſs be preſented to his Majeſty that he will be graciouſly pleaſed to direct his Attorney-General forthwith to proſecute, in the moſt effectual Manner, the ſaid *James Barnes*, *William Pindar*, *John Everett*, and *Thomas King*, for their ſaid Crimes.

Ordered, That the ſaid *Thomas Bambridge* be committed cloſe Priſoner to his Majeſty's Gaol of *Newgate*, and that *Mr. Speaker* do iſſue his Warrants accordingly.

Ordered, That the ſaid *John Huggins*, Eſq. be committed cloſe Priſoner to his Majeſty's Goal of *Newgate*, and that *Mr. Speaker* do iſſue his Warrants accordingly.

Ordered, That the ſaid *James Barnes* be committed cloſe Priſoner to his Majeſty's Gaol of *Newgate*, and that *Mr. Speaker* do iſſue his Warrants accordingly.

Ordered, That the ſaid *William Pindar* be committed cloſe Priſoner to his Majeſty's Gaol of *Newgate*, and that *Mr. Speaker* do iſſue his Warrants accordingly.

Ordered, That the ſaid *John Everett* be committed cloſe Priſoner to his Majeſty's Gaol of *Newgate*, and that *Mr. Speaker* do iſſue his Warrants accordingly.

Ordered, That the ſaid *Thomas King* be committed cloſe Priſoner to his Majeſty's Gaol of *Newgate*, and that *Mr. Speaker* do iſſue his Warrants accordingly.

Ordered, Nemine contradicente, That Leave be given to bring in a Bill to diſable the ſaid *Thomas Bambridge* to hold or execute the Office of Warden of the Priſon of the *Fleet*, or to have or exerciſe any Authority relating thereto; and that Mr. *Oglethorpe*, Mr. *Earl*, the Lord *Percivall*, and Mr. *Hughes* do prepare and bring in the ſame.

Ordered, Nemine contradicente, That Leave be given to bring in a Bill for better regulating the Priſon of the *Fleet*, and for more effectual preventing and puniſhing arbitrary and illegal Practices of the Warden of the ſaid Priſon; and that Mr. *Oglethorpe*, Mr. *Cornwall*, Mr. *Glanville*, and Mr. *Hughes* do prepare and bring in the ſame.

Which Bills paſſed into a Law.

They alſo enquired into the State and Condition of the *Marſhalſea* Priſon, and ordered a Proſecution againſt *William Acton* for Murder.

XI. The Trial of John Huggins, Eſq. Warden of the *Fleet* Priſon for the Murder of Edward, Arne, at the *Seſſions-Houſe* in the *Old-Bailey*, *May* 21, 1729, before Mr. Juſtice *Page*, Mr. Baron *Carter* and others his Majeſty's Juſtices *.

Die Martis, 20 *Die Maij*, 1729.

Proclamation was made for all Perſons concerned to attend.

Clerk of Arraigns.

YOU good Men, that are impannelled to inquire, *&c.* anſwer to your Names, and ſave your Fines.

John Huggins, hold up thy Hand. (*Which he did.*)

Clerk. Thou ſtandeſt indicted by the Name of *John Huggins*, Eſq. Warden of the *Fleet*, &c. [The Indictment being inſerted with the Special Verdict at the End of this Trial, is omitted here].

How ſayeſt thou, *John Huggins*, art thou Guilty of the Felony and Murder whereof thou ſtandeſt indicted, or Not Guilty?

Mr. *Huggins.* Not Guilty.

Clerk. How wilt thou be tried?---Mr. *Hugg.* By God and my Country.

Clerk. God ſend thee a good Deliverance.

Die Mercurij 21 *Die Maij*, 1729.

Proclamation was made for Information.

Clerk. Thou the Priſoner at the Bar, theſe Men that thou ſhalt hear called, and perſonally appear, are to paſs between our Sovereign Lord the King

* Theſe Trials of *Huggins*, *Bambridge* and *Acton*, were all taken in Short-Hand by Mr. *Luke Kenn*, (Clerk to the Committee appointed to inquire into the Gaols of the *Fleet*, *Marſhalſea*, &c.) who in his Life-time aſked Two Hundred Pounds for the Copy of them.

and thée, upon the Trial of thy Life and Death; therefore, if thou wilt challenge them, or any of them, thy Time to speak is as they come to the Book to be ſworn, before they are ſworn.

Then the Jury ſworn were as follow, *viz.*

Philip Foulhard,	*John Milward,*	*Martin Wardell,*
John Filkebrown,	*Daniel Town,*	*Richard Pitt,*
Peter Sejourney,	*Thomas Clayton,*	*John Price,*
Thomas Gregg,	*John Hoar,*	*James King.*

Clerk. John Huggins hold up thy Hand. (*Which he did.*) You of the Jury look upon the Priſoner (and was going on).

Mr. *Huggins.* My Lord, the Diſtance is too great to be heard: I deſire I may come to the Inner Bar; for, my Lord, when any Inconvenience happens, it is the conſtant Rule to admit the Priſoner to come there: It was done in the Caſe of *Sanders* and *Clifton.*

Mr. Juſt. *Page.* Whenever the Court conceives an Inconvenience, it has been allowed; but I cannot allow it till then.

Clerk. You Gentlemen of the Jury look upon the Priſoner; he ſtands indicted by the Name of, *&c.*

(Prout *the Indictment* mutatis mutandis.)

Mr. *Huggins.* I muſt deſire, my Lord, to have the Indictment read in *Latin. (Which was accordingly done.)*

Mr. *Holland.* (*Member of Parliament for* Chippenham). My Lord, and you Gentlemen of the Jury, I am of Counſel for the King; and this is an Indictment againſt *John Huggins*, for aiding and abetting *James Barnes* in the Murder of *Edward Arne*; that *John Huggins* was Warden, and one *James Barnes* was then his Agent, who did in *November*, in the 11th Year of his late Majeſty, make an Aſſault upon *Edward Arne*, and took *Arne* involuntarily, and confined him in the Strong Room (without the Comfort of Fire, Cloſe-ſtool, or other Utenſil), built near the Place where Excrements are thrown out, a Place very unwholeſome, and moſt dangerous to the Health; that *Arne* fell ſick in the ſaid Room, and languiſhed till the 7th of *December*, and then died; that *Huggins*, through his cruel Diſpoſition, being an Oppreſſor of the Priſoners, did, *&c.*

Mr. Serj. *Cheſhire.* My Lord, and you Gentlemen of the Jury, *James Barnes*, who ſtands indicted for the Murder of *Edward Arne*, is fled from Juſtice; and *John Huggins*, the Priſoner at the Bar, alſo ſtands indicted for aiding and abetting in the ſaid Fact. He was then Warden of the *Fleet*, and had the Cuſtody and Care of the Priſoners then committed to his Charge; therefore it will be neceſſary to let you know what Bounds the Law ſets to Gaolers, and to Priſoners. The Law ſets Fences to them both: The Gaoler is to be protected in his Duty, ſupported and maintained in it; and it is juſtifiable, if, in Defence of himſelf, he deſtroys a Man, and commits an Act of Felony: On the other hand, if by any unneceſſary Tyranny, or Reſtraint, any of the Priſoners come by an untimely Death, it is Murder in the Gaoler; and this laſt is principally neceſſary for your Attention.

Edward Arne, on the 12th of *May*, 1725, was committed upon Meſne Proceſs; he was a quiet, peaceable, and inoffenſive Man, and continued ſo till *September* in that Year; the Gentleman at the Bar, not content with the ſame Security that his Predeceſſors had, took it in his head to make a Strong Room, which was built about three Months before the Death of *Edward Arne*; it was like a Vault, built over the Common Sewer, near a Layſtall, where the filthy Matter was lodged, nothing but Bricks and Mortar, not tiled or pointed; and in this Condition, about *September*, one *Barnes*, Servant of the Defendant, came to the ſaid *Arne*, as he was ſitting in the Cellar, ruſhed upon him, and took him away to the Dungeon, a Place where Nobody had been put in before; in this ſaid Place of Reſtraint he was confined, though he was in a quiet Condition: There was no Fire, nor Fire-place, no Light but through a Hole over the Door, and a little Hole by the Side, big enough to put a Quart Pot in at; there was not the Want only of Fire, or Fire-place, but there was no Chamber-pot, no Convenience for the Eaſe of Nature, ſo that it muſt fall, and he converſe with it: The Place was ſo moiſt, that Drops of Wet run down the Wall. The Man immediately loſt his Voice, his Throat was ſwelled, and his Cloaths rotted with the Dampneſs of the Place, and the poor Man having a Feather-bed crept into it, and the Feathers ſtuck cloſe to him, and in this Condition he lay; but one Day, the Door being open, he got out, and run into the Common Hall; he looked, Gentlemen, more like a feather'd Fowl, than an Human Creature. This was repreſented to Mr. *Huggins*, who generally lived in the Country, and did not come to the Gaol ſo often as he ought; but at one Time, when he was at the Priſon, he ſaw the Man, and the poor Man juſt ſaw him, his Eye fell, the Door was cloſed, and he died: The Warden, Gentlemen, had the Door ſhut, and ordered him to be locked up, and he continued ſo locked up from *September* till the 20th of *October*; and it is wonderful to think (if he had not been a Man of a very ſtrong Frame) how he could have continued there ſo long. It moved the Compaſſion of his Fellow-Priſoners, who applied to have him releaſed out of that Place, but that not being done, a little Care was taken to attend him. Gentlemen, at the Time when Mr. *Gybbon* was Deputy, ſome of the Priſoners aſked him, Why he did not take care of *Arne*, for the Man cannot ſpeak? And Anſwer was made by *Barnes*, let him die and be damned; and this was in the Preſence of the Warden. Gentlemen, I muſt obſerve to you, that for Security of the Lives of Priſoners, the Coroner's Inqueſt ought to ſit upon them, to ſee if any Marks could be found to give an Information of the Cauſe of Death, but this was not done: This is the Subſtance of the Evidence, which cannot be aggravated.

Mr. Att. Gen. (*Sir* Philip Yorke, *afterwards Earl of* Hardwick *and Lord Chancellor.*) My Lord, and you Gentlemen of the Jury, I am of Counſel for the King, and this Proſecution is the Effect of a uſeful, compaſſionate Inquiry concerning the Gaols, ſo it was found neceſſary to bring the Cauſe before you, that Gaolers may be puniſhed, who have Opportunity, and have endeavoured to oppreſs the unfortunate Perſons under their Charge and Power. It is neceſſary there ſhould be Gaols and Priſons, and that Perſons ſhould be under Confinement; but not for Gaolers to have it in their Power to commit Oppreſſions and Cruelties, to the Loſs of the Lives of his Majeſty's Subjects; if the Evidence be true, which ſhall be offered to you, this will appear to be an Inſtance of the utmoſt Oppreſſion, and the utmoſt Cruelty. Mr. *Huggins* was Warden of the *Fleet* Priſon, and had the Care and Cuſtody of the Priſoners, and ought perſonally, or by his Deputy, to take care of them, and ſo is anſwerable for them: Mr. *Edward Arne* came a Priſoner in *May* 1725, and continued there till he died. At his firſt coming in, he lodged with one *Robert Shaw*; but ſome Difference happening between them, he was turned out of that Room, and lay in the Common Hall. This unhappy Man was ſaid to be diſordered in his Senſes, which his Oppreſſion might reaſonably occaſion; he was an inoffenſive, quiet Man: But about this Time there was a new Scheme of having a Priſon within a Priſon, and was the Occaſion of their committing Oppreſſions upon the Priſoners. This Strong Room was then erected in the manner of a Vault, commonly called a Dungeon; there was no Window, no Chimney; it was built with bare Brick and Mortar: Upon what Occaſion it was built, the Priſoner will give you an Account, if he had any Authority for building it. Gaolers are to take care of Priſoners, but not to build Dungeons to put them in; the Walls were not dry, but very damp and unwholeſome, as uſually ſuch Places muſt be. While *Arne* was ſtanding in the Cellar inoffenſively, *Barnes*, who was intruſted with the Care of the Priſoners, ſeized him and put him in this Place, and he was there put without any manner of Proviſion to ſuſtain Life; there was a little Hole where you might put a little Drink through, ſometimes he had an Opportunity of having ſome, and ſometimes none. Under this Reſtraint this Perſon was kept, without any Convenience to eaſe Nature; the Deſcription is ſuch that muſt move every body to Compaſſion. His Bed was dragged in with him, and he ripped it open and crept into it to keep himſelf warm, and the Feathers ſtuck to him by reaſon of his being beſmeared with his own Ordure, which he had not Opportunity of doing out of the Place. During the whole Time whilſt *Arne* was confined, Mr. *Huggins*, who was then Warden, came twice, though he ought to have come oftener, and his Duty required him ſo to do: Mr. *Huggins* looked upon him there, and ſaw him lie in that Condition, in the Place built by his own Order; but the Priſoner, ſo far from giving him any Relief, or removing him out of that Confinement, ordered the Door to be locked up in his Preſence, he being Warden, and by his Authority. This affecting Condition the poor Man was in, and in the Circumſtance he was in, he ought to have relieved him. Several Applications were made to *Gybbon*, and other the Servants of the Warden, to deſire this unhappy Man to be releaſed: Letters were ſent to ſhew his miſerable Condition, that he was not likely to live, and to deſire that he might be put under a proper Cuſtody; but nothing was done. At that Time even the Priſoner ſaw him languiſh; his Speech was loſt, and then he languiſhed, and continued in the Dungeon till the Time of his Death; this will appear clearly by the Evidence, that he died in Dureſs, and that the Diſtemper there contracted was the Occaſion of his Death. The next Conſideration is, who, and what was the Occaſion of his Death: It is the Duty of a Gaoler to have a Coroner's Inqueſt to inquire into the Death of a Priſoner, for his own Juſtification, who, by having the Cuſtody of, and the Power over his Priſoners, may deſtroy them; therefore, if there was no particular Reaſon, why ſhould it not have been done? Tho' he cannot pretend to ſhew a particular Order why he did not. When I conſider, that nothing could be done but by his Authority, nothing done but by his Direction, that was his particular Order.

If he, who was the principal Gaoler, who had the Authority to confine him, and to diſcharge him from an improper Confinement, who ſaw him there, did not releaſe him, but inſtead of that ſuffered him to be locked up, he is guilty of his Death. In point of Law, if a Priſoner dies in Dureſs of the Gaoler by hard Confinement, in a cruel Manner, unneceſſary to the Gaoler's ſafe Cuſtody, it is Death by Law; if the Gaoler is not anſwerable for the Act, what needs the dead Perſons to be inquired after by a Jury? Juſtice ought to be done, let it fall on whom it will; and I do not doubt, but the Jury, for the Sake of their Oaths, will find him Guilty.

Mr. Sol. Gen. (*Hon. Mr.* Talbot, *afterwards a Peer and Lord Chancellor.*) We will call our Evidence to prove the Facts.

Call Richard Longborn. (*Who was ſworn, as were all the reſt that appeared.*)

He produced a Copy of Mr. *Huggins*'s Patent, bearing Date the 22d *July*, the 12th *Queen Ann*, which he proved to be a true Copy, and ſuch Part of it was read as proved him to be Warden.

Mr. *Huggins.* My Lord, I deſire the *Habendum* may be read, by which I have a Power to appoint a Deputy or Deputies for and during my natural Life.

Mr. Juſt. *Page.* I don't know what Uſe you will make of it; but you may call for it in your Defence.

Call Robert Bigrave.

Mr. Sol. Gen. Do you know the Priſoner?—Mr. *Bigrave.* Very well.

Mr. Sol. Gen. How long have you known him?

Mr. *Bigrave.* I knew him when I was Clerk of the Papers, in *April* 1725.

Mr. Sol. Gen. Did he act?—Mr. *Bigrave.* He was Warden, but did not act, Mr. *Gybbon* was Deputy to Mr. *Huggins.*

Mr. Sol. Gen. Who conſtituted you Clerk of the Papers?

Mr. *Bigrave.* Mr. *Huggins.*

Mr. Sol. Gen. Were the Securities taken in the Name of Mr. *Huggins?*

Mr. *Bigrave.* The Security Bonds were taken, and Returns made in the Name of Mr. *Huggins.*

Mr. *Huggins.* My Lord, I deſire to come to the Inner-Bar, for I can't hear.

Mr. Juſt. *Page.* You ſhall have all reaſonable Indulgence, and if you can't hear you muſt be allowed to come. (*Which he accordingly did.*)

Mr. Sol. Gen. Mr. *Bigrave*, did Mr. *Huggins* continue Warden during the whole Year 1725?

Mr. *Bigrave.* He did continue Warden during the whole Year 1725, and Returns were made in his Name.

Mr. Sol. Gen. Do you know *James Barnes?*

Mr. *Bigrave.* Yes, He was Servant to Mr. *Gybbon*, and was imploy'd as Watchman and Runner, to take care that the Priſoners did not eſcape.

Mr. Sol. Gen. Did he act in this Capacity, whilſt Mr. *Huggins* was principal Warden?

Mr. *Bigrave.* He did.

Mr. Sol. Gen. When did you come there?
Mr. *Bigrave.* In *April* 1725.
Mr. Sol. Gen. What do you know of the Building the Strong Room?
Mr. *Bigrave.* When I came there, there was a Stable, which was converted into a Strong Room, but as to the Time it was pulled down and rebuilt, I am not certain.
Mr. Sol. Gen. What Sort of a Place is it?
Mr. *Bigrave.* It is a Place arched like a Wine-Vault, and built of Brick and Mortar.
Mr. Sol. Gen. What are the Dimenſions?
Mr. *Bigrave.* It is eight Feet wide, and eleven Feet long.
Mr. Sol. Gen. Had it any Floor?
Mr. *Bigrave.* I did not ſee it had.
Mr. Sol. Gen. Did you ſee Mr. *Arne* in it?
Mr. *Bigrave.* I never ſaw any-body in it, till Captain *Mackpheadris* was put in.
Mr. Sol. Gen. Did the Common-Sewer run under it?
Mr. *Bigrave.* I can't ſay whether the Common-Sewer runs under it or not.
Mr. Sol. Gen. How near was the Dunghill to it?
Mr. *Bigrave.* The Dunghill was as nigh as to the other Part of the Court.
Mr. Sol. Gen. Was there any Fire-place or Chimney?
Mr. *Bigrave.* No.
Mr. Sol. Gen. Was there any Place to let the Air or Light in?
Mr. *Bigrave.* There was a Hole in the Side of the Wall ſeven or eight Inches ſquare, and an opening of two Foot over the Door.
Mr. Sol. Gen. Did not you ſee *Edward Arne* confined in that Place?
Mr. *Bigrave.* I remember *Edward Arne*, and I did hear he was confined there.
Mr. Sol. Gen. Who was the Place built by?
Mr. *Bigrave.* It was built by Mr. *Gybbon*, becauſe I ſaw Mr. *Gybbon* give Directions about it.
Mr. Sol. Gen. Do you know *Daniel Hopkins?*
Mr. *Bigrave.* I do.
Mr. Sol. Gen. Whoſe Servant was he?
Mr. *Bigrave.* I eſteemed him to be *Gybbon*'s Servant.
Mr. Sol. Gen. Did not he belong to Mr. *Huggins?*
Mr. *Bigrave.* He uſed to be Clerk to Mr. *Huggins.*
Mr. Sol. Gen. Did you at any Time, during the building the Strong Room, take any Notice of it?
Mr. *Bigrave.* I can't ſay I did.
Mr. Sol. Gen. Was not *James Barnes* a Runner to look after Priſoners that had eſcaped?
Mr. *Bigrave.* Yes.
Mr. Sol. Gen. Were not the Warrants given to him in Mr. *Huggins*'s Name?
Mr. *Bigrave.* They generally were.
Mr. Juſtice *Page.* What where the Dimenſions of this Room?
Mr. *Bigrave.* The Room is eight Foot wide, eleven Foot long, and nine Foot high.
Mr. Att. Gen. Did not *Hopkins* from Time to Time acquaint Mr. *Huggins* with the Tranſactions of the Gaol?
Mr. *Bigrave.* He was Clerk of the Inquiries to the Warden of the *Fleet.*
Mr. Att. Gen. So he choſe to be Deputy to Mr. *Gybbon?*
Juryman. My Lord, I deſire the Witneſs may be aſked if the Room was boarded or floored.
Mr. *Bigrave.* I did not obſerve it till *Mackpheadris*'s Time.
Mr. Att. Gen. How were the Sides of it?
Mr. *Bigrave.* Brick and Mortar.
Mr. Att. Gen. Was you not in the Room till after *Arne* died?
Mr. *Bigrave.* No.
Mr. *Huggins.* My Lord, I ſhall follow the Gentleman ſtep by ſtep, and deſire Mr. *Bigrave* may be aſked, if the Bonds were not made up by Mr. *Gybbon*'s Direction, and he took the Advantage of them?
Mr. *Bigrave.* He always did, and I filled up ſeveral by his Order.
Mr. *Huggins.* Did he receive all the Advantage and Benefit of the Office to his own Uſe?
Mr. *Bigrave.* I took it ſo.
Mr. Att. Gen. Can you take upon you to ſay that Mr. *Huggins* had no Part?
Mr. *Bigrave.* I can't ſay.
Mr. *Huggins.* Was not *Gybbon* appointed my Deputy?
Mr. *Bigrave.* I found Mr. *Gybbon* Deputy, when I came there, but can't ſay, whether he was appointed by Writing or not.
Mr. *Huggins.* Did he pay no Salary?
Mr. *Bigrave.* I heard he paid 400 *l. per. Ann.* and I always apprehended Mr. *Gybbon* had the whole Account.
Mr. *Huggins.* I deſire he may be aſked, whether the Bonds were not filled up by Mr. *Gybbon?*
Mr. *Bigrave.* Always.
Mr. *Huggins.* Returns of Writs were made in my Name; I deſire he may be aſked, whether he did not receive Direction from Mr. *Gybbon* to make Returns?
Mr. *Bigrave.* I did receive Directions from him, for in 1727, I had ſome difficulty in making a Return of a *Languidus*, and then made Returns in Writing, and I received two Rule Fees, and 1*s.* out of each was due to the Warden, which I allowed and paid to Mr. *Gybbon*, and had a Receipt under his Hand for it.
Mr. *Huggins.* Were Warrants in my Name for Priſoners eſcaping?
Mr. *Bigrave.* The Warrants were generally left in the Publick Office, and ſigned and ſealed in Blank, and that they were filled up by Mr. *Gybbon*, and ſigned and ſealed by Mr. *Huggins.*
Mr. *Huggins.* In whoſe Name were the Warrants returned?
Mr. *Bigrave.* The Warrants were returned in the Name of Mr. *Huggins*, but by the Direction of Mr. *Gybbon.*
Mr. *Huggins.* Was *Barnes* my Servant or Mr. *Gybbon*'s?
Mr. *Bigrave.* He was allowed to be Servant to Mr. *Gybbon.*
Mr. Juſtice *Page.* I will aſk a Queſtion or two.
Mr. *Huggins.* I muſt beg Leave, my Lord, to aſk one Queſtion more, and then will make ſome Obſervations upon the Evidence.
Mr. Juſtice *Page.* It is not proper to break in upon the Evidence to make any Obſervations now.
Mr. *Huggins.* This is the grand Point.
Mr. Juſtice *Page.* Whether it is or no, that will come anon. If you inſiſt upon making your Remarks now you ſhall; but I think it will be to your Prejudice, for by that you will be precluded from making your Remarks upon the Cloſe of the Evidence.
Mr. *Huggins.* My Lord, I will then ſubmit.
Mr. Juſtice *Page.* If you will aſk Mr. *Bigrave* any more Queſtions, you may proceed.
Mr. *Huggins.* Did you hear of any Ill-uſage from me to this Man (meaning Mr. *Arne*)?
Mr. *Bigrave.* I remember Mr. *Arne* was there, though I knew no ſuch Man, and heard he was in the Strong Room.
Mr. *Huggins.* Did you hear of any Alteration that was made in the Strong Room while Mr. *Arne* was there?
Mr. *Bigrave.* I never heard of any Alteration during that Time.
Mr. *Huggins.* Did not *Gybbon* keep two diſtinct Offices in one and the ſame Houſe?
Mr. *Bigrave.* In the Year 1725 he did.
Mr. Att. Gen. Pray diſtinguiſh nicely as to *Barnes*, *Huggins*, and *Gybbon*, whether *Barnes* was not imployed as Watchman while *Huggins* was Principal, and *Gybbon* Deputy-Warden?
Mr. *Bigrave.* He was.
Mr. Att. Gen. Who put you into your Office?
Mr. *Bigrave.* Mr. *Huggins* put me into the Place, and I made an Agreement, and was to have One Shilling paid me out of each Day-Rule.
Mr. Baron *Carter.* Who made the Agreement?
Mr. *Bigrave.* I made the Agreement with Mr. *Huggins*, and paid 700*l.* to Mr. *Huggins* and Fifty Guineas.
Mr. Baron *Carter.* Who put Mr. *Barnes* in?—Mr. *Bigrave.* Mr. *Gybbon.*
Mr. Baron *Carter.* How do you know?—Mr. *Bigrave.* I heard ſo.

Call Richard Biſhop.

Mr. Sol. Gen. What are you?
Mr. *Biſhop.* I was Tipſtaff to Mr. *Huggins*, preſently after *Huggins* came to his Office, and paid him 200*l.* for it.
Mr. Sol. Gen. Who was Deputy then?
Mr. *Biſhop.* There was no Deputy-Warden, only Mr. *Dickſon*, Clerk of the Papers.
Mr. Sol. Gen. When did *Gybbon* come there?
Mr. *Biſhop.* In the Year 1724.
Mr. Sol. Gen. What time did *Arne* become a Priſoner?
Mr. *Biſhop.* In 1724 or 1725, I brought him down from the Judges Chambers, and put him at the *Vine* as uſual.
Mr. Sol. Gen. Why did you not bring him into the Priſon?
Mr. *Biſhop.* Becauſe he thought to give Security.
Mr. Sol. Gen. Was not that a Spunging-houſe?
Mr. *Biſhop.* Yes.
Mr. Sol. Gen. How long did he continue there?
Mr. *Biſhop.* About two Months.
Mr. Sol. Gen. Where did he lie, when he went into the Gaol?
Mr. *Biſhop.* When he went into the Gaol, I did not trouble myſelf about it.
Mr. Sol. Gen. Do you remember the building the Strong Room?
Mr. *Biſhop.* I do remember its being built in 1725.
Mr. Sol. Gen. What Sort of a Place is it?
Mr. *Biſhop.* I have ſeen the Outſide, but never ſaw the Inſide; I believe it is built over the Common-Sewer, and but a little Way from the Dunghill; the Aſhes and Dirt of the Houſe is flung down there.
Mr. Sol. Gen. Did you ſee Mr. *Arne* there?
Mr. *Biſhop.* I ſaw him once in the Long Room out of his Cloaths, before he was brought into the Strong Room, and I complained to Mr. *Gybbon*, and ſaid he ought to be ſent to *Bethlem*, but he put him in the Strong Room.
Mr. Sol. Gen. Can you tell of any Complaints made about *Arne*'s being put there?
Mr. *Biſhop.* I did apply to Mr. *Gybbon*, and ſaid it was better to keep him in his own Room, for if a Wiſe Man was put there it would make him mad; and it would have made me mad if I had been put there myſelf; and I heard Mr. *Gybbon* ſpeak to Mr. *Hopkins* to acquaint Mr. *Huggins*, that as Mr. *Taylor* was one of the Governors of *Bethlem*, and Mr. *Huggins*'s Friend and Acquaintance, he might eaſily get him in there.
Mr. *Huggins.* It was no Part of the Office of Warden of the *Fleet*; but I might, by a friendly Office, uſe my Intereſt with Mr. *Taylor*, and that would ſhew me more a humane Man, than one guilty of Cruelty.
Mr. Sol. Gen. Did you ſee Mr. *Huggins* in the Gaol, during the Time Mr. *Arne* was in the Strong Room?
Mr. *Biſhop.* I ſaw Mr. *Huggins* there ſeveral Times, but can't ſay whether then or not when Mr. *Arne* was in the Strong Room.
Mr. Sol. Gen. Was he any way abuſive?
Mr. *Biſhop.* I never heard that *Arne* was any way abuſive, or needed any ſuch Reſtraint.
Mr. Sol. Gen. What was *James Barnes?*
Mr. *Biſhop.* He was to take up People that the Warden directed him to take up, and acted as Watchman in the Gaol, and was Servant under the Warden.
Mr. Sol. Gen. What time was *Arne* put in the Strong Room?
Mr. *Biſhop.* He came into the Priſon before the Strong Room was built.
Mr. Sol. Gen. Do you remember when it was built?
Mr. *Biſhop.* It was built in 1725, I believe at the latter Part of the Summer Seaſon.
Mr. Sol. Gen. Do you remember the Time while *Arne* was there?
Mr. *Biſhop.* I do.
Mr. Sol. Gen. Was there any Thing of Conſequence done in the Gaol, without the Direction of Mr. *Huggins?*
Mr. *Biſhop.* Nothing of Conſequence was done without his Direction; but the common Buſineſs of the Gaol was done by Mr. *Gybbon*'s Direction.
Mr. Sol. Gen. Did you ever ſpeak to Mr. *Huggins* in relation to *Arne*'s Confinement?
Mr. *Biſhop.* I believe I might ſpeak to Mr. *Gybbon*, and I believe I might ſpeak to Mr. *Huggins*, for I frequently did ſpeak to him about Buſineſs.
Mr. Sol. Gen. What Condition was Mr. *Arne* in, when brought to the *Fleet?*
Mr. *Biſhop.* I think he was in his Senſes, he was inoffenſive, and I think there was no Occaſion to confine him; I ſaw him ſeveral Times walking about

about the Yard, and if he had been confined to his own Room any-body might have looked after him, even if it had been a Child.

Mr. Sol. Gen. Had he any Bed whilſt in the Strong Room?

Mr. *Biſhop.* I think he had no Bed there, it was a dark Place, I could not ſee into it.

Mr. Sol. Gen. Did *Huggins* uſe to come there after *Gybbon* was Deputy?

Mr. *Biſhop.* I ſaw Mr. *Huggins* there ſeveral times after Mr. *Gybbon* was Deputy-Warden, and *Huggins* uſed to give Directions, during the Time *Gybbon* was his Deputy, and *Hopkins* uſed to bring Orders to Mr. *Gybbon* from Mr. *Huggins*.

Mr. Sol. Gen. In what condition of Health was Mr. *Arne* when he was brought in?

Mr. *Biſhop.* He was in a good Condition of Health, and in his Senſes; and I believe, being put in the Strong Room in the *Fleet*, would have killed any-body, and that that forwarded *Arne*'s Death, and he would not have died ſo ſoon if he had not been there.

Mr. *Huggins.* When you ſpoke to Mr. *Gybbon* to apply to me to make Intereſt to the Governor of *Bethlem*, whether it was Quatenus-Warden, or only as I was ſuppoſed to have Acquaintance or Intereſt?

Mr. *Biſhop.* It was to apply to you as Warden.

Mr. *Huggins.* Was there not Women Priſoners, and Men's Wives in the Gaol? —— Mr. *Biſhop.* Yes.

Mr. *Huggins.* My Lord, It was very unfit for a Man to go naked about where there were Women, and it was fit he ſhould be confined ſome where. Whoſe Servant was *James Barnes?*

Mr. *Biſhop.* Mr. *Gybbon*'s.

Mr. Juſtice *Page.* At the Time, when he run about naked, was there no other Room that he could have been put in?

Mr. *Biſhop.* There certainly were other Places where he might have been put.

Mr. Juſtice *Page.* How often have you ſeen him naked?

Mr. *Biſhop.* I ſaw him naked but once.

Mr. Baron *Carter.* You ſaid *Gybbon* gave ſome Directions, and *Huggins* gave ſome Directions; now during the Time that *Gybbon* acted, did the Priſoner, Mr. *Huggins*, give any Directions as to the moving of Priſoners?

Mr. *Biſhop.* My Lord, I never meddled with what was done in the Inſide of the Priſon, ſo can't inform you.

Call Mr. John Cotton.

Mr. Att. Gen. What Officer are you belonging to the *Fleet?*

Mr. *Cotton.* Clerk of the Papers.

Mr. Att. Gen. Pray ſee what Time *Arne* was committed?

Mr. *Cotton.* He was committed the 12th of *May*, 1725, at the Suit of *John Martin* and others upon *Meſne Proceſs.*

Mr. *Huggins.* I deſire he may ſee, when *Barnes* became a Priſoner?

Mr. *Cotton.* In *Hillary*, 1724.

Mr. Att. Gen. Is not *Barnes* ſtill a Priſoner, and what is become of him?

Mr. *Cotton.* He was a Priſoner, and had the Liberty of the Gate; and when the Order of the Houſe of Commons came for taking him into Cuſtody, he ran away, and *Corbet* has endeavoured to find him out, but could not.

Mr. Att. Gen. Was *Arne* charged in Execution?

Mr. *Cotton.* No, he was not.

Call Mr. Thomas Farrington.

Mr. Att. Gen. Did you know *Edward Arne?*

Mr. *Farrington.* I did, and the firſt Time, that he came into the Priſon, it was between the 20th and 28th of *June*, 1725. He was ſome time at the *Vine* before.

Mr. Att. Gen. What State of Health was he in?

Mr. *Farrington.* When he came into the *Fleet* Priſon he was in a good State of Health, and free from any Sort of Deliriouſneſs, and I never ſaw him do any Thing amiſs to Man, Woman, or Child.

Mr. Att. Gen. Do you remember his being confined in the Strong Room?

Mr. *Farrington.* I do remember his being confined in *September*, and that he died in *October*.

Mr. Att. Gen. When was the firſt Time you knew of his Confinement?

Mr. *Farrington.* The firſt time I ever heard of his being confined, I heard he was carried into the Strong Room by *Barnes*, by the Directions of *Gybbon*, Deputy-Warden to the Priſoner at the Bar, and he had lain before that in Number VII. with *Robert Shaw*, and upon ſome Difference, being turned out of that Room, he then lay in the Common-Hall, upon a Bed of his own, which he laid upon Part of a broken Table-Bedſtead.

Mr. Att. Gen. When was the firſt Time you ſaw *Arne* in the Strong Room?

Mr. *Farrington.* I ſaw him the very Day he was put in.

Mr. Att. Gen. What Sort of a Place is it?

Mr. *Farrington.* It is a Room arched over like a Vault, and had been new erected about ſix Weeks, and the Walls were very damp and wet, you might ſtrike off the Drops with your Hand like the Dew on the Top of the Graſs in a Morning; there was no Wainſcot nor Plaſtering, there were ſome Boards at the Bottom, but whether intirely boarded I can't tell. It was a Vault arched over, and when *Arne* was carried in not tiled; there was a Window over the Door three Quarters of a Yard long, and another on the Side of the Door ſeven or eight Inches long, and four wide, and no Fire-place, and the Common-Sewer runs under it.

Mr. Att. Gen. Who ſupply'd him with Victuals?

Mr. *Farrington.* I ſaw Mr. *Louden* give him Victuals.

Mr. Att. Gen. Who kept the Key of the Room?

Mr. *Farrington. Barnes.*

Mr. Att. Gen. From the Time that Mr. *Arne* came into the Priſon, which was between the 20th and 28th of *June*, till he was put in the Strong Room, What State of Health was he in?

Mr. *Farrington.* He continued in a good State of Health, till a little before he was put in the Strong Room, and then he grew ſomewhat diſordered; and from the Time he was put in the Strong Room, he altered every Day, grew hoarſe, and at laſt could not ſpeak, and he grew weaker and weaker every Day; about the Beginning of *October* loſt his Voice, he grew then delirious, and ript open his Bed, and crept into the Feathers, and one Day came to the Chapel with Excrement and Feathers ſticking about him like a Magpye, being forced to eaſe Nature in that Place; and after that, I ſaw the Priſoner at the Bar, and *Hopkins*, looking into the Strong Room (the Door being open) upon *Arne*, and *Arne* was lying in the Bed ript open, and covered much about as high as his Navel.

Mr. Att. Gen. Did you hear *Arne* ſpeak?

Mr. *Farrington.* He was very hoarſe, and could not ſpeak, but lifted up his Eyes, and looked at Mr. *Huggins.*

Mr. Att. Gen. Did *Huggins* then ſee him?

Mr. *Farrington.* Mr. *Huggins* muſt ſee him, if he was not blind.

Mr. Att. Gen. Did you hear them ſpeak?

Mr. *Farrington.* Mr. *Huggins* and *Hopkins* whiſpered, but I did not hear what they ſaid; but *Huggins* ſhook his Head, then *Barnes* ſhut the Door, and *Huggins* and *Hopkins* were then going away.

Mr. Att. Gen. How long after was it before *Arne* died?

Mr. *Farrington.* About fourteen Days.

Mr. Att. Gen. Did you ſee *Arne* between this Time of *Huggins* being there and his Death?

Mr. *Farrington.* I ſaw him the Morning before he died, and at that Time he was ſo weak, he could not ſtir any Way, but there lay gaping for Life.

Mr. Att. Gen. What was the Occaſion of his lying in that languiſhing Condition?

Mr. *Farrington. Arne*'s Confinement was the Occaſion. I was in the Strong Room three Days myſelf with one *Smith*, my Legs were ſo ſwelled, that the Small was as big as my Thigh, and I never knew a Day's Sickneſs till that Time, and if I had continued a Week longer it would have killed me, and I was forced to buy Paper to eaſe Nature in, and fling it out of the Window.

Mr. Att. Gen. What is the Situation of that Room?

Mr. *Farrington.* Its Situation is at the furtheſt Part of the Priſon Northward, and there is a Sewer under it, into which runs the Water from the Pump to carry off the Excrements of the Priſon, which are emptied into it, and the Dunghil was then about ſix Yards from it.

Mr. Att. Gen. What Diſtance is there between the Strong Room and the Dunghil now?

Mr. *Farrington.* About eight Yards, and all the Nuiſance of the Houſe is flung there, and there are very bad Smells.

Mr. Att. Gen. What was the Occaſion of the Death of *Arne?*

Mr. *Farrington.* I think it was the Strong Room was the Occaſion of it, for it was enough to kill the ſtrongeſt Body.

Mr. Att. Gen. Did *Arne* die there?

Mr. *Farrington.* He did, and Mr. *Huggins* always ſaid he had Authority to put Perſons in the Strong Room, or Irons, which I can prove under his Hand (and was going to pull out a Paper, which not being allowed as Evidence, he deſiſted). I ſaw Mr. *Huggins* a ſecond Time walking upon the *Bare* with *Gybbon* and *Levinz*, between the Hours of Eleven and One, a Week or Fortnight after which he was at the Strong Room.

Mr. Att. Gen. How long did Mr. *Huggins* ſtand looking upon Mr. *Arne* in the Strong Room?

Mr. *Farrington.* About three, four, or five Minutes, and he then ſtood looking at the Door, as I now ſtand looking at the Council.

Mr. Att. Gen. Was *Arne* let out of the Strong Room afterwards?

Mr. *Farrington.* I never heard that *Arne* was afterwards out of the Strong Room till he died.

Mr. *Huggins.* Did not you make ſome Affidavits by way of Complaint to the Court of Common Pleas? ——— Mr. *Farrington.* Yes.

Mr. *Huggins.* Pleaſe, my Lord, to aſk, Whether or not Mr. *Arne* was mentioned in that Complaint that he made?

Mr. *Farrington.* I never made but three Affidavits, two of which I have in my Hand in Print, but don't remember Mr. *Arne*'s being mentioned in either of them.

Mr. *Huggins.* My Lord, The Affidavits tend chiefly to the ſending of Coffins in.

Mr. Juſtice *Page.* If you intend to make any Uſe of thoſe Affidavits, they muſt be produced and read.

Call Mr. Richard Fulthorpe.

Mr. Att. Gen. Did you know *Edward Arne?*

Mr. *Fulthorpe.* I did, I was a Priſoner then myſelf, he was brought in the latter End of *Auguſt*, and I remember him a Priſoner before he was confined in the Strong Room; I being in the Cellar, one *Barnes* and two or three other Servants of the Wardens, took him by Violence and carried him there.

Mr. Att. Gen. Had you been in his Company, and had Converſation with him? ——— Mr. *Fulthorpe.* I had ſeveral Times.

Mr. Att. Gen. Was he diſorderly?

Mr. *Fulthorpe.* He might be a little in Liquor, but he did nothing to offend any one, and gave no Diſturbance to the Company. He was carried by *Barnes* into the Strong Room.

Mr. Att. Gen. What Sort of a Place is the Strong Room?

Mr. *Fulthorpe.* It is a Place like a Dungeon, with a Hole on the Side big enough to put in a full Pot of Beer.

Mr. Att. Gen. How big is the Room?

Mr. *Fulthorpe* The Room is about Half the Bigneſs of the Court where the Counſel ſit, and ſtands near the Dunghill, and the Sewer runs under it. I ſaw it opened.

Mr. Att. Gen. What was over the Common Sewer?

Mr. *Fulthorpe.* There was Boards laid looſe over.

Mr. Att. Gen. What was between the Common Sewer and the Boards?

Mr. *Fulthorpe.* Nothing. The Walls were green. It was not tiled in, and ſcarce been built above a Week, and was as wet as any Thing could be.

Mr. Att. Gen. Who put *Arne* into the Strong Room?

Mr. *Fulthorpe. Barnes* and ſome others, then Priſoners, who acted under the Warden, took him out of the Cellar, put him in there, and locked him up.

Mr. Att. Gen. Did you ſee Mr. *Huggins* during the Time *Arne* was there confined?

Mr. *Fulthorpe.* I ſaw Mr. *Huggins* twice there. I ſaw him at the Strong Room; he went along with *Gybbon* and *Hopkins*, and Mr. *Huggins* laid his Hand upon the Door, and looked in, the Door being open.

Mr. Att. Gen. How long was he there?

Mr. *Fulthorpe.* A Minute or two.

Mr. Att. Gen. Who was there beſides?

Mr. *Fultborpe.* Several belonging to the *Fleet*. I believe *Barnes* was there.

Mr. Att. Gen. How long before the Death of *Arne?*

Mr. *Ful.* About a Month.

Mr. Att. Gen. What Contition was *Arne* in at the Time he was put in there?---Mr. *Ful.* When he was put in there, he was a little out of the way when fuddled, but when ſober as well as any Man; when I came to the Door, there uſed to be a Smell enough to ſtrike one down.

Mr. Att. Gen. How long was *Arne* in the ſtrong Room, before you ſaw him there?---Mr *Ful.* I went the next Morning, and at ſeveral other Times.

Mr. Att. Gen. How long was *Arne* there?---Mr. *Ful.* About ſix Weeks.

Mr. Att. Gen. What Condition was he in when *Huggins* looked upon him?---Mr. *Ful.* He was very ill when *Huggins* looked upon him.

Mr. Att. Gen. What do you think was the Occaſion of his Death?

Mr. *Ful.* The Confinement and the Dampneſs of the Room gave him his Death.

Mr. Att. Gen. Had Mr. *Huggins* ſpoke to have *Arne* taken out?

Mr. *Ful.* He had not, for the Door was ſhut, Mr. *Huggins* being then preſent.

Mr. Att. Gen. How came you to be there?

Mr. *Ful.* I wanted to ſpeak to Mr. *Huggins* about Buſineſs, for the Payment of the Bill drawn upon *Huggins* by one *Lewis*.

Mr. Att. Gen. How came *Arne* to cut his Bed in Pieces, and creep into the Feathers?

Mr. *Ful.* It was occaſioned by his Confinement; there was no Fire there, and I believe the Confinement was the Occaſion of his Death.

Mr. *Huggins.* How often did you know him let out?

Mr. *Ful.* Two or three Times.

Mr. *Huggins.* How long was you a Priſoner after?

Mr. *Ful.* I was diſcharged by the Act of Grace.

Mr. Att. Gen. How came you to be preſent at the Time Mr. *Huggins* looked into the Strong Room?

Mr. *Ful.* I waited for an Opportunity of ſpeaking to him about a Note.

Call Mr. Tudor Smith.

Mr. Sol. Gen. Did you know *Edward Arne?*

Mr. *Smith.* I knew Mr. *Arne* very well, and that he was in the *Fleet* Priſon. I remember the Time of his coming into the *Fleet* Priſon. I was with him in the Spunging-Houſe, and then he was carried into the *Fleet* Priſon.

Mr. Sol. Gen. Where did he lie?

Mr. *Smith.* In the Room of one *Robert Shaw*, and continued there about a Fortnight or three Weeks; but upon ſome Quarrel was turned out.

Mr. Sol. Gen. When *Arne* came out of the Room, was not his Bed turned out with him?

Mr. *Smith.* It was; upon which, he then lay in the Common-Hall for ſome Time.

Mr. Sol. Gen. Did you ſee *Arne* carried to the Strong Room?

Mr. *Smith.* I was in the Cellar, when he was carried to the Strong Room; *Barnes* took him away.

Mr. Sol. Gen. What was *Barnes?*

Mr. *Smith.* I apprehended him to be Mr. *Huggins*'s Servant.

Mr. Sol. Gen. What did you ſee done by *Barnes?*

Mr. *Smith.* I did ſee *Barnes* come, and take *Arne* by the Collar, and he ſaid, He muſt go along with him. *Arne* ſaid, Where? *Barnes* replied, No matter where, you muſt go along with me; and the next Morning I ſaw *Arne* in the Strong Room.

Mr. Sol. Gen. What State of Health was he in, when carried there?

Mr. *Smith.* He was in an ill State of Health.

Mr. Sol. Gen. What Sort of a Room was it?

Mr. *Smith.* It was newly built, very damp, and a nauſeous Place. I knowing him before, was under more than common Concern, and aſked *Arne* how he did? And he ſaid *Barnes* carried him there. I aſked him if he had a Bed? He ſaid he had no Bed; but the next Day a Bed was brought to him.

Mr. Sol. Gen. How long did he lie there?

Mr. *Smith.* A Month or ſix Weeks; I viſited him often.

Mr. Sol. Gen. Was there any Fire-place, any Candle, or any thing neceſſary to eaſe Nature in?

Mr. *Smith.* There was no Fire-Place, no Candle, nothing neceſſary to eaſe Nature in, and he was forced to do all that Nature required there; and many a Time, when I carried Drink, Meat, or Ale to him, I have been forced to hold my Noſe.

Mr. Sol. Gen. What place was there to let in the Air?

Mr. *Smith.* There was a Place over the Door with Iron Bars, three Foot in Length, and another Hole on the Side, about a Foot and Half.

Mr. Att. Gen. Did you give any Notice to Mr. *Huggins* of the Condition this Man was in?

Mr. *Smith.* Having been a Priſoner ſome Time, I applied for the Benefit of the Rules, and he received Twelve Pounds for the Liberty of the Rules, and *Hopkins* and *Gybbon* inſiſted upon Ten Guineas more; and I wrote four Letters of the Uſage I received, having paid ſeveral Sums of Money; which I ſent to Mr. *Huggins* by *Robin* the Porter, and did in one of them, of the 5th of *October*, mention Mr. *Arne*'s Confinement.

Mr. Baron *Carter.* To what Purpoſe was that Letter?

Mr. *Smith.* It partly related to my own Buſineſs, and I mentioned that the Strong Room was a Place not fit for a Chriſtian to be in, and Mr. *Arne* lay in a very miſerable Condition; and ſeeing him in ſuch a Condition, I gave him an old Night-Gown, being in a Manner naked for want of Covering, he had ripped open his Bed, and had got into the Feathers.

Mr. Baron *Carter.* Did you take any Notice in the Letter of his lying in the Feathers?

Mr. *Smith.* I had wrote in the Letter about ſeeing him in the Feathers, and directed the Letter to Mr. *Huggins*, at his Houſe in *St. Martin's-Lane*, and ſent it by *Robin* the Porter. I ſpoke to Mr. *Hopkins.*

Mr. Juſtice *Page.* That was not material.

Mr. Baron *Carter.* Did you ever ſee Mr. *Huggins* in the Gaol?

Mr. *Smith.* I never did, but watched an Opportunity of ſeeing him.

Mr. Baron *Carter.* What Condition was *Arne* in?

Mr. *Smith.* It was a miſerable Scene; and I take it that it was the Cauſe of his Death; and that he periſhed by being in ſuch a Condition.

Mr. *Hug.* I deſire he may be aſked, my Lord, if ever I had come into the *Fleet* Priſon, he ſhould have ſeen me?---Mr. *Smith.* I believe I ſhould.

Mr. *Huggins.* Did you ever ſee me there?

Mr. *Smith.* I ſaw Mr. *Huggins* two or three Times, at the Time the Prothonotaries were there?

Mr. *Huggins.* I deſire he may be aſked, my Lord, if he received any Anſwer from me to the Letter?

Mr. *Smith.* I received no Anſwer from Mr. *Huggins.*

Mr. *Hug.* Did the Letter contain other Buſineſs?---Mr. *Smith.* It did.

Call Robert Saintclair, *the Porter.*

Mr. Att. Gen. Is that the Man, *Robin?*—Mr. *Smith.* It is the Man I ſent.

Mr. Att. Gen. Did you carry any Letters for Mr. *Smith?*

Saintclair. I carried ſeveral Letters, and brought Anſwers back again to them; but by reaſon of the Diſtance of the Time, cannot remember the Delivery of the Letters, but gave the Anſwers to Mr. *Smith.*

Mr. Att. Gen. Do you remember about what Time?

Saint. I cannot ſay about what Time.

Mr. Att. Gen. Did you carry any Letters from Mr. *Smith* to Mr. *Huggins?*

Saint. I carried ſeveral Letters to Mr. *Huggins* from Mr. *Smith*, and always returned an Anſwer to whom I delivered them.

Mr. *Huggins.* My Lord, I deſire he may be aſked, if he ever delivered a Letter from Mr. *Smith* to me?

Saint. I cannot ſay I ever ſaw Mr. *Huggins* at his own Houſe.

Call Thomas Paine.

Mr. Att. Gen. Did you know *Edward Arne?*

Mr. *Paine.* I did, and remember his being put in the *Fleet* Priſon.

Mr. Att. Gen. What State of Health was he in when he came there?

Mr. *Paine.* He was in a good State of Health. I was in Company with him and Captain *Bateman*, who was at Cards, and *Arne* was at Play, and did not ſeem to be lunatick; and one *James Barnes* came into the Room whilſt I was in Company drinking with them, and *Arne* was doing nothing diſorderly, and *Barnes* forced him into the Strong Room, and I was then by.

Mr. Att. Gen. Who was *Barnes?*

Mr. *Paine. Barnes* was a Priſoner, and was made a Watchman by *Gybbon*, who gave him the Liberty of the Gate.

Mr. Att. Gen. What was his Buſineſs?

Mr. *Paine.* He was a Watchman.

Mr. Att. Gen. Whoſe Servant did you look upon him to be?

Mr. *Paine.* I looked upon him to be a Servant of Mr. *Gibbon*'s.

Mr. Att. Gen. Did you ever ſee Mr. *Huggins* there?

Mr. *Paine.* I never ſaw Mr. *Huggins* there, but when the Prothonotaries were there.

Mr. Att. Gen. What Sort of a Place was it before it was made ſo?

Mr. *Paine.* It was a Stable where the Cocks and Hens rooſted.

Mr. Att. Gen. Did you ſee it after it was converted into a Strong Room, before Mr. *Arne* was put into it?

Mr. *Paine.* I did; and the Walls were green; there was certainly a Dampneſs.

Mr. Att. Gen. Was there any Sewer run under it?

Mr. *Paine.* I cannot ſay; but there was an ill Smell came both from the Neceſſary-Houſe and from the Dunghill.

Mr. Att. Gen. What Condition was *Arne* in, after he was put in by *Barnes?*

Mr. *Paine. Arne* grew outrageous, and tore his Clothes and Bedding.

Mr. Att. Gen. What Condition of Health was *Arne* in?

Mr. *Paine.* I never talked to him, but through the Hole in the Wall.

Mr. Att. Gen. How was he before he died?

Mr. *Paine.* I was diſcharged before he died.

Mr. Att. Gen. What kind of Alteration was there in his Voice?

Mr. *Paine.* He was a little hoarſer, and I could not ſee him, but only as I talked to him through the Hole.

Mr. Att. Gen. Was it a fit Place to confine a Priſoner in?

Mr. *Paine.* It was not a fit Place to confine Priſoners in without Danger of their Lives.

Mr. *Hug.* Was there a Court of Inſpectors or Governors of the *Fleet?*

Mr. *Paine.* There was ſuch.

Mr. *Hug.* Did they not ballot once a Month?

Mr. *Paine.* We once balloted for Steward and Inſpector.

Mr. *Hug.* Did not the Court of Inſpectors place *Arne* in the Strong Room?

Mr. *Paine.* The Inſpectors did not ſo much as viſit the Strong Room.

Mr. *Hug.* If any Complaint had been made, was not the Power veſted in the Court of Inſpectors to redreſs?

Mr. Juſtice *Page.* Mr. *Huggins*, that is not a proper Queſtion.

Mr. *Hug.* My Lord, I deſire he may be aſked then how long it was before Mr. *Arne* died that he left the Priſon?

Mr. *Paine.* I was diſcharged in *September*, about the 8th.

Mr. *Hug.* The 8th of *September*, my Lord, which was about ſix Weeks before Mr. *Arne* died.

Mr. Juſtice *Page.* When was the Strong Room built?

Mr. *Paine.* In Mr. *Gybbon*'s Time.

Mr. *Hug.* My Lord, if Mr. *Gybbon* built the Strong Room, there is Reaſon to believe he paid for it.

Call John Bouch.

Mr. Att. Gen. Did you belong to the *Fleet?*

Mr. *Bouch.* I did, I was Turnkey there.

Mr. Att. Gen. When was the Strong Room built?

Mr.

Mr. *Bouch.* It was built in 1725, the latter End of the Summer, by the Direction of Mr. *Huggins.*

Mr. Att. Gen. During the Time that you belonged there, did not Mr. *Huggins* come frequently?

Mr. *Bouch.* He came now and then, not very often.

Mr. Att. Gen. When was *Arne* put in the Strong Room?

Mr. *Bouch.* He was put in about *Auguſt.*

Mr. Att. Gen. Did you know him before he was carried there?

Mr. *Bouch.* I knew him very well, and never ſaw any Ill offered by him.

Mr. Att. Gen. Whoſe Order was he put in by?

Mr. *Bouch.* He was put in by the Order of Mr. *Gybbon* and Mr. *Huggins.*

Mr. Att. Gen. Did he die in that Place?

Mr. *Bouch.* He did.

Mr. Att. Gen. How long was he there?

Mr. *Bouch.* About a Month or ſix Weeks.

Mr. Att. Gen. Did you ſee Mr. *Huggins* there during the Time *Arne* was in the Strong Room?

Mr. *Bouch.* I cannot ſay I did.

Mr. Att. Gen. Who was it over-look'd the building the Strong Room?

Mr. *Bouch.* Mr. *Huggins*, when he came to the Lodge.

Mr. Att. Gen. Was he there when the Building was a-raiſing?

Mr. *Bouch.* I cannot be certain, but I remember there was a Direction of the Court of *Common-Pleas* for Mr. *Huggins* to inſpect the Gaol, and that he came once a-Week after the Order from the Court of *Common-Pleas.*

Mr. Att. Gen. What was the Condition of the Room?

Mr. *Bouch.* The Room was newly built and green.

Mr. Att. Gen. Did you carry any Letter to Mr. *Huggins* relating to Mr. *Arne?*

Mr. *Bouch.* I did carry a Letter from a Friend of Mr. *Arne's*, and he was ſo weak then that he could not ſpeak.

Mr. Att. Gen. Where did you carry it from?

Mr. *Bouch.* From the *Fleet* Priſon.

Mr. Att. Gen. What was it about?

Mr. *Bouch.* It was about getting *Arne* his Liberty; a Gentleman gave me the Letter, and deſired me to bring an Anſwer as to *Arne's* having the Liberty of the Rules; and I went myſelf, and ſaw Mr. *Huggins*, and gave him the Letter; he opened it, and ſaid he would ſend an Anſwer by Mr. *Hopkins.*

Mr. Att. Gen. When was this?

Mr. *Bouch.* It was in *October*, about a Week before *Arne* died.

Mr. Att. Gen. Where did *Arne* die?

Mr. *Bouch.* He died in the Strong Room, I ſaw him two Days before he died; he was juſt as if dead then, and very weak and ill.

Mr. Att. Gen. What kind of a Place was the Strong Room?

Mr. *Bouch.* It was a very ſickly Place, becauſe of the Common Sewer running under it.

Mr. Att. Gen. What Meſſage did Mr. *Huggins* ſend by Mr. *Hopkins* as to the Letter?

Mr. *Bouch.* Mr. *Huggins* ſent Word by *Daniel Hopkins*, that he would inform Mr. *Arne's* Friend what was to be done.

Mr. *Att. Gen.* Who was it built the Strong Room?

Mr. *Bouch.* One *Fry*, a Bricklayer, took Directions from Mr. *Huggins*, at Mr. *Huggins's* own Houſe, and I was preſent when *Fry* was there.

Mr. Att. Gen. Who paid for the Building?

Mr. *Bouch.* I believe Mr. *Huggins*, for *Fry* was a Maſter Bricklayer, and I ſaw him there about Buſineſs after the Building was finiſhed.

Mr. Att. Gen. How came you to be there?

Mr. *Bouch.* I went there then to get a Place of Mr. *Huggins.*

Mr. Att. Gen. When was you Turnkey?

Mr. *Bouch.* I was not Turnkey till after Mr. *Arne's* Death.

Mr. Att. Gen. Did you ſee him in the Strong Room?

Mr. *Bouch.* I ſaw him in the Strong Room twenty Times, for I was then endeavouring to get to be Turnkey.

Mr. Att. Gen. Who had you the Place from?

Mr. *Bouch.* From Mr. *Huggins*; and during the Time I was endeavouring for it, I ſaw Mr. *Arne* in the Strong Room.

Call James Tucker.

Mr. Att. Gen. Do you know the Place that is called the Strong Room in the *Fleet* Priſon?

Mr. *Tucker.* I do, and was employed by the Bricklayer and Carpenter to make the Iron-work.

Mr. Att. Gen. Who did you make out your Bill to?

Mr. *Tucker.* I made it out to Mr. *Huggins*, as Debtor.

Mr. Att. Gen. Who paid you?

Mr. *Tucker.* I made the Bill out in Mr. *Huggins's* Name, and was paid by *Pindar*, and a Receipt was given in full of that Bill.

Call Mrs. Eliz. Le Pointz.

Mr. Att. Gen. Did you know *Edward Arne?*

Mrs. *Le Pointz.* I did.

Mr. Att. Gen. Do you remember him a Priſoner in the *Fleet*, and his Confinement in the Strong Room?

Mrs. *Le Pointz*, I do; he had been confined two or three Days before I went to him; the firſt Time I ſaw him ſitting upon a Bench, and the next Time in his Feather-bed, and he was covered therein, and his Bed lay on the Floor.

Mr. Att. Gen. What Condition of Health was he in?

Mrs. *Le Pointz.* I never found him any Way diſtempered, only diſordered by the Cold and Dampneſs of the Place.

Mr. Att. Gen. Was not his Voice altered?

Mrs. *Le Pointz.* He had a ſhivering Hoarſeneſs upon him.

Mr. Att. Gen. How long did he continue there?

Mrs. *Le Pointz.* He continued there ſeven Weeks, or thereabouts.

Mr. *Att. Gen.* What Condition was the Place in?

Mrs. *Le Pointz.* It was building in *July*, and I remember the finiſhing of it ſome Time in *Auguſt.*

Mr. Att. Gen. When was Mr. *Arne* put in?

Mrs. *Le Pointz.* He was put in as ſoon as it was finiſhed.

Mr. Att. Gen. Do you believe that was the Occaſion of his Death?

Mrs. *Le Pointz.* It was impoſſible to be otherwiſe; for the Building was ſo very green, that you might pull the Mortar from the Bricks with your Fingers, and it was impoſſible any body could be continued therein for ſeven Weeks without being killed by the Dampneſs of the Place; and I verily believe that Confinement was the Occaſion of *Arne's* Death.

Mr. Att. Gen. Did you ever ſpeak to any body about his Releaſement?

Mrs. *Le Pointz.* Whilſt he was in this Place, I met with Mr. *Hopkins*, and ſpoke to him to acquaint Mr. *Huggins*, that it was impoſſible but that *Arne* muſt periſh, if continued in that Place; and if he did not ſpeak to Mr. *Huggins*, I would ſend to him myſelf; to which *Hopkins* replied, he would; and afterwards I met with him, and aſked him, whether he had ſpoke? He told me he had ſpoke to Mr. *Huggins*, who ſaid it was no Buſineſs of his.

Mr. Juſtice *Page.* That cannot be given in Evidence, for 'tis only Hearſay.

Mrs. *Le Pointz. (Standing up again)* I ſaw Mr. *Huggins* upon the *Bare*, with one *Levings*, a Quaker, then a Priſoner in the Houſe, and Mr. *Gybbon*, during the Time *Arne* was in the Strong Room.

Mr. Serj. *Cheſhire.* Which Way did he come upon the *Bare?*

Mrs. *Le Pointz.* I cannot tell; there was then but two Ways, one by the Strong Room, and the other through the Houſe.

Mr. Serj. *Cheſhire.* Whereabouts is the Strong Room?

Mrs. *Le Pointz.* The Strong Room was built near the *Bare*, and joins to the End of the Houſe; and I ſaw them walking together; and that he could not well come in or out without coming near the Strong Room.

Mr. Serj. *Cheſhire.* What did you think was the Occaſion of his coming there?

Mrs. *Le Pointz.* To take a Survey of the Walls, which were then finiſhed, for that I ſaw him look up at them.

Mr. Serj. *Cheſhire.* Did you know Mr. *Huggins?*

Mrs. *Le Pointz.* I knew him very well.

Mr. Serj. *Cheſhire.* When was this?

Mrs. *Le Pointz.* I take it to be ſome Time in *October*, about fourteen Days before *Arne* died: It was after the Fire happened in *Bell-Savage* Yard.

Thomas Levings *was called, and being a Quaker * refuſed to take an Oath, and therefore could not be admitted an Evidence.*

Mr. *Huggins.* It is a great while ago ſince this Matter happened; there is no Notice taken by the Courſe of the Evidence how this Matter has gone on, and therefore it was very difficult to anſwer particularly thereto; this I do ſolemnly affirm, That during the Time *Arne* was there, I never heard of his Name, that he died, or was in the Strong Room, till that I was in the *Fleet* to be examined. That I never was ſeen in the *Fleet* Priſon while *Arne* was in the Strong Room; and that no one of the King's Witneſſes has ſaid, that I uſed any hard Words about Mr. *Arne.* There was a Suggeſtion of my getting *Arne* into *Bethlehem*, it was no Part of my Office as Warden of the *Fleet*, but I might by a friendly Office uſe my Intereſt with Mr. *Taylor*; and that would ſhew me more a humane Man, than one guilty of Cruelty.

That ſome of the Priſoners, who were Witneſſes, were diſcharged the Priſon the 7th of *September*, ſo it was not likely that they ſhould be able to ſwear as to *Arne's* Death, who did not die till *October.*

As to *Gybbon* being Deputy, the firſt Evidence to be produced will be the Act for Inſolvent Debtors in 1725, to prove that *Gybbon* carried in a Liſt purſuant to that Act; and delivered it as Gaoler, and ſwore to it; and I muſt deſire, that Mr. *Tanner* may read the Clauſe in that Act of Parliament, where Gaolers are directed to make out a Liſt of Priſoners.

Mr. Att. Gen. If you would prove Mr. *Gybbon* Warden, you muſt prove what Conſideration he gave, and what Stile he bore.

Mr. Juſtice *Page.* Did the Commiſſioners in that Act take notice who was Deputy-Warden or not? Let it be Deputy, or how it would, they took no Notice of that. It would be no Evidence for the King.

Mr. *Huggins.* It will prove that *Gybbon* acted.

Mr. Juſtice *Page.* We ſhall ſee that when the Act of Parliament is read, I allow *Gybbon* did act in Fact.

Mr. Att. Gen. If he had a Mind to prove Mr. *Gybbon* Deputy, he muſt prove it by his Deputation.

Mr. Serj. *Cheſhire.* It is too early to offer this before the Deputation lies before us; therefore I ſubmit it, if it is not too ſoon to offer this in Evidence.

Mr. Juſtice *Page.* I cannot direct the Priſoner how he ſhould proceed; whether this may be of Advantage to him I cannot find. If he be charged from a particular Fact that did ariſe by *Gybbon*, why ſhould not *Huggins*; by the ſame Rule of Reaſon, juſtify himſelf by any other Act done by *Gybbon?*

Vide Act.] Then the Clauſe in the Act of Inſolvency in the Year 1725 was ordered to be read.

Mr. Juſtice *Page.* I do not ſee, upon reading of the Act, it affects any Thing that has been ſaid. I take it that the Officer acts, and makes Returns, and the Law does not ſay whether it is the Warden or the Deputy-Warden. Mr. *Huggins*, I dare to ſay you yourſelf will own it; and the Uſe that you would make of it is to ſhew, that he acted as Warden.

Mr. *Huggins. Fulthorpe* was diſcharged the 7th of *September.* I deſire Mr. *Tanner* may produce the Liſt, and that it may be read to ſhew that.

Mr. Juſtice *Page.* If *Fulthorpe's* Evidence was laid aſide, yet there are Witneſſes enough to prove, that they ſaw you there: However, I muſt take notice of what *Fulthorpe* ſaid; he ſaid, that *Arne* was a peaceable Man, and then gave a Deſcription of the Room; and ſaid, that the Floor was covered with a few Boards; and that he ſaw the Priſoner twice in the *Fleet*, and that he was there at one Time, and looked in at the Door, and then the Door was ſhut, and he went away. This Defence ſeems but trifling.

* In the Caſe of *Bambridge (poſtea)* the Appellant's Counſel called a Quaker, and inſiſted that this is a Civil Suit, in which he he might be a Witneſs. But the Chief-Juſtice ſaid, it was to this Purpoſe a Criminal Proceeeding, and therefore he could not be a Witneſs. *Strange's Reports*, Vol. II. p. 856.

Mr. *Huggins*. I intended it as to the Credit of the Witneſs.

Mr. Juſt. *Page*. The Man has ſworn honeſtly, and if it was ſtruck out of the Evidence it would not ſignify; and I muſt a little aſſiſt you, as no Counſel is allowed but in Caſes of High-Treaſon. You was going to ſhew the Act of the Deputy, without ſhewing what Authority was given to the Deputy. If you have any Inſtrument or Agreement by which you conſtituted *Gybbon* Deputy, you muſt produce it.

Mr. *Hugg*. My Lord, I cannot produce it, becauſe it is in the Hands of the Widow *Gybbon*, or ſome other Perſon; and we are at this Time in Equity.

Mr. Juſt. *Page*. Affairs of this Nature have always been done by Indenture—as the Sheriffs of *London* to their Under-Sheriff—and then you muſt have a Counterpart.

Mr. *Hugg*. My Lord, I never made any ſuch Indenture; I deſire Mr. *Tanner* may be aſked, who appeared as Warden upon the Inſolvent Act?

Mr. *Tanner*. Mr. *Gybbon*, my Lord.

Mr. Juſt. *Page*. Do you believe he was Deputy or not?

Mr. *Tanner*. I looked upon *Gybbon* as a proper Officer.

Mr. Juſt. *Page*. Who do you think was Warden?

Mr. *Tanner*. I cannot ſay who was Warden.

Mr. Juſt. *Page*. I thought you would not have equivocated. You are a good Officer, but I ſhall never examine you as a Witneſs.

Call John Jeffreys, *Keeper of the* Compter. (*Who was ſworn.*)

Mr. *Hugg*. Mr. *Jeffreys*, pray acquaint the Court what Agreement was made betwen Mr. *Gybbon* and me.

Mr. *Jeff*. There was a Writing made, and I was a Witneſs to it, but did not know what it was.

Mr. Juſt. *Page*. Mr. *Huggins*, the Queſtions that you ask, you muſt firſt explain to the Court.

Mr. *Hugg*. I deſire Mr. *Jeffreys* may be asked, if he was preſent at the Agreement?----Mr. *Jeffreys*. I was preſent.

Mr. *Hugg*. Was there any Writing ſigned?

Mr. Juſt. *Page*. You muſt take care to produce the Writings if you examine to them.

Mr. *Hugg*. I have ſent a Man for the Receipt of 1000*l*.

Mr. Juſt. *Page*. I cannot comply for the ſame Title made under your Grant to be given in Evidence for the Grantor: It was a Title from you, and how you will do to prove this by Word of Mouth, I cannot ſee how it can be done; for when a Treaty comes into Articles and Writing, the Treaty by Word of Mouth is at an End without the Writing is produced.

Mr. *Hugg*. I was going to explain myſelf, and was over-ruled.

Mr. Juſt. *Page*. When once Articles are come to be a Conveyance, except it is to explain that Conveyance, and except it is to diſcover ſome Fraud even in the Conveyance when given, it cannot be ſpoke to.

Mr. Baron Carter *being gone out of Court, now returned, and Mr. Juſtice* Page *took notice to him of what had paſſed in his Abſence.*

Mr. *Huggins*'s Aim is to ſhew, that Mr. *Gybbon* was ſole, intire, acting Warden; and that no Act of *Gybbon*'s ſhould affect him; and had the late Act of Inſolvency read, and thought to have read the Schedule, but that could not be read. Mr. *Huggins* aſked who brought in that Schedule, and aſked Mr. *Tanner*, whether Mr. *Gybbon* brought in that Return as Deputy or not; who ſaid that he did not know who was Warden, but that *Gybbon* was the proper Officer: Now *Huggins* carrying this Matter further, would have *Gybbon* appear to be his Deputy, and has now called *Jeffreys* to prove that Deputation. *Jeffreys* ſays, that it was in Writing, and I could not allow *Jeffreys* to give in Evidence what was in Writing. *Huggins* ſaid in Anſwer, that there was no Counterpart, and that *Gybbon*'s Widow had ſuch Appointment. I ſubmit it if it was not his Act and Deed, if Mr. *Gybbon* allowed of it.

Mr. *Hugg*. My Lord, it is only a Receipt.

Mr. *Jeffreys*. My Lord, it was a Receipt for 1000*l*. and no Agreement.

Mr. *Hugg*. Mr. *Gybbon* agreed with me for 500*l*. *per Annum*; and liking the Bargain made a Depoſit of 1000*l*. and this was all the Writing between us, and in it declared that he was to pay 900*l*. *per Annum*, on Condition of having the Rents of the Houſe and Shops in *Weſtminſter-Hall*, and required a Depoſit of 1000*l*. and a Parole of three Years may amount to a Leaſe or Demiſe.

Mr. Baron *Carter*. At ſix Months End *Gybbon* deſired to have it renewed, and came to the ſubſequent Agreement for 900*l*. *per Annum* for three Years. If the Court could ſee that Agreement, whether it do not amount to a Leaſe, there may be a Demiſe in it, but how far the Court will lay their Commands to produce it, we ſhall not now determine; it would be very hard to have it out of his Power, and not to admit him to give Evidence.

Mr. Att. Gen. The Law requires the beſt Evidence that is to be given; ſuppoſing that that Writing was loſt, he might be admitted to give Evidence that it was loſt. If it was in the Hands of any Officer of the Crown, and they wanted to be admitted to give Evidence as to the Contents, whether upon giving Evidence, that the Thing was in Being, and in the Hands of a third Perſon, they ſhould give Evidence Parole as to that.

Mr. Juſt. *Page*. Suppoſe a Man receive Money by falſe Tokens, but by ſome Accident it is got into other Hands, and he uſes all the Care and Art he can to get it, and proves that he cannot come at it, it would be hard to convict a Man, if he cannot come at the Writing. It is the ſame in Caſes of Life and Death, by Forgery and falſe Deeds.

Mr. Bar. *Carter*. I agree your Notion is right in Caſes of Civil Actions, for if he can't give ſuch Evidence as the Law gives againſt it, he has a Remedy at Equity; but in this Caſe, where a Man ſtands indicted for Murder, where can he have his Remedy? I am ſure we ſhould be guilty of Murder, if we inſiſted on it; *Huggins* ought to give an Account, that he can't come at ſuch Agreement.

Mr. *Hugg*. Mr. *Jeffreys* ſays, that he applied to Mrs. *Gybbon*, and Mrs. *Gybbon* told him, that it was in the Hands of one *Wilſon*, her Clerk in Court, and he could not tell whoſe Hands it was in.

Mr. *Jeffreys*. I have a Copy of that Writing, which has been in my Hands long before any Conteſt happened to Mr. *Huggins*, for it was written at the ſame Time the Receipt was given.

Mr. Juſtice *Page*. Is it a true Copy?

Mr. *Jeff*. I believe it to be a true Copy, and that there has been no Alteration made in it.

The Copy of the Writing read —— And it appeared to be witneſſed by Mr. Jeffreys, *the 26th of* June 1723.

Mr. *Hugg*. Have you had any Converſation with Mrs. *Gybbon* lately?

Mr. *Jeff*. Mrs. *Gybbon* came to me about fourteen Days ago.

Mr. *Hugg*. Was there any Talk of any ſuch Thing as a Leaſe or Articles of Agreement?

Mr. *Jeff*. There was no ſuch Word mentioned as a Leaſe or Articles of Agreement.

Mr. *Hugg*. Do you know of any Articles of Agreement?

Mr. *Jeff*. I don't believe there was any, for I was very converſant with Mr. *Gybbon*, but never heard him aſk after them.

Mr. *Hugg*. How long did *Gybbon* continue in that Office?

Mr. *Jeff*. Three Years.

Mr. Att. Gen. What do you mean by that Office; did he continue to act for thoſe three Years?

Mr. *Jeff*. He did, and one Year longer, which I apply'd to Mr. *Huggins* for him to do.

Mr. Juſt. *Page*. You was preſent at the ſettling of the Account between Mr. *Huggins* and Mr. *Gybbon*: at the Bottom of the Account there are ſome Items that have no Sums to them; pray how did that happen?

Mr. *Jeff*. My Lord, it was not ſettled.

Mr. Juſt. *Page*. Was any Thing mentioned, who was to be at the Charge of Repairs during the four Years?

Mr. *Jeff*. Mr. *Huggins* made a Memorandum at the Bottom of the Paper.

Mr. *Hugg*. It was ſettled at the End of four Years.

Mr. Juſt. *Page*. The Repairs of the Priſon was left a Blank.

Mr. *Hugg*. I anſwer to that, my Lord, that it was ſettled at the End of four Years; Mr. *Jeffreys* was then preſent. Your Lordſhip ſeems to take it for a Leaſe of three Years.

Mr. Juſt. *Page*. It is neither the one, nor the other, either Leaſe or Agreement.

Mr. *Hugg*. My Lord, *Jeffreys* ſaid there was no other Agreement.

Call George Welland. (*Who was ſworn.*)

Mr. *Hugg*. When did *Gybbon* enter upon his Office?

Mr. *George Welland*. Mr. *Gybbon* entered at *Chriſtmas*, 1722, and I was concerned for Mr. *Gybbon* before, and by his Direction acted, and he always paid me my Fees, and I never received any Thing from Mr. *Huggins*.

Mr. *Hugg*. Who bore all Expences relating to the Gaol?

Mr. *Well*. Mr. *Gybbon*.

Mr. *Huggins*. How long did he act?

Mr. *Well*. Mr. *Gybbon* was in four Years and a Half.

Mr. *Hugg*. What do you know about *Arne*?

Mr. *Well*. I was there then, and *Arne* was committed about the Middle of *May*, and at the latter End of *September*, *Hopkins* was ſent into the Country to *Shropſhire*, and I acted till *October*, and I was requeſted by Mr. *Gybbon* to go to the Company of Upholders relating to Mr. *Arne*. He was brought in *May*, and put at the *Vine*, and made his Eſcape, and then grew diſordered in his Senſes. Some of the Priſoners come and brought a Bed of Mr. *Howard*'s, and I ſaw him ſtark naked; and being deſired, he was put in the Strong Room at the Requeſt of the Priſoners.

Mr. *Hugg*. What was done upon your Application to the Company of Upholders?---Mr. *Well*. They took Care of him.

The Witneſs had a Book in his Hand, which he called a Check-Book.

Mr. *Hugg*. Pray give an Account, whether I gave any Direction relating to the Priſoners?

Mr. *Well*. I never ſaw Mr. *Huggins* there but twice, and that was, when the *Prothonotaries* were there.

Mr. *Hugg*. When had you that Book delivered to you?

Mr. *Well*. Two Days before Mr. *Fitch* died; the Book was brought into my Hands, which I continued to act in till Mr. *Bigrave* came in.

Mr. *Hugg*. By the Writing in that Book, I can prove *Hopkins* out of Town. When was *Hopkins* out of Town?

Mr. Juſt. *Page*. I will call *Fulthorpe* to clear up this Matter.

Fulthorpe *was called again.*

Mr. Juſt. *Page*. When was it you ſaw Mr. *Huggins* at the *Fleet* Priſon?

Mr. *Fulthorpe*. It was ſome time before I was diſcharged. It was about a Month before Mr. *Arne* died, and I likewiſe ſaw Mr. *Farrington* at the ſame Time. Mr. *Hopkins* was there, and then came in with *Huggins*.

Mr. Juſt. *Page*. How often did you ſee Mr. *Huggins* there?

Mr. *Fulth*. I ſaw him twice at the Priſon, but once at the Strong Room.

Mr. Juſt. *Page*. What Time of the Day was it you ſaw Mr. *Huggins* there?

Mr. *Fulthorpe*. It was between Eleven and Twelve, and there were there Mr. *Huggins*, Mr. *Hopkins*, and *Barnes*; and I ſaw Mr. *Huggins* walking upon the *Bare*, when *Levings* the Quaker was there, and I believe Mr. *Gybbon* with them.

Thomas Farrington *was again called.*

Mr. Juſt. *Page*. Who was at the Strong Room when you ſaw *Huggins* there?

Mr. *Farrington*. There were Mr. *Huggins*, *Hopkins*, and *Barnes* there.

Mr. *Hugg*. I beg Leave to obſerve, that *Fulthorpe* was diſcharged on the 7th of *September*, and whether I may not be allowed to examine *Welland* again, to know if Mr. *Gybbon* did not give all Orders, and to prove that the conſtant Uſage was not to have the Coroner ſit upon Bodies in *Meſne Proceſs*.

Mr. Juſt. *Page*. You may ask what Queſtions you think proper, for I will ſtay here till To-morrow Morning, to give you an Opportunity of going on with your Defence in your own way.

Mr. *Hugg*. I deſire then, my Lord, he may be asked, whether *Gybbon* did not give all Orders relating to the Priſoners?

Mr. *Well*. He did.

Mr. *Hugg*. Whether the Coroner was called in to ſit upon any Bodies, but in Execution?

Mr. *Well*. We never had the Coroner, but upon Execution.

Mr. *Hugg*. Whoſe Servant was *Barnes*?

Mr.

Mr. *Welland.* Mr. *Gybbon*'s Servant, I saw *Gybbon* pay him Money.
Mr. *Huggins.* Did you ever see me and *Barnes* together?
Mr. *Wel.* I don't believe I ever did.
Mr. *Hug.* At whose Request was *Arne* put in the Strong Room?
Mr. *Wel.* At the Request of the Prisoners.
Mr. Justice *Page.* Name at whose Request he was put in.
Mr. *Wel.* I can't tell.
Mr. Justice *Page.* How came you to know it?
Mr. *Wel.* I was in the Lodge.
Mr. Justice *Page.* Was you then present?——Mr. *Wel.* I was.
Mr. Justice *Page.* Can't you name one of them?
Mr. *Wel.* No, none of them are now in Gaol.
Mr. Justice *Page.* Was not *Farrington* then a Prisoner?
Mr. *Wel.* He was.
Mr. Justice *Page.* How long is it since you was concerned in the Prison?
Mr. *Wel.* In *Michaelmas* 1722, and I know nothing of it before.
Mr. Justice *Page.* Was there not a Benefit to the Warden for Day-Rules?——Mr. *Wel.* Yes.
Mr. Justice *Page.* Who was the Money accounted to for?
Mr. *Wel.* It was accounted for to *Bishop.* The Clerk of the Papers always received the Money, and I have been there several Times at the Payment of Money.
Mr. *Lee.* Was it not usual to give Money for the Liberty of the Rules?
Mr. *Wel.* Mr. *Gybbon* made it a Custom to take Two Guineas for every Hundred Pounds, for the Liberty.
Mr. *Lee.* Do you know of any Money paid to Mr. *Huggins?*
Mr. *Wel.* I don't know any was.
Mr. *Lee.* Was you there when the Strong Room was built?
Mr. *Wel.* I was, and *Arne* was the first Person that was put in.
Mr. *Lee.* I ask you, whether it was all finished?
Mr. *Wel.* I believe it was floored.
Mr. *Lee.* Was it not an arched Vault?
Mr. *Wel.* It was a Kind of a Vault, and there was a Bench in it.
Mr. *Lee.* Where was it situated?
Mr. *Wel.* It was about three Yards from the Dunghill.
Mr. *Lee.* Had *Arne* a Bed there?
Mr. *Wel.* He had a Bed in it.
Mr. *Lee.* Was he not in a naked Condition?
Mr. *Wel.* He was in a naked Condition, which proceeded from his Madness.
Mr. *Lee.* Was that a Place fit for a Man in his Condition to be kept in?
Mr. *Wel.* It was.
Mr. *Lee.* Is there any Place so bad in the Prison?
Mr. *Wel.* There was a worse Place where I lay, called *Julius Cæsar*'s Ward.
Mr. *Lee.* How could it be worse?
Mr. *Wel.* Because many People lay in it.
Mr. *Lee.* Whether Writs were not directed *Deputato*, or *Locum Tenenti?*
Mr. *Wel.* They were.
Mr. *Lee.* Who were the Writs returned by?
Mr. *Wel.* By Mr. *Huggins.*

Call John Browning. *(Who was sworn.)*

Mr. *Huggins.* How long have you known the *Fleet* Prison?
John Browning. I have been a Prisoner there above twenty Years.
Mr. *Huggins.* When any body died in the *Fleet*, except in Execution, was there any Coroner's Inquest?
Mr. *Browning.* Never, but when in Execution. Mr. *Dickson*, who was Clerk of the Papers before *Huggins* came, told me so.
Mr. *Huggins.* My Lord, the Prison being very full, it being against the Time of an Insolvency, the Prisoners grew very riotous, and Mr. *Gybbon* could not come in, so that there was no Place but the Strong Room to put *Arne* in.

Call Mr. Samuel Green.

Mr. *Huggins.* What was the State of the Prison, and the Condition of it in 1725?
Mr. *Green.* I was had in in *February* 1724, and came out the latter End of *June* 1725, and I apply'd to Mr. *Gybbon* in *February* 1724 for a Room; Mr. *Gybbon* said he could not help me to one; then I apply'd to the Prisoners, and gave a Guinea and a Half to them for one.
Mr. *Huggins.* Was there a Court of Inspectors?
Mr. *Green.* Yes, and I was one of them, and every Prisoner that came in paid 5*s.* in order to apply to the Court of Common Pleas to regulate the Fees.
Mr. *Huggins.* You did place People in Rooms. Did you punish any Prisoners?-----Mr. *Green.* I can't say we did.
Mr. *Huggins.* Did the Warden dare to come in?
Mr. *Green.* He did not.
Mr. Justice *Page.* Could the Prisoners set open the Gates?
Mr. *Green.* They could not set open the Gates, because there was a Turnkey.
Mr. *Huggins.* Did Mr. *Gybbon* offer to come in?
Mr. *Green.* He did.

Call Mr. William Howard.

Mr. *Huggins.* Did you know *Edward Arne?*
Mr. *Howard.* Mr. *Arne* came in about three Weeks before I went out, and he was in the same Room where I was, and wanting some Goods, *Arne* offered me much more than I thought they were worth; for which Reason I did not apprehend him to be in his right Understanding.
Mr. *Huggins.* Did you desire him to bring some Friend?
Mr. *Howard.* I think I might desire him to bring some Friend.
Mr. *Huggins.* How much might he offer?
Mr. *Howard.* He offered me Nine Guineas, but I took Three, when I sold them to his Friends.

Call Mr. Daniel Woodcock.

Mr. *Huggins.* What do you know of *Edward Arne?*
Mr. *Woodcock.* He came into the *Fleet* Prison in 1725, and I was a Prisoner a Year and a Half before that, in *July* 1723, and continued there till *September* 1725: and I remember *Arne*'s being there some time before I was discharged.
Mr. *Huggins.* Was you there when he was carried into the Strong Room?
Mr. *Woodcock.* I was.
Mr. *Huggins.* Was you in the Cellar, when he was taken from thence?
Mr. *Woodcock.* I was upon the Stairs, when he was carried into the Strong Room: He lay up and down in the Goal in the Common-Hall and Cellar, till he was carried into the Strong Room, and he was in it till I came away.
Mr. *Huggins.* Was you ever in the Strong Room?
Mr. *Woodcock.* I was.
Mr. *Huggins.* Do you remember the building of it?
Mr. *Woodcock.* I do.
Mr. *Huggins.* How near to the Laystall and Dunghill is it?
Mr. *Woodcock.* Within eight or ten Yards.
Mr. *Huggins.* Are there any Lights?
Mr. *Woodcock.* There is a Place to put in Drink at, on the Side of the Door.
Mr. *Huggins.* What is the Wall made of?
Mr. *Woodcock.* Lime and Brick, as other Walls are.
Mr. *Huggins.* How long was it finished before *Arne* was carried in?
Mr. *Woodcock.* I can't be certain.
Mr. *Huggins.* Did you see *Arne* let out at any time?
Mr. *Woodcock.* I saw him let out, and he run about stark Naked.
Mr. *Huggins.* Did you ever see him naked before he was put in there?
Mr. *Woodcock.* Nd.
Mr. *Huggins.* Did you ever see me at the Prison?
Mr. *Woodcock.* Yes, when the Prothonotaries were there.
Mr. *Huggins.* Did you think you should have known, when I came there?
Mr. *Woodcock.* It was as well known, as if the King had made a publick Entry.
Mr. *Huggins.* Was it not for the Prisoners Security to have *Arne* put there?------Mr. *Woodcock.* I think it was.
Mr. *Huggins.* Who sold *Arne* his Goods?
Mr. *Woodcock.* Captain *Howard* sold *Arne* his Goods.
Mr. *Huggins.* My Lord, I must observe that the Court of Inspectors punished Prisoners. Did not the Inspectors punish their own Prisoners?
Mr. *Woodcock.* Yes, they put them in the Stocks.
Mr. *Huggins.* Could Mr. *Gybbon* come into the Prison?
Mr. *Woodcock.* He could not.
Mr. Justice *Page.* Why then did you not all go out of Prison?
Mr. *Huggins.* Did not the Court of Inspectors dispose of Rooms?
Mr. *Woodcock.* I can't say.
Mr. *Huggins.* Did you see *Barnes* carry *Arne* to the Strong Room?
Mr. *Woodcock.* I saw *Arne* as he was going to the Strong Room with *Barnes*; and there was a Complaint made to the Court of Inspectors; but not about this Man, but about others.
Mr. *Huggins.* Was he a quiet Man?
Mr. *Woodcock.* I saw no other, than his running about like a Madman.
Mr. *Huggins.* How many Days was *Arne* in the Strong Room before you was let out of Prison?
Mr. *Woodcock.* I was let out about the 4th or 5th of *September*, there was an Application made to the Court of Common Pleas, and I made an Affidavit against *Barnes.*

Call Mr. Samuel Humphrys.

Mr. *Huggins.* Was not you Steward of the Court of Inspectors?
Mr. *Humphrys.* I was Steward for some considerable Time.
Mr. *Huggins.* When was the Court first erected, and upon what Occasion?
Mr. Baron *Carter.* Mr. *Huggins*, how can you apply this, I can't apprehend. Mr. *Humphrys*, what do you know of *Arne* or the Strong Room?
Mr. *Humphrys.* Mr. *Arne* was a Prisoner there, when I was there first.
Mr. Baron *Carter.* Where was he when he came first?
Mr. *Humphrys.* A Person of his Name came there, whom I knew, and I went with him to see Mr. *Arne*, and he lived intemperately. This Gentleman, after he had been there, had supplied him with Money, which he spent in Liquors; and after some time he was much altered in his way, and I saw him one Day walking with his Hat and Wig off in the Rain, and took Notice of it; and after that he proceeded to further Extremities, and took up a Brick-bat, and throwed it upon the *Bare.*
Mr. Justice *Page.* Do you believe he had any Design against any body?
Mr. *Humphrys.* I believe he had not.
Mr. Justice *Page.* Did he ever hit any body?
Mr. *Humphrys.* I do not know that he did, but we had apprehensions, that he might, after being in that Condition; he was an Object of great Compassion.
Mr. *Huggins.* What was his Behaviour?
Mr. *Humphrys.* His Behaviour was such, that he was not fit for a Bed-fellow.
Mr. *Huggins.* Do you know any Thing of his being put into the Strong Room?
Mr. *Humphrys.* Before he was put into that Place I was discharged.
Mr. *Huggins.* Do you remember that you saw me there?
Mr. *Humphrys.* I don't remember I saw you there, except when the Prothonotaries were there.
Mr. *Huggins.* Was that Room built when you was there?
Mr. *Humphrys.* According to the best of my Memory, that Room was built while I was there.
Mr. *Huggins.* Was it not a Stable before?
Mr. *Humphrys.* There was a Stable, but I don't apprehend it was built on that Spot.
Mr. *Huggins.* Was you present at any Time, when the Prisoners desired to have *Arne* put into the Strong Room?
Mr. *Humphrys.* I do not know it; it was after that I came away.
Mr. *Huggins.* Did *Gybbon* dare to come into the Prison without Leave of the Inspectors?
Mr. *Humphrys.* Mr. *Gybbon* was very unwilling to come in, and I believe the Reason was, he could not come in with any Safety. Mr. *Gybbon* sent one Day to some Gentlemen of the Master Side to know, if he might venture with Safety to the *Fleet* Prison, for that he had a mind to see the Repairs; upon which Answer was returned, that he might come in; and Mr. *Gybbon* came in, and I went about with him.
Mr. *Huggins.* I desire he may be asked, whether, if any Man was injured, would they not have complained of it?
Mr. *Humphrys.* I was there when *Arne* came in, and discharged before he was put in the Strong Room.

Call

Call Mr. Thomas Dean.

Mr. *Huggins.* Did you see me in the Prison during the Time Mr. *Arne* was there?

Mr. *Dean.* During the Time I was there, which was till the 12th or 14th of *September*, you was not there; I was discharged on the 7th, but stay'd a Week after.

Mr. *Huggins.* Was it the Opinion of the Prisoners that Mr. *Arne* should be confined?

Mr. *Dean.* It was.

Mr. *Huggins.* Who provided him Victuals?

Mr. *Dean.* One Mr. *Louden* found him in Meat and Drink, and he was allowed for it. I have seen Mr. *Louden* in the Room.

Mr. *Huggins.* Who kept the Key of the Strong Room?

Mr. *Dean.* I don't know who kept the Key.

Mr. *Huggins.* Did you see *Arne* there?

Mr. *Dean.* I have seen *Arne* in the Strong Room.

Mr. *Huggins.* When was he carried there?

Mr. *Dean.* He was committed to the Strong Room in *July*, or the Beginning of *August*.

Mr. *Huggins.* Did you see me with *Gybbon?*

Mr. *Dean.* I went round the *Bare* when Mr. *Gybbon* was in the Prison, and was upon the *Bare* with him.

Mr. Att. Gen. Did not *Gybbon*'s Servants come in?

Mr. *Dean.* They did, and *Gybbon* came to Chapel.

Mr. Att. Gen. Whereabouts is the Chapel?

Mr. *Dean.* The Chapel is within the Walls of the Prison.

Mr. Att. Gen. If Mr. *Gybbon* dare to venture to come to Chapel; how came he not to come at other Times?

Mr. *Huggins.* Please to ask, whether, if between the Hours of Ten and Twelve I had been there, I must not have been seen?

Mr. *Dean.* Captain *Pattison* and others went round the Prison with Mr. *Gybbon.*

Mr. *Huggins.* The Question is, If I had been there, whether you would not have seen me?

Mr. *Dean.* I should.

Mr. *Huggins.* Had not *Arne* a broken Constitution?

Mr. Baron *Carter.* Mr. *Huggins*, I cannot admit you to go into that Evidence; I don't know what Advantage it will be to you, you are going to prejudice yourself; for if he had a broken Constitution, there was less Reason to put him into the Strong Room.

Call Mr. John Louden.

Mr. *Huggins.* My Lord, be pleased to ask Mr. *Louden*, whether he had the Care and Custody of Mr. *Arne?*

Mr. Justice *Page.* Answer that Question.

Mr. *Louden.* I knew Mr. *Arne* before he came to Prison, I had some Acquaintance with him; he came into Prison about the latter End of *June*, and some Gentlemen spoke to me to have Mr. *Arne* table with me, and he allowed me 5*s. per* Week; but the Gentlemen grew uneasy at his Dining with them, because that he was something out of Order; and some Time after growing worse, the Gentleman with whom he lay quarrelled with him, and I could not afford to board him any longer, he not being able to pay me; and after he was turned from my Table, some of the Upholders Company came and desired me to dine him as usual; and every Morning I carried him a Breakfast, and a Plate of hot Victuals and Drink, and I had the Key of the Room in two or three Days after he was put in.

Mr. Justice *Page.* How came you by the Key?

Mr. *Louden.* Sometimes it was Half an Hour, sometimes an Hour before I could find the Officer, and I said, if they would not let me have the Key, I would not furnish him with Victuals.

Mr. Justice *Page.* You had the Liberty of going in, could you let him out?

Mr. *Louden.* Though I had the Key, and had the Liberty of going in, I had no Power to let him out. He was never out, from the Time he was put in, but once, and that was when some Servants of the Upholders Company came to see him, and then *Barnes* locked him up again; and when he was out he was stark naked, and run into the Chapel with the Feathers all about him, and I went to take him to carry him in again, but he was very sturdy, and would not let me.

Mr. *Huggins.* In all the Time you had the Key, and the Custody of him, which was from the third Day after his going into the Room, till three Days of his coming out, did you see me in the Prison?

Mr. *Louden.* I did not.

Mr. *Huggins.* Do you think you should, if I had come?

Mr. *Louden.* Yes.

Mr. *Huggins.* If I had been in the House, should you have seen, or heard of it?---Mr. *Louden.* I should.

Mr. *Huggins.* Did any-body sit up with Mr. *Arne?*

Mr. *Louden.* There was somebody sat up with him a few Nights before he died.

Mr. *Huggins.* I submit it to you, my Lord, whether I shall produce the People of the Upholders Company that sat up with him.

Mr. Justice *Page.* That will be of no great Use to you.

Mr. *Huggins.* Was there a Court of Inspectors, who governed the Prisoners?---Mr. *Louden.* Yes, there was.

Mr. *Huggins.* Do you remember you saw Mr. *Gybbon* there then?

Mr. *Louden.* No.

Mr. *Huggins.* Did the Prisoners dispose of their Rooms?

Mr. *Louden.* Yes.

Mr. Baron *Carter.* I don't understand very well what way you propose to make your Defence; if Mr. *Gybbon* had the sole Power, then the Court of Inspectors could not; first Mr. *Huggins* is not concerned, because *Gybbon* was; and then he could not be concerned, because the Court of Inspectors was. Mr. *Huggins* I take to be Warden, and *Gybbon* Deputy-Warden.

Mr. Attorney-General. What kind of a Place is the Strong Room?

Mr. *Louden.* It is a Brick-wall, and arched over with Bricks, and the Floor is boarded, and at that Time a Bench went across the Room. There is a Hole over the Door, with four or five Iron Bars, and a Hole big enough to put a Quart-pot in by the Side; it was a new built Room, about six or eight Weeks before *Arne* was put in, there was no Chimney, Fire-place, nor any Convenience to ease Nature.

Mr. Att. Gen. Was it not the Occasion of his Death?

Mr. *Louden.* It was possible it might. I believe it might do him Prejudice as to his Health.

Mr. Att. Gen. Did it hasten his Death?

Mr. *Louden.* I do not know but it might; I believe it did hasten his Death.

Mr. *Att. Gen.* Who gave you the Key?

Mr. *Louden.* The Turnkey; and I restored it to him again.

Mr. Att. Gen. As you came to take charge of it, did you always keep the Key?---Mr. *Louden.* Sometimes I had it, and sometimes they had it.

Mr. Justice *Page.* Do you believe you could have lived there six Weeks, if you had been put in that Room?

Mr. *Louden.* I don't believe I could.

Call Morgan Gwyn.

Mr. *Huggins.* Was you a Prisoner all the while Mr. *Arne* was there?

Mr. *Gwyn.* Yes.

Mr. *Huggins.* Did you see me in the House during that Time?

Mr. *Gwyn.* I did not hear that you had been in the House all the Time he was a Prisoner there, nor did I see you.

Mr. *Huggins.* Do you think if I had come, you should have seen me?

Mr. *Gwyn.* I do think I should.

Mr. *Huggins.* My Lord, I have Witnesses to prove that I was in *Hampshire* from the Beginning of *September* till the Middle of *September*; that one Part of the Time that *Hopkins* and myself are said to be at the Strong Room I was out of Town, and another Part that *Hopkins* was out of Town.

Call William Huggins.

Mr. Justice *Page.* You are Son to the Prisoner?

William Huggins. I am, my Lord; I have a House in *Hampshire*, and I remember by several Circumstances, that my Father came there the 1st of *September*, and continued till the 14th or 15th.

Mr. *Huggins.* Was I from your House during that Time?

William Huggins. Neither my Father nor myself were; that being the long Vacation, my Father was absent from his Business, and was out of Town at Sir *George Oxenden*'s.

Call Richard Smith.

Mr. *Huggins.* I desire he may be asked, my Lord, whether he saw me in *Hampshire*, in 1725, at my Son's?

Mr. *Smith.* My Lord, I saw Mr. *Huggins* in *Hampshire* about the 14th or 15th of *September* in that Year; and he was likewise there some Time in *August*.

Mr. Justice *Page.* Was Mr. *Huggins* twice there in that Summer?

Mr. *Smith.* He was there for a great many Days at one Time.

Mr. Justice *Page.* Did he go up to *London*, and come down again?

Mr. *Smith.* I cannot say whether he did or not.

Mr. Justice *Page.* Did he come up and down several Times?

Mr. *Smith.* He was constantly there for some Days.

Mr. Justice *Page.* What are you?

Mr. *Smith.* I am Tenant to the Estate which Mr. *Huggins* purchased.

Call Robert Knight.

Mr. *Huggins.* Do you know of my being at my Son's House in *Hampshire*, in 1725?

Mr. *Knight.* You was there between the 4th and 11th of *September*, and staid fifteen Days.

Mr. *Huggins.* When did I return?---Mr. *Knight.* The 15th.

Mr. *Huggins.* Was I there in *August* too?

Mr. *Knight.* You was there between the 9th and 14th, and stayed seven Days.

Call Charles Bird.

Mr. *Huggins.* Do you know of my being at my Son's House, in *Hampshire*, in 1725?

Mr. *Bird.* You was there in *August*, 1725, about the 7th, but cannot say how long you stayed there; then you came down on the 1st of *September*, and returned the 15th of the same Month.

Mr. *Huggins.* My Lord, I went from thence into *Berkshire.*

Call James Green.

Mr. *Huggins.* Did you see me in *Hampshire* at my Son's in 1725?

Green. I was a Servant then, and lived in *Hampshire* at the same Time; and you came there on the first of *September*, and continued till the Eleventh; and in the same Year you was there in *August*.

Call John Tucker.

Mr. *Huggins.* Who are you Servant to?

Tucker. To Sir *George Oxenden.*

Mr. *Huggins.* Was I any Time in *Berkshire* in 1725?

Tucker. You was there in *September*, 1725; and on the 17th I carried you from *Wittenham*, in *Berkshire*, to *Henley upon Thames.*

Mr. *Huggins.* Did you carry me any further?---*Tucker.* No.

Mr. Justice *Page.* When did Mr. *Huggins* come there?

Tucker. I did not mind that; I know the Time when I carried him from thence, but cannot tell when he came there.

Sir George Oxenden.

Sir *George Oxenden.* My Lord, Mr. *Huggins* said he came from his Son's about the 15th of *September*, and came to *Henley* about the 17th. I remember very well that Mr. *Huggins* was at my House in *Berkshire*, because Sir *Cecil Bishop* being there (it was the Day before or after *Watlington* Fair, which was the 18th), Mr. *Huggins* offered to purchase a little Farm of him, which Mr. *Huggins* said he would make a Present of to his Son, which, I thought, was a kind, good-natur'd Act: He went away on the 17th or 18th, and I rather believe it was the 18th, because on that Day I went to *Watlington* Fair.

Mr. Justice *Page.* How long did Mr. *Huggins* stay at your House?

Sir *George Oxenden.* Mr. *Huggins* was not there above two Days, and said that he came out of *Hampshire.*

Call Daniel Hopkins.

Mr. *Huggins.* I must observe, my Lord, the Witnesses said, that Mr. *Hopkins* was with me, that he was present at the Strong Room.

Mr. Justice *Page.* Mr. *Hopkins*, pray when did you go out of Town?

Mr. *Hopkins.* I went in the *Oxford* Coach on *Monday*, the 27th of *September*, 1725, and got to *Oxford* that Night; and on *Tuesday* took the *Worcester* Coach to *Moreton in the Marsh*, and went from thence to a Place called *Barton*, to one Mr. *Oakley*'s, a Relation's.

Mr. *Huggins.* When did you return?

Mr. *Hopkins.* I came back on the 14th of *October* in the same Year.

Mr. *Huggins.* I desire, my Lord, he may be asked, if ever he saw me in the Prison in the Month of *September?*

Mr. *Hopkins.* No, nor in *October*; for you was not come back on the 19th.

Mr. *Huggins.* Was you at the Door of the Strong Room with me?

Mr. *Hopkins.* No, I was there by myself.

Mr. Serj. *Cheshire.* Do you know Mr. *Farrington?*—Mr. *Hopkins.* Yes.

Mr. Serj. *Cheshire.* Don't you remember that he was there with you?

Mr. *Hopkins.* I don't remember any Company was there then.

Mr. Serj. *Cheshire.* Was *Barnes* there?——Mr. *Hopkins.* No.

Mr. Serj. *Cheshire.* Who opened the Door?

Mr. *Hopkins.* I cannot tell.

Mr. Serj. *Cheshire.* Did you see Mr. *Arne?*

Mr. *Hopkins.* I saw him there; he was naked; he had something about him white, but I cannot say what.

Mr. Serj. *Chesh.* Had you no Discourse about this Man?

Mr. *Hopkins.* No.

Mr. Serj. *Chesh.* Did not Mr. *Gybbon* send you to Mr. *Huggins* about *Arne?*———Mr. *Hopkins.* No.

Mr. Serj. *Chesh.* When you was at the Door, Did you not whisper to any one?——Mr. *Hopkins.* No.

Mr. Serj. *Chesh.* Whose Servant was *Barnes?*

Mr. *Hopkins.* He was Servant to *Gybbon.*

Mr. Serj. *Chesh.* Who named him a Watchman?

Mr. *Hopkins.* He was a Watchman when I came there; and I saw *Gybbon* pay him several Times.

Mr. Serj. *Chesh.* Who was you appointed by?

Mr. *Hopkins.* I was recommended to Mr. *Gybbon* by Mr. *Huggins.*

Mr. Serj. *Chesh.* Did you do any Business for the Prisoner?

Mr. *Hopkins.* Yes, and attended him constantly at his House every Morning; but I never had any Thing for that Trouble.

Mr. Serj. *Chesh.* Did you buy your Place?—Mr. *Hopkins.* No.

Mr. Serj. *Chesh.* Did you take all those Journeys to Mr. *Huggins* for nothing?

Mr. *Hopkins.* He had seldom any thing to do for me; I was in the Morning generally with him about seven o'Clock, and left him by nine.

Mr. Serj. *Chesh.* Do you know Mrs. *Le Pointz?*—Mr. *Hopkins.* Yes.

Mr. Serj. *Chesh.* Had you no Discourse with her about *Arne* as to his Condition?——Mr. *Hopkins.* I do not remember I had.

Mr. Serj. *Chesh.* Mr. *Hopkins*, pray consider with yourself, and answer directly, whether or no Mrs. *Le Pointz* did not desire you to speak to Mr. *Huggins* about *Arne*, and you said you would, and that you came to her after, and told her, that you had spoke to Mr. *Huggins*, and that he said it was no Business of his? Pray consider, and recollect yourself.

Mr. *Hopkins.* I cannot recollect it.

Mr. Serj. *Chesh.* How did *Arne* come into the Strong Room?

Mr. *Hopkins.* I do not know.

Mr. Serj. *Chesh.* How long was he there?—Mr. *Hopkins.* Six Weeks.

Mr. Serj. *Chesh.* How long was it in that Time before you heard he was there?———Mr. *Hopkins.* It could not be long.

Mr. Serj. *Chesh.* How long after the Beginning of the six Weeks was it that you saw him there?

Mr. *Hopkins.* I cannot tell how long; it could not be long.

Mr. Serj. *Chesh.* Was there any Matter in the Gaol that you did not acquaint Mr. *Huggins* with?

Mr. *Hopkins.* I seldom acquainted him with any of the Transactions.

Mr. Serj. *Chesh.* Do you remember you acquainted him with this Man's being in the Strong Room?——Mr. *Hopkins.* I do not know I did.

Mr. Serj. *Chesh.* Did you hear any Complaint of his being in that Place?

Mr. *Hopkins.* I cannot say that I heard any Complaint of his being there.

Mr. Serj. *Chesh.* I have in my Hand, Mr. *Hopkins*, an Examination of your's, and I would have you consider with yourself, and I will ask you one Question or two. Do you think the Keeping the Man in that Place was the Cause of his Death?

Mr. *Hopkins.* I had been very credibly informed of the Indisposition of *Arne* before.

Mr. Serj. *Chesh.* Upon the Oath you have taken, was not *Arne's* being confined in that Place the Occasion of his Death?

Mr. *Hopkins.* I cannot say, upon the Oath that I have taken, that it was, as he was mad and sick before he was put in the Strong Room. I believe the Madness was the Occasion of his Death.

Mr. Att. Gen. How long after Mr. *Arne* was confined was it that you saw him?

Mr. *Hopkins.* I cannot say how long; I believe it was in the Month of *September.*

Mr. Att. Gen. Did not you see him more than once?

Mr. *Hopkins.* I do not remember.

Mr. Att. Gen. I ask you again, Did not you see him more than once?

Mr. *Hopkins.* I do remember I saw him a second Time lying on the Floor, and the upper Part of his Body was then naked.

Mr. Att. Gen. Was any Prisoner in the *Fleet* confined in such a Strong Room before?

Mr. *Hopkins.* None was put in there before, nor in any such.

Mr. Att. Gen. What Kind of Room was it?

Mr. *Hopkins.* The Roof was arched; it was built even with the Ground, and built not long before *Arne* was put in there.

Mr. Att. Gen. Did you observe the Condition of the Wall?

Mr. *Hopkins.* The Room was damp.

Mr. Att. Gen. What Officer was you belonging to the *Fleet?*

Mr. *Hopkins.* I was Clerk of the Inquiries.

Mr. Att. Gen. Did not you go to Mr. *Huggins* frequently?

Mr. *Hopkins.* I went to Mr. *Huggins* three or four Times a Week.

Mr. Att. Gen. What did you go to Mr. *Huggins* upon?

Mr. *Hopkins.* I went to him about his own Business.

Mr. Att. Gen. Did you never attend him on Mornings about the Business of the Prison?

Mr. *Hopkins.* I have acquainted him with some Things.

Mr. Att. Gen. Did not you acquaint him with Matters of Consequence in the Prison?

Mr. *Hopkins.* I did, if they were Matters of any Consequence, or extraordinary.

Mr. Att. Gen: Did not you acquaint Mr. *Huggins* with Mr. *Arne's* being there?

Mr. *Hopkins.* The Reason is why I did not, that I went out of Town on the 27th of *September*, and did not return till the 14th of *October.*

Mr. Att. Gen. I ask you, Whether you believe in your Conscience you did acquaint Mr. *Huggins* or not?

Mr. *Hopkins.* It is very likely I did, if I was desired.

Mr. Att. Gen. Do you believe in your Conscience you did, if you was desired?——Mr. *Hopkins.* Why, I verily believe in my Conscience I did, if I was desired.

Mr. Att. Gen. How do you know *Arne* was mad?

Mr. *Hopkins.* I heard that he was.

Mr. Att. Gen. Would not his own Room have been a sufficient Confinement?——Mr. *Hopkins.* I believe it would.

Mr. Att. Gen. Did you receive any Order from Mr. *Huggins* for the Relief of this Man?——Mr. *Hopkins.* I do not know that I did.

[Upon which his Examination, which was taken before *Edward Hughes*, Esq. upon Oath, was read, to shew his Prevarication.]

Mr. Justice *Page.* I ask you, Whether in the Month of *September*, there was not a great many People discharged out of Custody, and whether there was not any one Room that became empty?

Mr. *Hopkins.* I believe there was, for fifty or sixty Persons were then discharged; but I had nothing to do with the Affair of Rent.

Mr. Justice *Page.* Was there any Room better than the Strong Room empty?—Mr. *Hopkins.* Any Room was better than the Strong Room.

Mr. Justice *Page.* How long was *Arne* continued there after the 7th of *September?*—Mr. *Hopkins.* He was continued there till he died.

Mr. Justice *Page.* Was there any Room in the House so bad as that?

Mr. *Hopkins.* I do not know of any.

Mr. Justice *Page.* When so many were discharged, might there not be a Room that *Arne* might be put in?

Mr. *Hopkins.* I do not remember any Disposition of Rooms.

Mr. Justice *Page.* Was there no Places empty where the fifty or sixty lay?———Mr. *Hopkins.* Yes.

Mr. Justice *Page.* Was there not a Room then for one Man to lie in?

Mr. *Hopkins.* Yes.

Mr. Att. Gen. Had you any Discourse with *Bishop* about *Arne?*

Mr. *Hopkins.* I do not remember he ever spoke to me about him.

Mr. Att. Gen. Did Mr. *Gybbon* never speak to you in the Presence of *Bishop*, to speak to Mr. *Huggins*, that some Care might be taken of *Arne?*

Mr. *Hopkins.* He did not.

Mr. Att. Gen. Did Mr. *Gybbon* order you to speak to Mr. *Huggins* to get him into *Bethlehem*, and to speak to Mr. *Taylor* to get him in?

Mr. Justice *Page.* I must observe, that Mr. *Huggins* owned that he only did it (speaking of *Arne's* being got into *Bethlehem*) as a Friend, and not Quatenus Warden.

Mr. *Lee.* Mr. *Hopkins.* I ask you, Whether you at any Time spoke to *Gybbon*, or any one else, to give Mr. *Huggins* Notice of *Arne's* being in the Strong Room?——Mr. *Hopkins.* I do not know that I did.

(Call Thomas Smith.)

Mr. *Huggins.* What Resolution did the *Upholder's* Company come to, as to the discharging *Arne* out of the *Fleet?*

Smith. He was Servant to the Company of *Undertakers* at *Exeter Change.*

Mr. Justice *Page.* Do you know if *Arne* was to be discharged, or how?

Smith. Martin and others, Members of the said Company, first arrested him, and he was carried to a Bailiff's in *Hare-Court*, and lay there a considerable Time, and then was carried to the *Fleet*; and upon an Application to the Company of *Upholders*, they agreed to discharge him, and get him into *Bethlehem.*

Mr. *Huggins.* My Lord, he was a very sickly Man before he came there; and I desire the Witness may tell you what Condition he was in.

Smith. In the Month of *April*, 1725, he was in a weakly Condition.

Mr. Justice *Page.* Mr. *Huggins*, I cannot admit you into that Evidence.

Mr. *Huggins.* I desire to call People to his Character.

(Call Mr. Thomas Arne.)

Mr. *Huggins.* He was chief Mourner to *Arne*; I desire he may acquaint you what Relation he was to him.

Mr. *Arne. Edward Arne* was my Uncle's Son: I know that he was in Prison; he lay some Time at an Officer's House, and from thence was removed to the *Fleet.*

Mr. *Huggins.* When did you go to him?

Mr. *Arne.* A Week or ten Days before he died I saw him there; I enquired for him, and they said he was locked up, and directed me to go to Mr. *Louden*, Mr. *Jerningham's* Man.

Mr. *Huggins.* Was the Door shut?

Mr. *Arne.* It was padlocked; he lay down at the Side of the Room near the Door, and I found some Rags about him. He knew me, and took me by the Hand; he was then very ill, and could hardly speak. I asked him, what was become of his Ring, Seal, Gold-headed Cane, and other Things of Value? He spoke very faint; I with much Difficulty understood by a Word now and then, that one *Searls*, a Mercer, had got some of them; and afterwards upon Enquiry found, that he had his Gold Watch, which he had lent him fourteen Guineas upon.

Mr. *Huggins.* Did he make any Complaint to you?

Mr. *Arne.* He was not capable of complaining, being so very weak.

Mr. *Huggins.* What State of Health was he in before he came there?

Mr. *Arne.* I believe he was in a wasting Condition before he was arrested

Mr. Att. Gen. Did you hear any Complaint as to his being in the strong Room?——Mr. *Arne.* By him I did not.

Mr. Att. Gen. At the Time when you came to visit him, was the Room in a Condition for a sick or a well Man?

Mr. *Arne.* I believe it was not fit for a sick or a well Man to be in it.

Mr. Att. Gen. How long do you think you could have lived if you had been confined in that Room?

Mr. *Arne.* I could not have lived six or seven Days, and could not believe any Man alive could be there six or seven Weeks.

Mr. Att. Gen. How often was you there?

Mr. *Arne.* I never saw it but once.

Mr. Att. Gen. Do you think you could have lived there six Weeks?

Mr. *Arne.* I think I could not live six Weeks in the Damp without Fire or Candle.

Mr. *Huggins.* My Lord, I desire to call some Gentlemen to my Character.

Mr. Just. *Page.* That you may do if you think fit.

Sir George Oxenden, *Bart.*

My Lord, I have known Mr. *Huggins* about nine Years, but have been more particularly acquainted with him these four or five Years last past; I never took him to be an ill-natur'd or barbarous Man, and do not believe, willingly, he would do an inhumane Thing to any one.

Sir John Hinde Cotton, *Bart.*

Mr. *Huggins.* Pray give an Account how long you have known me.

Sir *John Cotton.* My Lord, I have known Mr. *Huggins* about four or five Years, and have had Occasion to be a good deal with him. I believe him to be a good-natur'd, humane Man; and believe in my Conscience, he would not have been guilty of the Cruelty laid to his Charge.

Call Robert Viner, *Esq.*

Mr. *Robert Viner.* My Lord, I have known Mr. *Huggins* ever since I can remember any thing at all, he has been concerned for our Family these forty or fifty Years, and I lived with him two Years together; and I take him to be a good-natur'd and humane Man; and, in my Conscience, believe he would not be guilty of a cruel Thing to any Man.

Call John Hedges, *Esq.*

Mr. *John Hedges.* My Lord, I have known Mr. *Huggins* about six Years, and always took him for a good-natur'd and humane Man; and have since had an Opportunity of knowing several Instances of his Generosity and Good-nature without Fee or Reward: I have known him six or seven Years as a general Acquaintance, and he was very good natur'd and humane; and some time since I have known some Instances of great Generosity and Good-nature, merely for the Pleasure of doing Good, without Fee or Reward.

Call John Knight, *Esq.*

Mr. *John Knight.* My Lord, I have known Mr. *Huggins* these eight or nine Years past, and frequently had Opportunities of being in Conversation with him, and I always took him to be, as far as any Man living, from doing any thing that was cruel; and always acted agreeable to the Character of a humane Man; and I am very sorry any such Thing should be laid to his Charge.

Call Christopher Tillson, *Esq.*

Mr. *Tillson.* My Lord, I have known Mr. *Huggins* these five-and-thirty Years, not superficially, but in particular Friendship, and have found him in all Instances a Man unblameable; and I never saw any thing tending to Cruelty or ill Usage; and have always found him so for these thirty-five Years.

Call Major Churchill.

Major *Churchill.* My Lord, I have known him these forty-five Years, and have had frequent Communication with him, and always found him a Friend and a Man of Humanity, despising of Money; there was one Thing, in a most particular Manner, I will acquaint your Lordship of.

Mr. Just. *Page.* I can't admit you into a particular Character, but you may go on with a general one.

Major. *Churchill.* I never thought him capable in Thought, Word, or Deed, of doing a cruel Thing.

Call Thomas Gibson, *Esq.*

Mr. *Thomas Gibson.* My Lord, I have known Mr. *Huggins* for these seven or eight Years past, and found him to act with Good-nature, Integrity, Honour, and Humanity.

The Rev. Doctor Pearce (*Rector of* St. Martin's in the Fields, *now Bishop of* Rochester).

Dr. *Pearce.* My Lord, Mr. *Huggins* is a Vestry man; and I have had more particular Reason to converse with him frequently on that Account, and I never found any Thing in him, that was any way consistent with what is laid to his Charge, and have constantly found him at Church.

Edward Thompson, *Esq.*

Mr. *Thompson.* My Lord, I have known Mr. *Huggins* these seven Years, and have had frequent Experience of Acts of his Friendship and Good-nature, and never discovered any Thing in his Behaviour, but the utmost Good-nature.

Thomas Woodford, *Esq.*

Mr. *Woodford.* My Lord, I have known Mr. *Huggins* many Years. I have been with him both sober and mellow, and never have discovered any Thing barbarous or cruel in him; and I verily believe he could not be guilty of any such Act, if he knew it at all.

Joseph Taylor, *Esq.*

Mr. *Taylor.* My Lord, I have transacted a great deal of Business with Mr. *Huggins*, and found him act with Candor. Sometimes I have been concerned against him, and sometimes with him; and, if ever I had suspected any Thing in him tending to Cruelty, I assure you, my Lord, I would have shunned his Company instead of seeking it, as I have done.

Martin Bladen, *Esq.*

Mr. *Bladen.* My Lord, I have known Mr. *Huggins* many Years, and have lived by him in the Country these eight or nine Years; and the Character that he has had is, that he is a good-natured, humane Man; it has been his whole Business of Life to leave a good Character; and, therefore, I can't believe he would do an ill-natured Act.

John Lade, *Esq. afterwards Sir* John Lade, *Bart.*

Mr. *Lade.* My Lord, I have known Mr. *Huggins* these forty Years, and have seen a great many kind, compassionate Things of him.

Sir Charles Cox, *Knt.*

Sir *Charles Cox.* My Lord, I have known Mr. *Huggins* these forty Years, and have had frequent Dealings with him, and always observed him to be a Man of Charity and Humanity; and I have courted his Company from the good Opinion I have had of him, and don't believe that he would be guilty of any Inhumanity.

Edward Halsey, *Esq.*

Mr. *Halsey.* My Lord, I have known Mr. *Huggins* near thirty Years, and have been conversant with him, and the Observation I have made of him is, that I have found him zealous to do good Offices, where he had no Fee or Reward, and never found him covetous or cruel.

Sir James Thornhill, *Knt.*

Sir *James Thornhill.* My Lord, I have known Mr. *Huggins* for these twenty-five Years, and I was proud of the Honour of his Acquaintance. I have never seen or heard of the least cruel Act that he has done by any one; and if I was to repeat the Instances of good-natured Acts——

Mr. Just. *Page.* Sir, you can't be admitted to do that.

Thomas Martin, *Esq.*

Mr. *Martin.* My Lord, I have known Mr. *Huggins* these thirty Years, and that he has done a great many kind and good-natured Things. I never knew him a vain Man, but that he did it through Good-nature.

Colonel Negus.

Col. *Negus.* My Lord, I have known Mr. *Huggins* a great many Years, and always looked upon him to be a good-natured-Man; and that it was impossible to think he could do so ill-natured an Act, as laid to his Charge.

—— Campbell, *Esq.*

Mr. *Campbell.* My Lord, I have known Mr. *Huggins* from fifteen to twenty Years, and always found him behave himself with Integrity in his Profession, as a good-natured Man, and always thought his Genius far superior to do an ill-natured Thing. I always had, and still have a good Opinion of him.

Mr. *Huggins.* My Lord, it appeared to your Lordship, that Mr. *Gybbon* was the Acting-Warden, and that *Barnes* was his Servant, not mine. No Argument can be drawn from the Coroners not sitting, the Custom of the Place is otherwise, but as to any Application to get him into *Bethlem*, that, my Lord, can't be applied to me Quatenus Warden, for it would be only in me a good-natured Act: If *Barnes* put him in, he is not my Servant; if so, then the Indictment must fail.

That as to the Witnesses they were Prisoners, and they are natural Haters of their Keepers.

I never went to the Prison, but had a hundred People about me, and I must have been seen by many; there was no Pretence of using any Barbarity to any Man, no Money to be extorted; and when I could no way be benefited by it, no one can think, my Lord, I could be guilty of Murder, when no Benefit or Advantage by it could arrive.

Mr. *Louden*, my Lord, who had the Custody of the Man, and had the Key till three Days before his Death, had never seen me there; and if he that had the Key did not know of my being there, who should? I shewed, my Lord, that I was out of Town in *September*, and *Hopkins* was out of Town till the 14th of *October*, so that it was impossible, that us two could be there together. All the other Witnesses, that have been called against me would not have lain from that Day to this in Prison, had they not lost their Honour, or lost their Designs.

I never saw the Man, nor heard there was such a Prisoner, and to murder a Man for nothing, God Almighty knows there never stood a Man at this Bar with more Innocency than myself.

Mr. Serj. *Cheshire.* It is plain on the King's Side, that a Subject has been murdered; and what Mr. *Huggins* has endeavoured to shew is, that he never acted, but had a Deputy, and that Deputy was accountable, if any body, for he had no Acquaintance of this Thing; your Lordship, has heard the Witnesses, and I don't doubt but will relate the Evidence fully.

The Counsel for the Prisoner objected to Mr. Serjeant Cheshire's *replying.*

Mr. Just. *Page.* I am of Opinion, Brother, you can't reply.

Mr. Serj. *Cheshire.* But I may say something to what has not been given already in Evidence.

Mr. Att. Gen. Mr. *Huggins* endeavours to shew that *Gybbon* was the Acting-Warden. No, my Lord, neither by a Lease or Deputation *Gybbon* could not be appointed Warden.

Mr. Just. *Page.* *Mr. Attorney*, I cannot admit you to enter into any Reply, but if you have any Evidence, you may call them.

Call Elijah Beavis.

Mr. Att. Gen. Was you a Prisoner in the *Fleet*, in the Year 1722?

Mr. *Beavis.* Yes, and I had the Liberty of the Rules, in the Year 1723; and in the Year 1724, I was intituled to be cleared by the Act of Insolvency, but because I could not give the Warden Money enough, was continued till the Year 1725, and I used to see Mr. *Hopkins* at *Pindar*'s, where *Gybbon* kept his Office, and it was generally accepted by every body, that *Hopkins* brought Directions from *Huggins* to *Gybbon* every Day.

Mr. Att. Gen. Have you heard *Hopkins* say, that he had Directions from Mr. *Huggins* to *Gybbon*, and that he came from *Huggins?*

Mr. *Beavis.* I did not hear any particular Directions.

Richard Bishop.

Mr. Att. Gen. Who gave Directions as to the Management of the Gaol?

Mr. *Bishop.* The particular Things were done by *Huggins*'s Directions, but the common Things without.

Call Joseph Johnson.

Mr. Att. Gen. Do you know of any Directions brought from Mr. *Huggins* by Mr. *Hopkins*, to Mr. *Gybbon?*

Mr. *Johnson.* I have heard Mr. *Hopkins* say, that he came from Mr. *Huggins*, and that he bid him come every Morning to him; and that one time Mr. *Huggins* sent word back by *Hopkins*, that I should be locked up.

Edward Hughes, *Esq.* (*a Member of the House of Commons.*)

Mr. Att. Gen. Sir, what have you heard Mr. *Huggins* declare, as to the Acts he did during the time *Gybbon* was his Deputy?

Mr. *Hughes.* My Lord, it appeared to me ——

Mr. Baron *Carter.* Sir, you are not to tell us of what appeared to you, but what you know of your own Knowledge.

Mr. *Hughes.* My Lord, I can't tell how Knowledge should come to me, until it appeared to me. (*After some Pause Mr.* Hughes *went on.*)

My Lord, Mr. *Huggins* was ordered to attend the Committee, and while Mr. *Huggins* was there, he was asked, what Escapes had happened during the Time he was Warden? He said, he could not give an Account of them, there had happened so many; but said, that *Oliver Read* had escaped, and when he was taken, that he Mr. *Huggins* had ordered *Corbett* the Tipstaff to put him in Irons, which were sent for from *Newgate* by his, *Huggins*'s

directions, and owned that he did it by Virtue of his Authority for an Eſcape; this Confeſſion *Huggins* made himſelf, and owned, that he had paid 500*l.* for ſuch Eſcape that *Read* had made.

Mr. Baron *Carter*. Was it Mr. *Huggins* or Mr. *Gybbon* ordered him to be put in Irons?

Mr. *Hughes*. I did not ſay it was Mr. *Gybbon* bid him be put in Irons, but it was Mr. *Huggins*, and that he ordered him to be put in Irons as Warden, and in all Eſcapes he acted as Principal, for he paid 500*l.* for that Eſcape.

Mr. Baron *Carter*. About what time was this?

Mr. *Hughes*. It was upon the firſt Eſcape that *Read* made; it was in the Year 1726, that *Read* got off thoſe Irons, and made his ſecond Eſcape, and was retaken; and then he was put in the Dungeon.

Mr. Baron *Carter*. Was there any particular Time mentioned?

Mr. *Hughes*. I have recollected, and it was in the Year 1726; what points out the Time, is *Read*'s Eſcape.

Mr. Serjeant *Darnell*. That Paper produced by *Jeffreys* amounts to a Leaſe.

Mr. Juſtice *Page*, and Mr. Baron *Carter*. } When ever *an Agreement* is made to make *a Leaſe*, that can never be eſteemed *a Leaſe*.

Proclamation was made to keep Silence.

Mr. Juſtice *Page*. Gentlemen of the Jury, this is an Indictment againſt Mr. *Huggins*, the Priſoner at the Bar, and one *Barnes*, for the Murder of *Edward Arne*. The Indictment is indeed particular; the Indictment takes notice, that *Huggins* was Warden of the *Fleet* the 1ſt of *October*, in the late King's Reign; that he being Warden, had the Government of the Priſoners in the Gaol (that *Barnes* was an Agent of his, who is fled from Juſtice). It ſets forth, Gentlemen, that *Barnes* ſeized upon the ſaid *Arne*, and carried him to a Place, called the *Strong Room*; and that *Huggins* was Aiding, Abetting, and Aſſiſting in carrying him to that Place, and he was continued there the Space of ſix Weeks; that this is a Place of cold Reſtraint, and a Room newly built, made of Brick and Mortar, very wet and unfit to live in; that this *Barnes* did continue him in this Place for ſix Weeks in a moſt barbarous and vile Manner, and not allowed him any Neceſſaries, inſomuch that he had no Chamber-pot, he was without Fire or Fire-place, and only had a little bed. This is the Nature of the Dungeon. It is a Vault arched over, and in the Wall a little Hole big enough to put a Quart-pot in at. It is built over a Common-Sewer adjoining to a Layſtall, where all the Dirt and Filth of the Priſon lies, which made it not only ſo noiſome, but very unwholeſome, that the continuing this Perſon ſo long in this Place was the Occaſion of his Death. That Mr. *Huggins* was acquainted with it, but ſhewed him no Favour; he was not let out, and died in the Middle of *October*. He died, Gentlemen, by this Dureſs of the Priſoner. I will ſay but little to what the Law is in this Caſe; a Priſoner for Debt is only taken like a Diſtreſs, and kept there till he, or his Friends can pay the Debt for him. Impriſonment is no Puniſhment, it is not taken as Part of the Debt; for let a Man lie ever ſo long, his Heirs at Law cannot be exempt from the Debt, but, if they have Effects, are anſwerable for it. He is kept only in ſuch Manner as he may be forth-coming and ſafe; this being the Caſe, he is to be kept in here in a becoming way, as the Warden may be ſafe, and the Priſoner forth-coming, but in no other Degree that the Priſoner ſhould be puniſhed, by any unreaſonable Reſtraint. If this *Arne* was kept in no other way than became the Subject of the King, in that reaſonable Manner, ſo that you may take it, there was no Torture, ill Uſage, or any Act, but ſuch as was fit and decent for Confinement, no Dureſs; then and in that Caſe, though he died there, it will not be Murder.

But if by the Evidence that has been called, it appears that this Room was an unfit Place to lay this Man in, that it muſt be the Means of his Deſtruction, that (being in ſuch Impriſonment as the Gaoler cannot juſtify) will be Dureſs; if they carry that Point, it is Part of the Common Law, the Antient Law, and very rightly obſerved by the Counſel, that it will be Murder. It would be very hard to take away this Law, though in his own Defence; as he was intruſted with the Life of the King's Subject, he was anſwerable for him, and the Coroner's Inqueſt ought to have ſat upon his Body; the Law is ſo much afraid of the Loſs of the Life of a Subject, that the King will have an Enquiry to ſee what is become of the Life of the Priſoner. It was opened by the Counſel for the King, that it was wilfully omitted; on the other Hand, it was urged that this Cuſtom ſeemed to be aſleep, and that it was hard to lay a great Weight, where it had not been ſo long practiſed. Gentlemen, there have been great Numbers of Witneſſes called, and therefore I cannot give it Word for Word, but will repeat as far as is neceſſary.

Mr. *Longlorn* was called to prove the firſt Part of the Indictment, that *Huggins* was Warden; and he proved the Copy of the Letters Patent granted to Mr. *Huggins*, who might act by himſelf or Deputy.

Bigrave gave an Account, that *Huggins*'s Patent bore date on the 25th of *July*, in the 12th Year of the late Queen; that Mr. *Huggins*, though Warden, did not act himſelf, but appointed *Gybbon* as Deputy; and that Securities were taken by *Huggins* not by *Gybbon*, that is to be conſidered in point of Law, that the Act muſt be brought againſt him as Warden, and the making of a Deputy does not diſcharge him of his Duty; in ſeveral Caſes he does not continue anſwerable, for in Civil Caſes the Deputy is anſwerable, therefore the Security is lodged with him. It is a very ſtrong Evidence that the Warden ſtill continues Warden, that he ought to ſee to the Eſcape of Priſoners, for that is not only truſted to the Honeſty of the Warden, but he is to take the beſt Care he can of Eſcapes. He ſays, that *Gibbon* did buy his Place, that he did overſee and look after the Affairs of the *Fleet*, and filled up ſeveral Warrants, but always in *Huggins*'s Name; that he did apprehend that *Barnes* was only a Servant to *Gybbon*, and that *Gybbon*, no doubt, had the immediate Truſt of the Gaol; and that *Barnes* was a Runner to *Gybbon*, and not *Huggins*'s Servant. He agreed what this Place was; that it was arched over; that it was eight Feet wide, eleven Feet long, and nine Feet high; that it was built very little Time before *Arne* was committed there; he could not deſcribe the whole Situation, but gave an Account that it was very nigh the Dunghill and Filth, had no Chimney nor Chimney-place, and had only two little Holes to let the Air in. He gives an Account of *Hopkins*; that he looked upon *Hopkins* to be *Gybbon*'s Servant, beſides that he was Clerk to Mr. *Huggins* at his Houſe in St. *Martin's Lane*, and generally went backward and forward moſt Days to Mr. *Huggins*, and was able to give him an Account of what happened in the Gaol.

Hopkins tells you, he was Clerk of the Inquiries, and that all the Security-Bonds were left with *Gybbon*, but left in Blank; and when he had inquired into the Securities, the Security-Bonds were filled up by *Gybbon*; that *Gybbon* received all the Money, and he heard that *Gybbon* was to pay Four Hundred Pounds *per Annum* for it, but that all went on in the Name of *Huggins*.

Biſhop ſays, that he was Tipſtaff under *Huggins*; that he did pay for his Place, which coſt him Two Hundred Pounds; and that about 1724 or 1725 *Arne* was brought a Priſoner firſt, and was carried to the *Vine*, and there continued about a Month, and afterwards was carried into Priſon, and lay with one *Shaw*, and upon a Quarrel was turned out, and the Strong Room was built at the latter End of the Summer; and it muſt be granted, it was not fit for mortal Man, ſcarce any Beaſt, to be in. Gentlemen, this Room is totally unfit for any Man to be put in; and that it was ſtrongly proved, that from the Nature of the Place, and the Circumſtances of the Weather, it was the Occaſion of his Death; that it was new built, not above three or four Yards from the Dunghill, and that every thing of Nature was done in it; there was no Chair, no Proviſion, only an old Bed. That he ſaw him before running about naked in the common Yard, and upon this did tell *Gybbon* of him, and that it was not fit for the poor Man to be left alone, ſo it was fitter for him to go to *Bethlehem*; and very ſoon after the Man was put into the Strong Room. To go along with Mr. *Huggins*, I muſt take Notice of an Obſervation he made: That it was very unfit for a Man to go naked about where there were Women; and it was fit he ſhould be confined ſomewhere. He (ſpeaking of *Biſhop*) gives ſome Account of *Barnes*, and ſome Account when the Room was built, juſt at the latter End of the Year; that he did hear he was in a very wild Condition; that *Barnes* nor none of them did apprehend *Gybbon* to have the ſole Power; but that *Gybbon* acted by the Authority of Mr. *Huggins*; but that he would apply to Mr. *Huggins* about it, and did aſk the Priſoner if it was not proper to get him into *Bethlehem*; and *Huggins* obſerved it was not Part of the Office of Warden of the *Fleet*, but he might by a friendly Office uſe his Intereſt with Mr. *Taylor*, and that would ſhew him more a humane Man than one guilty of Cruelty. When any thing ſpecial happened, that was ſtill done by *Huggins*; that tho' *Arne* was in that Condition, though there was no Occaſion or Hazard, and no Cauſe for putting him into that Room, *Huggins* not only a Principal, who is anſwerable for his Deputy, was often in the *Fleet*, and ſaw him ſeveral Times whilſt *Gybbon* was Deputy, and *Arne* in that Confinement, and did give Orders about ſeveral Things of Moment. *Arne* he knew was diſordered, but never did any ill Thing to put him in Fear and Hazard; the Man never did any Hurt, he might drink, but then there were other Rooms to put him in; no Place could be found to put this Man in ſo bad as this. When he was turned out from *Shaw* he had a little Place that he put up in the Common-Hall, and his Goods were carried down there. It was very hard to imagine, if he was not very well, if he was a little diſtempered, it was very ſtrange that no Place could be found but the Strong Room to put him in. When I came to ask the Queſtion, if there were other Rooms where the Man might be kept with Safety, it was ſaid, that there were Rooms where he might be put in Safety; but it was not thought fit he ſhould go into a Place fit for a Chriſtian to go in, but into this Place.

Mr. *Cotton*, by the Book, ſhews, he was admitted Priſoner on Meſne Proceſs in 1725, to ſhew he did not require to be kept in the ſame Strictneſs as on Execution. The Care of the Gaoler is to keep a ſafe Cuſtody, but not ſo great on Meſne Proceſs: If a Man in Execution for 1000*l.* was to eſcape, he muſt pay the whole Money: No Action of Debt lies on Meſne Proceſs; then the Gaoler is not anſwerable, the Gaoler could not pay the Debt, the Gaoler is no further anſwerable than for the Perſon: ſo that the Terror was not ſo great, the Danger was not ſo cloſe, and that may be the Reaſon that the Coroner does not ſit upon Priſoners in Meſne Proceſs, becauſe the Hazard is not ſo great; and he ſays, that about *Hillary* Term 1724 *Barnes* came in; and that he was a Watchman and a Runner there.

Farrington apprehends, that *Arne* came in about the Middle of *June*, and that he was in good Health when he came in, and that he never knew him do an ill Thing, nor that he would drink; that there was no Danger of his breaking Priſon. That he was put into the Strong Room in *September*, and continued therein till the Middle of *October*. When he firſt came into the Priſon he lodged with one *Robert Shaw*, and *Shaw* threw his Bed out of the Room; he then put his Bed upon a Settle, and he lay there till he was carried to the Strong Room.

He did not ſee *Arne* locked in the Strong Room, but did ſee him taken away, and ſays, that the Room was not built above ſix Weeks before the poor Man was carried there. That it was ſo very wet, green, and ſo much ouſing from the Mortar, that one might with one's Hands ſtrike the Drops off the Wall; and gave the ſame Account as to the Manner, that it was not tiled in, and he was continued there from the Middle of *September*, to the Middle of *October*, and lay in a miſerable Condition, not only having his own Excrements ſticking about him, but the Feathers of the Bed, having opened it and crept into it for Warmth. I need not take Notice of the Situation of the Place, that has been fully deſcribed. There was only two ſmall Holes to let in the Air, there was no Fire, nor Fire-place. He ſays, that after ſome time the poor Man grew hoarſe. One of the Witneſſes ſays, that he had a ſhivering Hoarſeneſs, and ſo continued lingering on till he died: Before he died he came to a bad Hoarſeneſs, and his Senſes and Voice were ſo far gone afterwards, that he could not ſpeak; then Nature failed, he fell away, and Death grew upon him, then he grew delirious, and in this poor Condition he had nothing but a Feather-bed, which a Gentleman had lent him, laying in the Dirt in his own Excrements, and in a naſty Condition, and no way left to preſerve Life, but to cut his Bed open, and to lie in the Feathers as long as he could: Being in this miſerable Condition, he came into the Church more like a feathered Fowl, than a human Creature, that the Feathers ſtuck all about him; he burſt out and came to the Church; he was demanded back again, and had no Comfort or Relief. *Farrington*, one of the Evidences ſays, that he ſaw *Hopkins* and *Huggins* at the Door of the Strong Room, and the Door was open, and *Huggins* looked upon him, and *Hopkins* and *Huggins* whiſpered, and talked together, but he was not near enough to hear what

was

was ſaid, but *Huggins* ſhook his Head; not only *Gybbon* but *Huggins* himſelf locked him up, with *Barnes*, and this was at the Time when the Door was open, and *Barnes* kept the Key. It was when the Door was open, and *Huggins* looked in upon him, the Diſcourſe you will beſt judge of; his (meaning *Huggins*) Eyes were there fixed. This is very ſtrong upon the Priſoner; whether *Huggins* before knew of it, *Huggins* knew of it then, and then might have ſaved his Life; he might have taken the proper Care as he ought to have done of him; if Mr. *Huggins* had done his Part, it would have been no Objection to *Huggins*, and if he did nothing at that Time, you will judge how far he did pity the Man, whether he did know of it before or no, if he was privy to his being kept in that Dureſs, he had ſufficient Power, and nothing could bar him of having the ſuperior Power, for, in the Preſence of his Deputy, he might act; he that put the Man under Dureſs not only was told of it, but ſaw the Miſery of it; it makes him in Law a Principal. That Place was ſo damp, that he himſelf was in there but three Days, and was almoſt killed in that Time. It made his Legs ſwell, and he had been dead, if he had continued there longer. That Man died there from the Noiſomeneſs of the Place.

Fulthorpe ſays, that *Arne* and another Priſoner was drinking with him a Pot of Ale (that Gentleman don't create great Anger in the *Fleet.)* The Witneſs ſays, that he paid Five Shillings *per* Week for Boarding, and *Barnes* came up and ſeized upon *Arne* and carried him away, but he did not go to follow him; that *Arne* was very quiet, and he went the next Day to ſee how it was with him, and there was looſe Boards, which he apprehended to lie on the common Sewer, and the Walls were all green and wet, and that it was a miſerable Place; that the Man continued ſix or ſeven Weeks in this Strong Room.

He ſays, that he ſaw *Huggins* come twice into the *Fleet*, while *Arne* was in the Strong Room, but whether it was the Time that *Farrington* was there can't be certain; but that *Huggins*, *Hopkins*, and *Barnes* were there, and were looking upon him. When he came there a ſecond Time, he can't ſay that *Huggins* came to look on *Arne*, for that he ſtaid there only Half an Hour, to take care of the Priſon and Priſoners; that *Arne* was in Health at, and before the Time he was put in there, and that he went to give him ſome Drink at the Hole, and the Stench of the Room was ſo great that it was like to ſtrike him down. He ſays, that to the beſt of his Judgment on viewing the Place, that it was impoſſible for a Man to live there. He did ſee *Arne* out two or three Times, but they turned him in again.

Smith ſays, that *Arne* for whom he had a great Concern (which Matter is of great Conſequence, that requires the utmoſt Attention), was carried to the *Vine*, and then carried to the Gaol; that *Barnes*, who was a Servant to *Huggins*, as *Arne* was drinking in the Cellar without being the leaſt troubleſome, ſeized upon *Arne*, and carried him to the Strong Room; he lay upon the bare Ground, and had nothing to reſt him upon; the Deſcription of the Room that he gives, is, that there was no Fire-place, no Candle, nothing to eaſe Nature in, ſuch a Stink that he was forced to hold his Noſe, extremely wet, and in no Condition fit for any one to lie in; he having no Credit with *Gybbon*, wrote to *Huggins* ſeveral Letters, and in one of them mentioned the ſaid State of *Arne*, and ſent it by *Robin* the Porter, he ſent it by the common Porter, but did not prove that *Robin* delivered the Letter to *Huggins*, or brought an Anſwer, and was of Opinion, this barbarous Treatment was the Death of the poor Man.

Robin was examined as a Witneſs, he ſaid he did not know what the Letters were; he did what he was paid for, but can't take upon him to ſwear, whether the Letters were delivered to Mr. *Huggins*, and what the Contents of the Letters were; there is a Chaſm in that Part.

Paine ſays, that *Arne* was in a good State of Health, that he might drink, but there was no Ground or Occaſion to put him in the Strong Hold, that *Barnes* was Servant to *Gybbon*, and that *Gybbon* acted as Chief-Warden, and that the Priſoner at the Bar did not act. He gave an Account how the Room was built, that it was very damp, that *Arne* grew hoarſe, and loſt his Voice; and he believes any Perſon could not be there without Danger of loſing his Life.

Bouch ſays, that he was Turnkey, and gave an Account, when the Strong Room was built, and apprehended it was built by *Huggins*; that *Huggins* did come to the Lodge, but can't ſay whether he came into the Priſon or no; he ſays, that the poor Man died after in *October*, and that he carried a Letter to Mr. *Huggins*, wrote by one of *Arne*'s Friends; that he gave it to *Huggins*, who opened it, and read it, who ſaid, that he muſt leave it, and Mr. *Huggins* would acquaint him with the Nature of the Rules; he further ſaid, that Mr. *Huggins* did not act ſingly and ſolely, and I don't know how indeed he could, I don't know how he could controul a Principal, he might controul a Deputy; he ſays, he did apply to Mr. *Huggins* to be Turnkey, and was very often in the Priſon, and ſaw *Arne*, and gave an Account of his being in that languiſhing Condition, and that he died there; the Chief of his Evidence is, that Mr. *Huggins* came often to inquire about the Affairs of the Gaol, and that he was ſtill principal Warden, and if any Thing wrong was done, he ordered it to be rectified.

Tucker was employed to make the Iron Work, but don't ſay by whom ordered.

Mrs. *Le Pointz* ſays, ſhe ſaw *Arne* in the Strong Room; and when Mr. *Huggins* was laſt there, ſhe ſaw him on the *Bare*, and that he could not come in or out, without coming near the Strong Room, and that it was impoſſible for him to go out upon the *Bare*, but to go by that Room.

For the Priſoner, he does inſiſt upon ſeveral Ways of making his Defence. He ſays this was in 1725, and therefore its not to be expected, that he can give ſo good an Account as if it had been a more recent Proſecution; this Thing had ſlept for three or four Years. It was taken Notice by *Mr. Attorney* how this came now by a ſtrict Examination, and a very honourable one, and that he mentioned was the Reaſon it could not eſcape the Eyes that were ſo diligent; that is the Anſwer to that Part of the Defence. Another Part of his Defence is, whether he was made Warden at the Time, that the Letters Patent bore Date? He takes Notice of his coming to an Agreement with Mr. *Gybbon*, who, he ſays, had the ſole Management, he was willing to put himſelf into a State of Inaction.—He did agree at firſt for the Priſon only for Half a Year, and then *Gybbon*, willing to take the whole Rents and Profits, was to pay together Nine Hundred Pounds *per Ann.* which was agreed on. Another Part of his Defence that he made, was, that he intruſted Mr. *Gybbon* with the Management of the Office; he had ſo little Knowledge, that he had never ſeen nor heard of the Name of *Arne*, nor never knew that there was ſuch a Priſoner.

Another Matter inſiſted upon, that there were three Witneſſes, that were all miſtaken, and that no Credit at all ought to be given to them; and it won't be very material. Some of his Witneſſes ſay, that they never heard of his being there, and others that he was not at *London*, looking upon it, that he was not concerned at all. To prove this he calls Witneſſes, and called Mr *Tanner* to read the Inſolvent Act, that Deputies were to make Returns of Priſoners. To prove the Liſt of the Priſoners was returned by Mr. *Gybbon*, he would have produced an Affidavit, but it was not ſufficient to be Proof. Mr. *Tanner* was aſked, whether at the Time the Liſt was delivered, Mr. *Huggins* was not Warden? He did not think fit to anſwer that Queſtion, and I did not preſs it very far: But I ſhall ſhew you *Gybbon* was only Deputy. The next Witneſs that was called was *Jeffreys*, to ſhew how far *Gybbon* was concerned in the Office; he was by when the Agreement was made, and ſigned by Mr. *Huggins*, and when it came to be a Queſtion, when that was to be read, whether it was an Agreement or not, he could not tell where it was, it was out of his Power, he could not produce it then. *Jeffreys* ſaid it was an Acquittance; upon that *Huggins* endeavoured to get the Paper, and that this was a Copy of it taken, and that it was a true Copy, then that Receipt was proper to be read: When that came to be read, you will conſider what it was; it was neither Leaſe nor Deputation, only an Agreement for a Leaſe, what Rent was to be paid, and how long he was to have it. It was a Receipt for a Depoſit of One Thouſand Pounds, wherein there was a proper Covenant and Clauſes to be performed. I don't go to argue the Validity of it, if a Man had agreed to hold Land for three Years, that would be a Leaſe; and if *Huggins* and *Gybbon* had agreed certainly for three Years, that would have been a Grant of the Office, and a ſufficient Evidence of a Deputation but it is nothing but an Agreement for a Deputation, or a Leaſe. In Strictneſs of Law it is nothing; though this may not be in Point of Law, it is ſufficient between them for *Gybbon* to be Deputy in Fact, who came with the good liking of Mr. *Huggins* and with his Conſent; that he was Deputy in Fact ſtill carry with you, and that *Huggins* was Chief in the Office, and had the Controul thereof. That a Deputy is controulable by the Principal, and when the Principal is there no Man can make a Deputy to execute the Office. This was dated 26 *June*, 1723, for 100*l.* and 90*l. per Annum.*

The next was Mr. *Welland*; there was a good deal ſaid by him about the Coroner's ſitting upon dead Bodies, not very much to the Purpoſe; and then he gave an Account that *Gybbon* did act during four Years, but what was become of the Repairs, who was to do that, I do not find; as to the Repairs and Taxes, it is not ſettled to this Day. If upon the Foot merely from the Truſt and Confidence one had of the other, if all the Expences were paid by Mr. *Huggins*, then he built the Strong Room; however, he was liable to the Charge. You will conſider, Gentlemen, by what Law this can be built; it was putting a Show of Cruelty in this Office, which they were no way juſtified to build: Things for Torment, and not for the Service of the Cuſtody, Things of that Kind are not to be done at the Will of the Gaoler, it always ought to be done by Order of their Superiors; if in the City, the Act muſt be done by the Mayor and Aldermen; if not, by the Common-Council: If in the County, it is not in the Power of the Gaoler, it muſt be done by the Seſſions; there are ſo many Gentlemen of the Seſſions to ſee what is proper to be done and decent for Chriſtians, that there is no Danger of erecting any Place of Torment. I do not know what Authority either *Gybbon* or *Huggins* had to build it; *Huggins* might have pulled it down, and *Gybbon* would have been anſwerable for the Contempt. There is no Agreement appears between *Huggins* and *Gybbon* that would clear it up; beſides, as to the Repairs we are left in the dark ſtill.

Welland ſays, that in the Year 1725 *Arne* was ſtark naked before he was put in the Strong Room. *Huggins* urged, that it was not deſigned for any ſuch Purpoſe. *Welland* does not deny, but that there were other Places in the Gaol to put him in: This was in the very Year when the Act paſſed for Inſolvent Debtors, when fifty or ſixty were diſcharged on the 7th of *September*, before that Time.

Another Part of his Defence is, that the Room was neither his nor *Gibbon*'s to anſwer for; that there was a Court of the Priſoners, who formed themſelves into a Juriſdiction, and made what Order and Rules they pleaſed, and that they were ſo troubleſome that *Gybbon* was afraid to go into the Gaol: I do not know what Excuſe this is, it would have been very fit for them to have applied to another Place: And though *Welland* does ſay, that there was a Requeſt of ſome of the Priſoners to have him put into the Strong Room, all the Terror this Man put any body in, was flinging a Brick-batt on the *Bare*, not aiming at any one, and forced them to put this Man under the Reſtraint of the Strong Room. It was the Requeſt of Nobody, it was Nobody did it; it was very much to have ſuch a Combination, but every body knows that *Welland* is an Attorney, and has been taken notice of in the Courts. They have not given any Account of any Man's being put in there before. This Man being in a ſick Condition, *Welland* was deſired to go to the Upholders at *Exeter-Change*, they are very compaſſionate, and do aſſiſt People of their Fellowſhip; and he had ſome Relief given him. He ſays, that he never knew Mr. *Huggins* give any Direction in the Management of any Matters after Mr. *Gybbon* became Deputy, and gave an Account as to the Coroner's ſitting upon dead Bodies; that he took *Barnes* not to be *Huggins*'s Servant, and *Gybbon* therefore was anſwerable for the Act of *Barnes*. He never ſo much as ſaw Mr. *Huggins* and *Barnes* together, and that he did not ſo much as know any Rule-Money paid to *Huggins*; that *Gybbon* generally was paid the Fees, for *Gybbon* paid Nine Hundred Pounds *per Annum* to *Huggins*. Whether a Man takes the Fees all at once or not, it is the ſame Thing.

Green ſays, that he applied to Mr. *Gybbon* in order to have a Room, and Mr. *Gybbon* could not go into the Gaol for fear of this Court of the Priſoners; but at laſt ſays, that he did get himſelf a Room in the Houſe, and did lie there; that he apprehended *Gybbon* was the Principal, and did act.

The

The next Witneſs was one *Howard*, who was a Priſoner there before *Arne* came in; he was firſt carried into the Spunging-Houſe, and at laſt brought into the Gaol. When he came there he had nothing to lie on, and *Howard* had a Bed to ſell, which *Arne* had a mind to purchaſe. *Howard*, Gentlemen, did not give an Account of any Freeneſs *Arne* was guilty of; but that *Arne* offered more for the Things than he ſold them for: Whether *Arne* was not in haſte for them, or whether offered more for them than they were worth, I cannot think an Argument of Madneſs.

Woodcock gave an Account of the poor Man's being there, that he was let out, and after a little Time drove in again, and during all this Time he never ſaw *Huggins* there; for he ſhould have ſeen him if he had come. Gentlemen, Mr. *Huggins* put it hard upon calling theſe People.

Humphreys ſays, that *Arne* was a Man of ſome Subſtance, and ſaid that he did no Harm nor Hurt; that he did ſome odd Acts, and then he was carried and put in the Strong Room in the manner you have heard, and ſtaid there till he died; and never ſaw *Huggins* there till about the Middle of *September*.

Louden ſays, that he kept a Boarding-houſe, and boarded a good many there at five Shillings *per* Week, and *Arne* was one; that afterwards, when he came to quit the Houſe and was carried into the Strong Room, he was deſired by the Upholders Company to take ſome Care of him; that the Key was kept by *Barnes*, ſo that there was a Difficulty to carry and ſupply him with Proviſions; that he ſaid he would give it up unleſs he had the Key; that he had no Authority to let him out; and that he did keep the Key till three Days before he died, and then delivered it up. He has given an Account of that Act of *Arne*'s running about with the Feathers, and ſaid he never ſaw *Huggins* and *Gybbon* there, at the Time that *Arne* was in the Strong Room; and that *Huggins* was Warden, and *Gybbon* was Deputy. He has given an Account of the Room when built, and of the ſad Condition of it.

Gentlemen, Mr. *Guyn* ſaid the ſame; but that he never ſaw *Huggins* there.

Another Matter that Mr. *Huggins* inſiſted upon, to prove the Evidence not to be true, was, that he was not in Town.

The firſt Witneſs that he called was his Son, who ſaid, that from the firſt of *September* in that Year his Father came down to him in *Hampſhire*, and continued till the 14th or 15th, and ſtaid fourteen or fifteen Days; I do not find but it might be after that that he was at the Strong Room.

Smith proves the ſame, and that he was down there before in *Auguſt*.

Knight ſaid, that he was there in *Auguſt*.

Bird, Servant to Mr. *Huggins*, junior, ſaid, that he was there in *Auguſt* ſeven Days; and that he was there the firſt of *September* likewiſe.

Tucker ſays, that he was employed by Sir *George Oxenden*, and that he ſent his Coach with Mr. *Huggins* from *Wittenham* to *Henley-upon-Thames* about the 15th of *September*.

Sir *George Oxenden* agrees with the Servant; and ſays, that on the 17th or 18th the Priſoner came to his Houſe, and went away the 18th or 19th.

I muſt obſerve to you, Gentlemen, that from that Time to the Death of this Man, there is no Account given to you where he was.

Hopkins gave Evidence to ſhew the Witneſſes Miſtake. *Farrington* ſwore, that when *Huggins* looked in; *Hopkins* was with him at that Time; and *Hopkins* ſaid, that he went out of Town to *Oxford*, and did not return till the 14th of *October*. *Huggins* came from Sir *George Oxenden*'s about the 18th or 19th, and I do not hear from any body that he continued out of Town; and it is natural to believe he came to Town, for *Henley* is the Road to come up to *London*. *Hopkins* ſaid, he did not go out of Town till the 27th of *September*, ſo that from the 19th to the 28th both might have been at the Strong Room; and I believe this was the Time, may be it may be the 19th, *Hopkins* did not go till the 27th. What I muſt leave to you, Gentlemen, is, that this Witneſs ſaid, it could not be true that he and *Huggins* could be together. There was about ten Days from the 17th to the 28th, and it appears they were both in Town; and it does ſeem to come pretty nigh the Time. You ſee, Gentlemen, *Huggins* came again a ſecond Time; the firſt Time does ſeem to tally, and run very well, if not both.

Gentlemen, you muſt take this with you, whether *Hopkins* does not confirm what *Farrington* ſays, though he ſaid he was out of Town. *Farrington* ſays, once upon a Time, he was at the Strong Room Door; the Door was open, and that he did ſee the Witneſs, (meaning *Hopkins*) and that *Arne* crept into the Feathers of his Bed; and *Hopkins* ſaid, that he was there, but he could not ſee the Feather-bed; that he was in ſomething half up and half naked, which Evidence rather confirms than weakens the Evidence. He (*Hopkins*) does contradict another Matter; that he does not know that Mr. *Huggins* was there at the Room, or that he ever ſaw him there; that he (*Hopkins*) was at the Strong Room Door, and that he was in the ſame Manner as the Witneſs that was there ſaid. And he does contradict, that *Barnes* was a Servant of *Huggins*'s, and ſays that *Huggins* was not to be at the Charge of executing the Office. All that *Hopkins* ſays, is, that he was Clerk of the Inquiries, and that he did apply to Mr. *Huggins*, and that Mr. *Huggins* did not think fit to put him in, but he ſent him to *Gybbon* to be Clerk of the Inquiries. But that he was Clerk to Mr. *Huggins* at his Home, he did own it; but in a very extraordinary Manner, that he took him to do his Buſineſs for nothing. He ſaid, that the Management of this Office was not ſolely and clearly under Mr. *Gybbon*; but, Gentlemen, as to Things of Conſequence, there Mr. *Huggins* was called in, ſo that it appears that there was a View of his looking after the Priſoners; and it was very well, Gentlemen, that he ſhould, for he was the firſt Reſort upon all Occaſions. *Hopkins* ſays, that he does not remember any Diſcourſe about *Arne* with Mr. *Huggins*, but if he was deſired he believes he might do it; but does not remember he was deſired to do any thing as to *Arne*. It ſeems, Gentlemen, that he was examined in a ſtrict Manner, and a wiſe Inquiry made, as appears by an Examination taken before *Edward Hughes*, Eſq. which was produced, and ſhews, that he had given Evidence to you contrary to that Examination. In that he ſays, *Huggins* was Warden; and that he (*Hopkins*) went from the *Fleet* to him every Day, and told *Huggins*, whatever was conſiderable that was done there; and told him of *Arne*. He agrees, that there was a Diſcharge of Priſoners on the 7th of *September* 1725, when fifty or ſixty were diſcharged; and cannot ſay, but when they were gone, but that there was Room enough to put *Arne* in. He denies that *Biſhop* and *Gybbon* ſpoke to him about *Arne*, which *Biſhop* ſwears.

The next Witneſs is Mr. *Arne*, who was a Relation to the Deceaſed; he ſays, that the firſt Account he received of his miſerable Condition was about a Week or ten Days before the poor Man died; he then went to ſee him, and found him grovelling at the Door; that he was not only become hoarſe, but almoſt ſpeechleſs: He was crept down and fallen at the Door, and lay like a Dog. He found him, upon opening the Door, in a bad Condition: His Voice was ſo far gone, that it was a Difficulty to underſtand him. He had a Gold Watch, and he did get out of him by half Words and Sentences where it was; and ſaid, that the Place was not fit for any Creature whatſoever, neither ſick nor well; and that he could not have lived a Week in it. Gentlemen, I aſked one of the Witneſſes, who appeared to be a very ſtrong Man (*Louden*), if he had been there half the Time, would it not have been the Occaſion of his Death? Who owned that it would.

The Obſervation my Brother *Carter* made is very juſt: That if a ſtrong Man, being put into that filthy, vile Place it would kill him, to put into ſuch a Place him that wanted Health, Death was more ſure. If he was a weak Man, there was no Danger of his eſcaping, no Danger of going out.

As to his being in that Room being the Occaſion of his Death, there need not much be ſaid.

And what is ſaid by Mr. *Huggins*, except one Thing, carries little or no Weight; and there is only that can deſerve your Conſideration, Whether he did die by the Cruelty of *Gybbon* or *Huggins*? That he did die by Dureſs, it is not to be ſuppoſed to the contrary.

That in Point of Law, wherever there is a Deputy appointed, the Superior muſt anſwer; for had a Priſoner of 20,000 *l.* eſcaped, Mr. *Huggins* muſt have paid the Money.

In criminal Caſes I do not think, that the Warden or any other Officer ſhould anſwer for Murder, unleſs he was privy and conſenting. If this ſole Act was *Gybbon*'s, and *Huggins* no ways conſenting, I think the Murder lies upon *Gybbon*, not *Huggins*. Though this was the Act of *Gybbon* and *Barnes*, whoever has a Hand in it, and the Authority and Power as he had, if it is true that he ſaw him, and he would not give a helping Hand to aſſiſt him, the excepted Rule of Scripture would be true, *That he that is not for me muſt be againſt me*: And if he was any way privy to the carrying him and confining him there, he muſt anſwer for the Murder both in this and the next World.

If this is the Act of *Gybbon* ſolely, *Huggins* is not to anſwer for it; but if *Huggins* was privy, and he was Warden, he could and ought to have relieved him.

One Thing more, in the latter Part of the Defence Mr. *Huggins* made for himſelf, was, to call vaſt Numbers of Gentlemen of the firſt Quality; Sir *George Oxenden*, Sir *John Hinde Cotton*, in all about twenty he called to his Character and Credit; and if theſe Gentlemen are not ſufficient, I do not know what will be: His Character has been fully eſtabliſhed; but I muſt obſerve to you, whatever the Character a Man bears, if he is guilty of that Act which deſtroys his Character, his Character goes for nothing: If there was Difficulty or great Doubt happened upon Circumſtances, whether Mr. *Huggins* was guilty or not, then it was the conſtant Practice to be governed by a Character: I think Nobody can have a better; he has had a very great Character given him.

Not long ſince a Perſon produced twenty-ſeven People, that gave him a Character, with no Compariſon to this, only the Greatneſs of Numbers.

Notwithſtanding which, if there was not doubted, he had committed the Fact; and the Jury very juſtly brought in their Verdict, Guilty.

Verdicts, in convicting of People, are to be founded upon the Evidence that the Jury has had before them; and I hope I do not expreſs myſelf ſo for them to found themſelves upon any thing I have ſaid; for they will determine according to the Evidence that has been before them.

Mr. Attorney-General produced three Witneſſes, that came to nothing.

I muſt take notice of one Piece of Evidence given by Mr. *Hughes*, a Gentleman of Probity and Diſtinction, one of the Committee appointed by the Houſe of Commons. He tells you, that when Mr. *Huggins* was under Examination before the Committee, relating to Eſcapes during the Time he was Warden, *Huggins* confeſſed ſo many had eſcaped, he could not remember them all; he owned one *Oliver Read* had eſcaped, and was retaken; and that he himſelf ſent to *Newgate* for Irons, and ordered *Read* to be ſtapled down and ironed; and that he owned he paid five hundred Pounds to *Read*'s Creditors for the Eſcape of *Read*: This was whilſt *Gybbon* acted as Deputy.

Mr. *Huggins* does give this Anſwer to that; that *Hopkins* proved that *Gybbon* acted, and ſo he was Warden in Law; I cannot tell what Condition *Gybbon* was in, and what Security he had given; *Huggins* was liable for all Eſcapes.

I have taken Pains to ſtate the Evidence to you as fully as I can; and I hope you will conſider it; and that God will direct you to do for the beſt.

Then one was ſworn to keep the Jury, and they withdrew, and Mr. Juſtice Page *and Mr. Baron* Carter *left the Bench; and Mr. Serjeant* Raby *with the* Lord Mayor *remained there; and in about two Hours and an Half the Jury returned.*

Clerk of Arraigns. Are you all agreed in your Verdict?

Omnes. Yes.

Clerk. Who ſhall ſay for you?---*Omnes.* Foreman.

Clerk. John Huggins, hold up thy Hand. *(Which he did.)* Look upon the Priſoner: Is he Guilty of the Felony and Murder whereof he ſtands indicted, or Not Guilty?

Foreman. We are agreed to bring in our Verdict Special to the Court.

Mr. Att. Gen. What is their Doubt in Point of Law?

Mr. Serj. *Raby.* What that Doubt is, muſt be referred to the Court.

Foreman. Was there any Medium between bringing him in Guilty or Not Guilty?

Mr. Serj. *Raby.* You may find the Fact ſpecially, and refer the ſpecial Matter to the Court. If any Matter of Law ariſes upon that Doubt, it will be explained. You may give a general Verdict in order to refer that to the Judgment of the Court. You muſt agree upon the Fact; you muſt ſtate the ſpecial Matter: It is uſual to ſtate the Point of Law that you doubt in. If you have any Doubt as to the Law, that you muſt refer to the Court; but as to the Fact, you muſt determine yourſelves.

Mr. Att. Gen. What is it makes the Queſtion doubtful?

Mr. Serj. *Raby.* The Jury do believe the Priſoner in ſome meaſure guilty, but not of the whole Indictment.

Foreman. We cannot find any of the Evidence come up to ſhew he was aiding, abetting, and aſſiſting *Barnes* in putting him into the Room.

Mr. Serj. *Raby.* Call over the Jury.

Clerk of Arraigns. Anſwer to your Names. (*Which they did.*) Are you all agreed in your Verdict? Is *John Huggins* Guilty of the Murder and Felony, whereof he ſtands indicted, or Not Guilty?

After conſidering ſome Time among themſelves, the Foreman ſpoke as follows:

Foreman. We agree the Priſoner was acceſſary to the Murder committed upon *Edward Arne*, but that it was not premeditated in him; that he has been privy to the Cauſe of this Man's Death, and might have prevented it. Two Witneſſes ſwore, that Mr. *Huggins* was at the Door of the Dungeon, and ſaw *Arne* there; and, as he did not diſcharge him at that Time, he was acceſſary to that.

Mr. Serj. *Raby.* If he was privy, he was guilty of that; if he was privy and conſenting, if he did concur in that Act, he is guilty; for it will imply Malice.

If he died by Dureſs, and he was concurring and conſenting to it, then he was guilty of this Act, in that he had Power to redreſs it, and did not. If he was privy, you muſt conſider if he was concurring.

Mr. Att. Gen. If he was privy and conſenting, it does imply it.

In all Special Verdicts the Jury never find Malice.

In no Special Judgment they find Malice.

Foreman. Several of us don't think him guilty of the Malice.

Mr. Att. Gen. The Law will imply the Malice.

Mr. Serj. *Raby.* You are to conſider and find the Fact.

Foreman. We all agree that *Arne* died by Dureſs; there are two Witneſſes to prove that; but that the Priſoner had no Forethought.

The Jury again conſidered among themſelves; but not immediately agreeing, withdrew, and ſtaid out ſome conſiderable Time, and then returned.

Clerk of Arraigns. Are you all agreed?

Foreman. "We are agreed, that there is ſufficient Evidence to prove, "that they ſaw Mr. *Huggins* at the Strong Room.

"We agree that he was Warden of the *Fleet*-Priſon; and that he was "Head-Warden at the Time the Fact happened, as mentioned in the In-"dictment; and that *Gybbon* was Deputy, and acted as ſuch.

"That *James Barnes* appeared to us to be Servant to *Gybbon*, and was "employed and acted under him in taking care of the Priſoners, and had "the Cuſtody of them; and particularly of *Edward Arne.*"

Mr. Att. Gen. Mr. *Tanner*, you muſt write down the Verdict of the Jury.

Mr. Serj. *Raby.* Get Pen, Ink, and Paper ready. Gentlemen, you muſt tell him what he is to write, (*which is as follows*) *viz.*

"That *James Barnes*, at the Time mentioned in the Indictment, made "an Aſſault upon *Edward Arne*, being then a Priſoner in the *Fleet* Priſon; "did take and impriſon him without his Conſent, *prout* in the Indict-"ment."

Mr. Att. Gen. They will find the Deſcription and Situation of the Room as in the Indictment; they can have no Reaſon to doubt of that.

"That *James Barnes* and *John Huggins*, at the Time of the Impriſon-"ment of the ſaid *Arne*, knew that the Room was newly built; and that "the Walls were moiſt and damp, as in the Indictment."

Mr. *Strange.* Mr. *Huggins* did not know it at firſt, at the Time he was there, when the Door was open.

Mr. Att. Gen. Are the Jury ſatisfied that Mr. *Huggins* knew the State and Condition of the Room during the Time *Arne* was there?

Foreman. "We agree he ſaw the Building, and that he muſt know it "an unwholeſome Room, as deſcribed in the Indictment."

Mr. Att. Gen. Let me ſee the Indictment (*Which he did, and read the Words as to the Deſcription of the Strong Room*). He muſt know it when he was at the Strong Room Door.

Mr. Serj. *Darnell.* It is neceſſary that the Jury ſhould know what the Attorney reads.

Mr. Att. Gen. Mr. *Tanner* has twice taken it. How long (*ſpeaking to the Jury*) before the Death of *Arne* do you find the Priſoner knew the Condition of the Room?

Foreman. I believe it to be fifteen Days at leaſt before the Death of *Arne.*

Mr. Att. Gen. That during this Impriſonment and Detention in this Room, the ſaid *Arne*, by reaſon of the Dureſs of ſuch Impriſonment, became ſick and languiſhed there, and died, *prout* in the Indictment.

Mr. *Hug.* The Jury are upon their Oaths, will they find him dead by my Means?

Mr. *Strange.* I deſire the Fact may be found as it is.

Mr. Att. Gen. Mr. *Tanner* mind, That on the 7th of *September* he was aiding, abetting, and aſſiſting *James Barnes.*

Foreman. "We apprehend the Man continued from the 7th of *Septem-"ber*, and we apprehend he died about the 23d of *October.*"

Mr. Att. Gen. That *John Huggins*, being principal Warden during the Impriſonment and Detention of the ſaid *Arne*, was preſent at the ſaid Room, and ſaw *Arne* in that Room under the Dureſs of that Impriſonment; and that he being preſent, the Room was locked up with the ſaid *Arne* in it.

That fifteen Days before the Death of *Arne*, *John Huggins* being then Warden of the *Fleet*, and Mr. *Gybbon* Deputy-Warden, he ſaw *Arne* under the Dureſs of that Impriſonment; and the ſaid *Arne* was confined in the ſaid Room, and the ſaid *Huggins* being then preſent, he was locked up by *James Barnes*, and continued in the ſaid Confinement.

Mr. *Strange.* That is not according to the Evidence. It ſhould be found thus:

That during the Impriſonment of the ſaid *Arne*, and fifteen Days at the leaſt before his Death, *John Huggins* being then Warden of the *Fleet*, and the ſaid *Thomas Gybbon*, Deputy and acting Warden, was once preſent, and ſaw the ſaid *James Barnes* lock up the Door of the ſaid Room, the ſaid *Arne* being therein impriſoned.

And at the Time *Huggins* turned away, *James Barnes* locked to the Door; and *Arne* continued under the ſaid Impriſonment therein, until the Time of his Death; and the Jury don't find, that *Huggins* knew the ſaid *Arne* was in the Strong Room when he was firſt put in there.

Mr. Att. Gen. I inſiſt upon adding the Words, *Aiding, Abetting, and Aſſiſting.* And *that* Huggins *knew of the Badneſs of the Room.*

Mr. *Strange.* They don't find, that, during the whole Time *Arne* was there, *Huggins* knew of the Badneſs of the Room.

Mr. Att. Gen. The Jury cannot find what they don't know.

Foreman. "We find the Letters Patent, conſtituting *John Huggins*, Eſq. "Warden of the *Fleet*, *prout* in the Indictment.

"That during the Time that *Gybbon* was Deputy-Warden, *Huggins* "acted as Warden."

Mr. *Strange.* That does not appear.

Mr. Att. Gen. Who ſent for Irons from *Newgate?*

Aſk whether or no they do find, that, at the Time *Gybbon* was Deputy-Warden, *Huggins* acted as Warden.—"*Beavis* in 1725, ſaid *Hopkins*, came "from *Huggins* about Buſineſs; that at the ſame Time, during the Time "that *Gybbon* acted as Deputy-Warden, *John Huggins* acted as War-"den." — — — — — — — — — — — — — — —

The Verdict was removed, at the Prayer of *Mr. Attorney*, into *B. R.* and there argued by Mr. *Willes* and Serj. *Eyre*; after which, it was argued at *Serjeants-Inn-Hall* in *Chancery-Lane*, before all the Judges, by Serjeant *Cheſhire*, *Mr. Attorney*, *Mr. Sollicitor*, and Mr. *Willes*, for the King; and by Serj. *Darnell*, Serj. *Eyre*, Serj. *Hawkins*, Mr. *Peere Williams*, Mr. *Strange*, and Mr. *Foſter*, for the Priſoner. But as every Thing inſiſted on by either ſide, is taken Notice of in the Opinion delivered by the Lord Chief-Juſtice *Raymond*, it will not be neceſſary to ſtate the Arguments of Counſel *.

Mich. Term. 4 *Geo.* II. *Regis, B. R.* 1730.

Rex verſ. Huggins.

Raymond, *Chief-Juſtice* †.

This was a Special Verdict, found at the *Old-Bailey*, on an Indictment of Murder againſt *James Barnes* and *John Huggins*. The Indictment ſets forth, "That *John Huggins*, from the firſt Day of *October*, in the twelfth "Year of the late King, to the firſt Day of *January* next following, and "long before and after, was Warden of the Priſon of the *Fleet*, &c. and "that *James Barnes* was, during that Time, Servant to *John Huggins*, "and employed about the Care of the Priſoners; and that *James Barnes*, "*exiſtens perſona crudelis naturæ & immanis deportationis erga priſonarios in "eadem priſona exiſtentes*, on the firſt Day of *November*, in the twelfth "Year, &c. made an Aſſault upon one *Edward Arne*, then being a Priſo-"ner in the ſame Priſon, under the Cuſtody of the ſaid *John Huggins*, "and him the ſaid *Edward Arne*, then and there, with Force and Arms, &c. "unlawfully, felониouſly, wilfully, and of his Malice aforethought, and "without the Conſent of the ſaid *Edward Arne*, took, and him with "Force and Arms, &c. to a certain Room, within the Priſon aforeſaid, "then newly built, unlawfully, &c. conveyed and led, and him the "ſaid *Edward Arne*, with Force and Arms, &c. in the ſaid Room, for "a long Time, to wit, for the Space of ſix Weeks, then next following, "unlawfully, &c. impriſoned and detained, and him the ſaid *Edward "Arne*, then and there, with Force and Arms, &c. for all the Time laſt "mentioned, in that Room, *abſque ſubſidio ignis aeneum ſive aliquod vas, "ſcaphio, vel aliquo alio hujuſmodi utenſili*, unlawfully, &c. forced to re-"main and be (the Walls of the aforeſaid Room, made of Bricks and "Mortar, at the aforeſaid Time of the Impriſonment of the ſaid *Edward "Arne* in the ſame, being very moiſt, and the Room aforeſaid being "ſituate over the Common Sewer of the ſaid Priſon, and near the place "*ubi ſordes & ſimus priſonæ predictæ necnon excrementa priſonariorum præ-"dictorum adtunc uſualiter poſita fuerunt*, by reaſon whereof the Room "aforeſaid then was very unwholeſome, and greatly dangerous to the Life "of any Perſon detained in the ſame)". And the Indictment further ſets forth, "That the ſaid *James Barnes* and *John Huggins*, at the ſaid Time "of the Impriſonment of the ſaid *Edward Arne* in that Room, well knew "that the ſaid Room had then been newly built, and that the Walls of that "Room, being made of Bricks and Mortar, were then very moiſt, and "that the ſaid Room was ſo ſituate as aforeſaid." And the Indictment further ſets forth, "That the ſaid *Edward Arne*, during the Im-"priſonment and Detaining aforeſaid, in the ſaid Room, viz. the 7th of "*November*, &c. by Dureſs of the ſame Impriſonment and Detaining, "became ſick, and thereby from the ſame 7th Day of *November*, until "the 7th Day of *December*, then next following, in the Room afore-"ſaid, languiſhed, on which ſaid 7th Day of *December*, the ſaid *Edward "Arne*, by Dureſs of the Impriſonment and Detaining aforeſaid, in the "Room aforeſaid, died, &c." The Indictment further ſets forth, "That the ſaid *John Huggins*, being a Perſon of a cruel Nature, and "ſavage Diſpoſition, and a grievous and inhumane Oppreſſor of the "Priſoners in the ſame Priſon, under his Cuſtody being, during the "ſaid Impriſonment and Detaining of the aforeſaid *Edward Arne*, in the "Room aforeſaid, viz. the ſaid 7th Day of *November*, &c. and divers "other Days and Times, during that Impriſonment and Detaining, at "*London*, &c. felониouſly, wilfully, and of his Malice aforethought, was "preſent, aiding, abetting, comforting, aſſiſting, and maintaining the "aforeſaid *James Barnes*, felониouſly, wilfully, and of his Malice afore-"thought, the ſaid *Edward Arne*, in Manner aforeſaid, to kill and "murder: and ſo the Jurors aforeſaid, upon their Oath aforeſaid, ſay, "That the ſaid *James Barnes* and *John Huggins*, the ſaid *Edward Arne*, "in Manner and Form aforeſaid, felониouſly, wilfully, and of their Ma-"lice aforethought, did kill and murder, againſt the Peace, &c."

On Not Guilty pleaded by the Priſoner, *Huggins*, the Jury find a Special Verdict, as follows: "That Queen *Anne*, by her Letters "Patent, bearing Date the 22d of *July*, in the twelfth Year of Her "Reign, granted to *John Huggins*, named in the Indictment, the Office

* *Strange*'s Reports, Vol. II. p. 883.

† From Lord *Raymond*'s Reports, Vol. II. p. 1574, 5, 6, 7, 8, &c.

"of

" of Warden or Keeper of the *Fleet*, and Keeper of the Priſon, and Gaol " of the *Fleet*, ſituate, *&c.* and of the Priſoners then committed, or to be " committed to the Priſon and Gaol of the *Fleet* aforeſaid; and the ca- " pital Meſſuage for the Cuſtody of the Priſoners, and thirteen Meſſuages " in the Pariſh aforeſaid, and all other Meſſuages, *&c.* and all that " Rent, Fee or Salary of ſeven Pounds, twelve Shillings and one Penny " yearly, payable and to be paid by the Hands of the Sheriffs of her City " of *London*, and her County of *Middleſex*, &c. and all other Rents, *&c.* " and him the ſaid *John Huggins*, Warden or Keeper of the *Fleet*, and of " the Priſon and Gaol of the *Fleet* aforeſaid, for herſelf, her Heirs and " Succeſſors, did make, ordain, and conſtitute, by the ſame Letters Pa- " tent: To have, hold, enjoy, and exerciſe the ſaid Office, Meſſuages, " Lands, *&c.* to the aforeſaid *John Huggins*, by himſelf, *or by his ſufficient* " *Deputy or Deputies*, for and during his natural Life, in as ample Man- " ner and Form as Sir *Jeremy Whichcot*, Baronet, or any other Warden of " her Priſon of the *Fleet* aforeſaid, the ſaid Office and other the Pre- " miſſes, or any of them, had before had, held, uſed or enjoyed, or " ought to have had, held, uſed, or enjoyed; with the uſual Aver- " ments: And they farther find, that the ſaid *John Huggins*, firſt of *Sep-* " *tember*, in the twelfth of the late King, and for divers Years before, " and continually from thence after, until the firſt of *January* then next " following, was Warden or Keeper of the ſaid Priſon of the *Fleet*; and " that one *Thomas Gybbon* for all the ſame Time was Deputy of the ſaid " *John Huggins* in the ſaid Office of Warden or Keeper of the Priſon of " the *Fleet* aforeſaid, by the ſame *John Huggins* appointed, and acted as " ſuch his Deputy: And they further find, That *James Barnes*, in the " Indictment named, for all the ſame Time was Servant of the ſaid *Tho-* " *mas Gybbon*, Deputy of the ſaid *John Huggins*, in the ſame Office ſo as " aforeſaid being, and acted under the ſaid *Thomas Gybbon*, &c. in and " about the Care of the Priſoners committed to the ſaid Priſon, and in " the ſame Priſon being, and particularly in and about the Care of *Ed-* " *ward Arne*, in the Indictment named, then and there a Priſoner in the " ſame Priſon being: They farther find, That the ſaid *James Barnes*, the " ſeventh of *September*, in the twelfth Year, *&c.* in and upon the ſaid " *Edward Arne*, a Priſoner in the ſame Priſon then as aforeſaid being, in " Manner and Form as in the ſaid Indictment is ſpecified, made an As- " ſault, and him the ſaid *Edward Arne*, then and there without his Con- " ſent, in Manner and Form as in the ſaid Indictment is ſpecified, took, " and him the ſaid *Edward Arne* to a certain Room within the ſaid Priſon " then newly built, in the ſame Indictment mentioned, without his Con- " ſent, in Manner, *&c.* conveyed and led, and him the ſaid *Edward Arne*, " in the ſaid Room for a long Time, to wit, for the Space of forty-four " Days from thence next following, without the Conſent of him the ſaid " *Edward Arne*, in Manner, *&c.* impriſoned and detained, and him the " ſaid *Edward Arne*, then and there for all the Time laſt-mentioned in " that Room, *abſque ſolamine ignis necnon ſine aliqua matula, ſcaphio,* " *vel aliquo alio hujuſmodi utenſili*, to remain and be without his Con- " ſent in Manner, *&c.* forced: And they further find, That the " Walls of the ſaid Room were made of Bricks and Mortar; and " at the ſaid Time of the Impriſonment of the ſaid *Edward Arne* " in the ſame were very damp; and that the ſaid Room was ſituate over " the Common Sewer of the ſaid Priſon, and near the Place *ubi ſordes et* " *ſimus priſonæ prædictæ necnon excrementa priſonariorum prædictorum adtunc* " *uſualiter poſita fuerunt*; by Reaſon whereof the ſaid Room was then very " unwholeſome, and greatly dangerous to the Life of any Perſon detained " in the ſame: And they further find, That the ſaid *James Barnes*, at " the ſaid Time of the Impriſonment of the ſaid *Edward Arne* in that " Room, well knew that the ſaid Room had then been newly built; and " that the Walls of that Room were made of Bricks and Mortar, and " were then very damp; and that the ſaid Room was ſituate ſo as afore- " ſaid: And they further find, That during the ſaid Impriſonment, and " detaining of the ſaid *Edward Arne* in the ſaid Room, *to wit*, by the " Space of fifteen Days at leaſt before the Death of the ſaid *Edward Arne*, " the ſaid *John Huggins* knew that the ſaid Room had been then newly " built, and that the Walls of that Room were made of Bricks and Mor- " tar, and then were damp; but whether the ſaid *John Huggins* knew, " that on the ſaid ſeventh Day of *September*, in the twelfth Year, *&c.* the " Jurors know not: And they further find, that the ſaid *Edward Arne*, " during the ſaid Impriſonment and Detaining of him the ſaid *Edward* " *Arne* in the ſaid Room, to wit, the tenth Day of the ſame Month of " *September*, in the twelfth Year aboveſaid, by Dureſs of the ſame Im- " priſonment and Detaining, became ſick in the ſaid Room; and thereby, " from the ſame tenth Day of *September*, in the twelfth Year aboveſaid, " until the twentieth Day of *October* then next following, in the ſaid " Room languiſhed; on which ſaid twentieth Day of *October*, in the " twelfth Year aboveſaid, the ſaid *Edward Arne*, by Dureſs of the ſaid " Impriſonment and Detaining in the Room aforeſaid, died, to wit, at " *London*, &c. And they further find, That during the Impriſonment " and Detaining of the ſaid *Edward Arne* in the ſaid Room, to wit, by the " Space of fifteen Days at leaſt before the Death of the ſaid *Edward Arne*, " the ſaid *John Huggins* was once preſent at the ſaid Room, and then and " there ſaw the ſaid *Edward Arne* in that Room, under the Dureſs of the ſaid " Impriſonment, and then and there turned away; and the ſaid *James Barnes* " locked the Door of the ſame Room, at the ſame Time in which the " ſaid *John Huggins* turned away as aforeſaid (the ſame *Edward Arne*, at " the ſaid Time in which the ſaid Door was locked by the ſaid *James* " *Barnes*, being in the ſaid Room under Dureſs of the ſaid Impriſon- " ment). And they further find, That the ſaid *Edward Arne*, in the ſaid " Room, under Dureſs of the ſaid Impriſonment remained, and was con- " tinued from the ſaid Time in which the ſaid Door of the ſaid Room " was ſo locked by the ſaid *James Barnes* as aforeſaid, until the ſaid Time " in which the ſaid *Edward Arne* ſo as aforeſaid died: And they further " find, That the ſaid *John Huggins* ſometimes acted as Warden or " Keeper of the ſaid Priſon, during the Time in which he the ſame *Tho-* " *mas Gybbon* was Deputy of the ſaid *John Huggins* in the ſaid Office as " aforeſaid; but whether upon the whole Matter, *&c.*"

The Record of this Indictment and Special Verdict being removed into the *King's-Bench* by *Certiorari*, it was argued on *Tueſday* the ſixteenth of *June*, 1730, by Mr. *Willes*, for the King; and Mr. Serjeant *Eyre*, for the Priſoner. And on the laſt Day of *Michaelmas* Term following, after the Caſe had been argued on the fourteenth of *November*, at *Serjeants-Inn* Hall, before all the twelve Judges, the Lord Chief Juſtice (*Raymond*) delivered the Opinion of the Judges.

In this Caſe two Queſtions have been made, firſt, What Crime the Facts found upon *Barnes* in the Special Verdict will amount to? Second, Whether the Priſoner at the Bar is found guilty of the ſame Offence with *Barnes*?

Firſt. As to the firſt Queſtion it is very plain, that the Facts found upon *Barnes* do amount to Murder in him. Murder may be committed without any Stroke. The Law has not confined the Offence to any particular Circumſtances or Manner of Killing; but there are as many Ways to commit Murder, as there are to deſtroy a Man, provided the Act be done with Malice, either expreſs or implied. *Hale P. C.* 46. 3 *Inſt.* 52. Murder is, where a Perſon kills another of Malice, ſo he dies within a Year and a Day. *Hale P. C.* 43. And Malice may be either expreſſed or implied. In this Caſe the Jury have found the Malice expreſs; for the Facts charged on *Barnes* are laid in the Indictment to be *ex malitia ſua præcogitata*, to wit, that he, having the Cuſtody of *Arne*, aſſaulted him, and carried him to this unwholeſome Room, and confined him there by Force againſt his Will, and without his Conſent, and without proper Support, *ex malitia ſua præcogitata*; by Means of which he languiſhed and died. And the Jury have found that *Barnes* did all theſe Facts, *modo et forma prout in indictamento prædicto ſpecificatur*.

But upon the finding of theſe Facts there is alſo a plain Malice ariſing in Conſtruction of Law. *Hale P. C.* 46. The Law implies Malice in reſpect of the Perſon killing. If a Priſoner, by Dureſs of the Gaoler, comes to an untimely End, it is Murder. It is not neceſſary to make it Dureſs, that there ſhould be actual Strokes or Wounds. And in 3 *Inſt.* 35. the putting into a Dungeon is Dureſs, or into a Place too ſtrait, 3 *Inſt.* 91. *pluis arctment que devoit*, *Cromp.* 90. The untimely End, mentioned by Lord Chief Juſtice *Hale*, is what is meant by *Briton*, *cap.* 11. *fol.* 18. If a Man die in Priſon, the Coroner is to take an Inqueſt upon the View of the Body; and if it is found by the Inquiſition, that the Perſon was brought nearer to Death, and farther from Life, *per dure gard del gaoler*, it is Felony.

The Reaſons why the Law implies Malice in ſuch Caſes are plain. Becauſe it is a Breach of his Duty, and of the Truſt which the Law has repoſed in him. A Priſoner is not to be puniſhed in Gaol, but to be kept ſafely. *Fleet.* 38. *Bract.* 105. The Act alſo is deliberate. And the Nature of the Act is ſuch, as that it muſt apparently do harm. It is alſo cruel; as it is committed upon a Perſon that cannot help himſelf. And it is committed by Force, and without the Conſent of the Priſoner. So that the Charge in the Indictment againſt *Barnes* is Murder; and theſe Facts found in the Verdict, as to him, fully maintain the Indictment, and amount to Murder. But *Barnes* is not before the Court, he having fled (*as it is ſaid*) from Juſtice.

Second. The next Queſtion is, Whether the Priſoner, *Huggins*, is found guilty of the ſame Offence as *Barnes*; or how far it appears, by this Special Verdict, that he has been aiding and aſſiſting to *Barnes* in the committing of theſe Facts?

In the Indictment the Offence is as ſtrongly charged upon *Huggins* as upon *Barnes*. The Indictment charges, that the Priſoner at Bar, during the Impriſonment of *Arne* in the ſaid Room (the Situation and Condition of which the Indictment expreſsly charges *Huggins* to have the Knowledge of), on the ſeventh of *November*, *et diverſis diebus et vicibus*, during that Impriſonment, felonioufly, voluntarily, and of his Malice aforethought, was preſent, aiding, abetting, comforting, and aſſiſting the ſaid *Barnes*, the ſaid *Arne* felonioufly, and of his Malice aforethought, to kill and murder, *&c.* which if found by the Verdict, would certainly be Murder in the Priſoner. But there is a great Difference in the finding the Verdict. As to *Huggins*, the Jury have only found theſe Facts, *viz.* That he had the Office of Warden of the *Fleet*, &c. granted to him by Letters Patent of 22 *July*, 12 *Ann.* to hold for his Life, and to execute by himſelf or his Deputy: That he, 1 *Sept.* 12 *Geo.* I. and before and from thence to 11 *Jan.* 12 *Geo.* I. was Warden of the *Fleet*: That *Thomas Gybbon* was, and for all that Time acted as his Deputy in that Office: That *James Barnes* was for all that Time Servant of *Gybbon*, and acted under him about the Care of the Priſoners, and particularly about the Care of *Arne*: Then they find, that *Barnes* aſſaulted and carried by Force the ſaid *Arne* into the Room, and kept him there againſt his Conſent, *prout* in the Indictment, forty-four Days: Then they find the Situation and Condition of the Room, whereby it was very unwholeſome, and dangerous to the Life of any Perſon kept therein: That *Huggins*, during the Impriſonment of *Arne* in that Room, *viz.* for fifteen Days before *Arne*'s Death, knew that the Room was then lately built, and that the Walls were made of Brick and Mortar, and were then damp; but whether he knew it the ſeventh of *September*, *ignorant*: That *Arne*, the tenth of *September*, 12 *Geo.* I. by Dureſs of Impriſonment, became ſick, and languiſhed to the twentieth of *October*, and then died by Dureſs of Impriſonment in the ſaid Room: That during the Impriſonment of *Arne* in that Room, *viz. per ſpatium quindecim dierum ad minus* before his Death, *Huggins* was once preſent at that Room, and then ſaw the ſaid *Arne* in that Room, *ſub duritie impriſonamenti prædicti ac adtunc et ibidem ſe avertit*, and the ſaid *James Barnes*, the ſame Time as *Huggins* turned himſelf away, locked the Door; the ſaid *Arne*, at the Time when the ſaid Door was locked by *Barnes*, being in the ſaid Room, *ſub duritie impriſonamenti prædicti*; and that *Arne* remained under that Dureſs till his Death: That *Huggins* acted ſometimes as Warden, during the Time *Gybbon* was Deputy: But it is not found that he acted as Warden during the Confinement of *Arne*.

The Judges are all unanimouſly of Opinion, that the Facts found in this Special Verdict do not amount to Murder in the Priſoner at the Bar; but as this Special Verdict is found, they are of Opinion that he is not guilty. Though he was Warden, yet it being found that there was a Deputy, he is not, as Warden, guilty of the Facts committed under the Authority of his Deputy. He ſhall anſwer as Superior for his Deputy civilly, but not criminally. It has been ſettled, that though a Sheriff muſt anſwer for the Offences of his Gaoler civilly, that is, he is ſubject in an Action to make Satisfaction to the Party injured, yet he is not

to anſwer criminally for the Offences of his under Officer. He only is criminally puniſhable who immediately does the Act, or permits it to be done, *Hale P. C.* 114. So that if an Act be done by an under Officer, unleſs it is done by the Command or Direction, or with the Conſent of the Principal, the Principal is not criminally puniſhable for it. In this Caſe the Fact was done by *Barnes*; and it no where appears in the Special Verdict, that the Priſoner at the Bar ever commanded, or directed, or conſented to this Dureſs of Impriſonment; which was the Cauſe of *Arne*'s Death. 1. No Command or Direction is found. And 2. It is not found that *Huggins* knew of it. That which made the Dureſs in this Caſe was, 1. *Barnes*'s carrying and putting, and confining *Arne* in this Room by Force and againſt his Conſent. 2. The Situation and Condition of this Room. Now it is not found that *Huggins* knew of theſe ſeveral Circumſtances, which made the Dureſs. 1. It is not found that he knew any thing of *Barnes*'s carrying *Arne* thither. 2. Nor that he was there without his Conſent, or without proper Support. 3. As to the Room, it is found by the Verdict, 1. That the Room was built of Bricks and Mortar. 2. That the Walls were *valde humidæ*. 3. That the Room was ſituate on the common Sewer of the Priſon, and near the Place where the Filth of the Priſon and Excrement of the Priſoners were uſually laid, *ratione quorum* the Room was very unwholeſome, and the Life of any Man kept there was in great Danger. But all that is found with reſpect to the Priſoner's Knowledge is, that for fifteen Days before *Arne*'s Death he knew that the Room was then lately built, *recenter*; that the Walls were made of Brick and Mortar, and were then damp. But it is not found, nor does it appear, that he knew they were dangerous to a Man's Life, or that there was a Want of neceſſary Support. Nor is it found that he directed or conſented that *Arne* ſhould be kept or continued there. The chief Thing relied upon is, that the Verdict finds, that once the Priſoner at the Bar was preſent at the Room, and ſaw *Arne ſub duritie impriſonamenti prædicti, et ſe avertit*, &c. which, as was objected, made him an Aider and Abettor. But in Anſwer to this, 1. Being preſent alone, unleſs he knew all the Circumſtances, and directed that *Arne* ſhould continue, or at leaſt conſented that he ſhould, cannot make him an Aider or Abettor in the Murder. *Kelynge* 113. A Man may be preſent, and be entirely innocent. He may be caſually preſent. 2. The Verdict is, *vidit ſub duritie impriſonamenti prædicti*. He might ſee him, and ſee him while he was *ſub duritie impriſonamenti prædicti*, that is, while he was in Fact under the Dureſs by *Barnes*; but it does by no means follow from thence, that he knew that the Man was under this Dureſs, and it is not found that he did know it. It was objected, that if he ſaw the Man under this Dureſs he muſt know it, and it was his Duty to deliver him. But we cannot take Things by Inference in this Manner. The *vidit* does not imply a Knowledge of the ſeveral Facts that made the Dureſs. If the Nature of this Dureſs be conſidered, it is impoſſible that it ſhould be diſcovered by one Sight of the Man. It conſiſts of ſeveral Ingredients and Circumſtances, that are not neceſſarily to be diſcovered upon Sight: For though he ſaw *Arne* in the Room, yet by the View he could not tell that he was there without his Conſent, and by Force, or that he wanted neceſſary Relief. It is not found that the Man made any Complaint to him, or that any Application was made to him on the Man's Behalf. If he was there with his Conſent, it would take off the Dureſs. His ſeeing is but Evidence of his Knowledge of theſe Things at beſt, and very poor Evidence too. And therefore the Jury, if the Fact would have borne it, ſhould have found that *Huggins* knew that *Arne* was there without his Conſent; and that he conſented to and directed his Continuance there. Which not being done, we cannot intend theſe Things, nor infer them. For in Special Verdicts in criminal Caſes the Court muſt never intend nor infer Facts, but judge upon the Facts found, and not on the Evidence of the Facts. *Kelynge* 78. Whether a Man is aiding and aſſiſting in Murder or no is matter of Fact, and ought to be expreſsly found by the Jury, *Kelynge*, 111. *Rex verſ. Plummer*. It does not appear by the Special Verdict there that *Glover*, or the Perſon unknown, who ſhot off the Gun, did diſcharge it againſt any of the King's Officers, but it might be for aught that appears for another Purpoſe: Though upon the particular Circumſtances in the Special Verdict there are Things found which were a ſufficient Evidence, that the Gun was diſcharged againſt the King's Officers, and ſo it might be reaſonably intended, conſidering they were all armed, and in Proſecution of an unlawful Act in the Night, which they deſigned to juſtify and maintain by Force; eſpecially when the Gun was ſhot off upon the Watch-word given; and as the King's Officers were endeavouring to ſeize the Wool; the Jury thereupon might well have found that the *Fuſee* was diſcharged againſt the King's Officers *. But ſince they had not found it, the Court were confined to what they had found poſitively; and were not to judge the Law upon Evidence of a Fact, but upon the Fact when it is found. See *Kelynge*, 118.

This Caſe was ſo well argued on both Sides, that ſome Objections on the Part of the Crown muſt be taken notice of, though they are already in a great meaſure anticipated. As,

1. That *Huggins*, as Warden, though he had made a Deputy, had ſtill the Care of the Priſoners; and it was incumbent on him to ſee that there was no illegal Dureſs: And to explain what the Law means by Dureſs, *Brit. cap.* 11. *fol.* 18. was cited. If a Priſoner is brought nearer to Death and farther from Life *per dure gard del keeper*; and *Staunf. P. C. lib.* 1. *cap.* 35. If he keeps him more ſtrictly than of Right he ought, it is Dureſs. And the Dureſs need not be by the Hand of the Gaoler; for if it is done with his Privity, it will affect him. But that is a Miſtake; for when an Officer has Power to make a Deputy, and has appointed a Deputy, he has diſcharged himſelf of the whole Care: The Deputy has the whole Power, and it is incumbent upon the Deputy till the Principal reſumes his Office. Indeed, when the Principal comes to execute his Office himſelf, the Power of the Deputy ceaſes; but a bare accidental coming to the Place will not determine the Deputation, unleſs he comes with an Intent to reſume his Office. The Caſe of a *Diſſeiſee* coming to dine with a *Diſſeiſor*, or to ſee his Pictures, may be very properly compared to this.

2. It was objected, that this Murder was done with his Privity; it is found that he ſaw *Arne* under this Dureſs, *et ſe avertit*. He ought to have taken notice of it, and removed him, as it was his Duty to take care of his Priſoner's Life. *Vidit ſub duritie* implies that he knew it; and therefore he was privy to the Dureſs of which *Arne* died.

But his Conſent to this Dureſs is not found; it intirely depends on his ſeeing the Man, which does not import his Conſent, for want of his Knowledge of the particular Facts.

3d Objection. When he was preſent, the Power of his Deputy ceaſed; and then he ſhould have eaſed the Man of this Dureſs; and his ſuffering him to continue afterwards under the ſame Dureſs infers that he knowingly ſuffered him to continue till his Death; and his not reforming this Abuſe implies his Conſent to it. But theſe Inferences are by much too ſtrong; and the not reforming an Abuſe does by no means infer a Conſent to all the Conſequences of it.

4th Objection. A Perſon abſent may be Principal in Murder, as in the caſe of poiſoning. An Infant was laid in a Hog-ſtye, and a Sow eat it; and held Murder, *Palm.* 547, 548. The ſame Opinion in the caſe of a ſick Man laid in the Cold. So in the caſe of laying an Infant under Leaves in an Orchard, and a Kite ſtruck it, *Poph.* 13. *Ow.* 98. *Hale P. C.* 53. There the Perſon who did the Act occaſioned the Death; but in this Caſe no Act was done by the Priſoner at the Bar. There are indeed Caſes of Murder where no Act was done by the Perſons guilty, as the letting looſe a wild Beaſt, which the Party knows to be miſchievous, and he kills a Man. 3 *Edw.* III. *corone* 311. *Staunf.* 17. *Crompt.* 24 *b.* the Owner of the Beaſt is guilty of Murder. In Anſwer to thoſe Caſes, there is a Difference between Beaſts that are *feræ naturæ*, as Lions and Tygers, which a Man muſt always keep up at his Peril, and Beaſts that are *manſuetæ naturæ*, and break through the Tameneſs of their Nature, ſuch as Oxen and Horſes. In the latter Caſe an Action lies, if the Owner has had Notice of the Quality of the Beaſt; in the former Caſe an Action lies without ſuch Notice. As to the Point of Felony, if the Owner have Notice of the miſchievous Quality of the Ox, *&c.* and he uſes all proper Diligence to keep him up, and he happens to break looſe and kills a Man, it would be very hard to make the Owner guilty of Felony; but if through Negligence the Beaſt goes abroad, after Warning or Notice of this Condition, it is the Opinion of *Hale* (*H. P. C. vol.* I. 431.) that it is Manſlaughter in the Owner. And if he did purpoſely let him looſe and wander abroad, with a Deſign to do Miſchief; nay, though it were but with a Deſign to fright People and make Sport, and he kills a Man, it is Murder in the Owner.

5th Objection. It is found that *Barnes* ſhut the Door in the Preſence of *Huggins*; and therefore the continuing of *Arne* under that Confinement will affect *Huggins*. But there is no Conſent found to his Confinement. What is found is, at moſt, but Evidence of a Conſent; and even not that, it is only *vidit et ſe avertit*.

6th Objection. It is not neceſſary for the Jury to find the Conſent in expreſs Words, and if Facts are found that amount to a Conſent, the Court will judge it a Conſent. As in the Caſe of Malice, the Court will judge it upon the Facts found; and Malice is an Act of the Mind as well as Conſent. To this it is anſwered, that Malice is Matter of Law, and proper for the Court to judge, but the Conſent of one Man to the malicious Acts of another, is Matter of Fact which ought to be found by the Jury. And here is no Conſent found, nor that *Huggins* aided or abetted *Barnes*; nor is there any poſitive Fact found, that muſt neceſſarily be conſtrued an aiding and abetting.

There is another Matter which the King's Counſel inſiſted upon, That if the Court were of Opinion that they could not give Judgment upon the Facts found in this Verdict, that the Priſoner was guilty of Murder; that yet the Verdict was ſo uncertain, as that they could not give Judgment of Acquittal: And therefore, that a *venire facias de novo* ought to go. And this brought it under the Conſideration of the Judges, whether a *venire facias de novo* ought to be granted in this Caſe. And to ſpeak to that Point, the Counſel on both Sides were heard before all the Judges on *Wedneſday* the 24th Inſtant.

It was ſaid by the Counſel for the King, that they ſpoke to this Point without Prejudice. For they inſiſted, that as to the Verdict itſelf there were ſufficient Facts found affecting the Priſoner, to induce the Judges to be of Opinion that they amounted to Murder. But for Argument's Sake, in caſe the Judges ſhould be of Opinion, that they were too uncertain to found a Reſolution upon, that the Priſoner was guilty of Murder, then they argued that a *venire facias de novo* ought to go, though it was in a capital Caſe.

1. In a civil Caſe, if a Verdict is found ſo uncertainly and ambiguouſly as that no Judgment can be given, a *venire facias de novo* muſt iſſue. *Co. Li.* 227. 2 *Roll. Abr.* 693. *Venn. verſ. Howell. Cro. Car.* 322.

It was obſerved that the Book of *Co. Li.* 227. ſpeaks of Verdicts in general, and does not ſay in what Caſes: But as to civil Caſes there is no Doubt.

2. In criminal Caſes Writs of *venire facias de novo* have been granted. *Co. Inter.* 393. *b. Hil.* 4. *Car.* I. *B. R. rot.* 32. *Rex verſ. Fiſher.*

3. In capital Caſes a *venire facias de novo* muſt go. 1. In Caſes of Miſtrial. 6 *Co.* 14. *a. Arundel*'s Caſe, the Point agreed. 2. For Miſbehaviour of the Jury in giving in their Verdict. *Hil.* 8 *Hen.* VII. *rot.* 3. *placit. reg. Rex verſ. Wayner.* Agreed. 3. As to granting a *venire facias de novo*, after a Special Verdict found, they were ſo candid as to own, that tho' there was Search made with the greateſt Diligence, yet they could not find one Inſtance, nor ſo much as an Opinion of a Judge, except what was ſaid by Lord Chief-Juſtice *Holt*, in the Caſe of the *King verſ. Keite. Comberb.* 408. *Holt* ſays, "I ſhould not be much againſt a *venire de novo*." (*Comyns* 17.) And this was remembered by ſome others that heard that Opinion. The Jury had found in that Caſe that the Priſoner had killed the Man; but it did not certainly appear whether the Fact was Murder or Manſlaughter. *Mr. Attorney General* inſiſted, that if there was ſuch an Uncertainty, as that no Judgment could be given in a capital Caſe; the ſame

* "I take it that the Point on which the Caſe turned was this, it did not appear from any of the Facts found, that the Gun was diſcharged *in Proſecution of the Purpoſe for* "*which the Party was aſſembled*. But had it been poſitively found, that it was diſcharged againſt the Officer or his Aſſiſtant, the Court, upon this finding, might, without encroaching on the Province of the Jury, have preſumed that it was diſcharged in Proſecution of their original Purpoſe. In Caſes ſo circumſtanced, *Res ipſa loquitur*." Foſter's Reports, p. 352."

Reaſon held in ſuch Caſe as in civil and other criminal Caſes; tho' there is no Precedent of it as yet; for *ubi eadem eſt ratio, eſt eadem lex.* And therefore, ſuppoſing (for in this it was argued upon a Suppoſition) that the Verdict was too uncertain to give Judgment againſt the Priſoner, they inſiſted that a *venire facias de novo* ought to go.

But the Judges came to no Reſolution, that a *venire facias de novo* could not iſſue after a ſpecial Verdict in any capital Caſe; it being unneceſſary for them to determine that Queſtion: For as every ſpecial Verdict depends upon the particular finding of the Verdict, ſo the preſent Queſtion relates only to the preſent Verdict before us as found. And as to that we were all of Opinion, that this Verdict was not ſo uncertain as that Judgment could not be given upon it. For the Facts found are all poſitively found; but thoſe Facts in the Nature of them joined together, are not ſufficient to make the Priſoner guilty of Murder. And if ſo, then the Priſoner muſt be acquitted; for it is not that the Verdict is uncertain, but it is not full enough to convict him. Perhaps the Jury might have found other Facts which they have not, but the Court can judge only upon what is found. (*Kelyng*, 78, 79.) We all agreed in the Caſe of *Green* and *Bedell*, on a ſpecial Verdict, that the Verdict was not full enough as to them, for us to judge it Treaſon in them; becauſe the Verdict only found that they were preſent, and found no particular Act of Force committed by them; and did not find that they were aiding and aſſiſting to the reſt. And it is poſſible they might be there only out of Curioſity to ſee; and whether they were aiding and aſſiſting is Matter of Fact, which ought to be expreſsly found by the Jury, and not left to the Court upon any colourable Implication; and accordingly thoſe two Perſons were diſcharged. And yet as to *Green*, he was found to be among the Perſons aſſembled, *&c.* calling up his Cap, and hallooing with a Staff in his Hand; and that whilſt he was among them he was knocked down by a Party of the King's Soldiers that came to ſuppreſs them; and was then taken. And as to *Bedell*, it was found that he was there, and being purſued by one of the King's Soldiers, called out to the reſt of the Company to face about, and not to leave them (*a*).

Upon the whole, there is no Authority againſt the Court's giving Judgment of Acquittal, upon a Verdict that is not ſufficient to convict; and therefore this Verdict not finding Facts ſufficient to make the Priſoner guilty of Murder, he muſt be adjudged not guilty. And he was diſcharged.

(*a*) *Strange*, in his Reports, *vol.* II. *p.* 888. after mentioning this Caſe of (Meſſengers) *Bedell* and *Green*, in the Opinion delivered by the Chief-Juſtice, adds to it, (from *Kelyng*, p. 66.) "On a Special Verdict it was found, that *Thompſon* and his Wife were fighting, and *Dawes* endeavouring to part them was killed by *Thompſon*; and it not "being found, that *Thompſon* knew *Dawes* intended only to part them, it was held Manſlaughter, without ſending it back to the Jury to be certified of his Knowledge. "Theſe are Caſes directly in Point as to this Head; and I muſt obſerve that *Plummer's* Caſe was after the Caſe of *Keit*, wherein *Holt*, Chief-Juſtice, had had this Point under "his Conſideration."

XII. The Trial of Thomas Bambridge, Eſq. late Warden of the *Fleet*, for the Murder of Mr. Robert Castell, before the Right Hon. Sir *Robert Baylis*, Knt. Lord-Mayor of the City of *London*, the Hon. Mr. Juſtice *Page*, the Hon. Mr. Baron *Carter*, and Mr. Serjeant *Raby*, Deputy-Recorder; with other of His Majeſty's Juſtices of the Peace for the City of *London* and County of *Middleſex*, at the *Seſſions-Houſe*, in the *Old-Bailey*, *May* 22, 1729.

Die Martis, 20° *Maij*, 1729.

Proclamation was made for all Perſons concerned to attend.

Clerk of Arraigns.

YOU good Men that are impanelled to Enquire, *&c.* anſwer to your Names; and ſave your Fines.

Clerk of Arraigns. Thomas Bambridge, hold up thy Hand. (*Which he did.*)

Clerk of Arraigns. Thou ſtandeſt indicted, &c.

— — — — — — — —

Clerk of Arraigns. How ſayeſt thou, *Thomas Bambridge*, art thou Guilty of the Felony and Murder whereof thou ſtandeſt indicted, or Not Guilty?

Mr. *Bambridge.* Not Guilty.

Clerk of Arraigns. How wilt thou be tried?

Mr. *Bambridge.* By God and my Country.

Clerk of Arraigns. God ſend thee a good Deliverance.

Die Jovis, 22° *Die Maij*, 1729.

Proclamation was made for Information.

Clerk of Arraigns. Thou the Priſoner at the Bar, theſe Men that thou ſhalt hear called, and perſonally appear, are to paſs between our Sovereign Lord the King and thee, upon the Trial of thy Life and Death, therefore if thou wilt challenge them, or any of them, thy Time is to ſpeak as they come to the Book to be ſworn, before they are ſworn.

Then the Pannel was called over, and Mr. *Bambridge* challenged twenty.

Mr. Juſtice *Page.* You have challeged the full Number allowed by Law, without any Reaſon aſſigned, now take care.

Then the Jury ſworn were as follow:

George Baker,	*Oliver Slowcock*,
John Goodinch,	*John Nemes*,
Robert Hampſhire,	*Thomas Playſeed*,
Richard Maſon,	*William Mills*,
William Bernard,	*Robert Everett*,
Roger Penny,	*Moſes Freeman.*

Clerk of Arraigns. Hold up thy Hand. (*Which he did.*)

Clerk of Arraigns. You, Gentlemen of the Jury, look upon the Priſoner, hearken to his Charge, he ſtands indicted by the Name of *Thomas Bambridge*, &c. (*prout* in the Indictment *Mutatis Mutandis.*)

Mr. *Bambridge.* I deſire the Indictment may be read in *Latin*, as it is.

Mr. Juſtice *Page.* That you ſhall have done.

Mr *Holland.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Counſel for the King. This, Gentlemen, is an Indictment againſt *Thomas Bambridge*, Eſq. late Warden of the *Fleet* Priſon, for the Murder of Mr. *Robert Caſtell*; and the Indictment ſets forth, That *Thomas Bambridge*, upon the 14th of *November*, had the Care and Cuſtody of the Priſoners in the ſaid Priſon, but being a Man of a cruel Temper, did upon the 14th of *November* laſt paſt, aſſault the ſaid *Robert Caſtell*, and carry him to *Richard Corbett's*, a Spunging-houſe, and at the Time of this Impriſonment, one *Joſeph White* was ſick of the Small-Pox, and Mr. *Caſtell* never had them; that Mr. *Caſtell* ſeveral Times deſired he might not be there, for that he was afraid if he ſhould catch it, it would be his Death. That from the 16th of *November* to the 12th of *December* following, *Bambridge* forced him to continue there; and that *Caſtell* (after his Requeſt made to *Bambridge* to be removed from that Place, and Notice had been given to *Bambridge*, that the Perſon was ſick of the Small-Pox) fell ſick of the Small-Pox, and languiſhed under it in the ſame Houſe until *December* 12, and then died: Therefore the Indictment concludes, that the ſaid *Thomas Bambridge* did felonioufly and maliciouſly murder the ſaid *Robert Caſtell*, againſt the Peace of our Sovereign Lord the King, his Crown and Dignity. To this Indictment the Defendant pleaded Not Guilty; but if the Fact is proved, I don't doubt but you will find him Guilty.

Mr. Serj. *Cheſhire.* My Lord, and you Gentlemen of the Jury, *Thomas Bambridge* ſtands indicted for the Murder of Mr. *Robert Caſtell*, a Priſoner then in his Cuſtody. Gentlemen, Priſoners muſt be treated with Humanity and Tenderneſs, unleſs unruly, and then the Gaoler has an Authority to reſtrain them; but thoſe that behave well, he has no ſuch Authority over. This Perſon came to the *Fleet* the 28th of *June*, as will be ſhewn by the Books of the Warden, and *Bambridge* had been a Deputy Warden ſome Time before. I wiſh he had not learned to treat People with Severity. On the 30th of *September* he came to be Warden in right of himſelf, and Mr. *Caſtell* had performed every Thing that was neceſſary; for the Liberty of the Rules had given Security, and to continue that Liberty of the Rules, found additional Security, Security to his Satisfaction, approved on by the Clerk of the Enquiries, yet on the 14th of *November*, he was forced into *Corbett's*; and I muſt ſubmit it to you, my Lord, if it is not contrary to Law, as he lodged in the Rules, at one Mr. *Underwood's*, to carry him to a Spunging-houſe, Houſes where they make a Property of all Priſoners. 'Tis the Duty, Gentlemen, of a Gaoler, that has Priſoners in his Cuſtody, when he thinks they cannot be continued ſafely in the Rules, to put them into Priſon, and not into Spunging-houſes, where large Reckonings are run up upon them. Their Method is, Gentlemen, to make the Security uneaſy, and then to tell the Priſoners that they ſhall be carried into Spunging-houſes, till they can work them up to a Temper to pay ſuch Sums of Money that they want to get from the unhappy Priſoners. Gentlemen, Mr. *Caſtell* was given to underſtand, that a Man was ill of the Small-Pox in the ſame Houſe, and Mr. *Caſtell* had never had them, and ſaid, *he ſhould die if he had, let me not be carried into this Houſe.* This did not take Effect, *Bambridge* inſiſted upon his renewing his Security, and when he was carried there, *Savage* went from him to *Bambridge*, and told him that Mr. *Caſtell* never had the Small-Pox, and that one *White* was ill of them, and begged that he might be carried back into his Lodgings, or into the Gaol. One would have thought *Bambridge* ſhould have had ſome Conſideration of him, but he had no Anſwer to his Satisfaction; he continued there very melancholy till the 4th of *December*, and then the Diſtemper took him; he ſickened with the ſame, the Danger increaſed, and he died on the 12th, ſo that it was apparently the Occaſion of his Death. It was *Bambridge's* Duty, when he was informed the Diſtemper was in the Houſe, to have removed him. This is the State of the Evidence, and as we ſhall be able to prove the Facts, I doubt not but you will find the Defendant Guilty.

Mr. Attorney-General. My Lord, and you Gentlemen of the Jury, *Thomas Bambridge* ſtands indicted for the Life of an unhappy Man, who died under his Cuſtody. As the Law has armed Gaolers with a ſufficient Authority, for the ſafe Cuſtody of their Priſoners, and for the ſecuring their Properties, ſo the Law has taken Care that they ſhall not put any Priſoner into hard Dureſs, and if the Man dies, the Life of the Priſoner lies to the Gaoler, and whether the Perſon dies being ſo confined, or whether it was the Diſtemper occaſioned by means and by reaſon of his illegal Dureſs, I ſubmit it to your Lordſhip's Direction, to be Murder; for where actual Force ſhould be committed, and the Offender does an unlawful Act, by which Death enſues, I muſt ſubmit it whether, being mixed with actual Force, it is not Murder. This is a particular Caſe of this Priſoner, for he had given Security for the Enjoyment of the Indulgence of the Liberty of the Rules, during the Time he was in thoſe Lodgings; but for what Reaſon does not appear, that *Bambridge* ordered *Corbett* to take him out, and not to bring him into Priſon, but carry him into *Corbett's* Houſe, that will appear to be an illegal Act of Impriſonment; for by the Statute 22d *Charles* II. it is provided, no Gaoler, or other Officer, having Priſoners in his Cuſtody, ſhall carry them to any public Victualling-Houſe; therefore *Bambridge* ordering Mr. *Caſtell* to be carried to a Victualling-Houſe, and not into the Priſon, is an illegal Act, and the Conſequence of that, I apprehend to be an illegal Confinement: At the Time when carried there, *White* being ſick of the Small-Pox, it will appear to you, Gentlemen, that *Bambridge* was acquainted that the Small-Pox was in the Houſe, (it was a contagious Diſtemper) and that Mr. *Caſtell* was afraid of catching it. Frequent Meſſages were ſent to deſire he might be removed, and it will apppear that Mr. *Caſtell* did perſonally apply to

Bambridge himself at *Corbett's*; after this, the Small-Pox being mentioned to be in the House when *Bambridge* was in Company with Mr. *Castell*, he said he never had had them, and if he catched the Contagion, it would kill him, and desired to be removed; but *Bambridge* refused to let him go, and continued the unlawful Duress upon *Castell*; he did catch the Distemper, and of that Distemper, so taken into *Corbett's*, under this Duress, died. If this Matter is proved, it is a point of Law, if it is not Murder; as to the Fact, it must appear by Evidence, and if my Brief be true, it will be fully made out to you. If the Gaoler does so treat a Prisoner to put him in hazard of his Life, and by such Duress he dies, I submit it whether the Gaoler is not guilty of Murder.

Mr. Sol. Gen. We will call the Witnesses to prove the Facts.

Call Richard Longborne *(who was sworn)*, *and produced a Copy of* Bambridge's *Patent.*

Mr. Sol. Gen. Where had you it from?—Mr. *Long.* From the Rolls.

Mr. Sol. Gen. Is it a true Copy?—Mr. *Long.* It is a true Copy.

Mr. Sol. Gen. Deliver it to the Clerk to be read, *(which he accordingly did)* and it appeared to be dated the 30th of *September*, in the second Year of his present Majesty.

Call Thomas Cotton. *(Who was sworn.)*

Mr. Sol. Gen. Mr. *Cotton*, what Officer are you belonging to the *Fleet* Prison?—Mr. *Cot.* I am Clerk of the Papers.

Mr. Sol Gen. Produce the Commitment Books of the said Office, and see when Mr. *Castell* was committed Prisoner.

Mr. *Cot.* He was committed the 15th of *July* 1728, upon *Mesne Process.*

Mr. Sol. Gen. When was he charged in Execution?

Mr. *Cot.* The 9th of *November* following, for 180*l.* at the Suit of *William Waring.*

Mr. *Bambridge.* I do not hear Mr. *Cotton*, and therefore desire he may raise his Voice *(upon which the Court admitted Mr.* Bambridge *to come to the inner Bar)*; I must observe, my Lord, the Writ was brought in 1726, and entered in 1728.

Call Richard Corbett. *(Who was sworn.)*

Mr. Sol. Gen. Mr. *Corbett*, what House do you keep?

Mr. *Cor.* A Publick-House.

Mr. Sol. Gen. How long have you lived there?

Mr. *Cor.* Eleven Years.

Mr. Sol. Gen. Did you know Mr. *Castell* was in your House?

Mr. *Cor.* Yes.

Mr. Sol. Gen. Who brought Mr. *Castell* to your House?

Mr. *Cor.* Myself, his Security sent for me to the *Rainbow* Coffee-House.

Mr. Sol. Gen. Where was he before he was carried to your House?

Mr. *Cor.* At his own Lodgings.

Mr. Sol. Gen. Where was that?

Mr. *Cor.* At Mr. *Underwood's*, in the Rules of the *Fleet.*

Mr. Sol. Gen. Now go on.

Mr. *Cor.* My Lord, the Security sent for me to the *Rainbow* Coffee-House to take up Mr. *Castell*; but having some Respect for Mr. *Castell*, I sent to him to let him know that his Security intended to surrender him, and afterwards, at five or six o'Clock in the Evening, the Security sent for me again to the *King's-Arms* Tavern (where Mr. *Castell* was) to surrender him, and I told them I would not take Mr. *Castell* into Custody without I was paid; and they gave me Half a Guinea, and then asked me, Why I did not lock him up? Said I, He is my Prisoner now, not yours, and I left him there, and went to the Judge's Chambers; whilst I was gone, a Servant was sent to my House to have a Fire made and a Bed got ready for Mr. *Castell.*

Mr. Sol. Gen. How came he to go to your House?

Mr. *Cor.* It was at his own Request.

Mr. Sol. Gen. How long did he continue there?

Mr. *Cor.* Till he died, which was on the 12th of *December* following.

Mr. Sol. Gen. Was one *White* there?---Mr. *Cor.* Yes.

Mr. Sol. Gen. How long?---Mr. *Cor.* A considerable Time. *White* had been well about 14 Days before Mr. *Castell* came.

Mr. Sol. Gen. Was *Bambridge* there?

Mr. *Cor.* He was there several Times.

Mr. Sol. Gen. Did Mr. *Castell* ever desire you to go to Mr. *Bambridge?*

Mr. *Cor.* He did desire me to go to *Bambridge*, and said he was afraid, he had never had the Small-Pox, for if he had, it was when he was very young; and I went to *Bambridge* to tell him, that Mr. *Castell* desired to go to his Lodgings.

Mr. Sol. Gen. When was this?

Mr. *Cor.* Nine or ten Days after the Security had surrendered him.

Mr. Sol. Gen. What did Mr. *Castell* tell you to say to Mr. *Bambridge?*

Mr. *Cor.* He told me to tell Mr. *Bambridge* he was afraid of the Small-Pox, and to sollicit him to let him go to his Lodgings; and I went accordingly to Mr. *Bambridge*, at the *King's-Arms*, on *Ludgate-Hill*, and did sollicit him to let Mr. *Castell* go to his Lodgings, and *Bambridge* made answer to me, that he could not let a Man go, that was charged in three Executions, without Security.

Mr. Sol. Gen. What was the Reason you told *Bambridge* that Mr. *Castell* never had the Small-Pox, and desired to go to his Lodging at *Ludgate-Hill?*

Mr. *Cor.* I told *Bambridge* that one *White* had the Small-Pox.

Mr. Sol. Gen. What Room was it Mr. *Castell* died in?

Mr. *Cor.* I have kept a Club in the Room where Mr. *Castell* died.

Mr. At. Gen. When did you first acquaint Mr. *Bambridge* with Mr. *Castell's* being at your House?

Mr. *Cor.* The 15th of *November*, the next Day.

Mr. At. Gen. What said you to *Bambridge?*

Mr. *Cor.* I told him Mr. *Castell's* Security had surrendered him; and *Bambridge* asked, Where is he? I said, At my House; to which *Bambridge* answered, That was well.

Mr. *Bambridge.* Be pleased to ask, my Lord, if *Corbett* had any Directions from me to take Mr. *Castell* into Custody.

Mr. Justice *Page. Corbett*, answer that Question.—Mr. *Cor.* I had not.

Mr. *Bam.* When was I admitted into my Office?

Mr. *Cor.* On the 15th of *December.*

Mr. *Bam.* I desire Mr. *Corbett* to be asked, if he was not in Court when I qualified myself for the Place, and desire he may give an Account of it.---Mr. *Cor.* I was in Court.

Mr. Justice *Page.* I cannot admit him to give an Account of what was done in Court, for that must appear by the Records thereof.

Mr. *Bam.* My Lord, I desire Mr. *Corbett* may acquaint you what part of the House Mr. *Castell* lay in, and what part *White.*

Mr. *Cor. White* lay in the old House, in the Garret, and Mr. *Castell* in a House newly taken in, on the first Floor.

Mr. Justice *Page.* Had Mr. *Castell* and *White* any Communication together?

Mr. *Cor.* I never suffered *White* to come down for eight Weeks.

Mr. Justice *Page.* How high was the House where he lay?

Mr. *Cor.* Three Stories.

Mr. Baron *Carter.* How long was it before *White* went out of his Chamber after Mr. *Castell* was there?

Mr. *Cor.* Not till six Weeks after Mr. *Castell* was dead.

Call John Savage. *(Who was sworn.)*

Mr. Sol. Gen. Mr. *Savage*, do you know Mr. *Castell* being any Time a Prisoner in the *Fleet?*---Mr. *Savage.* I was daily with him.

Mr. Sol. Gen. Do you know any thing of his being sent to *Corbett's?*

Mr. *Sav.* I was several Times in Company with him, and he seemed apprehensive of his Bail surrendering him.

Mr. Sol. Gen. Did you go to him to *Corbett's?*

Mr. *Sav.* I went to Mr. *Castell* the Day after he was carried there, and he complained that he was afraid he should not get Day Rules to go out with, though it was Term-Time, to transact his Business.

Mr. Sol. Gen. Had he the Small-Pox at that Time?---Mr. *Sav.* No.

Mr. Sol. Gen. How soon did you go to Mr. *Castell* again?

Mr. *Sav.* I went to him again in a Day or two, and he expressed a great Concern for fear of the Small-Pox, and said if he caught that Distemper, it would be very fatal to him; and I went to Mr. *Bambridge*, and told him of it, and *Bambridge* said he would not let him go to his Lodgings.

Mr. Sol. Gen. Was you with *Bambridge* at any other Time?

Mr. *Sav.* I was at the Coffee-House with him.

Mr. Sol. Gen. What Request did you make then?

Mr. *Sav.* I don't remember any.

Mr. Sol. Gen. How many Times did you go to *Bambridge?*

Mr. *Sav.* Four Times I went to him, and the second Time I mentioned Mr. *Castell's* Fear of having the Small-Pox.

Mr. Sol. Gen. Did you see Mr. *Castell* after he had the Small-Pox?

Mr. *Sav.* I did not see him, in regard to some of my own Family who had not had them.

Mr. At. Gen. Mr. *Castell* was carried to Mr. *Corbett's* the very Day he was surrendered, pray what was it he desired at that Time?

Mr. *Sav.* He said it was a great Misfortune not to have the Benefit of Day Rules to negotiate his Business with his Friends.

Mr. At. Gen. When did you first go to Mr. *Castell?*

Mr. *Sav.* The next Day after he was carried there, and it was mentioned that Mr. *Castell* was fearful of having the Small-Pox.

Mr. At. Gen. Was not that the first Day that he was carried there?

Mr. *Sav.* I am not sure it was the first Day.

Mr. At. Gen. How did you hear it?

Mr. *Sav.* I had it from Mr. *Castell* the next Day after, or the Day after that.

Mr. At. Gen. When you went first to Mr. *Bambridge* from Mr. *Castell*, what did you desire?

Mr. *Sav.* I did desire that he might have the Benefit of the Day Rules, and Mr. *Bambridge* said he could not, being charged in Execution to the amount of 900*l.*

Mr. At. Gen. When did you go to *Bambridge?*

Mr. *Sav.* I believe I went in a Day or two after Mr. *Castell* was carried in, and then mentioned Mr. *Castell's* Fears of having the Small-Pox.

Mr. At. Gen. Did you say any thing of the Small-Pox being in the House?——Mr. *Sav.* I knew nothing of them.

Mr. At. Gen. How came you to talk of the Small-Pox to *Bambridge?*

Mr. *Sav.* I heard it from Mr. *Castell*, that the Small-Pox was there.

Mr. At. Gen. What was the Reason of Mr. *Castell's* Fear, and Message to *Bambridge?*

Mr. *Sav.* Mr. *Castell* told me the Small-Pox was there at *Corbett's.*

Mr. At. Gen. What did you tell *Bambridge?*

Mr. *Sav.* I told *Bambridge* that Mr. *Castell* was fearful of having the Small-Pox, and that he desired to be carried to his own Lodgings.

Call Mary Corbett. *(Who was sworn.)*

Mr. Serj. *Cheshire.* Mrs. *Mary Corbett*, you are Wife of Mr. *Corbett?*

Mrs. *Cor.* Yes.

Mr. Serj. *Chesh.* When was Mr. *Castell* brought to your House?

Mrs. *Cor.* The 14th of *November*, at ten o'Clock at Night, and a Drawer came from the Tavern, and brought a Message to have a Fire made, and a Bed prepared for Mr. *Castell.*

Mr. Serj. *Chesh.* Where was the Message brought from?

Mrs. *Cor.* The Message was from the *King's-Arms* Tavern.

Mr. Serj. *Chesh.* Did Mr. *Castell* come?---Mrs. *Cor.* Yes.

Mr. Serj. *Chesh.* Was *White* there?

Mrs. *Cor.* Yes.

Mr. Serj. *Chesh.* How long had *White* had the Small-Pox?

Mrs. *Cor.* I believe he had had the Small-Pox ten Days.

Mr. Serj. *Chesh.* Was there any Mark of the Small-Pox remaining?

Mrs. *Cor.* He kept the Scars on.

Mr. Serj. *Chesh.* How long was he sick?

Mrs. *Cor.* Ten Days.

Mr. Serj. *Chesh.* Did he sit up?

Mrs.

Mrs. *Corbett*. He got up every Day.

Mr. Serj. *Cheſhire*. Pray, if they are a good Sort, do they not turn in nine Days?--- Mrs. *Corbett*. Yes.

Mr. Serj. *Cheſhire*. So that the Day after the Small-Pox had turned, Mr. *Caſtell* came into your Houſe: How long had Mr. *Caſtell* been in your Houſe before he had the Small-Pox?

Mrs. *Corbett*. Mr. *Caſtell* had not the Small-Pox till about eight Days after he came to my Houſe: I was by chance ſpeaking of the Small-Pox, and ſaying a Perſon in the Houſe had them, and Mr. *Caſtell* ſaid he was very ſorry for it, becauſe he had never had them.

Mr. Serj. *Cheſhire*. Did he then deſire any thing of you or your Huſband, as to ſpeaking to Mr. *Bambridge*?

Mrs. *Corbett*. Mr. *Bambridge* was in the Room at the ſame Time.

Mr. Serj. *Cheſhire*. What did Mr. *Caſtell* ſay?

Mrs. *Corbett*. He deſired that he might go home to his Lodgings with a Keeper, and *Bambridge* ſaid in anſwer, he never knew any thing of that kind done.

Mr. Serj. *Cheſhire*. Did you give any Inſtance?

Mrs. *Corbett*. I told him that it happened when Mr. *Conway*, a Maſter in Chancery, was committed to the *Fleet* Priſon, and there was no Conveniency in the Priſon, nor at my Houſe, and then Mr. *Gybbon* ſent a Keeper with him to his Lodging.

Mr. Serj. *Cheſhire*. What did *Bambridge* ſay then?

Mrs. *Corbett*. He ſaid no more.

Mr. Serj. *Cheſhire*. During the Time Mr. *Caſtell* was at your Houſe, were there any Securities given?

Mrs. *Corbett*. Yes, I believe there were, for Mr. *Caſtell* ſaid his Securities were come, and ſtaid only for *Codnor*'s coming with Bonds, and *Codnor* told me there was Security given.

Mr. Serj. *Cheſhire*. Do you know nothing but what *Codnor* ſaid?

Mrs. *Corbett*. I ſaw two Men there, whoſe Names I do not know, in order to give Security.

Mr. Serj. *Cheſhire*. Do you know that they gave Security?

Mrs. *Corbett*. I ſaw *Codnor*, the Deputy Clerk of the Papers, go up Stairs with ſome Papers, which Mr. *Caſtell* ſaid was his Bonds.

Mr. Serj. *Cheſhire*. Did you hear *Bambridge* ſay, or own, that *Codnor* had taken Security?—Mrs. *Corbett*. No.

Mr. Serj. *Cheſhire*. How long was this after *Caſtell* came to your Houſe?

Mrs. *Corbett*. About ten Days.

Mr. Serj. *Cheſhire*. Do you remember the Time how long after he ſickened and died?

Mrs. *Corbett*. He ſickened on the 4th Day of *December*, and died on the 12th.

Mr. Serj. *Cheſhire*. What did he die of?

Mrs. *Corbett*. Of the Small-Pox.

Mr. Att. Gen. What was the Requeſt of Mr. *Caſtell*, when he had the Converſation with Mr. *Bambridge* at your Houſe?

Mrs. *Corbett*. His Requeſt to Mr. *Bambridge* was, to be moved to his own Lodgings with a Keeper.

Mr. Att. Gen. Did he agree or refuſe?

Mrs. *Corbett*. His Anſwer was, he never knew any thing of that kind done.

Mr. Att. Gen. When was Mr. *Caſtell* firſt brought into your Houſe?

Mrs. *Corbett*. On the 14th of *November*, about ten o'Clock at Night.

Mr. *Lee*. Was you in Company at the Tavern?---Mrs. *Corbett*. No.

Mr. *Lee*. How long after your Huſband was gone there, did you receive the Meſſage about Mr. *Caſtell*'s coming?

Mrs. *Corbett*. An Hour and an Half.

Mr. *Lee*. Who brought him to your Houſe?

Mrs. *Corbett*. He came in Cuſtody, but I did not ſee him.

Mr. *Lee*. How long was it after that Mr. *Bambridge* came to your Houſe?

Mrs. *Corbett*. In about a Week.

Mr. *Lee*. Did you hear *Bambridge* ſay any thing when he was at that Time at your Houſe?

Mrs. *Corbett*. He did not ſay any thing to me.

Mr. *Lee*. Are you ſure of it?---Mrs. *Corbett*. Yes.

Mr. *Lee*. *White* lay ill of the Small-Pox then, was it in the ſame Stair-caſe?

Mrs. *Corbett*. They went up the ſame Stair-caſe, but Mr. *Caſtell* lay in the new Houſe one Pair of Stairs, and *White* in the old Houſe three Pair of Stairs.

Mr. *Lee*. How long was it after Mr. *Caſtell* had been at your Houſe, that you mentioned *White*'s having the Small-Pox?

Mrs *Corbett*. About a Week after he had been there, I ſaid to Mr. *Caſtell* (Mr. *Bambridge* being by) that there was one in the Houſe had the Small-Pox; to which Mr. *Caſtell* replied, I am ſorry to hear it, for I never had them.

Mrs. *Lee*. How long had *White* been ill before you happened to ſpeak of his Illneſs to *Caſtell*?

Mrs. *Corbett*. To the beſt of my Remembrance eight Days.

Mr. *Bambridge* (*ſhewing a Paper to Mrs.* Corbett) ſays, Mrs. *Corbett*, pray look on that Paper.

Mrs. *Corbett*. I have, and remember the Coroner's coming to my Houſe, but did not know who he was.

Mr. Juſt. *Page*. If you intend to produce any Evidence in reſpect to the Inqueſt, ſhe is not a proper Perſon; for that you muſt produce the Coroner himſelf.

Mr. *Bambridge*. My Lord, I ſhall ſubmit, and deſire Mrs. *Corbett* may repeat what ſhe ſaid in relation to Mr. *Conway*.

Mr. Juſt. *Page*. Mrs. *Corbett*, pray repeat that.

Mrs. *Corbett*. My Lord, Mr. *Conway* was at a Friend's Houſe on *Ludgate-Hill*, and the Reaſon was, the Gaol was very full, and there was no Room at my Houſe, and Mr. *Gybbon* ſent a Keeper with him to his Lodging, but that in two Nights and two Days, when there was Room, he came there.

Mr. Juſt. *Page*. Do you know of your own Knowledge, what Houſe he was at?

Mrs. *Corbett*. No, I do not, but that he was kept in the Rules of the Priſon, with a Keeper, till he was brought to my Houſe.

Mr. *Bambridge*. My Lord, I deſire ſhe may acquaint you what ſort of Intimacy there was between Mr. *Caſtell* and myſelf?

Mrs. *Corbett*. Mr. *Bambridge* uſed to be at a Club at my Houſe, where ſome Perſons met, and among them Mr. *Caſtell*, and I always thought him and Mr. *Bambridge* to be friendly together.

Mr. *Bambridge*. When Mr. *Caſtell* ſpoke about enquiring after new Securities, what Anſwer did I make?

Mrs. *Corbett*. That you would take the Security as it came.

Mr. *Bambridge*. When I was ſpeaking to a Gentleman, who told me Mr. *Caſtell* was ſick of the Small-Pox, what did I ſay?

Mrs. *Corbett*. You ſaid, that you was very ſorry to hear it, and that Mr. *Caſtell* ſhould trifle with you, and himſelf too, about the Securities.

Mr. *Bambridge*. When Mr. *Caſtell* applied about Securities, what did I ſay?---Mrs. *Corbett*. You ſaid it ſhould be done.

Mr. *Bambridge*. Was it not eſteemed a Favour, or Part of Friendſhip?

Mrs. *Corbett*. It was.

Mr. *Bambridge*. Was you by when Mr. *Caſtell* deſired to go to his Lodgings on *Ludgate-Hill*?---Mrs. *Corbett*. I was.

Mr. *Bambridge*. What was the Reaſon of Mr. *Caſtell*'s deſiring to go?

Mrs. *Corbett*. I believe he was afraid of the Small-Pox.

Call Richard Corbett *again*.

Mr. Juſt. *Page*. Mr. *Corbett*, you ſaid that *White* was recovered of the Small-Pox fourteen Days before Mr. *Caſtell* was brought to your Houſe; are you certain of that?

Mr. *Corbett*. I heard ſo, my Lord; I never went up to ſee him, and the Nurſe is here, and can inform your Lordſhip better.

Mr. Juſt. *Page*. You may go, you know nothing of it.

Call Hannah Stretch. (*Who was ſworn.*)

Mr. Sol. Gen. Mrs. *Stretch*, was you ſent for to Mr. *Caſtell* when he was ill?---Mrs. *Stretch*. Yes.

Mr. Sol. Gen. When did you leave *White*?

Mrs. *Stretch*. Some time in *November* laſt.

Mr. Sol. Gen. Was you Nurſe to Mr. *Caſtell*?---Mrs. *Stretch*. I was.

Mr. Sol. Gen. Do you know how Mr. *Caſtell* got the Small-Pox?

Mrs. *Stretch*. I do not.

Mr. Sol. Gen. How long did you ſtay with *White*?

Mrs. *Stretch*. Full three Weeks, and in that Time *White* had not been out of his Room. I went from *White* on the *Thurſday*, and was ſent for to Mr. *Caſtell* on the *Tueſday* following.

Mr. Sol. Gen. What Condition was *White* in when you left him?

Mrs. *Stretch*. When I left him he was out of all Danger, he had taken three Doſes of Phyſick.

Call Thomas Dawſon. (*Who was ſworn*).

Mr. Sol. Gen. Mr. *Dawſon*, do you remember Mr. *Caſtell*'s being brought into *Corbett*'s?

Mr. *Dawſon*. I never ſaw Mr. *Caſtell* till after he was dead.

Call John Noel. (*Who was ſworn.*)

Mr. Sol. Gen. Mr. *Noel*, did you know Mr. *Caſtell*?

Mr. *Noel*. I was a Priſoner at Mr. *Corbett*'s when he came there.

Mr. Sol. Gen. Was one *White* ill of the Small-Pox then?

Mr. *Noel*. I never ſaw Mr. *White*, but was informed he had the Small-Pox above Stairs; I was then in the Houſe.

Mr. Sol. Gen. Do you know how long *White* had them?

Mr. *Noel*. He was never ſuffered to come down in two Months after.

Call James Codnor. (*Who was ſworn.*)

Mr. Sol. Gen. Mr. *Codnor*, was you concerned in the Priſon of the *Fleet* as a Clerk?

Mr. *Codnor*. I did act there as Deputy Clerk of the Papers, by the Approbation of Mr. *Bambridge*.

Mr. Sol. Gen. Did you know of any Securities given by Mr. *Caſtell*?

Mr. *Codnor*. Some time in *November* laſt, in *Michaelmas* Term, I received Orders from Mr. *Bambridge* to attend Mr. *Caſtell* as often as his Security ſhould come to him to compleat his Bonds, who had then three Securities, and I received three *Habeas Corpus* very ſoon one after the other, and Mr. *Caſtell* could not get the Bonds ſigned ſo ſoon till Execution came againſt him, and then the Security was objected to, becauſe a greater Charge came againſt him.

Mr. Serj. *Cheſhire*. What were thoſe Bonds that had been given?

Mr. Juſt. *Page*, and Mr. Bar. *Carter*. } We cannot admit you to ask any Queſtions as to the Bonds, unleſs you had applied to Mr. *Bambridge* for them, and he had refuſed to deliver them.

Then the Priſoner was directed to proceed in his Defence.

Mr. *Bambridge*. I have a great many Witneſſes to prove my Regard for Mr. *Caſtell*, if occaſion; but ſhall ſubmit the reſt to the Evidence given for the Crown.

Mr. Juſt. *Page*. You may go on if you think fit.

Mr. *Bambridge*. No, my Lord, I will ſubmit the whole.

Mr. Juſt. *Page*. Gentlemen of the Jury, Mr. *Bambridge* ſtands indicted for the Murder of one Mr. *Caſtell*. If this has not been proved, Gentlemen, you are not to find the Man Guilty. That the Evidence for the Crown is not ſufficient to find him Guilty, for ſo far from being Guilty, Mr. *Caſtell* deſired to come there, and the Warden, if he is apprehenſive that a Man will run away, then it is the Duty of a Warden to carry him to a Place of ſafe Cuſtody. It is ſaid, indeed, that when Mr. *Bambridge* came to *Corbett*'s, in about eight Days after Mr. *Caſtell* was carried there, Mr. *Bambridge* was by, and Mr. *Caſtell* expreſſed his Fear of having the Small-Pox, and deſired to be removed to his Lodging, but then he never asked to go into the Cuſtody of the Gaol. Mrs. *Corbett* indeed ſaid, that one of the Maſters in Chancery, Mr. *Conway*, was allowed to be at his Lodging two Days before he was carried to the Gaol, but the Reaſon was, there was no Room in the Gaol. Gentlemen, the Gaoler muſt keep his Priſoners as well as he can, for they muſt not be put like Hogs together. Gentlemen, here was Execution upon Execution, which came to the Sum of 900*l.* therefore it was requiſite to have him in a Place of Safety. Another Witneſs ſays, that the Deputy Clerk of the Papers was ordered by Mr. *Bambridge* at all Times to attend Mr. *Caſtell* about his Securities, and ſo far from the Priſoner's having a malicious Intent, that there was no Quarrel, no ill Nature, no Difference, and they met frequently at *Corbett*'s at a Club, and there was no Quarrel, but always a Friendſhip between them. And when *Bambridge* heard that he had the Small-Pox, he declared that he was ſorry that Mr. *Caſtell* had them, and that he had trifled with himſelf and him about

the Securities. It must appear, Gentlemen, to you, that Mr. *Castell* was murdered maliciously, to find the Prisoner Guilty; if it appears otherwise, you must acquit him.

Clerk of Arraigns. How say you, is *Thomas Bambridge* Guilty of the Murder whereof he stands indicted, or not Guilty?

Foreman of the Jury. Not Guilty.

Upon this Acquittal, *Mary*, the Widow of Mr. *Robert Castell*, brought an Appeal against the said *Thomas Bambridge* and *Richard Corbett*, for the Murder of her Husband. We shall here give the Trial on the Appeal, though it is not in the Order of Time, yet as it relates to the same Fact, is proper to follow the Trial of *Bambridge* for the Murder.

What follows first, is a short Account of the Proceedings previous to the Trial, on the Appeal.

Hillary Term, 3 *Geo.* II.

Castell, *Vid. vers.* Bambridge, *et* Corbett.

'The Defendant *Bambridge*, having been prosecuted on the Report of 'the Committee of the House of Commons, for the Murder of the Plain-'tiff's Husband, who was a Prisoner in the *Fleet*, under the Custody of '*Bambridge* the Warden, and having on the Trial been honourably 'acquitted, upon the Prosecutor's own Evidence, was followed with an 'Appeal, to which *Corbett*, who on the Cross Examination appeared to 'be a material Witness for *Bambridge*, was now also made an Appellee; 'and the Writ of Appeal running *quia Maria Castell vidua fecit nos secur' 'de clamore suo prosequendo per Thom' Wagstaffe et Poston Stracey*, contrary 'to the usual Form, which is, *si* the Appellant *fecerit nos* (i. e. the King) '*secur'* Application was made to the Lord Chancellor *King*, to supersede 'this Writ, upon Affidavit that the Appellees were both in Custody upon 'it, but that no Security had been given, and the Writ reciting it as an 'Act done before the Emanation of it, the Sheriff had not taken any, as 'he would have done if it had been put by way of Condition, *si fecerit*. 'And it was argued by me that the Statute of *Westminster* 2. *C.* 12. giving 'the Appellee a Remedy against the Appellant, her Pledges, and Abet-'tors, it was not a Matter of Form, but Security should be entered into 'by Persons of Ability; to which it was answered by *Mr. Attorney-'General*, that it was sufficient if there were Pledges at any Time before 'Judgment. Sir *T. Jones*, 154. 9. *Coke*, Dr. *Hussey*'s Case. Croke 'Jac. 413.

'To this it was replied, that at that rate the Appellee would never 'have any Remedy against the Pledges; for if he was convicted, he would 'be intitled to none, and if he was acquitted, the Appellant would never 'pray Judgment, and it would be an Artifice to elude the Law.

'Notwithstanding all which the Chancellor would do nothing in it, 'but said, if the *quia fecerit vos* was wrong, we might have Advantage of 'it, and so refused to make any Order.

'Upon the first Day of *Michaelmas* Term last, the Writ being return-'ed, and the Appellees both brought by *Habeas Corpus*, and turned over 'to the King's-Bench, it was there moved to have the Proceeding set aside, 'upon the same Affidavit of there being no Pledges; and the Court here 'were of Opinion it was a very good Objection, and a Foundation to 'supersede the Writ; but then they said, it was not in their Power, who 'were to take the Writ as they found it, and not to hear Affidavits, to 'contradict the Suggestion of the Writ; and therefore the having Secu-'rity, being recited as an Act done, they must take it so, and could not 'relieve.

'Upon this the Appeal was arraigned, setting forth that the Appellant's 'Husband was a Prisoner in the *Fleet*, under the Custody of *Bambridge* 'the Warden, who made an Assault upon him, and contrary to his Will 'carried him to the House of *Corbett*, a Victualling-house within the *Fleet*, 'and there imprisoned him, where one *White* then lay ill of the Small-'Pox, which *Castell* had never had; that the Appellees had Notice of 'this, and were desired to suffer him to remove to another Place in 'the Prison, which they refused, and afterwards *Castell* fell ill of the 'Distemper, and died in *Corbett*'s House; whereby the Court concludes, 'the Appellees were Guilty of Murder.

'Without staying for a Copy of the Declaration, the Appellees *instan-'ter* plead Not Guilty, and their Plea was rehearsed in *French*, and Issue 'joined.

'Then it was moved, that the Appellees might be bailed; and, upon 'Debate, the Court were of Opinion to bail *Bambridge*, and not *Corbett*; 'and the Reason they gave was, that *Bambridge* had been acquitted, 'which was a strong Presumption of Innocence; and the Judge before 'whom he was tried, had certified that he was very well satisfied with 'the Verdict, and they said they would bail him in all Cases after an 'Acquittal; and that was the Reason they denied to bail in *Slaughter-'ford*'s Case, because *Holt*, Chief-Justice, had sent out the Jury again, 'to consider whether they would stand to their Verdict of Acquittal; 'and when they insisted upon it, he himself ordered the Appeal.

'But as to *Corbett*, there was no Foundation to bail, for they denied 'that it was of Course to bail in an Appeal; so *Bambridge* was bailed by 'two Persons, *Corpus pro Corpore*, who justified in 1000*l.* each. And 'it was agreed, that in an Appeal by Writ, on the Civil Side, two Bail 'only are required; but had it come on the Crown Side by *Certiorari*, 'there must have been four.

'Then it was moved to fix a Time for the Trial, the Appellees offer-'ing to take short Notice; but it being by Original, there was a Neces-'sity to have fifteen Days between the *Teste* and the Return of the *Dis-'tringas*, and they could not be tried on the *Venire*, because being in '*London*, there could be no Trial at Bar, (the Citizens not being to be 'brought out of the City) and as it must be tried at *Nisi Prius*, there 'must be a *Distringas*.

'Towards the latter End of the Term it was moved, that the Appel-'lees might be discharged, there being a Discontinuance, for that no '*Venire* had been taken out; and in Appeals, which are a recent Prose-'cution, every Delay is a Discontinuance: and *Cro. Jac.* 283. *Yelv.* 204. 'were cited. But upon Consideration the Court held, that it was not 'necessary to take out the Writ and make it returnable the soonest it 'might be, though it must bear *Teste* the Day the Issue is joined; and 'then the Appellant took out a *Venire*, *Teste* 23d *October*, and returnable 'the 25th of *November*, which the Court looked upon as an affected De-'lay, and therefore admitted the other Appellee, *Corbett*, to Bail. They 'said it appeared he might have been tried the Sitting after the Term, 'and then upon his Acquittal, he must have been *instanter* discharged by 'the Judge of *Nisi Prius*, according to the Statute 14 *H.* VI. *C.* I.

'Both being thus out upon Bail, appeared on the several Continuance 'Days, according to their Recognizance, and the Appellant also ap-'peared; and in the Beginning of this Term the Appellees moved for a 'Rule on Mr. *Tanner*, the Officer who keeps the Records at the *Old-'Bailey*, to attend the Trial with the Record of *Bambridge*'s Acquittal; 'he not being allowed a Copy of it. But the Court refused to make any 'Rule, and said, if it was brought it could be no Evidence. *Strange*'s '*Reports*, Vol. II. 854.'

XIII. The Trial of Thomas Bambridge, Esq. and Richard Corbett, at *Guildhall, London*, on an Appeal for the Murder of Mr. *Robert Castell*, before the Right Hon. the Lord Chief-Justice *Raymond*, *January* 26, 1729-30.

Mr. *Filmer*.

MAY it please your Lordship, and you Gentlemen of the Jury, I am of Counsel for the Appellants. This is an Appeal of Murder, brought by *Mary Castell*, against the Defendants *Thomas Bambridge* and *Richard Corbett*, for the Death of her late Husband. The Declaration sets forth, that upon the 14th of *November*, in the Second Year of his present Majesty, the said *Thomas Bambridge* was Warden of the Prison of the *Fleet*, and having the Custody of the Prisoners, did make an Assault, and with Force and Arms, and Malice aforethought, did carry and convey him to a Victualling-house, being the Defendant *Corbett*'s Mansion-house, and did detain him there till the 12th of *December*, against his Will, and without his Consent; and that one *Joseph White* was then sick of the Small-Pox, and that *Robert Castell* had never had the Small-Pox. That on the 16th of *November*, *Robert Castell* requested they would not detain him, and gave the Defendants Notice that *White* was sick of the Small-Pox, and that he *Castell* had never had the Small-Pox, and that he was afraid of his Death from this Distemper; notwithstanding which, the Defendants imprisoned and detained him from the 16th of *November* to the 12th of *December*, and forced him to remain all that Time in the said House: And further sets forth, that on the 4th of *December* he began to grow sick, and languished to the 12th of the same *December*, and on the 12th died; so that the Defendants, with Malice aforethought, killed *Robert Castell* aforesaid, the Husband of the said *Mary Castell*. To this Declaration the Defendants have pleaded Not Guilty, but if we prove the Facts you will find them Guilty.

Mr. *Reeves* [afterwards Lord Chief-Justice of the Common Pleas]. May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel for the Widow. This is an Appeal of Murder, brought by her against the two Defendants, *Thomas Bambridge* and *Richard Corbett*. *Bambridge*, Gentlemen, is laid to be Warden of the *Fleet*, and *Corbett* a Person that kept a Spunging-house, where Prisoners were sometimes kept. It was for his Advantage to have Prisoners brought to his House, in order to get Money of them. Mr. *Castell*, Gentlemen, was so unfortunate to become a Prisoner under the Controul of *Bambridge*, and *Bambridge* was Head Warden. He came in a Prisoner before *Bambridge* was Warden, in *June* 1728, and at that Time Mr. *Huggins* was Warden; and after being a little Time in Prison, Security was given to Mr. *Huggins* for Mr. *Castell*'s having the Liberty of the Rules. The first Action was at the Suit of one *Waring*, for 186*l.* tho' there was only 86*l.* due, and so sworn: another Cause was for 15*l.* at the Suit of another Plaintiff, so that the whole Charge against him then was 86*l.* due to *Waring*, and 15*l.* due to the other Plaintiff; so that Security was given upon his coming in; there was a Bond entered into by two sufficient Persons in the penal Sum of 200*l.* only; after, further Charges came against him in the Time of *Bambridge*. We shall shew you the Time when *Bambridge* became Warden, which was on the 30th of *September* 1728, in the Second Year of his present Majesty, then it was he was appointed Warden in his own Right, tho' some time before he came in his own Right; on the 30th of *September* he was sworn in, tho' on the 28th he was Warden, and acted in his own Right. Gentlemen, a little while after *Bambridge* came to be Warden, a Sum of Money 125*l.* *Castell* received; after this Money was paid to *Castell*, *Bambridge* knowing of it, contrived how to get some of this Money, and *Corbett* was to go Shares. It was this View of getting something from *Castell*, that was the Cause of the Demand for farther Security; and it was given: But some other Charges coming in, he gave a Bond for 800*l.* there was one of 200*l.* given before, and now it came to be 800*l.* then there was a third Security demanded, and given for 1000*l.* so that then the three Bonds as Security to the Warden, were 200*l.* 800*l.* and 1000*l.* these together made up the Sum of 2000*l.* for Security to be a true Prisoner to the Warden, and at that Time there was not 400*l.* due; one would have thought that when the Warden had 2000*l.* Security for 400*l.* this would have been sufficient; but that was not the Business intended, there was something farther to be done; for notwithstanding this ample Security, *Castell* was to be taken up, as they pretended, till he gave farther Security to the Warden, the Defendant *Bambridge*. Gentlemen, the Time of his being taken up was the 14th of *November*; the 28th of *September Bambridge* became Warden, Mr. *Castell* had then the Liberty of the Rules, and lodged at one Mr. *Underwood*'s in the said Liberty. *Corbett* he took him up (it becomes them to shew by what Authority), and was for carrying him away; *Castell* expostulated with *Corbett*, and asked him by whose Authority he did it? *Corbett* said he did it by the Direction of the Warden. Gentlemen, when he was taken up, he was carried away from his Lodging, contrary to his Will, to the *King's-Arms* Tavern, and from thence in the Even-

ing to *Corbett*'s Houſe; what Authority he had, becomes them to ſhew you. We ſay that Priſoners are not to be confined in Spunging-houſes without the Conſent of thoſe Priſoners; the proper place of Confinement is the Gaol; if there was Reaſon for confining him, he ought to be put into the Walls of the Priſon, then he would have been in a legal Confinement; but during the Time he was at *Corbett*'s, he was under an improper and illegal Confinement. The very Day, Gentlemen, he was taken up, he employed a Friend of his own to go to the Defendant *Bambridge*, who went at that Time he was to be carried to *Corbett*'s, and told him it was not proper to carry him there, for that there was a Priſoner then ſick, one *Joſeph White*; this *White* languiſhed of the Small-Pox in *Corbett*'s Houſe. *Caſtell*, Gentlemen, never had them, and was under the greateſt Terror that ever any Man could be, for fear of catching them. He ſent to the Defendant *Bambridge*, that he might not be carried to *Corbett*'s Houſe, and if he did require further Security, he deſired to have a Keeper ſent with him to his Lodgings, which he would be at the Expence of, or otherwiſe into the Walls of the Priſon. *Caſtell*, Gentlemen, did not only ſend that Night, but the next Morning to *Bambridge*'s Houſe or Lodgings, and did deſire him to conſider the Circumſtances, that he never had had the Small-Pox, and that he was under the greateſt Terror of catching them, and that *White* was ſick of them, and that he might not be carried there, but that he might be carried into the Priſon, or put in ſome other Place where the Small-Pox was not; but both theſe Requeſts were abſolutely refuſed, and he keeps him in *Corbett*'s Houſe, rather than to let him go into the Gaol, or ſome other Place where the Diſtemper was not: Then he applied at *Corbett*'s Houſe to *Bambridge* himſelf, and deſired he might not be kept any longer at *Corbett*'s, but that he might go into the Gaol; but that not being complied with, there were frequent Applications to *Bambridge* for his Removal from *Corbett*'s, but nothing complied with; and, if my Inſtructions are true, the Reaſon why *Bambridge* did inſiſt that he ſhould continue at *Corbett*'s, and not go to the Gaol or any other Place, was, unleſs he gave *Bambridge* a Sum of Money: This not being complied with, there was freſh Security given, a fourth Bond for 1000*l.* more. After this was done, *Caſtell*'s Friends complimented him of his having his Liberty again; but tho' he gave this Security, yet more Difficulties aroſe; they will have a fifth Bond. Mr. *Caſtell* was delayed in this manner for ſome Time, and a fifth Bond was given in the Penalty of 2000*l.* with four Perſons Security. Five Bonds, Gentlemen, were entered into for *Caſtell*'s being a true Priſoner to the Warden.

Lord Chief-Juſtice *Raymond*. What were the laſt Bonds?

Mr. *Reeves*. One was for 1000*l.* the other for 2000*l.* Gentlemen, this laſt Bond was given in the Beginning of *December*; he was kept in Cuſtody till the Time of giving the fifth Bond, which was the Beginning of *December*; and notwithſtanding the fifth Bond was given, he was kept in Cuſtody three Days after; at laſt he had ſome Apprehenſion of having his Liberty, and upon the 4th of *December* there was an Order ſent to his Lodging, as he had before, to get them ready; but he was diſappointed, having thought he had done every thing that was reaſonable, but it happened unfortunately, that on the 4th of *December* having been confined in this Houſe under the Terror of that Diſtemper, he fell ill, and on the 12th of *December* died of that Diſtemper. We ſay, Gentlemen, that his Death was occaſioned by his unlawful Impriſonment, and that the Hardſhip he ſuffered was the occaſion of his Death. If you ſhall be of Opinion on the Circumſtances, that this Apprehenſion of him ſerved only to get Money from him, it will be Dureſs. There is one Witneſs that heard the Converſation between *Caſtell* and *Bambridge* at *Corbett*'s, and the Witneſs will tell you, that *Caſtell* did expoſtulate with *Bambridge*, that he was in danger of his Life, and that he ſhould catch the Diſtemper and die, and deſired then to be carried to the Priſon or any other Place, and not to be in the Place where his Life was in ſo much danger; and his Anſwer was, that he ſhould neither go into the Priſon, nor to ſuch Place, without ſuch a ſum of Money; it was not to get Security as before. If we prove this to be the caſe, we prove the Declaration, and you muſt find the Defendants Guilty.

Mr. *Lee* [afterwards Lord Chief-Juſtice of the King's-Bench]. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Counſel for the Appellant. This poor Woman has for ſome time ſtaid, in hopes to ſee that this Affair would have appeared in a true and juſt Light at a former Trial, had againſt one of the Priſoners, in which the other Priſoner who now appears here, was examined as Witneſs. The Appellant waited with great Satisfaction, under a Belief that the Truth of the Fact would have appeared at that Trial, and did not commence her Appeal, nor would ſhe if ſhe could have received Satisfaction on the former Trial. Gentlemen, ſhe did not receive that, and therefore was at liberty to bring her Appeal; for, by the Statute of *Harry* VII. it is provided, that notwithſtanding any Priſoner is tried and acquitted, that the Party Appellant has a Right to a full and intire Examination into the Fact. That Act of *Harry* has preſerved that Right, notwithſtanding he was before acquitted; and, as I apprehend, the Affair now ſtands as open as if nothing had been done. This being the caſe, the Matter, Gentlemen, for your Conſideration will be, how far, by the Witneſſes, we are able to ſatisfy you in reſpect to your Apprehenſion of the Manner of her Huſband's coming to his Death. It has been opened to you, Gentlemen, that Mr. *Caſtell* was a Priſoner in the *Fleet*, and that the Defendant *Bambridge* was acting Warden in *June* 1728; the Defendant, *Corbett*, was by his Office a Tipſtaff, and as ſuch was under the Direction of the Warden. When Priſoners are out upon the Rules, the Tipſtaff is the proper Officer for taking them into the *Fleet*, and that to be under the Warden's Direction, and *Corbett* was ſuch a Tipſtaff. This *Caſtell* being committed in *June* 1728, (he was a Gentleman that lived in good Figure) did procure Security in *July*, and a Bond was given in the Penalty of 200*l.* and another 800*l.* and a third 1000*l.* Gentlemen, he was out of Gaol upon this Security, and the Warden was ſatisfied as to his being abroad, but on the 14th of *November* he was taken up. On the 3d of *October* before this, Gentlemen, he received a Sum of 125*l.*; on the 22d of *October*, according to my Inſtructions, this came to the Knowledge of the Defendant *Bambridge*, then came theſe Demands of freſh Security; it was very likely the Means to inſiſt upon having Money in hand or freſh Security; notwithſtanding this, upon the 14th of *November*, *Corbett* came to his Lodging in which he then was, a Place within the Ruſes, and took him from thence, and carried him to the *King's-Arms* Tavern; there he was continued till the Evening: That during his Continuance there, he ſent for a Perſon who will appear here as Witneſs, who went to the Defendant *Bambridge* at the Deſire of *Caſtell*, and he deſired him to acquaint *Bambridge*, that he found there was an Intention of carrying him to *Corbett*'s, and that the Small-Pox was there, and he never had them, and was afraid of catching them, and begged of *Bambridge* that he would not let him be carried there: The Witneſs accordingly went to *Bambridge*, and told him of the Requeſt of *Caſtell*, but before he came back Mr. *Caſtell* was carried to the Houſe of *Corbett*, and when he found him there (and was going on)—

Mr. *Fazakerley*. He found him at the Tavern when he came back.

Mr. *Lee*. The Difference, Gentlemen, is this, that this Perſon at the Requeſt of *Caſtell* went to *Bambridge*, and upon his Return (the Fact is that he found *Corbett* and *Caſtell* at the *King's-Arms* Tavern) ſaid, that upon his Application to *Bambridge* he could get no Anſwer, no Directions that *Caſtell* ſhould not be carried there. *Caſtell*, his Fear continued upon him, and the ſame Witneſs went next Day to *Bambridge*, and petitioned for the ſame thing, but could get no Satisfaction from *Bambridge*. We have Accounts of ſeveral other Applications, but without Anſwer to the purpoſe, and particularly one from *Caſtell* himſelf. When *Bambridge* came to *Corbett*'s Houſe, it was that *Caſtell* complained to him himſelf of the Hardſhip of being confined there, and deſired *Bambridge* to let him go to his Lodgings with a Keeper, or into the Walls of the Gaol, which he choſe much rather, from the Fear he had of catching the Small-Pox: The Anſwer then given by *Bambridge* to *Caſtell* was, that he ſhould neither go into the Gaol (tho' there was Room enough), or go to that other Place. Gentlemen, it muſt be under the Fear and Apprehenſion *Caſtell* had of catching the Small-Pox, that he made this Requeſt. How a Man could appear with ſo much Inhumanity I can't conceive, for *Bambridge* himſelf ſaid, upon a time when he was at the Tavern with *Caſtell*, that he never ſaw a Man ſo much ſhocked at the Small-Pox; notwithſtanding which, when *Caſtell* complained to him, and deſired to be removed from *Corbett*'s, this was *Bambridge*'s Anſwer to him then, That he ſhould not go into the Priſon or any where elſe, unleſs he had a Sum of Money for going.

Gentlemen, the whole of his Charge at this time was under 400*l.* He was committed in *June* 1728; on the firſt of *December* Security was found for no leſs than 5200*l.* the firſt Bond was for 200*l.* the next 800*l.* the third 1900*l.* a fourth 1000*l.* and the fifth 2000*l.* Notwithſtanding theſe Bonds were given on the firſt Day of *December*, this Man was ſtill continued a Priſoner, and I muſt ſubmit it to your Lordſhip, whether he was not continued in ſuch a Manner as to make it Dureſs. By the Statute of 28 of K. *C.* II. no Man is to be carried to a Spunging-houſe without his own Requeſt. He was kept, Gentlemen, in this Place even after the fifth Bond was given three Days, and on the 4th, which was the 4th of *December*, he took the Diſtemper. This Gentleman was ſo much affected with the Hardſhip of his Caſe, that he often complained of this Uſage, and of *Bambridge* in particular; and in his laſt Words, when he lay upon his Death-bed, when it can hardly be imagined, that any thing could come from a Man but Truth, then his conſtant Declarations were, that his Death was owing to *Bambridge*.

This, Gentlemen, is the Nature of the Caſe, and we will beg leave to call our Witneſſes, and if they come up to Proof, it muſt be thought the Widow has done very right; and though *Corbett*, when he appeared as a Witneſs, did not give Satisfaction, (I would not ſay it, if it was not in my Brief) yet probably the Witneſſes now called will give you Satisfaction why *Corbett* did not give Satisfaction.

Call Robert Reading *(who was ſworn, and produced a Copy of the Patent creating* Thomas Bambridge *Warden of the* Fleet).

Mr. *Reeves*. Did you examine that?-----Mr. *Reading*. Yes.

Mr. *Reeves*. Is it a true Copy?----Mr. *Reading*. Yes.

[Then the Clerk read ſo much of the Copy of the Patent as to prove Mr. *Bambridge* Warden of the *Fleet*.]

John Noel (Deputy to the Clerk of the Papers) *was ſworn, and produced the Commitment-Books of the* Fleet *Priſon*.

Mr. *Reeves*. Do you know that *Bambridge* acted as Warden of the *Fleet* Priſon?-----Mr. *Noel*. I always apprehended he did act.

Mr. *Fazakerley*. Do you know of the Commitment of Mr. *Caſtell*?

Mr. *Noel*. Yes, it is in that Book (which he had before produced).

[Then the Clerk turned to, and read the Entry in the Book.]

Clerk. *Decimo Octavo Die Junii* 1728.

Mr. *Noel*. There are ſeveral other Entries *(reading again)*.

Clerk. One Hundred and Eighty Pounds, ſworn to be Eighty-ſix Pounds.

Lord Chief-Juſtice. The Writ was made for 180*l.* Penalty. Read on.

Clerk. *William Thomas*.

L. C. J. It is neceſſary for me to take notice of all the Commitments.

Mr. *Strange*. To ſee the Sums before the 14th of *November*.

Mr. *Fazakerley*. Firſt is 86*l.*

Mr. *Kettleby*. 'Tis ſworn to 86*l.* and upwards, for that is ſufficient to hold to Bail.

L. C. J. How much is that on the 9th of *July*?

Clerk. The 9th of *July* is 20*l.*

Mr. *Strange*. How much that Debt is, don't appear.

L. C. J. Don't go on ſo faſt.

Clerk. ——*Die*——212*l.* —— *George Colvert*.

L. C. J. That is another.

Clerk. Another 20*l.* the 13th of *October*.——*Waring* 180*l.*

Mr. *Fazakerley*. That is the ſame.

Mr. Serj. *Darnell*. The firſt appears to be on Bond.

Clerk. There is 180*l.* Principal; 3*l.* 10*s.* Coſts.

Mr. *Fazakerley*. That is the ſame.

Clerk. Twenty-third of *November*,——Execution at the Suit of *Thomas*—— 19*l.*

Mr. *Strange*. He is charged in Execution likewiſe on *Colvert*'s.

Mr. *Reeves*. That is after being taken up.

Mr. *Fazakerley*. Do you know *Corbett*'s Houſe?

Mr. *Noel*. Yes.

Mr. *Fazakerley.* What kind of a Houſe is it? Were the Priſoners kept th e by *Bambridge*'s Order?

Mr. *Noel.* I was there Priſoner from the 23d of *October* for two Months, and never ſaw any Ting exacting, but very humane.

Mr. *Fazakerley.* Is it not a public Victualling-houſe?

Mr. *Noel.* They have Victuals and Drink.

Mr. Serj. *Darnell.* This is very material. I will aſk you a Queſtion or two, you was at *Corbett*'s two Months?---Mr. *Noel.* Yes.

Mr. Serj. *Darnell.* I aſk you whether you found any Exaction or Oppreſſion?

Mr. *Noel.* I never found any to any body, but they viſited Mr. *Caſtell* with a deal of Reſpect and Humanity.

Mr. Serj. *Darnell.* When was you carried there?

Mr. *Noel.* The 23d of *October*, 1728.

Lord Chief-Juſtice. How long did you remain there?

Mr. *Noel.* I ſtaid there till the 19th of *December.*

Lord Chief-Juſtice. Was this one of the Houſes that always remained to the Warden as Part of the Gaol?

Mr *Noel.* My Lord, I have heard ſo.

Lord Chief-Juſtice. Was you at *Corbett*'s Houſe all the Time Mr. *Caſtell* was there?---Mr. *Noel.* Yes.

Lord Chief-Juſtice. Do you know the Time of his taking his Illneſs?

Mr. *Noel.* He was taken ill on the 4th of *December*, and died on the 12th.

Lord Chief-Juſtice. Do you remember *Joſeph White?*---Mr. *Noel.* Yes.

Lord Chief-Juſtice. Were they in the ſame Houſe?

Mr. *Noel.* No, my Lord; *White* lay up three Pair of Stairs in one Houſe, and Mr. *Caſtell* one Pair of Stairs in the other.

Lord Chief-Juſtice. I aſk you if *White* was ever ſuffered to come down Stairs?

Mr. *Noel.* I have heard expreſs Orders, that *White* ſhould never come down, and nobody go up to him, for fear any body ſhould catch it.

Lord Chief-Juſtice. I aſk you, according to the beſt of your Obſervation, whether he ever came out of his Room?

Mr. *Noel.* I believe he never did, except one Time; and then he came to ſpeak to me.

Lord Chief-Juſtice. Was *Caſtell* there then?

Mr. *Noel.* No, my Lord; I believe he never was nearer to him than my Room.

Mr. *Strange.* I deſire he may deſcribe the Situation of *Corbett*'s Houſe.

Mr. *Noel.* There are two Houſes laid into one.

Mr. *Strange.* Where did *White* lie?

Mr. *Noel. White* lay three Pair of Stairs in one Houſe, and Mr. *Caſtell* one Pair of Stairs in the other.

Mr. *Strange.* When did Mr. *Caſtell* firſt come to *Corbett*'s?

Mr. *Noel. Caſtell* firſt came into *Corbett*'s the 14th of *November.*

Mr. *Fazakerley.* My Lord, if they aſk Queſtions to a particular Point, I hope they will not examine him to different Facts.

Lord Chief-Juſtice. I cannot interrupt them; you will have an Opportunity to reply: They are intitled to it.——Where did *Caſtell* lie?

Mr. *Noel.* Mr. *Caſtell* lay in one Houſe, up one Pair of Stairs, and *White* in the other, up three Pair of Stairs.

Lord Chief-Juſtice. When did Mr. *Caſtell* come to *Corbett*'s?

Mr. *Noel.* The 14th Day of *November.*

Mr. *Strange.* How long was *White* well before *Caſtell* came there?

Mr. *Noel.* He never had been down, but I believe he might have come down.

Mr. *Strange.* Did *White* continue up Stairs all the Time Mr. *Caſtell* was there?---Mr. *Noel.* Yes.

Mr. *Strange.* What was the Reaſon of his being kept there? There might be other People that had not had them. Did you ever ſee *White* come down during that Time?

Mr. *Noel. White* came down two or three great Stairs.

Mr. *Strange.* Who took care of Mr. *Caſtell?*

Mr. *Noel. Corbett* and his Spouſe.

Mr. *Strange.* During the Time he was ill, did he complain?

Mr. *Noel.* He never complained for any Thing, but ſaid he was very uneaſy at having the Small-Pox.

Mr. *Strange.* Who took care of him?

Mr. *Noel.* All the Family took care of him.

Mr. *Strange.* Did you ever ſee *Bambridge* in Company with Mr. *Caſtell* at *Corbett*'s?

Mr. *Noel.* I never ſaw Mr. *Bambridge* in Company with Mr. *Caſtell*, but Mr. *Corbett* I have.

Mr. *Strange.* Was there a Club there?---Mr. *Noel.* Yes.

Mr. *Strange.* Did you ſee *Bambridge* and *Caſtell* together at that Club?

Mr. *Noel.* No.

Mr. *Strange.* Where did *Caſtell* lie?

Mr. *Noel. Caſtell* lay in a Room by himſelf; he had a Room fitted up on purpoſe.

Mr. *Kettleby.* Do you know whether when Mr. *Caſtell*'s Wife was ſent to, ſhe did come to him, or not?

Mr. *Noel.* I have heard *Corbett* ſay, that his Widow was ſent to, but did not come.

Lord Chief-Juſtice. That is no Evidence.

Mr. *Kettleby.* Do you ſuppoſe you ſhould have ſeen her if ſhe had come?

Mr. *Noel.* I ſhould have ſeen the Woman.

Mr. *Kettleby.* What Sort of a Room was Mr. *Caſtell* in?

Mr. *Noel.* A very convenient Room, very near as big as this Court.

Mr. Serj. *Eyre.* How came Mr. *Caſtell* firſt to be brought to *Corbett*'s?

Mr. *Noel.* The Body of *Caſtell* was ſurrendered, his Security told me ſo.

Lord Chief-Juſtice. That is not Evidence.

Mr. *Lee.* Was you frequently with *White?*

Mr. *Noel.* No; only that Time.

Mr. *Lee.* Was Mr. *Caſtell* taken ill before or after that Time?

Mr. *Noel.* I cannot tell whether he was ſick before or after.

Mr. *Lee.* Did you uſe to be with Mr. *Caſtell?*---Mr. *Noel.* Sometimes.

Mr. *Lee.* Was you with *Caſtell* the ſame Day you ſaw *White?*

Mr. *Noel.* I cannot recollect whether I ſaw *Caſtell* the ſame Day or not.

Mr. *Lee.* Was there one or two Stair-Caſes?

Mr. *Noel.* There were two Houſes laid into one, but one Stair-Caſe.

Mr. *Lee.* Was not the Paſſage near *Caſtell*'s Room?

Mr. *Noel.* The Paſſage comes by the Head of the Stair-Caſe?

Mr. *Lee.* Muſt not all thoſe that go to the Neceſſary-houſe go by *Caſtell*'s Room?---Mr. *Noel.* Yes.

Captain —— Sinclair *was called and ſworn.*

Mr. *Fazakerley.* Do you know *Corbett*'s Houſe?

Capt. *Sinclair.* Upon the 14th of *December*, 1727——

Mr. *Fazakerley.* Sir, do you know this Houſe of *Corbett*'s?

Capt. *Sinclair.* Yes.

Mr. *Fazakerley.* Was you there in *September, October, November*, or *December*, 1728?

Capt. *Sinclair.* I was not brought in then, I was fifty-two Days at *Corbett*'s Houſe.

Mr. *Fazakerley.* How was you uſed then?

Capt. *Sinclair.* I muſt ſubmit it to the Court, whether, as I have a Proſecution againſt *Bambridge*, what I may ſay may not prejudice myſelf; whether any Thing I ſay now may not be prejudicial to me.

Lord Chief-Juſtice. It is impoſſible for me to tell you. If you ſay any Thing that they can make uſe of, without doubt they will.

Mr. *Bambridge.* I deſire, my Lord, the People may be kept from the Witneſſes behind.

Lord Chief-Juſtice. If you hear any body prompt the Witneſſes, they ſhall be removed.

Mr. *Filmer.* We deſire to know what Sort of a Houſe *Corbett*'s is?

Capt. *Sinclair.* I was carried to Mr. *Corbett*'s Houſe contrary to my Inclinations; when I was there I was put in a Garret, with ſome of the Domeſtics.

Mr. Serj. *Darnell.* It is not proper Evidence.

Lord Chief-Juſtice. Let me know what it is; I don't know whether it is material or not.

Mr. *Lee.* My Lord, the Witneſs is come to give you an Account of this Houſe; that it is a Victualling-Houſe.

Capt. *Sinclair.* It is a Victualling-houſe and Spunging-houſe, and they take exorbitant Sums of Money. I was there from the 14th of *December*, 1727, till the 3d of *February* following.

Lord Chief-Juſtice. I think you ſay it was a public Victualling-houſe and Spunging-houſe?---Capt. *Sinclair.* Yes, my Lord.

Mr. *Reeves.* I deſire you'll inform my Lord and the Jury, whether it is continued the ſame Sort of Houſe ſince?

Capt. *Sinclair.* There was one *Blackwell* there.

Lord Chief-Juſtice. When was that?

Capt. *Sinclair.* In the Month of *January*, 1727.

Lord Chief-Juſtice. That is not Evidence. Do you know nothing of this Houſe ſince 1727?

Capt. *Sinclair.* Since I have been diſcharged I have not been in the Houſe; but when I was there, I was obliged to pay one Shilling a Night for a Bed.

Lord Chief-Juſtice. That was a very wrong Thing, but that was in 1727?

Capt. *Sinclair.* Yes.

Mr. Serj. *Eyre.* Let me aſk you one Queſtion. You call it a Victualling-houſe and a Spunging-houſe; what is a Spunging-houſe?

Capt. *Sinclair.* Thoſe that take exorbitant Fees.

Mr. Serj. *Eyre.* Did you pay any Thing above the Fees?

Lord Chief-Juſtice. This is no Evidence in point of Time: You all know Evidence, and ſhould keep to it.

Call —— Wilſon *(who was ſworn).*

Mr. *Reeves.* Do you know *Corbett*'s Houſe?---Mr. *Wilſon.* Yes.

Mr. *Reeves.* What Sort of a Houſe is it?

Mr. *Wilſon.* It is a Public-houſe.

Mr. *Reeves.* What do they ſell there?

Mr. *Wilſon.* Beer, Ale, Cyder, Wine, Punch, and Victuals.

Mr. *Reeves.* Was the Houſe uſed for that Purpoſe when Mr. *Caſtell* was there?---Mr. *Wilſon.* Yes.

Mr. *Reeves.* You know *Caſtell* was there?---Mr. *Wilſon.* Yes.

Mr. *Reeves.* Was it then made uſe of for this Purpoſe?

Mr. *Wilſon.* Yes.

Mr. *Reeves.* Where had Mr. *Caſtell* Victuals and Drink?

Mr. *Wilſon.* In that Houſe.

Mr. *Reeves.* Do you know the Situation of the Room where Mr. *Caſtell* lay?---Mr. *Wilſon.* Very well.

Mr. *Reeves.* Do you know the Room where *White* was in?

Mr. *Wilſon.* No.

Mr. *Fazakerley.* How much did he (Mr. *Caſtell*) pay a Night for his Bed?---Mr. *Wilſon.* Mr. *Caſtell* told me——

Mr. *Strange.* That is not Evidence. Had he a Room up one Pair of Stairs?---Mr. *Wilſon.* The latter Part of his Time.

Mr. *Strange.* Was you with him often?

Mr. *Wilſon.* Yes, till he had the Small-Pox.

Mr. *Strange.* Did his Wife come near him during the Time he was ill?

Mr. *Wilſon.* No.

Lord Chief-Juſtice. If you are examining the Witneſſes, I cannot hear.

Then Mr. Strange *aſked the Witneſs ſome Queſtion, which for the Noiſe in the Court was not heard.*

Lord Chief-Juſtice. If you aſk any Queſtion, you muſt propoſe it to the Court.

Mr. *Strange.* Was you Servant to Mr. *Caſtell?*---Mr. *Wilſon.* No.

Mr. *Strange.* Was you his Companion?

Mr. *Wilſon.* Yes; and drank ſeveral Bottles of Wine with him; and I have heard Mr. *Caſtell* ſay, that *Cambridge* and *Corbett* were all Rogues alike.

Call —— Collett *(who was ſworn).*

Mr. *Filmer.* Do you know Mr. *Caſtell?*---Mr. *Collett.* Yes.

Mr. *Filmer.* Did you know of any Money he received?

Mr. *Collett.* Yes, 125*l.*

Mr. *Filmer.* When?---Mr. *Collett.* The 3d of *October*, 1728.

Mr. *Filmer.* Do you know of *Cambridge* being privy to it?

Mr. *Collett.* I believe he was; Mr. *Caſtell* told me ſo.

Mr. *Kettleby.* My Lord, that is no Evidence.

Mr. *Filmer.* Do you know of your own Knowledge that he knew of it?

Mr. *Collett.* No.

Mr. *Lee.* Where was this 125*l.* paid to Mr. *Caſtell?*

Mr. *Collett.* It was paid at *Woodward*'s.

Mr. *Lee.* Where was *Woodward*'s?

Mr.

Mr. *Collett.* I drew a Draft.
Mr. *Lee.* Where was *Woodward*'s?
Mr. *Collett.* In *Exchange* Alley; I thought all the World knew that.
Mr. *Lee.* So *Woodward* paid it?———Mr. *Collett.* I don't know.
Lord Chief Juſtice. I thought you had actually paid the Money to Mr. *Caſtell?*—Mr. *Collett.* I gave a Draft on *Woodward.*
Mr. *Lee.* Was that allowed on Account, do you know?—Mr. *Collet.* Yes.
Mr. *Strange.* You don't know what Hands it was paid into at *Woodward*'s?——Mr. *Collett.* No.
Mr. *Strange.* What Reaſon have you to believe *Bambridge* knew of it?
Mr. *Collett.* Becauſe I had ſome Difficulty in paying the Money; there was Mr. *Brent*, Mr. Alderman *Preſton*, Mr. *Kirley*, and myſelf, and we were under ſome Difficulty, and *Caſtell* deſired that one of us would go up to *Bambridge*; upon which Mr. *Brent* went up, and deſired to know if he might pay the Money with Safety; then *Brent* came down, and gave us Satisfaction, and I paid the Money.
Mr. *Strange.* The Force of their Argument is, that as ſoon as *Bambridge* knew that he had received this Money, then he preſſed him to give freſh Security. If he did not know that he had Money, that Argument will not hold. How was the Note drawn?
Mr. *Collett.* To *Robert Caſtell*, or Bearer.
Mr. *Fazakerley.* Who was the Note payable to?
Mr. *Collett.* It was payable to Mr. *Robert Caſtell* or Bearer, on Demand.
Mr. *Fazakerley.* And this was allowed in Account to you by *Woodward?*
Mr. *Collett.* Yes.
Mr. *Strange.* You don't know that it came to *Caſtell*'s Hands?
Mr. *Collett.* No, any Porter might go and receive it.
Mr. *Lee.* To whom was the Note delivered?
Mr. *Collett.* To Mr. *Caſtell.*
Lord Chief Juſtice. I went away with it at firſt as if *Caſtell* had received it.
Mr. *Lee. Brent* was the Man that went up to *Bambridge.*
Mr. *Strange.* Prove ſomething or other.
Mr. *Bambridge.* My Lord, I never had one Shilling of him.
(*Call Mr.* ——— Brent, *who was ſworn*).
Mr. *Fazakerley.* Was you preſent when Mr. *Collett* drew a Bill upon *Woodward*, payable to Mr. *Caſtell?*——Mr. *Brent.* Yes.
Mr. *Fazakerley.* Do you know of any body that went to *Bambridge*, and what was ſaid?
Mr. *Brent.* Sir, I was jealous of Mr. *Caſtell*'s Circumſtances, and I aſked Mr. *Bambridge* if there was any Judgment or Execution againſt Mr. *Caſtell?* and *Bambridge* told me he was in upon *Meſne Proceſs.*
Mr. *Fazakerley.* Did you at any Time tell him the Occaſion of aſking that Queſtion?
Mr. *Brent.* It is very poſſible I might give him ſome Hints, but I cannot be poſitive.
Mr. *Fazakerley.* I deſire you will recollect; it was very natural for you to ſpeak to *Bambridge*, did you mention any Thing of that Money?
Mr. *Brent.* I cannot ſay.
Mr. *Fazakerley.* Did *Bambridge* ſpeak to you concerning it?
Mr. *Brent.* I cannot remember that he did.
Mr. *Fazakerley.* Did you give him any Reaſons for aſking the Queſtion?
Mr. *Brent.* It is poſſible I might tell him ſome Reaſons.
Mr. *Fazakerley.* I deſire you'll acquaint my Lord, whether *Bambridge* appeared to be aſſiſting to Mr. *Caſtell* in that Affair, or have you Reaſon to believe him ſo?
Mr. *Brent.* I cannot ſay, unleſs to ſatisfy me, I aſked Mr. *Caſtell* ſeveral Queſtions, and *Caſtell* ſaid, if I would aſk *Bambridge* he would ſatisfy me.
Mr. *Lee.* When you went up to *Bambridge*, when you went to enquire after *Caſtell*'s Circumſtances, what did you ſay to *Bambridge?*
Mr. *Brent.* I have anſwered that Queſtion, I cannot be poſitive, to be particular I cannot.
Mr. *Lee.* Where was Mr. *Caſtell* then?
Mr. *Brent.* I do believe Mr. *Caſtell* was with the other Company.
Mr. *Lee.* Where was *Bambridge*, was he with the other Company?
Mr. *Brent.* I believe he was not, I don't remember he was in the other Company.
Lord Chief Juſtice. Was he in the ſame Room?
Mr. *Brent.* I don't believe he was.
Lord Chief Juſtice. Did you go out of that Room into another Room to *Bambridge?*
Mr. *Brent.* I don't believe either Mr. *Collett* or *Preſton* went out of the Room, but I went myſelf.
Mr. *Strange.* Did you not go up Stairs?
Mr. *Brent.* I can't ſay whether it was in the ſame Stair-caſe, or not; I did aſk *Bambridge*, and he did ſatisfy me.
Mr. *Strange.* Did you aſk *Bambridge* if it was ſafe to pay Mr. *Caſtell* any Money?
Mr. *Brent.* I can't be certain it was the whole I ſaid, probably I might tell him I was negotiating the Concern.
Mr. *Fazakerley.* It will follow moſt naturally, that the further Bonds were demanded on Purpoſe to extort Money. Now we ſhall ſhew, that Security was given from Time to Time, and in order to that we had given Notice to *Bambridge* to produce the Bonds.
Mr. *Strange.* You know the other Day in the Court of *Chancery* it was over-ruled.
Mr. *Reeves.* Here are Bonds given as a Security to a private Perſon; we demand the Bonds, and the Proof lies upon them to ſhew they have delivered them over.
Mr. *Lee.* We ought to be let into Parole-evidence, to ſhew that we gave Notice to produce them.
Mr. Serj. *Darnell.* I think you are too early.
(*Then Mr.* Bendon *was ſworn.*)
Mr. *Lee.* Did you give *Bambridge* any Notice to deliver the Bonds?
Mr. *Bendon.* Yes, I have a Copy of it in my Hand.
Mr. *Lee.* What did *Bambridge* ſay to you?
Mr. *Bendon. Bambridge* told me he had but one in his Cuſtody.
Mr. *Strange.* Were not the Words, that he had only one executed?
Mr. *Bendon.* No.
Mr. *Strange.* Tell us the very Words.
Mr. *Bendon.* When I gave *Bambridge* that very Paper (which he had then delivered to the Counſel)——
Lord Chief Juſtice. That Paper—it muſt be produced.
Mr. *Lee.* We deſire to produce this Paper.
Mr. *Bendon. Bambridge* ſaid, to prevent any Diſputes in Court, I have but one Bond.
Mr. *Strange.* Who was by?——Mr. *Bendon.* Several.
Mr. *Strange.* Did you know any of them?
Mr. *Bendon.* There was one *Beatniff*, that was one of his Security.
Mr. *Strange.* How many were there in all?—Mr. *Bendon.* Five or ſix.
(Then the Paper was given into the Hands of the Clerk.)
Lord Chief Juſtice. Read.
Clerk. I do hereby give Notice, to produce on the Trial of this Cauſe, ſeveral Bonds entered into by the Appellant's Huſband, or his ſeveral Securities, taken by you as Warden of the *Fleet*, or by the Clerk of the Securities, and particularly two Bonds, dated about *November* or *December*, 1728.
Mr. *Lee.* Now we will call *Peter Ellam.* Somebody acted in the Room of *Hopkins*, who was Clerk of the Securities, and took a Bond wherein *Peter Ellam* was one of the Securities.
(*Call* Peter Ellam, *who was ſworn.*)
Mr. *Reeves.* Do you know what Security was given by Mr. *Caſtell* to the Warden of the *Fleet?*——Mr. *Ellam.* I do.
Mr. *Reeves.* Was you one?——Mr. *Ellam.* Yes.
Mr. *Reeves.* Give an Account of the ſeveral Securities you knew given, the Times when, and the Sums.
Mr. *Ellam.* Security was given five Times, one in *July.*
Mr. *Reeves.* When was the firſt?——Mr. *Ellam.* In *July*, 1728.
Mr. *Fazakerley.* How much was the Sum?—Mr. *Ellam.* I think 100*l.*
Mr. *Fazakerley.* How much was the Penalty of the Bond?
Mr. *Ellam.* I think it was 200*l.*
Mr. *Reeves.* Who was that given to?
Mr. *Ellam.* It was given to *Hopkins.*
Mr. *Reeves.* Who was Warden?——Mr. *Ellam.* Mr. *Huggins.*
Mr. *Reeves.* Who was Deputy-warden?
Mr. *Ellam.* I do not know, I believe *Bambridge.*
Mr. *Reeves.* Was there any other Security beſides yourſelf? Who was the Bond given by?—Mr. *Ellam.* By Mr. *Chambers* and myſelf.
Mr. *Reeves.* Pray, mind what I aſk you. The next Bond was given, how ſoon?—Mr. *Ellam.* I believe in about four or five Days.
Mr. *Reeves.* How much was that for?
Mr. *Ellam.* Eight Hundred Pounds.
Mr. *Reeves.* Who were put in that?
Mr. *Ellam.* Mr. *Curll*, Mr. *Chambers*, and myſelf.
Mr. *Reeves.* There was a third Bond, do you know any thing of that? Who was that given by?
Mr. *Ellam.* It was given by *Curll*, myſelf, and I believe Mr. *Bell.*
Mr. *Reeves.* Pray recollect yourſelf, do not be under any Miſtake.
Mr. *Ellam.* Mr. *Curll* and myſelf I am poſitive of.
Mr. *Fazakerley.* Can you be poſitive of a third Bond; was there three?
Mr. *Ellam.* I believe there was, and I ſigned with him.
Mr. *Fazakerley.* How much was the third for?
Mr. *Ellam.* The third was for 1000*l.*
Mr. *Fazakerley.* The third, when was that?
Mr. *Ellam.* I can't remember the particular Time.
Mr. *Fazakerley.* How long before Mr. *Caſtell* died?
Mr. *Ellam.* A great while.
Mr. *Fazakerley.* Was it before or after making the 4th Bond that he was taken ill?——Mr. *Ellam.* I believe it was after.
Mr. *Fazakerley.* How long after?
Mr. *Ellam.* I believe about the Beginning of the Term.
Mr. *Fazakerley.* Then that muſt be in *October.*—Was there any more?
Mr. *Ellam.* Yes.
Mr. *Fazakerley.* How much was that for?
Mr. *Ellam.* I think the fourth was for 1000*l.*
Mr. *Fazakerley.* Don't you know that it was for 1000*l?*
Mr. *Ellam.* I believe it was.
Mr. *Fazakerley.* Who entered into that Bond?
Mr. *Ellam.* There was Mr. *Curll*, Mr. *Bell*, and myſelf.
Mr. *Fazakerley.* When was that given?
Mr. *Ellam.* That was given the latter End of *November.*
Mr. *Fazakerley.* You ſay that was for 1000*l.*?—Mr. *Ellam.* Yes.
Mr. *Fazakerley.* You ſeemed to ſay ſomething of a fifth Bond being given, how much was that for?——Mr. *Ellam.* Two Thouſand Pounds.
Mr. *Fazakerley.* How do you know?
Mr. *Ellam.* I was preſent at reading it, and I took it to be 2000*l.*
Mr. *Fazakerley.* When was that given?
Mr. *Ellam.* On the firſt of *December.*
Mr. *Fazakerley.* Do you believe it was the 5th or 1ſt of *December?*
Mr. *Ellam.* I believe it was on a *Monday.*
Mr. *Fazakerley.* Who were bound?
Mr. *Ellam.* There was Mr. *Curll*, my Brother, and myſelf.
Mr. *Fazakerley.* What is your Brother's Name?—Mr. *Ellam. John Ellam.*
Mr. *Fazakerley.* What was the Reaſon of all theſe Bonds being given ſo quick? When was the laſt Bond given?
Mr. *Ellam.* One was given between the 24th and 25th of *November*, on a *Saturday* Night, then Mr. *Caſtell* was going to his Lodgings, and in two or three Days we went to ſee him, but could not find him; and they ſaid he was at *Corbett*'s, and we went to him there.
Lord Chief Juſtice. When was this? Name the Time.
Mr. *Ellam.* It was about the latter End of *November*, between the 26th and the laſt.
Lord Chief Juſtice. Go on.
Mr. *Ellam.* I ſaid, Mr. *Caſtell*, what do you do here? You love a Gaol better than I do; what do you do here; what is the Reaſon of it? Mr. *Caſtell* ſaid, I do not know, it is what *Bambridge* pleaſes. I ſaid, Mr. *Caſtell*, ſurely your Luck is worſe than any body's.
Mr. *Strange.* Was *Bambridge* by?—Mr. *Ellam.* No.
Mr. *Strange.* Then you may hold your Tongue.

Mr.

Mr. *Fazakerley.* What were the Bonds given for?
Mr. *Ellam.* His Liberty.
Mr. *Fazakerley.* Had he his Liberty before the laſt Bond was given?
Mr. *Ellam.* No.
Mr. *Fazakerley.* I aſk you whether he had his Liberty upon the laſt Bond's being given?
Mr. *Ellam.* No, he never was out after.
Mr. *Fazakerley.* Do you know when he firſt took his Sickneſs?
Mr. *Ellam.* He firſt took his Sickneſs on a *Monday* Morning, the firſt of *December.*
Mr. *Fazakerley.* Was you a Creditor to Mr. *Caſtell?*
Mr. *Ellam.* He owed me near 200 *l.*
Mr. *Fazakerley.* Then you was his Security and Creditor at the ſame Time?
Mr. *Ellam.* I knew him to be as induſtrious a Man as any one living, and that there was no Probability of getting any thing in a Gaol, ſo thought it was better to run the hazard.
Mr. Serj. *Darnell.* Did you never apply to have him locked up?
Mr. *Ellam.* No.
Mr. Serj. *Darnell.* Do you know of any one elſe?
Mr. *Ellam.* No, I never was preſent.
Mr. Serj. *Darnell.* Do you know of the Deſign of his Security to put him into Priſon?
Mr. *Ellam.* Not that I know of, it was never mine.
Mr. Serj. *Darnell.* Did *Bambridge* never intreat you to continue Security for him?
Mr. *Ellam.* All that I know relating to that Matter is, that *Chambers* withdrew his Security.
Mr. Serj. *Darnell.* What did *Bambridge* do to *Chambers* to have him ſtand as one of his Security?
Mr. *Ellam.* *Chambers* withdrew his Security.
Mr. *Bambridge.* I don't look upon that to be a proper Anſwer.
Lord Chief-Juſtice. You muſt anſwer the Queſtion.
Mr. *Ellam.* Mr. *Chappell* was coming to me to tell me that Mr. *Chambers* would deliver him up, for that if he went out of the Rules, his Counſel adviſed him that the Security was liable, and I went along with *Chambers* to *Bambridge*, and *Chambers* told *Bambridge* that he would be Security no longer; upon this Mr. *Caſtell* was very uneaſy, and *Chambers* upon cooler Thoughts determined not to give up his Security.
Mr. Serj. *Darnell.* I aſk you whether Mr. *Bambridge* did not deſire Mr. *Bell* to continue his Security?
Mr. *Ellam.* Mr. *Bambridge* talked very civilly at that Time.
Mr. Serj. *Darnell.* I aſk you whether Mr. *Bambridge* appeared to have a Kindneſs for him?
Mr. *Ellam.* *Bambridge* told Mr. *Caſtell*, that if his Security delivered him up, he muſt go to *Corbett*'s.
Mr. Serj. *Darnell.* What did you do when *Chambers* ſaid he would not be Security?
Mr. *Ellam.* When *Chambers* told me he would not be Security any longer, it lay upon myſelf, and I went down to the Tavern then, and told them I was reſolved to ſtand.
Mr. Serj. *Darnell.* I aſk you whether Mr. *Bambridge* perſuaded you to ſtand, or ſaid that he ſhould be put into the Gaol?
Mr. *Ellam.* It did appear to me that *Bambridge* was civil to him.
Mr. Serj. *Darnell.* When was this?
Mr. *Ellam.* This was before the 4th or 5th Bonds were given.
Mr. *Strange.* This was after the Bonds for 800 *l.* and 1000 *l.* Tell us whether Mr. *Caſtell* did not deſire that a Bed might be got there?
Mr. *Ellam.* I did not know of his going there.
Mr. *Strange.* Pray did not you deſire *Corbett* to take him in Cuſtody?
Mr. *Ellam.* No.
Mr. *Strange.* Was you by at any other Time?---Mr. *Ellam.* No.
Lord Chief-Juſtice. Fix the Time; hark you, Sir, do you remember the Time when *Chambers* would not continue Security, I aſk you if you can remember when it was?
Mr. *Ellam.* I believe it was in *November.*
Mr. Serj. *Eyre.* You ſay you cannot be poſitive as to the Day of the Month.
Mr. *Ellam.* I tell you fairly, that by the Almanack it was on *Monday*; if Mr. *Caſtell* died that Day Se'nnight, it was Monday Se'nnight before that.
Mr. Serj. *Eyre.* How long after you executed the Bond, how many Days was it before he died?
Mr. *Ellam.* It muſt be *Wedneſday* or *Thurſday.*
Mr. Serj. *Eyre.* You ſay *Monday* the Bond was executed?
Mr. *Ellam.* Yes, it muſt be the firſt *Monday*, if he died on the 12th.
Mr. Serj. *Eyre.* Who were the Bonds given before? Or to whom? Was Mr. *Bambridge* preſent?
Mr. *Ellam.* I never ſaw *Bambridge* preſent when they were given.
Mr. Serj. *Eyre.* Do you know whether you was excepted to, or remain there till better Security was given?
Mr. *Ellam,* I don't know.
Mr. Serj. *Eyre.* Who was there?
Mr. *Ellam.* *Codnor* was there who acted as Clerk.
Mr. Serj. *Eyre.* Were you all preſent when the fourth Bond was given?
Mr. *Ellam.* To the beſt of my Remembrance, we were all preſent when the fourth Bond was given.
Mr. Serj. *Eyre.* What ſay you as to the fifth?
Mr. *Ellam.* As to the fifth, I believe that all the Perſons were not then preſent.
Mr. Serj. *Eyre.* You can't tell that either of you was excepted to?
Mr. *Ellam.* I know no other than as *Bambridge* told me.
Mr. *Wynn.* You ſaid you was uneaſy when *Chambers* ſaid he would not ſtand; what did you do then?
Mr. *Ellam.* I did nothing then, but went home, and next Morning reſolved to ſtand.
Mr. *Wynn.* Did you ſay any thing to Mr. *Corbett* or *Bambridge?*
Mr. *Ellam.* No; when I went to Mr. *Bambridge's* Room, I went with a Deſign to ſurrender him; and when I came out, ſeeing Mr. *Caſtell* in ſo great an Agony, I reſolved then not to do it.
Mr. *Wynn.* What did Mr. *Bambridge* ſay?
Mr. *Ellam.* He ſaid, he believed that Mr. *Caſtell* always behaved himſelf within Bounds, and believed that we had no Reaſon to complain; and believed he would not make an Eſcape.

Mr. *Wynn.* Did he encourage you to ſurrender him?
Mr. *Ellam.* All that he ſaid at this Time ſeemed to encourage us to ſtand as Security.
Mr. *Wynn.* When *Chambers* would not ſtand, did you take any Counter-ſecurity from any one?
Mr. *Ellam.* There was a Note drawn, but I never had it; Mr. *Curll* had the Cuſtody of it.
Mr. *Wynn.* What was the Amount?---Mr. *Ellam.* I believe 100 *l.*
Mr. *Wynn.* I aſk you, whether you had not a Bill of Sale from Mr. *Caſtell* at that Time?——Mr. *Ellam.* No.
Mr. *Wynn.* How long before?
Mr. *Ellam.* I can't tell the Date; I have it by me.
Mr. *Wynn.* Had you not that Bill of Sale before you executed that firſt Security?——Mr. *Ellam.* No.
Mr. *Wynn.* Was it between the Firſt and Second?——Mr. *Ellam.* No.
Mr. *Wynn.* The Second and Third?---Mr. *Ellam.* Very likely it might.
Mr. *Wynn.* What Month do you believe it was in?
Mr. *Ellam.* *November.*
Mr. *Strange.* Do you ſay the Bill of Sale was in *November?*
Mr. *Ellam.* I can't ſay particularly.
Mr. *Strange.* Might it not be before *November?*
Mr. *Ellam.* I don't believe it was.
Mr. *Strange.* Can you take upon you to ſay whether before or not?
Mr. *Ellam.* I cannot.
Mr. *Strange.* I deſire you to ſee, whether that is your Name; look only on the Name.——Mr. *Ellam.* I take it to be my Name.
Mr. *Lee.* Give it to the Officer.
Mr. *Strange.* Then you are not able to ſay exactly the Day when *Bambridge* gave you Encouragement not to deliver him up; Was it before the fourth Bond was given?
Mr. *Ellam.* Yes.
Mr. *Strange.* There was *Curll*; was he a Man of Subſtance?
Mr. *Ellam.* Yes; he has been a Houſekeeper theſe forty Years.
Mr. *Strange.* Is his Reputation to be a Man of Circumſtance?
Mr. *Ellam.* Yes.
Mr. *Strange.* There were *Bell* and others?——Mr. *Ellam.* Yes.
Mr. *Strange.* Were they Men of good Circumſtances?
Mr. *Ellam.* Yes.
Mr. *Strange.* There was your Brother?——Mr. *Ellam.* Yes.
Mr. *Strange.* Were they Houſekeepers?——Mr. *Ellam.* Yes.
Mr. *Strange.* Were they able to anſwer the Sums they ſtood bound for?
Mr. *Ellam.* The World thinks ſo.
Mr. *Strange.* What will you ſay you are worth over and above your Debts?
Mr. *Ellam.* One Thouſand Pounds.
Mr. *Strange.* When your Debts are paid?
Mr. *Ellam.* The laſt Time my Books were caſt up, I was worth One Thouſand Pounds.
Mr. *Strange.* Did you ſay you was not worth 200 *l.* when in Company with *Bambridge?*——Mr. *Ellam.* No.
Mr. *Lee.* 'Tis a Queſtion enough to put any Man out of Countenance.
Lord Chief-Juſtice. No Man ſhould be obliged to diſcover his own Affairs.
Call John Ellam *(who was ſworn).*
Mr. *Lee.* You was Security for Mr. *Caſtell* to Mr. *Bambridge*, Warden of the *Fleet?*——Mr. *J. Ellam.* Yes.
Mr. *Lee.* When was it?——Mr. *J. Ellam.* In *November* laſt.
Mr. *Lee.* Who was Security with you?
Mr. *J. Ellam.* My Brother *Peter Ellam* and Mr. *Curll.*
Mr. *Lee.* What was the Penalty of the Bond?
Mr. *J. Ellam.* Two Thouſand Pounds.
Mr. *Strange.* He only ſays what Mr. *Caſtell* ſaid.
Lord Chief-Juſtice. He ſaid it of his own Knowledge.
Mr. *Lee.* When was the Bond executed?
Mr. *J. Ellam.* I believe in *November.*
Mr. *Lee.* You can't tell poſitively?——Mr. *J. Ellam.* No.
Mr. *Lee.* Might it not be the Beginning of *December?*
Mr. *J. Ellam.* I can't exactly tell.
Mr. *Lee.* Who was the Bond executed by?
Mr. *J. Ellam.* Myſelf and two others; I ſigned firſt, and the other two at *Graveſend.*
Mr. *Lee.* Was you with *Bambridge* to tell him about it?
Mr. *J. Ellam.* Yes
Mr. *Lee.* How came you to be his Security?
Mr. *J. Ellam.* Mr. *Caſtell* ſent to me to know if I would be Security in the Room of Mr. *Chambers*; I ſaid it was a Thing I did not care for, but for him I would; this was in the Morning. Mr. *Caſtell* ſaid, You will be Security? I ſaid, Yes. And he ſaid, I don't know whether *Bambridge* will accept of it; I beg you'll come at Night. I told him I would: I think *Bambridge* would not then accept of it. One Mr. *Shortes* was there at Night, and Mr. *Caſtell* deſired he would go to Mr. *Bambridge* to deſire the Bonds to be executed for him.
Mr. *Lee.* When was Mr. *Caſtell* taken ill?
Mr. *J. Ellam.* Mr. *Caſtell* was very ill in *November* and *December.*
Lord Chief-Juſtice. Where was this?——Mr. *J. Ellam.* At *Corbett*'s.
Mr. *Lee.* Did you go to *Bambridge?*——Mr. *J. Ellam.* Yes.
Mr. *Lee.* What did you ſay?
Mr. *J. Ellam.* I aſked him, whether he thought my Security ſufficient in the Room of Mr. *Chambers?* And Mr. *Bambridge* ſaid he would accept of it.
Mr. *Lee.* Did you execute before your Brother?
Mr. *J. Ellam.* I believe I did before Mr. *Curll*; and Mr. *Bell* executed, I believe, after.
Mr. *Lee.* What was the Sum?---Mr. *J. Ellam.* Two Thouſand Pounds.
Mr. *Lee.* Was it Two Thouſand? How dow you know? Was it in *Latin* or *Engliſh?*
Mr. *J. Ellam.* The Attorney read it; and Mr. *Caſtell* told me ſo.
Mr. *Lee.* Was there any Perſon in the Bond before you ſigned?
Mr. *J. Ellam.* There was only Mr. *Curll*, my Brother, and myſelf.
Mr. *Lee.* I aſk you whether there was any more beſides you, your Brother, and Mr. *Curll?*——Mr. *J. Ellam.* No.
Mr. *Lee.* How many Names were there in the Bond?
Mr. *J. Ellam.* None but mine, my Brother, and *Curll.*
Mr. *Lee.* How many Obligors? Do you know what I mean by Obligors?

Mr.

Mr. *J. Ellam.* Yes.

Mr. *Lee.* Then I ask you, How many Persons Names there were besides these?---Mr. *J. Ellam.* There was mine, my Brother's, and *Curll*'s.

L. C. J. That he said before.

Mr. *Lee.* When you was sent to Mr. *Bambridge*, Mr. *Castell* seemed very impatient to have the Bonds executed; did he complain of any extraordinary Usage?---Mr. *J. Ellam.* Yes.

Mr. *Lee.* What did he complain of?

Mr. *J. Ellam.* I asked him, what made him uneasy? He said, they would not let him out. Then I asked him, what was the Reason? He made answer, I suppose they want more Money of me.

Mr. *Lee.* *They!* Name them. Can you name any body?

Mr. *Ellam.* I asked him again, Have you given any Money? He said, Yes, I have. I said, Pray how much have you given? He made Answer, About ten Pounds.

Mr. Serj. *Darnell.* What he said is not Evidence.

Mr. *Fazakerley.* What he said upon his Death-bed, I apprehend, is Evidence; which is what we shall examine him next to.

L. C. J. That is according to the Nature of the Question; what is declared as an actual Fact, is.

Mr. *Faz.* Had you any Discourse with Mr. *Castell*, when he lay on his Death-bed, what was the Occasion of his Death?

L. C. J. [*Speaking to the Witness.*] Don't be in a Hurry, take time, speak out.

Mr. *J. Ellam.* He asked me, what I thought the Distemper might be? I said, I cannot tell. The Doctor went down with me; what he said to the Doctor was, I am very ill.

Mr. *Strange.* This was before he was very ill?

Mr. *Faz.* When he lay in his Extremity?

L. C. J. Was he near his Death?

Mr. *Faz.* Did he say any thing what was the Occasion of his Death, when in Extremity?

Mr. *J. Ellam.* He said upon his dying Bed, that Mr. *Bambridge*, in not letting him go, was the Occasion of his Death.

Mr. *Faz.* Did he know the Distemper he died of?

Mr. *J. Ellam.* No.

Mr. *Faz.* How long after the Small-Pox came out?

Mr. *J. Ellam.* A Day or two.

Mr. *Faz.* How long did he live after?----Mr. *J. Ellam.* About—

Mr. Serj *Darnell.* Had he an Apprehension of dying before the Distemper came out?

Mr. *J. Ellam.* He said, if they did not let him out it would be too late, for it would be his Death.

Mr. Serj. *Darnell.* This was before the Distemper came out?

Mr. *J. Ellam.* Yes.

Mr. Serj. *Darnell.* Did he know of this Distemper being there? Was he apprehensive of this Distemper?

Mr. *J. Ellam.* He said, if it was in any Village of any County, he would go another Way.

L. C. J. Did he know it was in the House there?--Mr. *J. Ellam.* Yes.

L. C. J. When was this?

Mr. *Faz.* The Bonds will shew; must not they produce them?

L. C. J. They must produce them, or give some Reason why they don't.

Mr. *Strange.* The two first were given in Mr. *Huggins*'s Time, I don't know any thing of the other three. *Bambridge* was sworn the fifteenth of *November*, so that three were given in Mr. *Huggins*'s Time, and two only in his—I am afraid it is a civil Action.

Mr. *Lee.* The Action is in a criminal Cause.

L. C. J. What do you think this is? The mixt Action is no Part of the Appeal; it is certainly a criminal Cause.

Mr. *Reeves.* We give it up, if we don't give sufficient Evidence after.

L. C. J. Can you go no further to fix it on him?

Mr. *Reeves.* We can prove that *Codnor* acted as Clerk of the Securities, in behalf of *Hopkins*.

L. C. J. What was *Hopkins?*

Mr. *Reeves.* *Hopkins* was Clerk of the Papers, and not being well, employed one *Codnor*, who proves that *Peter Ellam* entered into several Bonds.

L. C. J. You say he was not sworn in till the 15th of *November*, the Patent bears Date the 30th of *October*; let *John Ellam* be called again, he was the last Witness.

Mr. *Reeves.* If your Lordship pleases, we will call *Peter Ellam*, for he executed all the Bonds.

Then Mr. Peter Ellam *was again called.*

Mr. *Reeves.* When you executed these Bonds, who was present, and assisted in behalf of the Warden?

Mr. *P. Ellam.* *Hopkins* was to the two first, *Codnor* to the three last.

Mr. *Reeves.* Who did *Codnor* act for?

Mr. *P. Ellam.* I always understood he acted for *Hopkins*.

Mr. *Reeves.* Who did you think was the Clerk?

Mr. *P. Ellam.* I thought *Hopkins*.

Mr. *Reeves.* What was the Reason he was not there?

Mr. *P. Ellam.* It was reported he was sick.

Mr. *Reeves.* Who was the Bond delivered to?

Mr. *P. Ellam.* To *Codnor*.

L. C. J. Who was allowed to be the Master?

Mr. *P. Ellam.* *Bambridge*.

Mr. *Faz.* Was it so in the three last?

Mr. *P. Ellam.* I think so.

Mr. *Faz.* Was *Codnor* there when the last Bond was given?

Mr. *P. Ellam.* Yes.

Mr. Serj. *Darnell.* What Bonds do you speak to?

Mr. *P. Ellam.* The third and fourth, and I think the last.

Mr. Serj. *Darnell.* How many were bound in the last?

Mr. *P. Ellam.* Myself, Mr. *Curll*, *John Ellam*, and Mr. *Bell*.

Mr. Serj. *Darnell.* What is become of the Bonds?

Mr. *P. Ellam.* I don't know.

Mr. Serj. *Darnell.* Should you know it if you should see it again?

Mr. *P. Ellam.* I believe I should.

L. C. J. Had you any Discourse with Mr. *Bambridge* about the third and fourth Bonds?

Mr. *P. Ellam.* No, not with him about any of these Bonds.

Mr. *Faz.* When *Chambers* declined standing as a Security, how many Bonds were given after?

Mr. *P. Ellam.* I think it was before the third was given up.

Then Peter Ellam *withdrew, but was called back; and standing up again was further examined.*

Mr. *Faz.* Recollect the Time you had the Discourse with Mr. *Bambridge*; How many Bonds did you give after the Time you had the Discourse with Mr. *Bambridge?*

Mr. *P. Ellam.* I think it was three; when he came to the third Bond I gave Security, Mr. *Chambers* having given up.

L. C. J. It don't appear who the Bonds were accepted by, or who delivered to.

Call Mr. Harbin. (*Who was sworn.*)

Mr. *Filmer.* Who acted as Clerk of the Securities to the Warden of the *Fleet* when *Hopkins* was ill?

Mr. *Harbin.* I don't know of my own Knowledge, but as *Hopkins* told me.

Call Mr. Edwards. (*Who was sworn.*)

Mr. *Reeves.* Do you know *Hopkins?*

Mr. *Edwards.* Yes.

Mr. *Reev.* What was his Office?

Mr. *Edw.* Clerk of the Inquiries, as I believe.

Mr. *Reev.* Who was Clerk of the Securities?

Mr. *Edw.* *Hopkins*, I believe.

Mr. *Reev.* Do you know *Codnor?*---Mr. *Edw.* Yes.

Mr. *Reev.* Do you know that he acted for *Hopkins?*

Mr. *Edw.* I was not privy to such Things.

Call Daniel Hopkins. (*Who was sworn.*)

Mr. *Reev.* I think you were employed by Mr. *Bambridge* to take Securities for the Liberty of the Rules?---Mr. *Hopkins.* Yes.

Mr. *Reev.* In *November* and *December* 1728, did you employ any one else?

Mr. *Hop.* In *November* I was taken ill, about the 20th; and in my Illness *Codnor*, who acted in the Office, I believe officiated in my Office.

Mr. *Reev.* Who did he deliver them to? To you?---Mr. *Hop.* No.

Mr. *Reev.* Who then?

Mr. *Hop.* I believe to Mr. *Bambridge*.

Mr. *Reev.* Did he account for any Bonds to you?

Mr. *Hop.* No; but he gave me a Memorandum, that Bonds were taken for Mr. *Landman* and Mr. *Castell*.

Mr. *Reev.* Do you believe Mr. *Bambridge* appointed him?

Mr. *Hop.* Yes; Nobody else could.

Mr. *Reev.* You believe he accounted to Mr. *Bambridge?*

Mr. *Hop.* Yes.

Mr. *Strange.* You are Clerk of the Inquiries?---Mr. *Hop.* Yes.

Mr. *Strange.* Don't you go to enquire after the Securities?

Mr. *Hopkins.* Yes; and I have taken Bonds.

Mr. *Strange.* Don't the Clerk of the Papers take Bonds?

Mr. *Hop.* Not in my Time.

Mr. *Strange.* Is it not the Clerk of the Papers Business?

Mr. *Hop.* No.

Mr. *Strange.* What is your Business?

Mr. *Hop.* Our Business is, to inquire into the Circumstances of the Sureties before we take them.

Mr. Serj. *Eyre.* Is it not usual to take Bonds *de bene esse?*

Mr. *Hopkins.* Yes.

Mr. Serj. *Eyre.* Suppose you inquire into these Persons Circumstances, if you find them not sufficient do you take them?---Mr. *Hop.* No.

Mr. Serj. *Darn.* If any body gets a Day-rule and escapes, who takes them up?---Mr. *Hop.* The Tipstaff.

Mr. Serj. *Darn.* If the Security won't stand any longer, but will surrender the Party, the Tipstaff carries them to Prison?

Mr. *Hop.* Yes, if they desire it; and to their own Houses, if they desire it.

Mr. Serj. *Darn.* Was it usual to take up a Man without the Security going along with him to surrender him?---Mr. *Hop.* Sometimes.

Mr. Serj. *Darn.* Could he do it in the Case of Mr. *Castell?*

Mr. *Hop.* I don't know he could.

Mr. Serj. *Darn.* I desire he may acquaint you, whether he had any Directions from Mr. *Bambridge* to enquire after this Mr. *Bell* for Mr. *Castell?*

Mr. *Hop.* There was a Bond taken in the Month of *July* for 200*l.* Penalty, and another of 800*l.* and I inquired after the Security by the Direction of Mr. *Bambridge*, and Mr. *Bambridge* excepted to the Security first proposed for that Bond, and Mr. *Castell* was at Liberty to get other.

Mr. Serj. *Darn.* Did you report them as sufficient?

Mr. *Hopkins.* Yes.

Mr. Serj. *Darnell.* Was *Bambridge* satisfied?

Mr. *Hop.* Yes, in *July*.

Mr. *Strange.* I ask you whether you ever observed any Averseness to these Gentlemen, as to the first Bond?

Mr. *Hopkins.* Never myself.

Mr. *Strange.* Had you any Directions as to the third Bond?

Mr. *Hop.* I had Directions to inquire after one *Lilly*.

Mr. *Strange.* Did you inquire after Mr. *Curll?*

Mr. *Hop.* Not then.

Mr. *Strange.* After the two first, did you inquire after the Security?

Mr. *Hopkins.* No.

Mr. *Strange.* Did you ever enquire after *Curll?*

Mr. *Hop.* Yes.

Mr. *Strange.* Did you report him sufficient?

Mr. *Hop.* Yes.

Mr. *Strange.* How many Bonds was he in?

Mr. *Hop.* He was in the two first, and the last Bond.

Mr. *Strange.* Have you these two Bonds?

Mr. *Hop.* No, I delivered them in to the Table at the Committee of the House of Commons, and have not had them since.

Mr. *Strange.* Do you know Mr. *Corbett*'s?

Mr. *Hopkins.* Yes.

Mr. *Strange.* Do you know what Prisoners pay there?---Mr. *Hop.* Yes.

Mr. *Strange.* What is the Price of a Dinner?

Mr. *Hopkins.* One Shilling, and I think it worth it.

Mr. *Strange.* While Mr. *Castell* was there, how was he used?

Mr. Serj. *Darnell.* (not answering directly) Did you ever hear Mr. *Castell* complain of any ill Usage?

Mr. *Hopkins.* No: There are some Persons behind interrupt me in giving my Evidence, and say I deserve to be hanged.

Mr. Serj *Darnell.* Do you know the House where *White* was?

Mr. *Hopkins.* Yes.

Mr. Serj. *Darnell.* Do you know the House where *Castell* was?

Mr. *Hopkins.* No.

Mr. *Fazakerley.* The Witness swore that *Bambridge* said he had one Bond.

Lord Chief Justice. Bendon did say so, for he had applied to *Bambridge*, and *Bambridge* said, to prevent Disputes, he had but one.

Mr. Serj. *Darnell.* Two were delivered to Mr. *Huggins*, the other two before the Committee; they charged Mr. *Bambridge* with having Bonds, and *Bambridge* said, to prevent Disputes, there was but one. If *Hopkins* could not act, and he had appointed any one, that was the same Thing; as to one Bond, that *Bambridge* confessed to have. There was an Act made last Session of Parliament, under the severest Penalty, that *Bambridge* should deliver up all his Books and Papers. If he should produce the other Bond, and it appears that he did not deliver up all Bonds, he would be liable to the said Penalty.

Lord Chief Justice. You are only to deliver the Bonds in Evidence; you must consider, here are three Bonds taken by *Godnor*; if one of these Bonds came to your Possession, that don't imply the rest being in your Hands; as to the single Bond, it is to be left to the Jury, for if *Godnor* is the Person, he put it in the Office, and has delivered up one Bond, won't it be implied that he has the other?

Mr. Serj. *Darnell.* There has been an Application to another Court for the Books of the Office; and it was the Opinion of the Court that the Books could not be delivered up.

Lord Chief Justice. That Excuse will not do here; if you shew they are taken from you, we cannot expect Impossibilities.

Mr. Serj. *Darnell.* I do confess they are not delivered up.

Lord Chief Justice. They say the Bonds were given for such Sums; you must produce the Bonds, to shew it that is true or not.

Mr. Serj *Darnell.* We are desirous to lay all before you we can; these Bonds were only taken *de bene esse*, only till the Security was enquired after, according to the Method of the Thing; these are not absolute, and that was the Reason why these People were enquired after.

Lord Chief Justice. Then the Question is, Whether they should not go on?

(*Call Mr.* Underwood, *who was sworn.*)

Mr. *Reeves.* Where do you live?

Mr. *Underwood.* Upon *Ludgate-hill.*

Mr. *Reeves.* In the Rules of the *Fleet?*——Mr. *Underwood.* Yes.

Mr. *Reeves.* Did Mr. *Castell* lodge at your House?

Mr. *Underwood.* Yes.

Mr. *Reeves.* When did he live there?

Mr. *Under.* Last *July* was twelve Months.

Mr. *Reeves.* How long did he continue there?

Mr *Under.* I believe till the Middle of *November.*

Mr. *Reeves.* Do you know what happened to him then?

Mr. *Under. Corbett* came to my House that Morning to fetch him away, but he was not at home; and when he came in, I told Mr. *Castell* he had been there; and Mr. *Castell* desired me, if he came again, not to tell him he was at home, and he went to lock himself up; then *Corbett* came up.

Mr. *Reeves.* Did he express any Concern?

Mr. *Under.* Yes, he spoke to me, and said, If *Corbett* came again he would lock himself up.

Mr. *Strange.* Did you hear any thing of his Security being uneasy?

Mr. *Under.* No.

Mr. *Strange.* Did you never hear Mr. *Castell* say the Security was uneasy?

Mr. *Under.* No.

Mr. *Strange.* Did *Corbett* use him uncivilly?—— Mr. *Under.* No.

Mr. *Strange.* What did *Corbett* say?——Mr. *Under.* He spoke to me, and asked where he was, and then went up.

(*Then* Daniel Hopkins *was again called.*)

Mr. *Reeves.* Was you in Mr. *Underwood*'s House?—Mr. *Hopkins.* Yes.

Mr. *Reeves.* You heard the Discourse that passed?

Mr. *Hopkins.* Yes, I was in *Williams*'s Room on the Stair-head; I lived up two Pair of Stairs, and Mr. *Castell* three Pair of Stairs; *Williams, Castell,* and I were standing together, *Corbett* came down Stairs; there was Mr. *Castell* with us; he said, Mr. *Castell,* you must go with me, your Security has surrendered you; Mr. *Castell* desired he might not go; *Corbett* said he must, he had the Warden's Orders, and must obey them.

Mr. *Reeves.* Who was Warden?——Mr. *Hopkins.* Mr. *Bambridge.*

Mr. *Reeves.* Did not *Castell* desire him to let him stay?

Mr. *Hopkins.* Yes; *Corbett* said, he wished he could; and said several other civil Expressions.

Mr. *Strange.* Do you know the Time when Mr. *Bambridge* was sworn?

Mr. *Hopkins.* I believe it was the 15th of *November.*

Mr. *Strange.* How do you know?

Mr. *Hopkins.* The 16th I took Bonds in his Name.

Mr. *Kettleby.* How long was it after Mr. *Castell* was taken from *Underwood*'s before *Bambridge* was admitted Warden? When was he admitted Warden?——Mr. *Hopkins.* About the 15th of *November.*

Mr. *Kettleby.* What Day was Mr. *Castell* fetched in?

Mr. *Hopkins.* About the 14th of *November.*

(*Call* Catharine Mackartney, *who was sworn.*)

Mr. *Reeves.* Was you present when Mr. *Corbett* came to take Mr. *Castell?*——Mrs. *Mackartney.* No.

Mr. *Reeves.* What Orders had you from your Mistress about Mr. *Castell?*

Mr. *Kettleby.* I must beg Leave to oppose that Question.

Mr. *Reeves.* Was you with Mr. *Castell* when he was ill?

Mrs. *Mackartney.* I went several times to know how he did; when I went the first Day, he kept his Bed, which was the second Day of the Small-Pox coming out.

Mr. *Reeves.* I desire she may acquaint you, whether she heard him say who was the Cause of his catching the Small-Pox.

Mr. *Strange.* How long before he died?

Mr. *Fazakerley.* Did you see him before he died?

Mrs. *Mackartney.* Every Day before he died.

Mr. *Fazakerley.* How long before he died, did you hear him say who was the Cause of his Death?

Mrs. *Mackartney.* I heard him say several Times, that if he died, he laid his Death to Mr. *Bambridge*, for he was the Occasion of his Death.

Mr. *Fazakerley.* Tell the last Time you heard him speak it. How long before he died?——Mrs. *Mackartney.* Three Days.

Mr. *Fazakerley.* Was he in a dangerous Condition at that Time?

Mrs. *Mackartney.* Yes.

Mr. *Fazakerley.* You say you went several Times by the Direction of your Mistress; did your Mistress supply him with any Thing?

Mrs. *Mackartney.* The first Day I went to him, he desired me to give his Service to my Mistress, for he wanted several Things.

Mr. *Fazakerley.* What did he say?

Mrs. *Mackartney.* He said he wanted to make some Tea, and he could not get Things there to make it.

Mr. *Fazakerley.* What were the Things?

Mrs. *Mackartney.* A Spoon, Tea-pot, Cup and Saucer, a Knife, Fork, Plate, and Napkin.

Mr. *Fazakerley.* When did he make that Declaration, that *Bambridge* was the Occasion of his Death?

Mrs. *Mackartney.* I heard him make that Declaration three Days before he died. The last Time I was with him, he held up his Hand, as much as to say, Don't come to speak.

Mr. *Fazakerley.* Who provided him with Necessaries?

Mrs. *Mackartney.* I cannot tell.

Mr. *Fazakerley.* Did your Mistress send them?—Mrs. *Mackartney.* No.

Call ——— Savage. (*Who was sworn.*)

Mr. *Lee.* Did you at any Time see Mr. *Castell* after he was in Custody with *Corbett?*——Mr. *Savage.* Frequently.

Mr. *Lee.* When did you first see him?

Mr. *Savage.* The Day he was taken in Custody.

Mr. *Lee.* Where did you first see him?

Mr. *Savage.* I can't say whether at his own Lodgings, or at the *King's-Arms* Tavern.

Mr. *Lee.* Did Mr. *Castell* make any Request to you?

Mr. *Savage.* Mr. *Castell* desired I would go to Mr. *Bambridge*, for that he understood he was going to close Confinement, and that he apprehended the Small-Pox was there; and said, that it was very fatal to his Family, and if he catched it, he should die; and said, it would be a Loss to him in his Affairs.

Mr. *Lee.* When was this?

Mr. *Savage.* This was the first Day he was taken in Custody, before he went to *Corbett*'s. I told Mr. *Bambridge* this, and told him the Apprehension Mr. *Castell* was under of catching the Small-Pox, and desired he might be indulged to go to his own Lodging, and that he would be at the Expence of having a Keeper there. Accordingly I went to Mr. *Bambridge*, but he gave me no express Answer.

Mr. *Lee.* Did you acquaint Mr. *Bambridge* with what Mr. *Castell* said?

Mr. *Savage.* Yes.

Mr. *Lee.* What did he do after?

Mr. *Savage.* I went upon the same Message to *Bambridge* three, four, or five Times, I believe four or five, and never had any Answer till the last Time; then Mr. *Bambridge* said, he was charged with a pretty deal of Money, and he must take care of his Office.

Mr. *Lee.* Did you mention any thing of the Small-Pox to *Bambridge?*

Mr. *Savage.* Yes.

Mr. *Lee.* Did he say any thing as to that?——Mr. *Savage.* No.

Mr. *Fazakerley.* Do you remember any Conversation at the *King's-Arms* Tavern?——Mr. *Savage.* Yes, that was some time after.

Mr. *Fazakerley.* How long?

Mr. *Savage.* A little before he was taken ill of the Small-Pox.

Mr. *Fazakerley.* How long before?

Mr. *Savage.* About a Week or four Days. I was in Company with some other Gentlemen, and *Bambridge* came in, and said he had been with Mr. *Castell*, and that an unlucky Accident had happened; and that Mrs. *Corbett* had mentioned the Danger the Man was in that was ill of the Small Pox, and *Bambridge* told us, that Mr. *Castell* seemed to be much affected, and it gave him vast Uneasiness.

Lord Chief Justice. Was this before Mr. *Castell* was taken ill?

Mr. *Savage.* I was at Supper in the *King's-Arms* Tavern, in a Room behind the Bar; then *Bambridge* came in and told us, that he had been at *Corbett*'s House, and *Corbett*'s Wife had unfortunately mentioned the Person's having the Small-Pox; and that Mr. *Castell* seemed to turn pale; and it gave him Pain to see Mr. *Castell* so much shocked.

Mr. *Reeves.* You say that you told *Bambridge*, the first time of going to him, of the Small-Pox being there, and you returned immediately to Mr. *Castell?*——Mr. *Savage.* Yes.

Mr. *Reeves.* Was that the first Day of his being in Custody?

Mr. *Savage.* Yes, I take it to be so.

Mr. *Reeves.* You say you went the next Day again?

Mr. *Savage.* I believe it was.

Mr. *Reeves.* Did you go by Order of Mr. *Castell?*

Mr. *Savage.* At the Request of Mr. *Castell.*

Mr. *Reeves.* What did Mr. *Castell* desire you to say the next Day to Mr. *Bambridge?*——Mr. *Savage.* The very same Thing.

Mr. *Reeves.* Was there any thing mentioned as to the Place Mr. *Castell* desired to be carried to?——Mr. *Savage.* It was to his own Lodging.

Mr. *Reeves.* Was there any other Place mentioned?—Mr. *Savage.* No.

Mr. *Reeves.* Was there any Endeavours used by *Bambridge* to take him out of that Place?——Mr. *Savage.* No, I do not know it.

Mr. *Filmer.* How many Times did you go?

Mr. *Savage.* Two, three, or four Times.

Mr. *Kettleby.* I think he said, it would be an Inconvenience, and that he cared not to go to *Corbett*'s?——Mr. *Savage.* Yes.

Mr.

Mr. *Strange.* I aſk you, Whether you ſaid it was the firſt Day, or not, before he went to *Corbett*'s?---Mr. *Savage.* No,

Mr. *Strange.* Did you ſee him there?---Mr. *Savage.* Yes.

Mr. *Strange.* How was his Uſage?

Mr. *Savage.* I did not hear him complain.

Mr. *Strange.* Did you go with any other Requeſt, than that he might go back to his Lodging?—Mr. *Savage.* That was the Requeſt by me.

Mr. *Reeves.* What was the Anſwer the laſt Time you went to *Bambridge*; whether he did not ſay he was in Execution?

Mr. *Savage.* I cannot take upon me to ſay.

Lord Chief-Juſtice. I think what you ſaid, was, that it had been ſignified by *Corbett*, that Mr. *Caſtell* was to be locked up there, and it had been ſignified to him that the Small-Pox was there?---Mr. *Savage.* Yes.

Lord Chief-Juſtice. What Place was it at?

Mr. *Savage.* I can't be certain whether at the *King's-Arms*, or his Lodgings.

Mr. *Lee.* Do you know the Day he fell ill?---Mr. *Savage.* I can't tell.

Mr. *Lee.* Was he well before he went into *Corbett*'s?

Mr. *Savage.* Yes, he was.

Mr. *Lee.* When he went into *Corbett*'s, the 14th of *November*, was he well then?---Mr. *Savage.* Yes.

Lord Chief-Juſtice. Did he not talk that it was fatal to his Family?

Mr. *Savage.* Yes, and ſaid if he caught it, it would kill him.

Lord Chief-Juſtice. Did you acquaint *Bambridge* of that?

Mr. *Savage.* I did tell him it would be fatal.

Lord Chief-Juſtice. Was the Meſſage the ſame as the firſt?

Mr. *Savage.* I went on the ſame Meſſage.

Mr. *Lee.* How many Times did you go?

Mr. *Savage.* Four or five Times.

Mr. *Lee.* How long before *Bambridge* came in into the *King's-Arms* Tavern, before that Diſcourſe happened?

Mr. *Savage,* I believe the ſame Day.

Mr. *Bambridge.* I deſire a Queſtion may be aſked the Witneſs, Whether he came in relation to ſome Suits of Mr. *Caſtell?*

Mr. *Lee.* We muſt oppoſe that.

Lord Chief-Juſtice. It is between Party and Party, his Counſel muſt aſk Queſtions.

Mr. *Savage.* I did underſtand there was a Negotiation carried on by Mr. *Bambridge* for Mr. *Caſtell*, between him and the Printer; and Mr. *Bambridge* did tell me, that he had made an End of it for 40 or 50 *l.* but I know nothing of it.

Mr. *Strange.* Did not you come about one *Curll?*

Mr. *Savage.* I know nothing of it.

Mr. *Strange.* Did you come to *Bambridge* as to Mr. *Curll*'s being Security?

Mr. *Savage.* I believe I did, and ſaid he was a proper Man for Security, being a Man of Subſtance.

Call ——— Shortis. *(Who was ſworn.)*

Mr. *Lee.* Did you go to Mr. *Caſtell* when at *Corbett*'s?

Mr. *Shortis.* I went to Mr. *Caſtell* at *Corbett*'s, the Morning after he was in Cuſtody.

Mr. *Lee.* What paſſed?---Mr. *Shortis.* Mr. *Caſtell* ſaid, he had been very ill uſed by his Creditors, and believed they had been in Combination, and had combined with Mr. *Bambridge.*

Mr. *Strange.* Was you frequently with Mr. *Caſtell* while he was at *Corbett*'s Houſe?---Mr. *Shortis.* Yes.

Mr. *Strange.* During the Time you was there, what Manner was he uſed in?---Mr. *Shortis.* Mr. *Bambridge* behaved towards him very gentleman-like, ſo did Mr. *Corbett.*

Mr. *Strange.* Did you ever hear him complain?---Mr. *Shortis.* No.

Mr. *Strange.* When did you laſt ſee him?

Mr. *Shortis.* A Day or two before he died.

Mr. *Strange.* Did he complain of Mr. *Corbett*'s ill Uſage then?

Mr. *Shortis.* I believe he had every Thing he wanted from *Corbett*'s.

Mr. *Wynn.* Did he complain of any Hardſhip in being carried to Mr. *Corbett*'s Houſe?---Mr. *Shortis.* Yes.

Mr. *Wynn.* Who did he complain of, his Creditors, or Mr. *Bambridge?*

Lord Chief-Juſtice. That is not Evidence.

Call John Surrige. *(Who was ſworn.)*

Mr. *Lee.* Did you go at any Time from Mr. *Caſtell* to Mr. *Bambridge?*

Mr. *Sur.* I went two or three Times.

Mr. *Lee.* When did you ſee him?

Mr. *Sur.* I went in the Month of *November.*

Mr. *Lee.* What Time?

Mr. *Sur.* About fourteen Days in the Time of the Term.

Mr. *Lee.* That was about the Middle of *November*; it was before he was taken ill.—Did you ſee him at *Corbett*'s?---Mr. *Sur.* Yes.

Mr. *Lee.* When you went to Mr. *Bambridge*, what did you go with?

Mr. *Sur.* Two Letters.

Mr. *Lee.* Did you go by Word of Mouth?---Mr. *Sur.* No.

Mr. *Lee.* Had you any Anſwer to theſe Letters? Did you deliver them to Mr. *Bambridge?* Did he give any Anſwer?

Mr. *Sur.* He ſaid, he would wait upon Mr. *Caſtell.*

Mr. *Reeves.* Had you any Diſcourſe, concerning his Confinement, with Mr. *Bambridge?*---Mr. *Sur.* No.

Call Thomas Goodman. *(Who was ſworn.)*

Mr. *Reeves.* Was you at any Time at Mr. *Corbett*'s, when Mr. *Bambridge* and Mr. *Caſtell* were together?

Mr. *Good.* I was confined a Priſoner there.

Mr. *Reeves.* Did you remember any Converſation between them two?

Mr. *Good.* I was a Priſoner there, and Mr. *Bambridge* came into *Corbett*'s, and ſent for Mr. *Caſtell* down Stairs; and *Caſtell* ſaid to Mr. *Bambridge*, he had ſent to him two or three Times, and never could have the Happineſs to ſee him; *Bambridge* ſaid he was very ſorry for that; and Mr. *Caſtell* deſired of Mr. *Bambridge* either to go into the Houſe, or the Rules, for the Diſtemper raged there.

Mr. *Reeves.* What do you mean by the Houſe? To go into the Gaol? Tell the D ſcourſe that happened; what did Mr. *Caſtell* ſay?

Mr. *Good.* Mr. *Caſtell* ſaid, the Diſtemper raged in the Houſe, and the Diſtemper would be the Death of him; and *Bambridge* made Anſwer, that he ſhould neither go into the Houſe, nor into the Rules, unleſs he gave him ſuch a Sum of Money.

Mr. *Reeves.* Where was you when you heard this Diſcourſe?

Mr. *Good.* I was at the Bar, aſking for ſome Bread and Cheeſe.

Mr. *Lee.* When Mr. *Bambridge* ſaid he ſhould not go into the Houſe, or into the Rules, what did Mr. *Caſtell* ſay?

Mr. *Good.* That he had given Security ſeveral Times, and freſh Bail, and that he would not give any more.

Mr. *Reeves.* Did Mr. *Bambridge* deny that?

Mr. *Good.* No; I did not hear it.

Mr. *Reeves.* Where did *Bambridge* order him to be put?

Mr. *Good.* He then ordered *Corbett* to put him into the Tap-room, and then he went up.

Mr. *Reeves.* How long did he ſtay there?

Mr. *Good.* About four Minutes.

Lord Chief-Juſtice. What Time of the Year was this?

Mr. *Good.* About the Month of *November.*

Mr. *Reeves.* Did *Caſtell* complain of any Illneſs?

Mr. *Good.* The next Morning he came down, and ſaid to Mr. *Corbett* he was very ill, and deſired a Fire to be made in his Room, and I believe he never came down again.

Mr. *Reeves.* How often did Mr. *Caſtell* repeat this to Mr. *Bambridge?*

Mr. *Good.* He deſired two or three Times to go into the Gaol, or to the other Place; and *Bambridge* ſaid he ſhould not go to either, without a Sum of Money.

Mr. *Reeves.* What Sum was it?---Mr. *Good.* I did not hear the Sum.

Mr. *Reeves.* Where was this?——Mr. *Good.* At the Bar; I was ſtanding at the Bar aſking for Bread and Cheeſe.

Mr. Serj. *Darnell.* How long was you there?

Mr. *Good.* Four or five Minutes.

Mr. Serj. *Darnell.* How long was you a Priſoner?

Mr. *Good.* Four or five Months.

Mr. Serj. *Darnell.* Did you ſee them together?

Mr. *Good.* No, it was impoſſible for me to ſee them, the Door was ſhut.

Mr. Serj. *Darnell.* Did you never give any Teſtimony before?

Mr. *Good.* No.

Mr. Serj. *Darnell.* When was you diſcharged?

Mr. *Good.* By the Act of Parliament.

Mr. *Kettleby.* How came it you was not examined before?

Mr. *Good.* I don't know.

Mr. *Kettleby.* Did you make any Declaration of this Matter to any body?

Mr. *Good.* I gave this Account to ſeveral, particularly to Mr. *Houghton.*

Mr. *Kettleby.* Did you hear of this Trial?

Mr. *Good.* I heard ſomething of it.

Mr. *Kettleby.* Are you ſubpœna'd?---Mr. *Good.* I am not ſubpœna'd.

Mr. *Kettleby.* Where have you been ſince you was diſcharged?

Mr. *Good.* In my Buſineſs.

Mr. *Kettleby,* What Buſineſs?—Mr. *Good.* A Printer.

Mr. *Bambridge.* My Lord, there is a Perſon, Mr. *Botwright*, ſtands behind the Evidence to prompt them, I deſire he may be removed from that Place.

Lord Chief-Juſtice. Let him go to the other Side.

Call ——— Sutton. *(Who was ſworn.)*

Mr. *Lee.* Did you know Mr. *Caſtell?*—Mrs. *Sutton.* Yes.

Mr. *Lee.* Did you know he had the Small-Pox?

Mrs. *Sutton.* Yes; Mr. *Corbett* ſent for me, and deſired me to look after one *White*, but I could not, and Mr. *Caſtell* was ſtanding there, and ſaid he was afraid of the Small-Pox, and ſaid that he was afraid that I had them, obſerving ſomething like a Pimple upon my Face.

Mr. *Lee.* Was there any Thing upon your Face?

Mrs. *Sutton.* No, nothing but what is now.

Mr. *Reeves.* Was that after he was in Cuſtody at *Corbett*'s?

Mrs. *Sutton.* He was not a Priſoner then there.

Mr. *Reeves.* Was you in the Houſe when Mr. *Caſtell* was ill?

Mrs. *Sutton.* I ſat up the Night he died.

Mr. *Reeves.* Can you tell the Day of the Month?

Mrs. *Sutton.* I cannot tell.

Mr. *Reeves.* Do you know the Month?

Mrs. *Sutton.* I can't tell, it was before *Chriſtmas.*

Mr. *Fazakerley.* What Diſtemper did he die of?

Mrs. *Sutton.* The Small-Pox.

Coll ——— Weſtbrook. *(Who was ſworn.)*

Mr. *Fazakerley.* What do you know of Mr. *Caſtell*'s Fear of having the Small-Pox?

Mr. *Weſtbrook.* I have been Mr. *Caſtell*'s Neighbour twenty Years, and often heard him ſay, that he was very much afraid of the Small-Pox.

Call ——— Kilbury. *(Who was ſworn.)*

Mr. *Fazakerley.* Do you know that about the 14th of *November*, and ſo for a Month, from that Time till *December* laſt, there were empty Rooms in the Priſon?——Mr. *Kilbury.* Yes, there was, one of the moſt commodious Rooms in the Priſon.

Mr. *Fazakerley.* Where was it?

Mr. *Kilbury.* Up one Pair of Stairs, No 16, wainſcoted.

Mr. *Fazakerley.* Was there any other Room?

Mr. *Kilbury.* Yes, one where they kept the Lumber in.

Mr. *Fazakerley.* Were there other Houſes where there were Rooms as convenient?—Mr. *Kilbury.* I don't know of any.

Lord Chief-Juſtice. What Time were the Rooms empty?—Mr. *Kilbury.* From the latter End of *October*, till the 4th or 5th of *December.*

Call ——— Booth. *(Who was ſworn.)*

Mr. *Fazakerley.* You hear the Queſtion, whether from the Middle of *November* till the latter Part of *December*, any Rooms convenient were empty?

Mr. *Booth.* There were the ſame two Rooms as *Kilbury* mentioned.

Mr. *Fazakerley.* How long were they empty?

Mr. *Booth.* They were empty about a Month; from the latter End of *October* till the 4th of *December.*

Mr. *Fazakerley.* Do you know any Thing of a Houſe that there was Room in?---Mr. *Booth.* I don't know any Thing of that.

Call ——— Cleaver. *(Who was ſworn.)*

Mr. *Fazakerley.* Do you know that about the Middle of *November*, 1728, and ſo till ſome Time in *December*, there was any convenient Houſe, as convenient as *Corbett*'s, to put Priſoners in?

Mr. *Cleaver.* There was one Room. I was firſt at *Corbett*'s, and from *Corbett*'s ordered to *Brown*'s: It was the Latter-end of *November*, or Beginning of *December*.

Mr. *Fazakerley.* Was there Room there?

Mr. *Cleav.* Yes, there were ſeven Beds made there, and but four or five Priſoners in the Houſe.

Mr. *Faz.* Was the Small-Pox at *Corbett*'s?---Mr. *Cleav.* Yes.

Mr. *Faz.* Was that Houſe made uſe of as *Corbett*'s?

Mr. *Cleav.* Yes.

Mr. *Strange.* Was it fitted up?

Mr. *Cleav.* Yes, ſo fitted up as to have Priſoners in it.

Mr. *Strange.* Were not the Workmen at Work?---Mr. *Cleav.* No.

Mr. *Faz.* We ſhall call no more Witneſſes.

Mr. Serj. *Darnell.* I am of Counſel for the Defendants. The Gentlemen on the other Side ſay, That this is an Appeal that is brought, with a good deal of Commendation of the Widow; that ſhe was following the Murder of her Huſband; and that ſhe traced it with a full Conviction, that though one had been acquitted for it, yet ſhe ſhould now convict both, therefore ſhe waited for this Opportunity of laying it before the Court.

I ſhall not take Notice what paſſed upon that Occaſion, but obſerve to you, Gentlemen, what is alledged in the Appeal: The Appeal has charged, that theſe two Defendants did with Force and Arms make an Aſſault, and did felonioufly take and impriſon *Robert Caſtell*, without his Conſent and againſt his Will, in the Houſe of *Richard Corbett*; that there they did impriſon him; and that in that Houſe there was one *Joſeph White* then ill of the Small-Pox, a Diſtemper the ſaid *Caſtell* was greatly afraid of; and he believed he ſhould die if he had them.

That being there confined, he caught the Small-Pox and died.

I cannot but ſay, it is ſomething new, and an uncommon Accuſation of Murder; but ſo far I'll go, that if People do wickedly, they ſhould anſwer for it.

There is firſt a great deal to be conſidered. As to the firſt Point, Whether he was legally taken and impriſoned? I think there is no Evidence as to that but *Hopkins*. He told you he was preſent, and ſaw *Corbett* come to *Underwood*'s, and told him his Bail had ſurrendered him, and told him he muſt carry him away to Priſon, and told him he was ſorry for it.

This is the unlawfully and felonioufly carrying him there.

He told you he had the Warden's Authority; as he was his Agent and Tipſtaff, he was put to take him; he muſt take him, and did it by the Authority of the Warden, as he was his Officer; this was the general Authority: This is the ſingle Evidence of the firſt taking the Man. I ſubmit it to your Lordſhip's Direction, that there is nothing unlawful in this.

The next is, that he was carried to the Houſe where *White* was ſick of the Small-Pox. What is the Evidence as to that? Every Body that ſpeaks as to that, ſaid, the Small-Pox was over ten Days; if it was over ten Days, when is he ſaid to be ſick? When is the Small-Pox to end? What is the Conſequence of his coming there? That he dreaded the Diſtemper, caught it and died. That the catching it was from the 14th of *November*, till the 4th of *December*, which was near three Weeks; this comes out to be a Month after the Man had the Small-Pox. It was lawful when he was carried there.

As it is unreaſonable to ſuppoſe the Time of catching the Small-Pox, are not you to judge? It is ſo general a Diſtemper, there is hardly one in a hundred in this Town, that has not caught it. Is it becauſe he had the Small-Pox there, that they had a felonious Intent? Were there all theſe Circumſtances to make it appear? This is the Circumſtance that muſt be left to you, the general Credit that Mr. *Bambridge* received from almoſt all the Witneſſes, that he treated him civilly, and that even Mr. *Bambridge* did Buſineſs for him, till it come to *Goodman*, and *Goodman* gives an odd Account to you, if you can believe it. He ſays, he ſtood at the Bar (which in a Publick-Houſe is very noiſy); and ſays, that he heard a Talk through the Door which was ſhut, and he took it to be Mr. *Caſtell*'s Voice; and he ſaid he deſired to have the Liberty of the Rules, for the Diſtemper raged in the Houſe.

For a Man to hear this at the Bar, when the Door was ſhut, and that this ſhould be a Secret ſo long, is very extraordinary.

I muſt obſerve to you, Gentlemen, that *Goodman* was a Priſoner; and if this Evidence had been thought material, the Vigilance and Induſtry uſed to find him out (and very commendable it was), it was impoſſible to think it ſhould be undiſcovered, where ſo vigilant an Inquiry was made.

This is the only Thing that ſhews any Iniquity in *Bambridge*. Here is a Man that wants to go into the Liberty of the Rules; is a Gaoler to let him? If a Gaoler deſires Money, I don't know that it is illegal; it was after his Bonds were given up; it would have turned upon his own Head if he had gone away; he muſt have been anſwerable.

He charges him with ſo monſtrous an Improbability (it is impoſſible to think he ſaid it), that we muſt ſubmit it, whether any Credit can be given to ſuch Evidence.

I chuſe to mention Mr. *Bambridge*; but I am more particularly concerned for Mr. *Corbett*.

They have called ſeveral Witneſſes, and they ſay Mr. *Corbett* uſed him very well. And this is alledged to be Evidence, That where Witneſſes are wanting, the Man's Declaration upon his Death-Bed is Evidence; becauſe that it may be done without the Privity of any one elſe; and that a Man at that Time would have Regard to himſelf in what he ſaid. What was this Declaration? If I die, I lay my Death to *Bambridge*; but he is not certain that the Man did lay the Misfortune of being brought into Priſon to *Bambridge*; but if he did die by catching it from *White*, or being confined in a cloſe Air, if I die the Priſon is the Occaſion of my Death, and conſequently the Keeper. Is there any Conſequence can be drawn, that there was a felonious Intent? There is nothing at all from *Corbett*.

But as they have taken up a good deal of Time in ſhewing that it was a Crime carrying him to *Corbett*'s, though I apprehend it is not material, we ſhall make it plain that it was no Crime at all.

I muſt take Notice as to this, that it was inſinuated from Circumſtances. They have endeavoured to ſhew Mr. *Caſtell* received 125*l.* and alledged, that this Money was to be got from him; this Money was the Means of his being uſed ill. When they came to prove this, they only ſhewed that a Note was drawn upon *Woodward*. If he had any Money, might he not have paid it to his Creditors?

The next Thing I ſhall take Notice of is, as to the Bonds. Probably the Bonds that had been given to Mr. *Huggins* were delivered to Mr. *Bambridge*. Mr. *Bambridge* ſaid he had but one; and if it was taken in the manner even ſaid by their Witneſſes, it did not appear in any manner oppreſſive; for *Chambers* ſaid he would ſurrender him.

When *Peter Elliam* was examined, he was aſked, whether *Bambridge* ſaid, that he would not have them ſurrender him? He made anſwer, that he ſaid ſomething to that Effect; and it was ſaid, that theſe Bonds were given *de bene eſſe*; therefore the Warden was to have a reaſonable Time to enquire into the Securities; ſo it may be likewiſe taken by the Circumſtance, that he deſired to have a Keeper with him, and he would pay for it. What Hazard does the Gaoler run, if two or three Perſons come to him to aſk the Liberties of the Rules, and he gives it them, and the Men eſcape? Is not he to anſwer for them? If that was the Caſe, a Keeper, which is thought to be a beneficial Office, would be ſoon ruined by Acts of Good-nature.

As to the Caſe, it ſtands thus: Mr. *Caſtell* was firſt committed the 18th of *June*, 1728, and it is cuſtomary to bring Priſoners firſt to this Houſe. *Hopkins* ſays, it is common for Priſoners to deſire to be there, for they have better Convenience to tranſact what Buſineſs is to be done, than to trouble their Friends to go into the Gaol. *Hopkins* ſays, that it was cuſtomary; and from this Houſe he did give Security and went to his Lodgings, and continued there till his Security would not ſtand.

When this Man was brought in, he happened to be an intimate Acquaintance with one Mr. *Vanderbank*, who ſpoke himſelf, and got ſeveral others to ſpeak to Mr. *Bambridge* in his Behalf. He will give you an Account of the very Creditors coming to ſurrender him; and it is nothing but a Man's Creditors can come; and theſe People will ſhew with what Favour Mr. *Bambridge* treated him, and that he deſired Mr. *Bambridge* to aſſiſt him in his Affairs.

Gentlemen, he was removed from *Corbett*'s to his Lodgings, and continued there till his Security ſurrendered him; and we ſhall ſhew you, that Mr. *Caſtell* ſent to Mr. *Corbett*'s, that this Room might be made convenient and fit for him; which ſtrikes out the firſt Part of the Appeal; and if we prove he deſired to be there, that ſtrikes out the whole; therefore there will be an End of the whole. The Man is carried to the Houſe, but the Communication between them was up two Pair of Stairs: For the Witneſſes ſay, *White* lay up three Pair of Stairs in one Houſe, and *Caſtell* lay up one Pair of Stairs in another. Was there any more Danger lying here than in the next Houſe? The Witneſſes ſay, *White* never came down, and Nobody inſiſted that *Caſtell* went up; he muſt have been a Madman if he did. When we ſhew you that he came there at his own Deſire, and had the Bed and Bedding at his own Deſire, we muſt ſay that this Diſtemper was the Viſitation of God, and came to him as to other People.

We ſhall call a good many of the People who were his Security, to prove, that as ſoon as they were inquired after, they were admitted to ſtand.

Gentlemen, after the laſt Bond was given, he might have gone about his Buſineſs if he would; and that Bond was given *de bene eſſe*; and therefore in the Power of the Warden to let them in or not. We will call our Witneſſes, and ſhew you how long *White* had been well before Mr. *Caſtell* came there; that he had taken three times Phyſick; but for fear of any Accident, becauſe there were other Priſoners in the Houſe, they did not let him come down. This, Gentlemen, we ſhall be able to prove by ſeveral Witneſſes; which if we do, you will find the Priſoners Not Guilty.

Mr. Serj. *Eyre.* My Lord, and you Gentlemen of the Jury, I am of Counſel of the ſame Side. I ſhall not go over the whole Caſe; but only obſerve to you, that the Gentlemen on the other Side were conſcious that they had no poſitive Proof; therefore they have artfully gone about to prove Circumſtances.

They ſay, that Mr. *Caſtell* had 125*l.* paid him; and having this Money, Mr. *Bambridge* knew of it, and conſequently was making uſe of Endeavours to extort the Money from him.

They are far ſhort, in that they called ſome People, who only proved that a Note was drawn upon Mr. *Woodward*, payable to him or Bearer; but it did not appear that *Bambridge* had any Part of it.

There is another Evidence, one *Goodman*, who ſaid, that Mr. *Bambridge* had a View to get ſome of the Money; one would have thought, that he ſhould have mentioned a particular Sum. That ſeems to be exceedingly unnatural, for the Anſwer *Caſtell* gives is, that Security was given, and he would give no more.

Conſider, Gentlemen, when this happened; in *November*, when all the Securities had been completed.

It is very extraordinary, that this Witneſs ſhould never be called on before, and very particular that he ſhould hear ſo well. He was at the Bar, they in the Room, and the Door ſhut; and, Gentlemen, I am inſtructed to ſay, that it is impoſſible to hear what any Perſon ſays behind the Bar, that ſtands on the Outſide of the Bar.

It is uſual to take Securities before their Circumſtances are inquired into, What then is the Caſe? They ſtand if their Circumſtances are good, if not they do n't.

How then ſtands this? If theſe Bonds were executed on the Second, this Man fell ſick on the Third, and this one Bond was only delivered over to the Principal, as a Bond *de bene eſſe*.

What I ſhould apprehend was neceſſary for them to produce, were the Facts in the Declaration, that he was forcibly taken away out of his Lodgings, and carried to *Corbett*'s Houſe: They admit them as Priſoners; and ſo far from Force, that ſome of the Sureties, on the 14th of *November*, ſaid, that they would ſtand no longer, and deſired Mr. *Caſtell* to be taken care of.

They ſay it was very wrong to carry him to a Spunging-Houſe; a Victualling-Houſe it is, but it don't appear to be a Spunging-Houſe; every Gentleman is uſed according to his Circumſtances; they pay one Shilling for their Dinner, which is very reaſonable, and *Hopkins* ſaid well deſerves it.

We

we say it is exceedingly lawful to put Prisoners there; it is lawful, and as lawful as his own Lodgings, and any Place in the Liberty of the Rules is lawful. This is not all; he went first to the Tavern, and his Servant bespoke a Room, and had the very Room he bespoke; and we apprehend, *Corbett* had a lawful Authority to carry him there.

There is another Fact they have alledged, I must beg leave to take notice of; That *White* was sick at this very Time, and in this very House.

These two Charges are necessary to be proved; but how have they proved them? It appears that these were two distinct Houses, two distinct Stair-cases; and, in my Judgment, I apprehend, appear to be two Houses, not one.

As to *White*'s being sick at that Time, it appears he was not sick, and we shall shew he had taken three Purges.

It is not only necessary for them to prove that this Man was sick at the Time *Castell* came there, and that he was unlawfully carried there, but it is necessary to prove that this Sickness was infectious; but *Castell*, on the contrary, did not come there till he was well.

Does it not appear that *White* lay up three Pair of Stairs, and was injoined not to come out of his Room, and that he continued there, as *Noel* said, all the Time? Where was *Castell?* In one Pair of Stairs in the new House. How can you imagine any Infection to come from the Garret down to Mr. *Castell* in the one Pair of Stairs Room? Therefore, it was impossible to imagine that Distemper was so taken.

Here is a Man visited with the Small-Pox, and says, "Pray let me not "go to Gaol, but let me go to my own Lodgings;" the Bail surrender him, because he was not safe at the Place where he lodged; therefore, it was very ridiculous for him to ask to go to his Lodging, which was unreasonable.

As to the Persons that were his Securities, I don't think they were his Friends in fact; for these Men, who before were drinking at the Bar of this House, designed it should be so.

I must beg leave to make one Observation: Suppose there were some of the Prisoners had the Small-Pox, and a Prisoner comes to the Gaoler, and says, Here is the Small-Pox in a Garret, I desire to go into the Liberty; I don't see how it can be granted, for it is impossible for that or any other Gaoler, if a contagious Distemper comes into it, and the well Prisoners desire to go out, he should give them the Liberty: If Criminals should be let out, it is very plain, in that Case, the Gaoler must answer for them; so I apprehend it would be in Civil Cases: Therefore, I must conclude with saying, that my Clients have done nothing at all but what is humane and right.

Mr. *Kettleby*. My Lord, I am Counsel of the same Side; and we will call our Witnesses.

Call —— Chappel. (*Who was sworn.*)

Mr. *Kettleby*. Was you present on the 14th of *November*, or at any other Time, when Mr. *Castell*'s Security came to Mr. *Bambridge?*

Mr. *Chappel*. Mr. *Chambers* came and said, he was determined to stand Security for Mr. *Castell* no longer; and *Peter Ellam* and *Curll* the same.

Mr. *Kettleby*. What did they say to *Bambridge?*

Mr. *Chappel*. That they gave him Power to take him up.

Mr. *Kettleby*. Where was this?—Mr. *Chappel*. At *Bell-Savage* Yard.

Mr. *Kettleby*. What did *Bambridge* say in Answer?

Mr. *Chappel*. He believed they were secure, and could not imagine the Reason of their withdrawing their Security.

Mr. *Kettleby*. What did they say to that?

Mr. *Chappel*. *Chambers* seemed willing, but *Curll* would not.

Mr. *Kettleby*. What Resolution was taken upon that?

Mr. *Chappel*. He persuaded *Ellam* to consent, and nothing more was done then; and we left *Castell* and *Bambridge* together.

Mr. *Kettleby*. What Time was this?

Mr. *Chappel*. I don't know the Day.

Mr. *Kettleby*. What Month was it in?—Mr. *Chappel*. In *November*.

Mr. *Kettleby*. The Beginning, Middle, or latter End?—Mr. *Chappel*. I cannot tell; by a Line sent to Mr. the Attorney, it will appear.

Mr. *Kettleby*. How long before he was carried to *Corbett*'s House?

Mr. *Chappel*. Three Weeks or a Month.

Mr. *Kettleby*. Do you know any Discourse that happened between them a little before he went to *Corbett*'s House?

Mr. *Chappel*. Mr. *Chambers* came to Mr. *Bambridge*, and told him, he would be Security no longer.

Mr. *Kettleby*. How near the Time he was carried to *Corbett*'s?

Mr. *Chappel*. The next Morning.

Mr. *Kettleby*. Give an Account what passed the Day before he went to *Corbett*'s.

Mr. *Chappel*. *Chambers* was twice with Mr. *Bambridge*; and the first Time Mr. *Bambridge* desired Mr. *Castell* might not be surrendered; Mr. *Chambers* waited two or three Days, and then came to Mr. *Bambridge* again, to let him know he would surrender him, and said he would be his Security no longer; and Mr. *Bambridge* said, if he would deliver him up, he must go to the Tipstaff's; then *Chambers* went to one *Corbett*, and *Corbett* said, he must have a Fee; then *Chambers* gave him his Fee, and *Chambers* said, he was at the *King's Arms*. About an Hour after I saw *Corbett*, *Chambers* and *Castell* together.

Mr. *Kettleby*. What did you see done?—Mr. *Chappel*. That is all I know.

Mr. *Kettleby*. Did not you go to the *King's Arms* Tavern?

Mr. *Chappel*. No.

Mr. *Kettleby*. Did you hear the Security say, they would complain to the Judges about it?—Mr. *Chappel*. Mr. an Attorney, was there.

Mr. *Kettleby*. What did the Attorney say?—Mr. *Chappel*. I don't know.

Mr. *Kettleby*. Did they direct him to take him up? Who did *Chambers* speak to?

Mr. *Chappel*. To Mr. *Bambridge*.

Mr. *Kettleby*. To do what?

Mr. *Chappel*. To take Mr. *Castell* in Custody, for he would be Security no longer; and desired that he would take him in Custody.

Mr. *Strange*. What did Mr. *Bambridge* tell him was necessary to be done?

Mr. *Chappel*. *Bambridge* said he must employ a Tipstaff.

Mr. *Strange*. What did Mr. *Chambers* do to *Corbett?*

Mr. *Chappel*. He sent to *Corbett* to the Coffee-house, and *Corbett* said, he must have a Fee.

Mr. *Strange*. When was this?---Mr. *Chappel*. Over Night.

Mr. *Strange*. Did *Chambers* threaten him?---Mr. *Chappel*. No.

Mr. *Strange*. What did he say?

Mr. *Chappel*. He said something about giving a Fee; and *Corbett* went to the *King's Arms*, and said, he could not find him.

Mr. *Reeves*. First of all *Ellam* seemed uneasy, but afterwards was not; Did *Peter Ellam* concern himself afterwards?

Mr. *Chappel*. Yes, he sent a Letter to Mr. *Scott*.

Mr. *Reeves*. I ask you, whether *Ellam* did not consent to continue before he was taken up?---Mr. *Chappel*. Yes.

Mr. *Reeves*. Did *Curll*, before Mr. *Castell* was taken up?

Mr. *Chappel*. I don't know of that.

Mr. *Reeves*. You don't know of any others?---Mr. *Chappel*. No.

Mr. *Lee*. How come you to be so much concerned?

Mr. *Chappel*. I was to secure *Ellam* and myself. I was so much concerned, that he and I were bound for Three-Fourths of One Thousand Pounds.

Mr. *Lee*. Who went with you to *Bambridge* the first Time?

Mr. *Chappel*. I went along the first time to *Bambridge* with *Peter Ellam* and *Curll*.

Mr. *Lee*. With what Intent did you go?

Mr. *Chappel*. I went with *Peter Ellam* and *Curll* with an Intent to deliver Mr. *Castell* up, for I had given Security to *Ellam* to indemnify him a half Part.

Mr. *Lee*. To indemnify him! Did *Ellam* decline then?

Mr. *Chappel*. He seemed inclinable to continue.

Mr. *Lee*. Was you present when *Bambridge* said he must go to the Tipstaff's?---Mr. *Chappel*. Yes.

Mr. *Lee*. Was he acquainted with *Corbett?*---Mr. *Chappel*. I don't know.

Mr. *Lee*. Was there any body mentioned at the Time when you was with *Bambridge?*

Mr. *Chappel*. I can't charge my Memory with any Name.

Mr. *Lee*. At this Time when you talked about the Tipstaff, was *Ellam* and *Curll* there?---Mr. *Chappel*. No.

Mr. *Fazakerley*. Pray what Bond was that you talked of, that you was Security in?---Mr. *Chappel*. I don't hear.

Mr. *Fazakerley*. Was there any Talk then with *Bambridge* how much the Bond was for?---Mr. *Chappel*. No.

Mr. *Fazakerley*. What was the Bond for?---Mr. *Chappel*. I think 1000*l*.

Mr. *Strange*. You say, upon *Bambridge*'s Interposition, that *Ellam* was induced to stand?---Mr. *Chappel*. Yes.

Mr. *Strange*. Was *Curll* the same?---Mr. *Chappel*. Yes.

Mr. *Strange*. When was that?---Mr. *Chappel*. That was the first Time.

Mr. *Strange*. When was the last Time?

L. C. J. I don't find that you fixed these Times.

Call —— Chambers. (*Who was sworn.*)

Mr. *Strange*. You was Security for Mr. *Castell?*---Mr. *Chambers*. Yes.

Mr. *Strange*. Give an Account what you did in relation to that?

Mr. *Chambers*. I begg'd of Mr. *Chappel*, he having Business every Day in Town, to apply to Mr. *Bambridge*, to let him know that I would be Security no longer; but having long had an Intimacy with Mr. *Bambridge*, *Bambridge* desired me to continue Security eight Days longer; and told me, that *White* at the *King's Arms* Tavern had given a Note. I said I was determined to deliver him up. Mr. *Bambridge* said, I was very safe, and desired I would continue; he had been the Instrument of my being Security, and he would not deceive me; if he thought there was any Danger, he would advise me by Letter. I came to Mr. *Castell* from time to time; he told me, he had other Securities ready, and it would be no Inconvenience to him. I came to tell him two or three times I would not stand, and found he had Nobody ready; and then went to Mr. *Bambridge*, and found him at the Lodge about seven or eight o'Clock at Night, and told him I was come determined to deliver Mr. *Castell* up; upon which he said, If you will deliver him up you must. I asked him which way to proceed? He said, I must get a Tipstaff. I asked him, where there was a Tipstaff? He said, there was one *Corbett*. I asked him, what I must give him? He said, Six-and-eight-Pence. I went accordingly to *Corbett*, and told him Mr. *Castell* was at the *King's Arms* Tavern, and I would give him Half a Guinea to secure him. Mr. *Corbett* went to the *King's Arms*, came back, and said he could not find him; then I said, I would be in Town; and I lay at the *Bell-Savage* Inn; then I came the next Morning, and sent to *Corbett*'s, who came in his Gown and Slippers; and *Corbett* said, he wished he had not got Notice of our Intention; and said he would go to his Lodgings; and said, he believed there he should find him: Then *Corbett* came, and said he was at his House; and I gave *Corbett* Half a Guinea; and I went to Mr. *Castell* at *Corbett*'s, and he said, he thanked me for my Civility; and said, he believed it was not an Act of my own; and I said it was. As you are going abroad, do not think I use you ill. He said, No; I don't believe it was your own Act. I said, Don't deceive yourself, it is.

Mr. *Strange*. Did Mr. *Bambridge* persuade you at first to be Security?

Mr. *Chambers*. Yes.

Mr. *Strange*. Mr. *Castell* made no manner of Objection to his being at *Corbett*'s, but thanked you?---Mr. *Chambers*. Yes.

Mr. *Strange*. About what Time was this?

Mr. *Chambers*. About the Middle of *November*.

Mr. *Strange*. Was this after he was surrendered?---Mr. *Chambers*. Yes.

Mr. *Strange*. Did he complain of being at *Corbett*'s House then?

Mr. *Chambers*. No.

Mr. *Strange*. Was you at the *King's Arms* the Day he was taken?

Mr. *Chambers*. No.

Mr. *Strange*. Was you with Mr. *Bambridge?*

Mr. *Chambers*. I sent up to him, and that I was come by the Securities Appointment; and he sent Word again, he had nothing to do with him, till the Security had surrendered him.

Mr. *Strange*. Did Mr. *Bambridge* at any Time expostulate with you, why you surrendered him?

Mr. *Chambers.* I told Mr. *Bambridge*, I heard he had an Invitation to go abroad with Lord *Londonderry*.

Mr. *Strange.* What did Mr. *Bambridge* say, to lead you to that Answer, to say that Mr. *Castell* was going abroad?

Mr. *Chambers.* No, I did not say he was going abroad.

Mr. *Strange.* Upon the whole, you say that Mr. *Bambridge* persuaded you to stand?———Mr. *Chambers.* Yes.

Mr. *Strange.* Did he persuade you to stand?——Mr. *Chambers.* Yes.

Mr. *Bambridge.* My Lord, I desire the Witness may be asked, whether he did not say that Mr. *Castell* was going abroad.

Lord Chief Justice. Mr. *Bambridge*, let your Counsel ask the Question.

Mr. *Strange.* What did you say?

Mr. *Chambers.* I said I heard a Rumour; I was informed he was going abroad.

Mr. *Strange.* I desire he may be asked, if he was not told that he was going abroad with Lord *Londonderry*.

L. C. J. Had any body told you he was going abroad with Lord *Londonderry?*

Mr. *Chambers.* No, I did not surrender him upon that Account.

Mr. *Strange.* What was the real Reason of your surrendering him?

Mr. *Chambers.* I was informed that he had made two Mortgages of his Estate, one to my Son-in-law.

Mr. *Strange.* You said you was informed he was going abroad?

Mr. *Chambers.* Yes.

Mr. *Strange.* Did any body, an Enemy to him, persuade you to surrender him?———Mr. *Chambers.* No.

Mr. *Strange.* Did not you know of that Mortgage to your Son-in-law before then?———Mr. *Chambers.* No.

Call Joseph Vains, *(Who was sworn.)*

Mr. Serj. *Darnell.* Give an Account of what you know of the surrendering Mr. *Castell.*

Mr. *Vains.* Mr. *Chambers* came several times to my Coffee-house, and asked when I saw Mr. *Corbett?* The first time, I said I had not seen him in two or three Days; and then he came again, and the third time *Corbett* came by, and my Servant said, There is Mr. *Corbett*; and he asked Mr. *Corbett*, whether he knew where Mr. *Castell* was? *Corbett* said No. Then *Chambers* desired him to find him.

Mr. Serj. *Darnell.* What did Mr. *Chambers* say to Mr. *Corbett?* Repeat it again.

Mr. *Vains.* He said, When did you see Mr. *Castell?* Mr. *Corbett* said, he had not seen him two Days. What do you want with him? *Chambers* replied, I want to speak with him. *Corbett* asked, What is your Business? *Chambers* made answer, I will be Security no longer, and will surrender him, for I hear he is going abroad with the Lord *Londonderry*. Then *Corbett* went away to look for Mr. *Castell*, but I know no more of it, but heard he was carried to *Corbett*'s.

Mr. Serj. *Darnell.* Did not Mr. *Chambers* threaten *Corbett?*

Mr. *Vains.* He said I must lose the Debt, and if you do not see and get him, I will move the Court against you, and make you pay the Debt, for I will stand Security no longer.

Mr. Serj. *Darnell.* Do you know any thing of Mr. *Castell*'s sending to *Corbett*'s?——Mr. *Vains.* No.

Call Thomas Woodyer. *(Who was sworn.)*

Mr. Serj. *Darnell.* Do you know any thing of Mr. *Castell*'s going to *Corbett*'s House, when it was, and at whose Desire?

Mr. *Woodyer.* The Night he went from the *King's-Arms* Tavern, I was Drawer there. Mr. *Castell* ordered me to go or send to Mr. *Corbett*'s House, to order his Room to be got ready.

Mr. Serj. *Darnell.* Was that the Night he was carried to *Corbett*'s?

Mr. *Wood.* Yes.

Mr. Serj. *Darnell.* It is said *Corbett* took him against his Will?]

Mr. *Wood.* I can't say.

Mr. Serj. *Darnell.* When you received that Message, was *Corbett* there?

Mr. *Wood.* I can't be positive.

Mr. Serj. *Darnell.* Did you go?——Mr. *Wood.* I sent one down.

Mr. Serj. *Darnell.* By whose Directions?—Mr. *Wood.* By Mr. *Castell*'s.

Mr. Serj. *Darnell.* What Time?

Mr. *Wood.* About eight or nine o'Clock.

Mr. Serj. *Darnell.* What Day?——Mr. *Wood.* I don't know.

Mr. Serj. *Darnell.* What Month?

Mr. *Wood.* I believe *November*.

Mr. Serj. *Eyre.* Was it the last time?

Mr. *Wood.* I believe it was; I never saw Mr. *Castell* after.

Mr. Serj. *Eyre.* How long did Mr. *Castell* stay at your House?

Mr. *Wood.* Mr. *Castell* was there three or four Hours.

Mr. Serj. *Eyre.* When did *Corbett* come to take him up?

Mr. *Wood.* That same Night, I believe.

Mr. Serj. *Eyre.* Did *Corbett* bring him to your House?

Mr. *Woodyer.* No.

Mr. *Strange.* Who was in Company when he came in?

Mr. *Wood.* I don't know.

Mr. *Strange.* Did *Corbett* come in with him?——Mr. *Wood.* No.

Mr. *Strange.* Did *Corbett* go with him away?

Mr. *Wood.* Yes.

Mr. *Strange.* Did Mr. *Castell* shew any Unwillingness to go?

Mr. *Wood.* I did not hear.

Mr. *Strange.* What time of the Night did he first come?

Mr. *Wood.* Some time in the Dusk of the Evening.

Mr. *Fazakerley.* He was taken in the Morning at *Underwood*'s.

Mr. *Lee.* Was you in the House when Mr. *Castell* first came from Mr. *Underwood*'s?

L. C. J. I don't take the time he was taken from *Underwood*'s to be in the Morning.

Mr. *Fazakerley.* Are you sure it was the 14th of *November?*

Mr. *Wood.* No.

Mr. *Fazakerley.* What was it he said? To get his Room ready?

Mr. *Wood.* Yes.

Mr *Strange.* There were Sheets to be aired?

Mr. *Wood.* Yes, there were.

Call John Downs. *(Who was sworn.)*

Mr. *Strange.* In *November* the 12th, was you a Servant to Mr. *Corbett?*

Mr. *Downs.* Yes.

Mr. *Strange.* Do you remember any Message that was sent?

Mr. *Downs.* Yes, that a Bed should be got ready for Mr. *Castell.*

Mr. *Strange.* Had he been at any House before upon the Surrender of his Bail?——Mr. *Downs.* No.

Mr. *Strange.* Where did he lodge before?

Mr. *Downs.* At Mr. *Underwood*'s.

Mr. *Strange.* Was there a Bed prepared accordingly?

Mr. *Downs.* Yes.

Mr. *Strange.* Do you know the Day he came?——Mr. *Downs.* No.

Mr. *Strange.* You say you was in the House when he came; Who came along with him?——Mr. *Downs.* Mr. *Corbett.*

Mr. *Strange.* Who shewed him the Room?

Mr. *Downs.* I think one *Holdesworth*, he was Chamberlain.

Mr. *Wynn.* You attended him whilst he was there?—Mr. *Downs.* Yes.

Mr. *Wynn.* All the Time?——Mr. *Downs.* Yes.

Mr. *Wynn.* What Condition of Health was he when he came in?

Mr. *Downs.* He was a weakly Gentleman.

Mr. *Wynn.* Was there any extraordinary Care taken of him?

Mr. *Downs.* Yes, he was put in the Room one Pair of Stairs.

Mr. *Wynn.* Was there a Club kept there?

Mr. *Downs.* Yes, and Mr. *Bambridge* and Captain *Martin* used to come to it.

Mr. *Wynn.* After the time he was brought in?

Mr. *Downs.* No, before.

Mr. *Wynn.* How long before?

Mr. *Downs.* There was a Club in it two or three Nights before.

Mr. *Wynn.* Did your Master use to visit him?

Mr. *Downs.* At all Leisure-Times.

Mr. Serj. *Eyre.* Was Mr. ——— with him?——Mr. *Downs.* Yes.

Mr. Serj. *Eyre.* What Room was that, that the Bed was brought out of, that he lay in?——Mr. *Downs.* I don't know.

Mr. Serj. *Eyre.* After you received the Message at nine o'Clock at Night, was there a Bed brought down?

Mr. *Downs.* I can't tell.

Call ——— Holdesworth. *(Who was sworn.)*

Mr. Serj. *Eyre.* What are you?

Mr. *Holdesworth.* I am Chamberlain at Mr. *Corbett*'s.

Mr. Serj. *Eyre.* How often was Mr. *Castell* brought to your House?

Mr. *Holdes.* He was brought but once while I was there.

Mr. Serj. *Eyre.* Was he brought in by Violence, or his own Consent?

Mr. *Holdes.* He came in with Mr. *Corbett*; I did not see any Violence.

Mr. Serj. *Eyre.* Was there any Care taken of him while he was there?

Mr. *Holdes.* He wanted for nothing while he was there, for he had every thing he asked for.

Mr. Serj. *Eyre.* When did he come in?

Mr. *Holdes.* About the Middle of *November*. During ten Days before he fell sick and complained, he kept his Room altogether, and very seldom came down.

Mr. *Strange.* The Bed that was prepared for him, was it usually laid in?

Mr. *Holdes.* It was a Bed that had been laid upon; Mr. *Hopkins* had laid upon that Bed.

Mr. *Kettleby.* If a Man was speaking at the Bar, could you hear what was said in the Inner Room?

Mr. *Holdes.* No, except he spoke very loud.

Mr. *Kettleby.* Was this one House where Mr. *Castell* lay, or two Houses?

Mr. *Holdes.* There were two Houses.

Mr. *Kettleby.* Was there any Communication or Door opened, or how did one lie up three Pair of Stairs in one House, and one Pair of Stairs in the other?

Mr. *Holdes.* One Pair of Stairs turn'd upon the left Hand, to go to Mr. *Castell's* Room, and the other turned upon the Right.

Mr. *Kettleby.* What Condition of Health was *White* in when Mr. *Castell* came in?——Mr. *Holdes.* He had the Small-Pox.

Mr. *Kettleby.* How long had he had them?

Mr. *Holdes.* He was blind.

Mr. *Kettleby.* How long was it before *White* recovered? How long was it he kept up after he recovered?

Mr. *Holdes.* About a Month.

Mr. *Kettleby.* Had *White* taken any purging Physick?

Mr. *Holdes.* I believe not.

Mr. Serj. *Eyre.* Was there any Message sent to Mr. *Castell*'s Wife to come?

Mr. *Holdes.* I can't say; Nobody ever came.

Mr. Serj. *Eyre.* Who provided Necessaries?—Mr. *Holdes.* Mrs. *Corbett.*

Mr. Serj. *Eyre.* He wanted Nothing?——Mr. *Holdes.* No.

Mr. *Reeves.* Did you not go to *Jonathan Ireland?*

Mr. *Holdes.* I was along with him when the Gentleman died.

Mr. *Reeves.* Did not you take away a Bed from under *White?*

Mr. *Holdes.* Yes, and I carried it into Mr. *Castell*'s Room; but the Bedstead being too little, I carried it up another Pair of Stairs, into a Room.

Mr. *Reeves.* How came you to put *White* out of his Bed? What did you put under *White?*

Mr. *Holdes.* I put as good a Bed as that.

Mr. *Reeves.* Did not *White* keep his Bed?——Mr. *Holdes.* Yes.

Mr. *Fazakerley.* Did not *White* continue in the same Room?

Mr. *Holdes.* He was removed into another Room.

Mr. *Fazakerley.* Where was that?——Mr. *Holdes.* In the next Garret.

Mr. *Fazakerley.* What was the meaning of turning *White* out of one Bed into another?

Mr. *Holdes.* It was for the Convenience of a Fire.

Mr. *Fazakerley.* Did *White* make any Complaint that you had taken away his Bed?

Mr. *Holdes.* I believe he would not have had it taken away.

Mr. *Fazakerley.* Let me ask you about the Stair-case. Was there no Communication to go from Mr. *Castell*'s Room up that Stair-case to *White*'s?

Mr. *Holdesworth.* Yes, when you go up another Part of the Stair-case.

L. C. J. You say that there are two Houses, and that there is but one Stair-case?

Mr. *Fazakerley.* When the two Houses were laid into one, the first Pair of Stairs served both Houses.—Did not Mr. *Castell* lay up one Pair of Stairs?

Mr. *Holdes.* Yes.

Mr. *Faz.* Can you go down Stairs, without going by Mr. *Castell*'s Room?---Mr. *Holdes.* No.

L. C. J. I thought the Houses were laid into one, till you come to the Top?

Mr. *Faz.* Is not one of the Stair-cases stopped up?---Mr. *Holdes.* Yes.

Mr. *Faz.* How long was this before Mr. *Castell* came in?

Mr. *Holdes.* Five or six Days.

Call Thomas Norton. *(Who was sworn.)*

Mr. *Strange.* Do you remember any Message brought from the *King's-Arms* Tavern?

Mr. *Norton.* Yes, it was to have a Fire laid in the best Room in the House, and the best Bed to be made.

Mr. *Strange.* Who did it come from?

Mr. *Norton.* From the *King's-Arms*, from Mr. *Castell.*

Mr. *Strange.* Was that the best Room in the House that he was in?

Mr. *Norton.* Yes.

Mr. *Strange.* Do you remember his coming in?---Mr. *Norton.* Yes.

Mr. *Strange.* Did he come in of his own Accord?---Mr. *Norton.* Yes.

Mr. *Strange.* Did you observe any Violence used to him?

Mr. *Norton.* No.

Mr. *Strange.* Had he all the Assistance necessary, while there, and while ill?---Mr. *Norton.* He had.

Mr. *Strange.* Who provided it?---Mr. *Norton.* Mrs. *Corbett.*

Mr. *Strange.* You know the Situation of the Bar?---Mr. *Norton.* Yes.

Mr. *Strange.* Supposing then a Person comes down to the Bar to ask for any Thing, and any Body was in the Room behind the Bar, in case the Door was shut; could you hear what was said in Discourse?

Mr. *Norton.* I think you could not.

Mr. *Strange.* Do you know one *Goodman?*

Mr. *Norton.* Yes, very well.

Mr. *Strange.* Did you ever hear him give any such Account till of late?

Mr. *Norton.* Never in my Life.

Mr. *Strange.* How long have you been there?

Mr. *Norton.* Two Years.

Mr. *Strange.* How long has *Goodman* been there?

Mr. *Norton.* Six Months.

Mr. *Faz.* Is not that Partition a very thin one?

Mr. *Norton.* Yes, it is Wainscot.

Mr. *Faz.* Did you ever hearken, to hear what was said in that Room?

Mr. *Norton.* No.

Mr. *Faz.* I suppose you are a Drawer there?

Mr. *Norton.* I am a Servant.

Mr. *Faz.* What are you?

Mr. *Norton.* I keep the Key of the Door; I must hear if any one can; I stand near the Door.

Mr. *Faz.* Is that made up to the Cieling?---Mr. *Norton.* Yes.

Mr. *Filmer.* Does the Bar go up to the Top?---Mr. *Norton.* Yes.

Call —— Gardiner. *(Who was sworn.)*

Mr. *Kettleby.* Did you attend Mr. *Castell* in his Illness?

Mr. *Gardiner.* No.

Mr. *Kettle.* Can you give an Account what Condition he was in?

Mr. *Gardiner.* No, he was not sick when I saw him.

Mr. *Kettle.* Was not you with him when he was sick?

Mr. *Gardiner.* No.

Mr. *Kettle.* Did you go with him, when he was charged in Execution?

Mr. *Gardiner.* Yes, I asked him how he had been used; he said, with great Civility.

Mr. *Kettle.* What House was he in?---Mr. *Gard.* At the *Royal Oak.*

Mr. *Kettle.* Did you ask him in what House he was placed?

Mr. *Gard.* He said he was placed at Mr. *Corbett*'s House, at his own Request.

Mr. *Kettle.* How did he say he was used?

Mr. *Gard.* With great Civility.

Mr. *Kettle.* How long before he died?---Mr. *Gard.* I don't know.

Mr. *Kettle.* Was it a Year?

Mr. *Gard.* I believe it was about fourteen Days.

Mr. *Kettle.* Was not you charged in Execution at the same Time?

Mr. *Gard.* Yes.

Mr. *Kettle.* When was you charged?

Mr. *Gard.* The last Day of the Term.

Mr. *Faz.* How came you to ask him such a Question?

Mr. *Gard.* I went from *Corbett*'s with him, and came back to *Corbett*'s again.

Mr. *Faz.* How many Times was you in Company with him after?

Mr. *Gard.* I never was in Company with him but at that time.

Mr. *Filmer.* Do you know when he had the Small-Pox?

Mr. *Gard.* I heard he had the Small-Pox, and died in a Fortnight.

Call Anne Blake. *(Who was sworn.)*

Mr. *Wynn.* You was in the House when Mr. *Castell* lay ill?

Mrs. *Blake.* Yes.

Mr. *Wynn.* Was he provided with all Necessaries?

Mrs. *Blake.* Yes, I was present at making of Hartshorn-drink, before he had the Small-Pox.

Mr. *Wynn.* Was he attended with an Apothecary?

Mrs. *Blake.* I did not see, I was sick beforehand.

Mr. *Wynn.* Pray did you know the Care that was taken to prevent the Disease from the other Prisoners?

Mrs. *Blake.* I saw no Disease after.

Mr. *Wynn.* Was the Room furnished with good Furniture?

Mrs. *Blake.* Yes.

Mr. *Strange.* What was the Matter with him?

Mrs. *Blake.* He had a Flux upon him when he came in.

Mr. *Filmer.* Had you ever the Small-Pox?---Mrs *Blake.* No.

Mr. *Filmer.* When he had the Small-Pox, was not you removed?

Mrs. *Blake.* After he died, I had leave to go out.

Mr. *Strange.* Was not the House so commodious, that as you lay up two Pair of Stairs you thought yourself safe?

Mrs. *Blake.* Yes.

Mr. *Strange.* You did not catch them?---Mrs. *Blake.* No.

Mr. *Strange.* Did *White* come down before Mr. *Castell* died?

Mrs. *Blake.* I was kept from *White*, because I had not had them.

Call —— Moor. *(Who was sworn.)*

Mr. Serj. *Hawkins.* Did you attend Mr. *Castell?*---Mr. *Moor.* Yes.

Mr. Serj. *Hawk.* You are an Apothecary as well as a Surgeon?

Mr. *Moor.* Yes.

Mr. Serj. *Hawk.* In what Manner did you take care of him?

Mr. *Moor.* I was ordered to attend Mr. *Castell*, and accordingly I went to him, and found him in Bed, in a very convenient warm Room: The Small-Pox was not then come out, but appeared in two Days after; he seemed alarmed at the Distemper, but did not say he was under any great Concern or Alarm---from the Confinement.

Mr. Serj. *Hawkins.* Who was to attend him?

Mr. *Moor.* There was a Nurse. He did not seem to want any Thing; there was a good Fire kept; I ordered her so to do, and he had every Thing given him in good Order.

Mr. Serj *Hawk.* Did he make any Complaint of *Corbett?*

Mr. *Moor.* No; he never said any thing to me, I was an utter Stranger, Mr. *Waller* was the Apothecary employed.

Call Mr. —— Smith. *(Who was sworn.)*

Mr. *Strange.* At the Time Mr. *Castell* was ill, *Corbett* came to Mr. *Bambridge* at your House?---Mr. *Smith.* Yes.

Mr. *Strange.* Tell what passed.

Mr. *Smith.* I think it was the second or third of *December Corbett* came to Mr. *Bambridge*, and *Bambridge* was in the Parlour; I was sitting there; we were not rose from Table, and Mr. *Cerbett* was telling Mr. *Bambridge* of the Affairs of the Prison, and said, Poor Mr. *Castell* is not well; and *Bambridge* asked what was the Matter with him? He said, he had caught cold. *Bambridge* said he was very sorry for it, and said, Give my Service to your Wife, and desire her to take Care of him.

Mr. *Strange.* What did Mr. *Bambridge* ask?

Mr. *Smith.* Mr. *Bambridge* asked what was the Matter, and *Corbett* said he had caught Cold. Something of the Affairs of the Prison requiring the Direction of Mr. *Bambridge*, the next Day *Corbett* came again, and *Bambridge* asked him how Mr. *Castell* did? Mr. *Corbett* said he had got the Small-Pox, and said the Gentlemen in the House were very uneasy at his being in the Middle of the House, and he was thinking to have him removed a Room higher; and Mr. *Bambridge* said, he would not have him removed higher in the House, to run the risque of his Life; but if the Gentlemen were uneasy, he would have them removed into the Prison.

Call —— Martin. *(Who was sworn.)*

Mr. *Strange.* I ask you if you were not of the Club with Mr. *Castell*, in *Corbett*'s House?---Mr. *Martin.* Yes.

Mr. *Strange.* Was you present at the Club the last time Mr. *Castell* was brought there?

Mr. *Martin.* I think I was there that Night he was charged in Execution.

Mr. *Strange.* I ask you whether Mr. *Corbett* and *Castell* were there in a friendly Manner, when together?---Mr. *Martin.* Yes

Mr. *Strange.* So they were together?---Mr. *Martin.* Yes.

Mr. *Strange.* Was Mr. *Bambridge* there?

Mr. *Martin.* Mr. *Bambridge* did not come to the Club all that Term.

Mr. *Strange.* There is one thing I must take notice of, that the Paper *Ellam* owned his Hand to, may be read.

Mr. Serj. *Hawk.* Was you with Mr. *Castell* all the Time of his late Illness?---Mr. *Martin.* I visited him constantly.

Mr. Serj. *Hawk.* What did he say as to his Usage?

Mr. *Martin.* I never heard any Complaint.

Mr. Serj. *Hawk.* How often did you go to see him?

Mr. *Martin.* Every Day at *Corbett*'s.

Mr. Serj. *Hawk.* Did you ever hear him complain of *Bambridge?*

Mr. *Martin.* It was the second Day after the Small-Pox came out; I went into the Room to him; I could not see him, being in Bed, but he knew my Voice, and he would have had me drank something. I was immediately called out of the Room, and Mr. *Castell* would not have had me gone; I told him I must, but would return soon; and when I went down, I saw Mr. *Bambridge* there, and I told him Mr. *Castell* had the Small-Pox; and Mr. *Bambridge* said he was very sorry for it, but he had trifled with him and himself too: When I went up again to Mr. *Castell*, and told him that I had told Mr. *Bambridge* that he was very ill of the Small-Pox, and that Mr. *Bambridge* said he was very sorry for it; (I would not mention the rest) Mr. *Castell* said, For God's sake don't mention his Name, I can't bear to hear of it.

Mr. Serj. *Hawk.* As to the Temper of Mr. *Castell*, was he reserved?

Mr. *Martin.* He was very free in Conversation, but not free in telling of his Circumstances.

Mr. *Strange.* I desire the Paper *Ellam* owned his Hand to may be read (which was accordingly produced and read, and appeared to be a Bill of Sale, dated the 22d of *October*, 1728).

Mr. *Strange.* The Witness, when I came to ask for the Bill of Sale, did not remember when it was executed.

L. C. J. But what Use is it of?

Call John King. *(Who was sworn.)*

Mr. *Kettleby.* Did you know when Mr. *Castell* was brought to Mr. *Corbett*'s?---Mr. *King.* No.

Mr. *Kettle.* Do you know how *Bambridge* behaved to him after?

Mr. *King.* I was to declare *Houston* and *Nus* against Mr. *Castell*, and *Bambridge* appeared not only as Gaoler, but as his Attorney, and paid me.

Mr.

Mr. *Kettleby.* How did *Bambridge* behave himself?
Mr. *King.* Very handsomely.
Mr. *Kettle.* In what Capacity did *Bambridge* act?
Mr. *King.* Mr. *Bambridge* was employed by Mr. *Castell* as his Attorney.
Mr. *Kettle.* Did not you say *Bambridge* lent him Money?
Mr. *King.* He lent him a Guinea to clear the Score.
Mr. *Kettle.* Did he lend him any more? And what?
Mr. *King.* Mr. *Castell* complained he had not Money to pay the Reckoning, and *Bambridge* paid it for him.
Mr. *Kettle.* When was this?
Mr. *King.* It was the 21st of *November*, 1728.
Mr. *Kettle.* You can be positive to the Time?---Mr. *King.* Yes.
Mr. *Kettle.* How many Times was you in Company before?
Mr. *King.* Twice; but I never was with him but once at *Corbett*'s.
Lord Chief-Justice. Then this 21st of *November* was at *Corbett*'s?
Mr. *King.* Yes.
Mr. *Kettle.* There it was he lent the Money?---Mr. *King.* Yes.
Mr. *Kettle.* Was there any Disrespect towards Mr. *Castell* shewn by Mr. *Bambridge?*
Mr. *King.* I never saw any Thing like it.
Mr. *Kettle.* I ask you, whether Mr. *Bambridge* did say any Thing upon his giving Security?
Mr. *King.* Mr. *Bambridge* said, he should be ready to do him any Service.
Mr. *Fazakerley.* Did he do any other than Attorneys usually do for their Clients?
Mr. *King.* Attorneys very seldom pay their Clients Reckonings.
Mr. *Fazakerley.* Was there not then Judgment against *Howson?*
Mr. *King.* No, I have always been concerned for *Howson.*

Call William Howson. *(Who was sworn.)*

Mr. *Kettle.* I ask you, whether you was ever in Company with Mr. *Castell* and *Bambridge*, after he was surrendered at Mr. *Corbett*'s?
Mr. *Howson.* I don't know that.
Mr. *Kettle.* Was you ever in Company with them?
Mr. *Howson.* Yes, Mr. *Castell* employed Mr. *Bambridge* as his Attorney, to make up a Matter between me and Mr. *Castell.*
Mr. *Kettle.* When was this?
Mr. *Howson.* In *November* before he had the Small-Pox.
Mr. *Kettle.* Did you observe any Dislike between him and *Bambridge?*
Mr. *Howson.* I did not know that he was Warden, he acted as his Attorney.
Lord Chief-Justice. This was before he came to *Corbett*'s?
Mr. *Howson.* Yes.
Lord Chief-Justice. Where was it at?---Mr. *Howson.* The *King's-Arms.*

Call ——— Meers. *(Who was sworn.)*

Mr. *Kettle.* Do you know any Thing that passed between Mr. *Castell* and Mr. *Bambridge?*
Mr. *Meers.* Yes, I desired———
Mr. *Kettle.* What Month was it in?---Mr. *Meers.* I cannot tell.
Mr. *Kettle.* How long before Mr. *Castell* died?
Mr. *Meers.* About ten Days.
Lord Chief-Justice. What were the particular Marks of Friendship that *Bambridge* shewed?
Mr. *Meers. Bambridge* appeared to behave with Civility to him; he desired———
Lord Chief-Justice. I cannot understand a Word; he must explain himself.

Call ——— Townshend. *(Who was sworn.)*

Mr. *Kettle.* Do you remember the Day when Mr. *Bambridge* was admitted Warden of the *Fleet?*
Mr. *Townshend.* I do not remember the Day particularly.

Then James Codnor *was again called.*

Mr. *Kettle.* Was you at any Time concerned in taking Securities?
Mr. *Codnor.* Yes; at the Time of Mr *Castell*'s first Commitment, and being put in Custody at *Corbett*'s.
Mr. *Kettle.* You acted in taking Securities; pray look upon this Bond, and see if it was taken by you?
Mr. *Codnor.* I believe it was all my Hand-writing, except the Names of the Persons subscribing as Witnesses and Parties.
Mr. *Kettle.* Did you receive any, and what Directions from Mr. *Bambridge*, as to Mr. *Castell?*
Mr. *Codnor.* I received Directions from Mr. *Bambridge* to attend Mr. *Castell.*
Mr. *Kettle.* Did he go to *Castell?*---Mr. *Codnor.* Never: he sent.
Mr. *Kettle.* What was the Purport of the Bond?
Mr. *Codnor.* The Purport of the Bond was *de bene esse.*
Mr. *Kettle.* Were there any other Bonds, during the Time you acted, given over to *Bambridge*; or that one only?
Mr. *Codnor.* I cannot recollect that; I remember I took two Bonds; I believe they were only bound *de bene esse.*
Mr. *Kettle.* Were these absolute Bonds, or Bonds *de bene esse?*
Mr. *Codnor.* As to the first Bond, the Parties not being found sufficient, the Penalty——
Mr. *Strange.* How much was the Penalty?
Mr. *Codnor.* One Thousand Pounds. It was ordered to be cancelled, and a Bond taken *de novo.*
Mr. *Strange.* Was that Bond absolutely compleated, or done *de bene esse?*
Mr. *Codnor.* There was not an Inquiry reported.
Mr. *Wynn.* Was that Indorsement made at the Time?
Mr. *Codnor.* It is my Hand-writing.
Mr. *Wynn.* What was wrote there?---Mr. *Codnor. De bene esse.*
Mr. *Wynn.* Was it done at that Time?
Mr. *Codnor.* I might go into the Office.
Mr. *Wynn.* Was it usual to let Parties execute Bonds before Enquiry was made?---Mr. *Codnor.* Yes; it was the daily Practice.
Mr. *Reeves.* You say it was the usual Practice to take Bonds *de bene esse*, and you say the other Bonds were cancelled?---Mr. *Codnor.* I believe so.
Mr. *Reeves.* Did you see them cancelled?---Mr. *Codnor.* I did not.
Mr. *Reeves.* I ask you then, whether it was usual for you to cancel a Bond that was good before another was executed?
Mr. *Codnor.* I would not have taken upon me then to have done it.
Mr. *Reeves.* Do you know it was done?
Mr. *Codnor.* I can't say I do; it was usual to take new Bonds *de bene esse:* when Bonds given before were cancelled, and the Persons had been inquired after, and not found sufficient.
Mr. *Reeves.* What were your Orders?
Mr. *Codnor.* My Orders were, to take the Securities from Time to Time as they came.
Mr. *Reeves.* So you took them *de bene esse?*---Mr. *Codnor.* Yes.
Mr. *Fazakerley.* You say you have got a Method to take Bonds *de bene esse*: Did not you take a Bond *de bene non esse*, which he was in Execution for?---Mr. *Codnor.* Yes.
Mr. *Fazakerley.* What, do you take double Times?
Mr. *Codnor.* Yes.
Mr. *Fazakerley.* Did you say how much he was in Execution for?
Mr. *Codnor*, No.
Mr. *Fazakerley.* Do you know how much?---Mr. *Codnor.* Yes.
Mr. *Fazakerley.* Was there any Thing more?---Mr. *Codnor.* No.
Mr. *Fazakerley.* Then that was 500 *l.*?---Mr. *Codnor.* Yes.
Lord Chief-Justice. So your constant Practice is, that the Securities are first bound, and then you enquire after them?---Mr. *Codnor.* Yes.
Lord Chief-Justice. You say you took these Bonds by Mr. *Bambridge*'s Directions?---Mr. *Codnor.* Yes.
Lord Chief-Justice. What did you do with the first Bond?
Mr. *Codnor.* I can't charge my Memory.
Lord Chief-Justice. Are you sure you took but two?---Mr. *Codnor.* Yes.
Mr. *Strange.* It was very probable that these People might demand 1000*l.* Bond; the other Bond, when given, was for 2000*l.* What was the Reason of your taking a larger Security?
Mr. *Codnor.* I received three *Habeas Corpus*'s, which was the Reason of taking so large a Security (speaking to Mr. *Strange).* We always take Security, though charged by the same Plaintiff, for two Sums.
Lord Chief-Justice. Is that usual?---Mr. *Codnor.* Yes.
Lord Chief-Justice. So that you take Security for the Declaration, and take Security for the subsequent Charge in Execution.
Mr. *Fazakerley.* When was the last Security given?
Mr. *Codnor.* Much about a Week after the first.
Mr. *Fazakerley.* Observe; if an Action is brought for 2000*l.* and you take Security, and a Week after that Judgment is had, do you take other Security, and double the Sum?
Mr. *Codnor.* Not without a *Habeas Corpus* is brought.
Mr. *Fazakerley.* So you don't increase the Penalty, unless you distrust the Value of the Bail?---Mr. *Codnor.* No.
Mr. *Fazakerley.* Because I observe a great many Judgments are given before the Security is increased.
Lord Chief-Justice. The last Bond was executed the first of *December*, and he was taken ill the third.
Mr. *Strange.* My Lord, we shall call no more Evidence, but submit it here.
Mr. *Reeves.* My Lord, I must beg leave to take notice of the Objections they have made. The first is, that he went voluntarily to *Corbett*'s; that it was his own Desire. In Answer to that, if our Witnesses are to be credited, we have proved the whole Appeal. We have proved, he was taken forcibly; I humbly apprehend that was sufficiently proved; for if *Corbett* took him without his Consent, it was forcibly, and it was unlawful; it will warrant the Declaration of Appeal.
The next Fact is, that he was carried to the House of *Richard Corbett*, where one *Joseph White* was then ill of the Small-Pox. The Objection did arise, that it was laid to be the House of *Richard Corbett*, which was one House, and here are two; one where *Joseph White* lay sick, and they say, he was carried to the other. As to that, it appeared by the Evidence, that before this Fact happened, they were made into one House; and notwithstanding they were made into two Dwelling-houses before *Castell* was put there, our Witnesses say, they went up Stairs into one and the same House; and that Mr. *Castell* was carried to the House of the said *Richard Corbett*, where *Joseph White* was ill of the Small-Pox.
The other Objection is, that *Joseph White* was well of the Small-Pox ten Days before Mr. *Castell* was brought there. My Lord, we apprehend that That is contradicted by their own Evidence; that the Man was well, and looked upon to be recovered; for I must beg leave to observe, that upon the Evidence of *Holdesworth*, it appeared that *White* was blind at that Time when *Castell* came in; and he remained there a considerable Time after *Castell* was brought in.
As to the Points of Law insisted on by the Gentlemen on the other Side, I must submit it to your Lordship, whether this Proof is not sufficient to support the Appeal; that he was carried against his Consent to an unlawful Confinement, and at a Spunging-house.
Mr. *Strange.* The Point of Law is, Whether he was unlawfully taken? And though he was unlawfully confined, yet it don't make an unlawful Taking.
Lord Chief-Justice. Though he was lawfully taken, yet he ought not to be unlawfully confined. He was carried into *Corbett*'s on the 14th of *November*, and the fifth Bond was given the first of *December*; which was a great while after he was taken in Custody.
Mr. *Reeves.* There was a third Bond given for 1000*l.* one was in *July.* In order to make these Bonds clear, they should be produced.
Mr. *Strange. Codnor* swears, that he took but two.
Mr. *Reeves.* It was sworn by *Ellam* that there were five.
Mr. Serj. *Darnell.* The Confinement was a proper Confinement. A Tipstaff's House is a proper Confinement, and the Taking was not an unlawful Taking.
Lord Chief-Justice. Is there not a Difference of being carried into the Rules? If not in the Rules, it is not a Part of the Prison; if not, every Prisoner that escapes and dies, the Gaoler is answerable for; and a Prisoner being

there, will not be looked upon to be a Priſoner at large: Every Part of the Rules is a Part of the Priſon, though not within the Walls: if it is not in the Priſon, then there is an End: It was both illegal to carry him there, and confine him there. There is another Conſideration; they ſay, capitally Guilty; I don't know but that is the Caſe here; but then it is not laid ſo in the Declaration. If a Priſoner dies by Dureſs, the Gaoler is guilty, and capitally guilty.

Mr. *Lee.* We humbly apprehend, that the Caſe muſt be conſidered, that he did with Malice aforethought murder the ſaid *Robert Caſtell.*

Lord Chief Juſtice. The Law makes it ſo.

Mr. *Lee.* Therefore I apprehend, from the Nature of the Thing, and his Behaviour, that it muſt be taken, that in this Caſe they did feloniouſly carry this Man to the Houſe of *Richard Corbett*; but that muſt be decided by the Evidence. They knew the Houſe to be infected; therefore, whether the original taking him up was legal or illegal, is the Thing to be conſidered: If he was only taken up to be carried into the Gaol, it will have another Conſideration; but the Priſoner's Intention is to be judged by the Jury. I don't know whether I ſhould be proper in taking Notice of the Evidence; I ſhould very ſhortly take Notice of the Evidence in this Trial.

Lord Chief Juſtice. That can't be done.

Mr. *Fazakerley.* As to the ſingle Matter of taking, that will be the Conſequence of the other.

Lord Chief Juſtice. Though the Act itſelf is lawful, the Uſage of the Man will make it unlawful: This is a neceſſary Caſe for their Conſideration; for where a Man dies in Dureſs, it is Murder in the Gaoler. It is the Nature of Human Bodies to take Infection; and if a Man is put into a Place where ſuch Infection is, it will be Murder in the Gaoler.

Mr. *Strange.* That does not appear to be done with the Privity of either.

Lord Chief Juſtice. Is the Proof againſt *Corbett*'s taking of him? Human Bodies may breathe forth infectious Vapours.

Mr. *Fazakerley.* We deſire to call *Noel* again.

(Noel *ſtanding up again.*)

Mr. *Fazakerley.* What has been the Uſage, where an Action has been brought, and Security given for 100 *l.* and Judgment given upon this Action?

Mr. *Noel.* I don't know what it was then; but ſince Mr. *Gambier*'s Time, where a Priſoner is charged with Meſne Proceſs, we have taken the Bond for the Sum; but when in Execution, take the Bond in a double Penalty.

Mr. *Fazakerley.* We deſire to call *Jonathan Ireland*, to aſk him a Queſtion or two, as to a Declaration of *Holdſworth.*

(*Call* Jonathan Ireland, *who was ſworn.*)

Mr. *Fazakerley.* Do you know *Holdſworth?*

Mr. *Ireland.* Yes.

Mr. *Fazakerley.* Had you any Diſcourſe with him about a Bed being brought out of *White*'s Room?

Mr. *Ireland.* No, I had no ſuch Diſcourſe.

Lord Chief Juſtice. Gentlemen of the Jury, this is an Appeal of Murder, brought by *Mary Caſtell* for the Death of her Huſband. I muſt take Notice of the whole Appeal, becauſe Proofs are required of the Facts as there laid. It charges, that on the 14th Day of *November*, in the ſecond Year of his preſent Majeſty, he was duly committed to the Cuſtody of the Warden; that on the 14th of *November*, *Richard Corbett* took her Huſband, arreſted him, and carried him to the Houſe of him, the ſaid *Richard Corbett*, and kept him there for the Space of twenty-one Days, againſt the Will, and without the Conſent of the ſaid *Robert Caſtell.* Then it goes on, and ſays, that the ſaid *Richard Corbett* did unlawfully, violently, and of Malice aforethought, impriſon and detain the ſaid *Robert Caſtell* in his the ſaid *Richard Corbett*'s Houſe; and that, at the Time of taking and impriſoning of the ſaid *Robert Caſtell*, *White* was ill of the Small-Pox in the ſame Houſe; which Diſtemper *Robert Caſtell* never had.

Further ſets forth, That while her Huſband was there, on the 16th of *November*, he requeſted *Bambridge* and *Corbett*, that they would not detain him in the Houſe; and then gave Notice that *White* was ſick of the Small-Pox, and that *Caſtell* had not had them; and if he got that Diſtemper, it would be the Occaſion of his Death: That notwithſtanding this Diſtemper was there, they detained him there, and there kept him till the 12th of *December.*

Further ſets forth, That on the 4th of *December* he fell ill of this Diſtemper; and on the 12th of the ſame *December* he died of the ſame.

To conclude, that theſe two Appellors did feloniouſly, voluntarily, and of Malice aforethought, kill and murder the ſaid *Robert Caſtell.*

To which the two Defendants have pleaded Not Guilty. The Queſtion for you, Gentlemen of the Jury, to conſider of, is, If the Appeal is proved, and not what is opened by the Counſel: You muſt regard that no further than it is proved by the Evidence.

This Appeal is grounded upon this Law; that as the Law has particular Guards and Privileges in juſtifying the Right of Gaolers in detaining of Priſoners in ſafe Cuſtody; ſo on the other Hand, that though they had the Liberty of keeping Priſoners ſecure and ſafe, yet they muſt treat them humanely, and put them into ſuch Places as do not prejudice their Limbs and Lives; for if they ſhould be put in ſuch Places as they do, and they die, it lies at their Doors; that is Murder.

If a Gaoler brought Bodies that were infectious into a Room, by which a Priſoner ſhould catch a Diſtemper; or put a Man into Irons, by which he ſhould die, it would be the ſame Thing. If a Goaler will take Perſons that have not a Diſtemper, and carry them to a Room againſt their Conſent, after Notice was given him that ſuch a Diſtemper was there, it is at his Peril. Gentlemen, I muſt obſerve to you, that in the preſent Caſe all theſe Circumſtances muſt be concurrent:

That he was carried there againſt his Will; that the Diſtemper was in the Houſe; that he had Knowledge of the Diſtemper being there, and that the Nature of it was infectious; that Application was made on his Behalf; that notwithſtanding he was carried there, and there kept; and by that Means caught that Diſtemper, which was the Occaſion of his Death; becauſe Diſtempers may ariſe from Human Bodies.

This is the Foundation upon which the Appeal is founded.

The firſt Witneſs is only to ſhew, that Mr. *Bambridge* was Warden of the *Fleet*; and for that End, he produced a Copy of the Letters Patent.

I ſhall take Notice of the Time, which is the 30th of *September*, 1728: It ſaid, he was not admitted till after, but there is no Proof to be admitted.

The next, *John Noel*, is to prove, that he was committed the 18th of *June*, 1728. I need not trouble you with all the particular Sums, but that all together they come to 527 *l.* When they have proved this, it was neceſſary to ſhew that he was a Priſoner at large.

As to *Corbett*'s Houſe, he ſays, he was a Priſoner there two Months, and that he never ſaw any Thing but what was very humane; the Houſe was in the Liberty of the Rules, and ſo conſequently Part of the Priſon; the Queſtions that were aſked by the Defendant's Counſel were to ſhew, that he had a Right to take him up, becauſe he might have went away before; that the Houſe belonged to the Warden, and that the Behaviour of *Corbett* to him, and his Uſage while he was there, were very humane.

He told you he was taken ill the 4th of *December*, and died the 12th; that as for the Houſe, there were two Houſes laid into one; and *White* was not properly in the Houſe, becauſe one was in the firſt Floor in one Houſe, and the other was up three Pair of Stairs in the other; and that Direction was given, that *White* was not to come down; and *White* never came down during the Time Mr. *Caſtell* was there, before he died.

That as to *Corbett*'s Wife, when Mr. *Caſtell* was ill, ſhe did look after him as much as if he had been her own Child; and that Mr. *Caſtell* did not complain, but did ſay, he was very ſorry he had the Diſtemper, and that *Corbett* and *Caſtell* had been of a Club together; that as to the Room, it was a very commodious Place. As to what Evidence elſe was given by him, I ſhall mention but little of it now, for I am now only ſumming up for the Appellant.

The next Evidence that was called was Captain *Sinclair*; he did not ſpeak to the Time in Queſtion, but ſpoke only to 1727; he was going on, but the Counſel knew that was not proper, ſo ſtopped him.

The next Witneſs was *Wilſon*; he ſays, that it was a Publick Houſe, and that they ſell Beer, Ale, and Wine; and that *Caſtell* had Proviſion there, and paid for it. I deſire, if I omit any Thing, I may be put in mind of it.

The next was Captain *Collet*; they made uſe of him for another Purpoſe, to prove that Mr. *Caſtell* had received 125 *l.* therefore they inſiſted, that Mr. *Bambridge* having Notice of this, he might take the Occaſion of inſiſting upon further Security, in order to extort Money from him.

Mr. *Lee.* There is a Juryman and the Priſoner talking all the Time.

Lord Chief Juſtice. I muſt have no Obſtruction of Juſtice; you muſt not diſturb the Court.

The firſt Thing to be done was to prove, that *Bambridge* had Knowledge of Mr. *Caſtell*'s receiving the Money for that End; *Collet* and *Brent* were called, who proved, that a Note was given to *Caſtell*, payable to him or Bearer, for the Sum; and that it was afterwards allowed in *Woodward*'s Account. *Collet* ſays, he was in the ſame Room with *Caſtell*, talking about the Judgment, and ſays, That it was poſſible that he might mention the Money that was to be paid by *Caſtell* to *Bambridge*; that is the material Thing. They would infer on the other Side, that it cannot be proved, unleſs it came to the Knowledge of *Bambridge*; for though *Brent* went up to *Bambridge*, he cannot take upon him to ſay, he mentioned any thing in relation to that Sum.

What is inſiſted on by the Appellant's Counſel, is, that ſeveral Securities were given upon Account of Mr. *Caſtell*, and therefore Security was given before; and in order to prove that, they called Witneſſes to ſhew he demanded ſeveral Bonds, and that Notice was given to Mr. *Bambridge* to produce them. As to that, the Anſwer that was given was, that to prevent Diſputes in Court he had but one Bond. Then they called upon Witneſſes to prove the Circumſtances. Mr. *Peter Ellam*, who ſays, he gave Bond five Times, the firſt in *July*, 1728, for 200 *l.* in the ſecond Bond one *Chambers* and *Peter Ellam* were bound; the third was for 1000 *l.* entered into by him and *Curll*; the fourth was for 1000 *l.* entered into by *Curll*, and him, and *Bell*, the latter End of *November*, in order for Mr. *Caſtell* to have the Liberty of the Rules; and there was a fifth for 2000 *l.* given: He ſays it was on a *Monday*, but that is a Miſtake; *Peter Ellam*, and *John*, and *Curll* were bound in that. He ſays, that between the 26th and laſt of *November*, he ſaw Mr. *Caſtell* at *Corbett*'s, and he aſked him what was the Reaſon of his being there? And he made Anſwer, That he did not know, it was what *Bambridge* pleaſed. Then he tells you how he came to be bound; that he was a Creditor of Mr. *Caſtell*'s in the Sum of 200 *l.* that he had a good Opinion of Mr. *Caſtell*'s Induſtry, and that he had a Bill of Sale from him, but did not know the Date; then the Defendant's Counſel produced a Paper, which ſhews it was the 22d of *October*, 1728.

That is the Point controverted, as you will ſee by and bye. He ſays, that there was one *Chambers* bound, who did not care to continue any longer; he ſays, he himſelf was inclinable to give it up, but that *Caſtell* probably might get over his Difficulties, ſo he was reſolved to continue. He was aſked, Whether *Bambridge* did diſſuade them from continuing Securities? He ſays, he did encourage them to continue, rather than diſſuade them from it. Afterwards the Security was to be delivered up, and he was carried to *Corbett*'s, after the 4th or 5th Bond was given; but he can't take upon him to ſay that Mr. *Bambridge* did ever accept of it; then was the other Security, in *November*, 1728, given by himſelf, *John Ellam*, and *Curll*, the Clerk attended at *Graveſend*; he ſays, he did ſend to them (*Caſtell* being uneaſy) to have the Bonds executed: He ſays, That he was with *Caſtell* before he died; and he ſays, he was much concerned at having the Diſtemper, and that he did ſay, that *Bambridge* was the Occaſion of his Death, for he applied to him to let him go, but he did not let him go; and told him, if he did not let him go out ſoon he knew he ſhould die. This was not above two days before he died.

Then, Gentlemen, they go on upon the former Enquiry about the Bonds, to fix the Bonds upon *Bambridge*, and called *Daniel Hopkins.* He ſays, he was Clerk of Inquiries; but that he was taken very ill, and *Codnor* officiated for him. He ſuppoſes *Bambridge* did, if any Security was not found ſufficient, ſcruple to continue him; and ſays, when Security ſurrenders a Man, it is the conſtant Practice to take them up by a Tipſtaff, who brings them in Cuſtody, and puts them into a Spunging-houſe: As to the Houſe of *Corbett*, he knew the Houſe, and that there was good Uſage there, and that Mr. *Caſtell* had not any ill Uſage there. Then they

they go to shew Mr. *Castell* was carried there without his Consent: and in order to prove that, called Mr. *Underwood*, who says, that last *July* was twelve Months (he continued in Custody till he died) *Corbett* came one Morning to inquire after Mr. *Castell*; then he was not at his Room, and *Castell* seemed much concerned at the hearing of it, and said he would go up and lock himself in; that *Corbett* came at nine o'Clock in the Morning, and took *Castell*, and he seemed very much concerned; but *Corbett* did not use him ill. *Hopkins* says, that *Corbett* said he must go along with him, his Security had surrendered him; upon which *Castell* desired to stay there; and *Corbett* said to that, he had the Warden's Order for it, and he must obey it; he wished he could excuse it.

Then they called *Catharine Mackartney*; she says; she was with Mr. *Castell*, and saw him the Day before he died; and says, she saw him about three Days before that, and he said, if he died, he would lay his Death to Mr. *Bambridge*. She says, that he wanted some Necessaries, as a Tea-pot, Knife and Fork, and that her Mistress supplied him.

Savage was the next; he says, he saw Mr. *Castell* a little before he was taken into Custody; and Mr. *Castell* sent to him, to desire him to go to Mr. *Bambridge*, to acquaint him that they had the Small-Pox in the House, and that he was afraid of catching them, for his Family had suffered very much thereby; so he was directed to deliver himself as to his Message; and that he had a great Inconvenience, to be locked upon respect of going out by Day Rules: He says he did go, but the Defendant gave no Answer till the last Time; he says, he went two or three times; he don't know but he went three or four times, and he delivered the same Message every Time, and he had no Answer till at last, and then he said he was in Execution; and after said, he was charged with great Sums of Money, and he must take care of his Office. He says, that some time after *Castell* was taken ill of the Small-Pox. He says further, Gentlemen, that *Bambridge* came to the *King's-Arms* Tavern, and said that he had been at *Corbett*'s, and that the Small-Pox being mentioned before Mr. *Castell* to be there, he said that *Castell* was extremely affected with it, and greatly concerned. He did go about some sort of Business to Mr. *Bambridge*.

Shortis was the next; he gave you Evidence, which I shall not repeat, it did not come to the Time; but he being cross-examined, said *Bambridge* treated him well.

Then *Surrige* was called; who said, he went with two Letters from *Castell* to *Bambridge*, and *Bambridge* said he would send an Answer. This is only introductory, to shew that *Castell* made Application to *Bambridge*.

Goodman was the next; he says, he was at *Corbett*'s, and *Bambridge* came there, and *Castell* said he had sent several Messages to him; and pursuing the Discourse, *Castell* desired to go into the Gaol, or go into the Rules, because the Distemper was there, and he certainly should die if he caught it. He swears, that *Bambridge* said he should neither go into the Gaol, or into the Liberty of the Rules, without a certain Sum; (he could not take upon him to swear what it was) to which *Castell* said, he had given Security enough, and he would give no more. Then he went into the Tap-room, and the next Day he was taken ill, and desired a Fire in his Room. The Counsel on the other Side, they did examine him to know the Description of the Place, and asked him if he could hear what was said; he said the Door was shut, but he took upon him to swear he did hear.

Then *Sutton* was called; who says, that Mr. *Castell* was very timorous; and says, she was sent for to *White*; that Mr. *Castell* looked her in the Face, and fancied she had the Small-Pox; she said she had no more Mark than at this time; and she swears he did die of the Small-Pox.

Westbrook was the next, who spoke to the same Purpose, to shew his Apprehension of catching the Small-Pox.

Then they go to the other Evidence, to shew that there was no Necessity of carrying him to this Place. There was a Room *Kilbury* swears was an empty Room from the Latter-end of *October* till about the 5th of *December*, No. 16; there was a Lumber-Room besides, that might have been made commodious.

Booth he says the same.

Beaver was called next, to give an Account, that there was not only a Room in the Prison empty, but that there were Rooms empty in another Spunging-house. This is the Substance of the Evidence, as near as I can lay it before you. The Evidence given by *Savage* is the most material; and the Evidence given by *Goodman* and the other Witnesses, of his Fear of having the Small-Pox.

This being the Evidence for the Appellant; for the Defendants, they insisted upon some Points of Law, that the Party here was not illegally taken, and say this was laid so in the Declaration. This was urged, because they will shew you in their Evidence, that it was proper for the Warden to take him up by a Tipstaff; that this was a legal Taking, and that it will be the Consequence only of —— that will be taken Notice of when that Part of the Case comes to be considered; that it is laid to be in one House, but there are two: Though they are different Apartments, this must be considered as one House.

The next Thing that was laid, was, that *White* was sick at the same time when Mr. *Castell* was brought in. Now say they, having proved that, they have proved the Declaration.

I don't see that the Man can be said to be ill of the Distemper when he was brought down; though the Defendant's Witnesses say, that he had not taken all his Purges; that Evidence will take off the Objection made by the Appellee's Counsel.

Then they go on further, and say, that he did actually catch this Distemper; and on the other hand, they say there was little Reason to believe it, when he was kept so long before he came down. This is true, it is to be considered in that Manner. As to the Objection of that Part of the Declaration of Mr. *Castell*, where he declared *Bambridge* was the Occasion of his Death; I must acquaint you, where a Man is wounded, and dies in a little time, we have admitted what he said to be given in Evidence. These Things were at the time when he had the Distemper, a little time before he died.

The Counsel for the Defendants gave this Answer, that if they bring him there, that his Declaration would not signify, for if they confine him there, they have a Right; it would be justifiable in them to do it.

After this Observation, they do say, that it was very incredible to hear what was said in the Room at the Bar; the Room was close boarded to the Top, and the Door was locked, and this was a long time before it was discovered; and called Witnesses to prove, how incredible it was to hear what was said in that Room.

Then the Defendants Counsel come to give Evidence that his Security had surrendered him. The Witness they make use of was Mr. *Chappel*, to shew that *Chambers* would not continue as Security any longer: He gives an Account, that *Chambers* would not stand, that *Peter Ellam* was of the same Mind, but afterwards did recede, and *Bambridge* said he thought them very secure; what could induce them to withdraw their Securities, don't appear; both the *Ellams* would stand. *Chambers* told *Bambridge* himself, that he desired to take him up; and *Bambridge* said, if he must be taken up, you must go to a Tipstaff, and directed him to *Corbett*, and *Corbett* demanded his Fee. That he could not find *Castell* at first, but went a second Time, and took him.

Ellam first refused, afterwards he was Counter-security to *Ellam*; that was the Reason he called the Note from *Chambers*.

Chambers desired Mr. *Chappel* to tell *Bambridge*, that he then came to Town in order to give him up; and *Bambridge* told him he was very safe, and he desired him to continue Security still. The Use they make of this is, that if *Bambridge* wanted him in Custody, he would not have persuaded him to continue Security. He says, that on *Bambridge*'s saying that, he did continue some time longer; then he came to Town, and was resolved he would deliver him up; he told him again, if he was resolved, he must go to a Tipstaff, and give Six Shillings and Eight-pence for his Fee; that *Chambers* went that very Day to *Corbett*'s, and had *Castell* taken up; and *Castell* said to *Chappel*, that he was set on; and *Chappel* said, he was not; and *Castell* said, he did not believe it; and says that Mr. *Castell* did not complain of any ill Usage.

Joseph Vains was the next; he says that *Chambers* came to his House (he was not there after he spoke to *Corbett*), and asked him, whether he had seen *Corbett?* He said, he had seen him that Day: He came there again, and met with *Corbett*, and told him he intended to surrender Mr. *Castell*, for that he was informed he was going abroad with Lord *Londonderry*. He says, that he charged *Corbett* to look for *Castell*; and said, if he did not get him, he would move the Court against him, and make him pay the Debt.

Woodyer, he gives an Account, that Mr. *Castell* was at the *King's-Arms*, and says, that Mr. *Castell* ordered him to get a Room ready, to air the Sheets, and get a Fire; and he says, he sent the Boy thereupon, but that he never saw Mr. *Castell* after; that Mr. *Corbett* went with him; that he went away easy, and did not make any Complaint.

The next is *Downs*; he did not say that he received the Message from Mr. *Castell* to get the Room ready, and that the Night before he lay at *Underwood*'s, that he attended him there till he died; and as to Necessaries, he had every thing that was fit, and there was a Club kept there, and *Corbett* used to be with them.

Then *Holdesworth* the Chamberlain was called; who says, that Mr. *Castell* came in there, and wanted nothing; he seemed to complain of nothing; before he came in there the Bed was aired. They asked him, whether they could hear on the Outside of the Bar, what was said in the Room behind it? (to take off the Evidence of *Goodman*) He says, in his Opinion he could not hear, unless they spoke very loud. As to *White*, he says, he lay up three Pair of Stairs, and *Castell* up one Pair of Stairs; that two Houses were laid together only at the Top, and that one Stair-case was stopped up five or six Days before *Castell* came there.

That the Bed *White* lay on was brought down into Mr. *Castell*'s Room, but the Bedstead being too little, it was carried up again; this was five or six Days before Mr. *Castell* came there.

The next Witness is *Norton*; he tells you, that a Message was brought to have a Fire made in the best Room, and to have the best Bed got ready in the best Room. He tells you, as to the Bar, that you can't hear what is said in the Inner-room.

They then called Doctor *Gardiner*; when he was charged in Execution, he says, he was with him at that Place; talking how Mr. *Bambridge* and *Corbett* used him, he said he was used with great Civility.

This was the last Day of *Michaelmas* Term, which was long after Mr. *Castell* was carried there, for he was carried there the 14th of *November*; and says, that he went back again with him.

The next was *Blake*; who gives an Account, that she saw Hartshorn-drink made; that she never had the Small-Pox, and staid in the House the whole time *White* was there, but never went out.

Mr. *Moor* says, he found him in a convenient Room, and that he wanted nothing.

Mrs. *Smith* was the next; who said, that *Corbett* said to *Bambridge*, that poor *Castell* was ill of the Small-Pox, and *Bambridge* desired to let him have every thing that was necessary for him; and *Corbett* came again the next Day, and said the Gentlemen were uneasy, and he said he had thoughts to remove him; and *Bambridge* said, if they are afraid, let them go into the Gaol.

The next was Captain *Martin*; he tells you, that he never heard that he particularly complained; that the Second Day after the Small-Pox came out, he went to *Bambridge*, and was telling him how Mr. *Castell* was, and *Bambridge* said he was very sorry for it; then he went up to Mr. *Castell*, and told him what Mr. *Bambridge* had said, and Mr. *Castell* desired he would not mention his Name.

Then there was a Paper produced to shew what he did by a Bill of Sale.

Then *King* was called; who says, that Mr. *Castell* was at *Corbett*'s, and that *Bambridge* used him very well, and *Bambridge* paid his Reckoning on the 21st of *November*, which is about seven Days after he came into *Corbett*'s House.

One *Howson*, another Witness, says, that Mr. *Castell* owed him Money, and that *Bambridge* was employed for him, and this was about ten Days before Mr. *Castell* died.

Then they come to shew you what became of the Bonds.

Peter Ellam proves that there were five; but then it was not proved they were delivered to *Bambridge*.

Codnor, he was Clerk, and says, he had repeated Directions, from time to time, to take Mr. *Castell*'s Security as soon as they came; he says, there were but two taken; there was 1000 *l.* 1000 *l.* and 2000 *l.* but he only admitted of 1000 *l.* and 2000 *l.*

He

He says, that the Bonds were taken *de bene esse*, in their Language, which was only to be taken in order for an Inquiry; one was taken up and cancelled, the other was only *de bene esse*.

He tells you likewise, that all the Charges was 500 *l.* this was taken in the Penalty of 2000 *l.*

He says, that where the Charge is first for 100 *l.* and Judgment for 100 *l.* they take Bonds for double.

There are other Witnesses say, that the Custom is otherwise lately: they say what the other said; and that the same Man may have a Declaration for one Sum, and Judgment for another.

Codnor says positively, that the two last Bonds were only taken *de bene esse*.

This Evidence has been long, according to the different Things; if any thing is omitted, you'll remind me of it.

Gentlemen, you are to consider in the first place, as to *Corbett*, that only Part of the Evidence relates to him, as to the taking Mr. *Castell* up; but as it does not appear he had any Knowledge of the Small-Pox being there then, I apprehend it is not sufficient to convict him: Then as to *Bambridge*; if *Bambridge* had notice that he never had this Distemper, that he was afraid of catching it, that he desired not to go there; if he did carry him afterwards, against his Will, and *Castell* did catch this Distemper of *White*, and he died of that Distemper, then he is Guilty. The Appeal depends upon these Circumstances. I take it in point of Law, they must all concur; if they do not, you will not find them Guilty; if they do, you will find them Guilty.

Clerk. Gentlemen of the Jury, answer to your Names. (*Which they did.*)

Clerk. Who shall say for you?—*Jury.* The Foreman.

Clerk. Are you agreed?

Omnes. Yes.

Clerk. Are the Defendants, or either, and which of them, Guilty or Not Guilty?---*Foreman.* Not Guilty.

Upon this Acquittal, Mr. *Kettleby* moved the Court, on the Statute of 13 *Edw.* I. *C.* 12. which enacts, That upon a false Appeal, by Malice, the Appellor shall suffer a Year's Imprisonment, and restore the Parties appealed their Damages, at the Discretion of the Justices.

But the Court would not allow the same; the Chief-Justice said,* He was only to try the Issue, and that the Application was proper above, or by Writ of Conspiracy, and all he could do was to record the Verdict.

Upon 3 *February* following, the Appellees appeared in Court, and having given a Rule upon the *postea*, which they then produced, and Nobody appearing to say any thing against them, they were discharged. *Strange pro Appellatis.*

* *Strange's Reports*, Vol. II. p. 857.

XIV. The Trial of William Acton, Deputy-Keeper and Head Turnkey of the *Marshalsea* Prison in *Southwark*, for the Murder of Thomas Bliss, late a Prisoner in the said Prison; at the Assizes held at *Kingston upon Thames* for the County of *Surrey*, before the Hon. Mr. Baron *Carter*, *Aug.* 1, 1729.

Die Mercurii, 30th July, 1729.

Proclamation was made for all Persons concerned to attend.

Clerk of Arraigns.

YOU good Men that are impannelled to inquire, &c. answer to your Names, and save your Fines.

Clerk. William Acton, hold up your Hand. (*Which he did.*)

Clerk. You stand indicted by the Name of *William Acton*, of the Parish of *St. George the Martyr*, &c. for the Murder of *Thomas Bliss*, &c.

Clerk. How say you, *William Acton*, are you guilty of the Murder whereof you stand indicted, or not guilty?—Mr. *Acton.* Not Guilty.

Clerk. How wilt thou be tried?---Mr. *Acton.* By God and my Country.

Clerk. God send you a good Deliverance. On a Motion, his Trial was fixed for *Friday*.

Die Veneris, 1st August, 1729.

Proclamation was made for Information.

Clerk. Thou the Prisoner at the Bar, these Men that thou shalt hear called and personally appear, are to pass between our Sovereign Lord the King and thee, upon the Trial of thy Life and Death; therefore if thou wilt challenge them, or any of them, thy Time to speak is as they come to the Book to be sworn, before they are sworn.

Mr. *Strange.* (*Counsel for the Prisoner.*) My Lord, I hope you will indulge the Prisoner to come to the Inner Bar.

Mr. Baron *Carter.* He may come.

Mr. Baron *Carter.* Call over the Pannel. (*Which was done.*)

Mr. Baron *Carter.* There are twenty-seven of the Jury in that Pannel, so you may challenge who you will.

Mr. *Acton.* No, my Lord, I shan't challenge any.

Then the Jury sworn was as followeth:

Thomas Cole,	*Charles Buckland,*	*William Brown,*
Miles Poole,	*William Goswell,*	*John Walter,*
Robert Parkhurst,	*John Siggins,*	*Robert Patten,*
Vincent Hollis,	*Thomas Bandford,*	*James Wellbeloved.*

Clerk. Hold up your Hand. (*Which he did.*) You of the Jury, look upon the Prisoner, and hearken to his Charge. He stands indicted by the Name of, &c. (*prout* in the Indictment *mutatis mutandis*).

Mr. *Acton.* I desire the Indictment may be read in *Latin*.

Mr. *Strange.* I desire Mr. Serjeant *Baynes* may be here, before it is read.

Mr. Baron *Carter.* I have staid an Hour already, I can't stay any longer. *Cryer*, make Proclamation to keep Silence upon Pain of Imprisonment. This is a Trial for Life and Death, and I shall commit any one that don't hold their Peace.

Mr. *Harding.* *William Acton* stands indicted for the Murder of *Thomas Bliss*. The Indictment sets forth, That *John Darby* was Keeper of the King's Palace-Court at *Westminster*, and had the Custody of the Prisoners there.

That *William Acton*, during the Time he was Servant of the said *John Darby*, was employed in and about the Care and Custody of the Prisoners there.

That the said *William Acton*, being a Person of an inhumane and cruel Disposition, did on the 21st of *October*, in the Thirteenth Year of the late King, cruelly, barbarously, and feloniously beat, assault, and wound the said *Thomas Bliss*, then being a Prisoner under the Custody of the said *Darby*; and of Malice aforethought did carry the said *Bliss* into the Strong-Room, and put on Irons and Fetters of great Weight upon his Legs; and the said *Bliss* was exposed to the Damp, and Wet, and Cold of the said Room; which is a dangerous, damp, noisome, filthy, and an unwholesome Place.

The Indictment further sets forth, that he put on an Iron Instrument, and Engine of Torture, upon the Head of the said *Thomas Bliss*, called the Scull-Cap; and also Thumb-Screws upon his Thumbs; and that he remained there three Hours under all this Torture and Torment.

At the Time of the imprisoning the said *Thomas Bliss* in the Room aforesaid, he knew it to be damp, noisome, and filthy; and consequently very unwholesome.

That during the Detention of the said *Thomas Bliss* in the said Room, by Duress of the Imprisonment, by being assaulted, beat and wounded, the said *Thomas Bliss* became languid, and contracted such an Indisposition, and ill Habit of Body, that he languished; and, by reason of this Duress, died.

The Indictment concludes, that he did feloniously, voluntarily, and of Malice aforethought, murder the said *Thomas Bliss*.

Gentlemen, the Prisoner has pleaded Not Guilty; and if we prove him guilty, you will find him so.

Mr. *Marsh.* I have the Honour to be Counsel for the King against *William Acton*, the Prisoner at the Bar. The Offence is Murder; and Nobody can be guilty of Murder, but by being a Person of a malicious and cruel Nature. The Law determines all Differences between all Subjects; and by the Laws of this Land, the Body and Person of the unfortunate Debtor is liable to Imprisonment till he pays the Debt; and the Law takes care, that Gaolers and Keepers of Prisons should have a particular Encouragement and Defence against the Persons that offer Abuses to them in the Capacity of a Gaoler; and on the other hand, the Law takes care, that they shall not use their Prisoners inhumanely or cruelly.

The Nature of all Custody is to answer for the Debt owing, or Injuries done; and the Person is to be kept safe there, till justly delivered in Court. Where a Person is condemned in an Action where Judgment is had against him, then the Gaoler is to keep the Prisoner in safe Custody, but not to use any inhumane Treatment.

That, by the common Fate and Inequality of human Affairs, Mankind cannot be alike in point of Fortune, and it must fall to the Lot of many to become insolvent; and it would be very hard for these of the Unfortunate, when they are reduced by the Confinement and Miseries of a Gaol, to be made more miserable by the Cruelty of the Gaoler; who ought to treat his Prisoners with Lenity and Humanity. *Bliss* was put in Gaol, and was there kept for a small Debt.

The Indictment takes notice, that *Darby* had the Custody of the Gaol; and that *Acton* was his Servant, and stood in his Place; and performed the same as *Darby* ought to have done.

That the Prisoner at the Bar, by a long Train and Series of cruel and inhuman Usage, maltreated the Deceased (I would not be hard upon a Man in his Circumstances); I may say what the Law allows, that he being under *Darby* as Servant, assaulted *Bliss*, who was a Prisoner for Debt under his Care, and prosecuted that, by putting him into that Place, where he would not have put his Swine, or other Beast.

A Place so damp, in which were so many noxious Humours, that any one that was put there must be in Danger of Death, not only from the noxious Vapours, but from the want of a due Covering at Top; and from its being so remote from the Sun, that it could have no Influence upon it, and must for want of it grow noxious, even to Infection.

To make Misery more miserable, he put him there without Bed or Bedding.

A Bed would have kept him warm, but he was denied that, which is seldom denied even to Criminals and Convicts; nor would he afford him the cold Comfort even of Straw; but he was restrained from the Liberty of looking out for any thing to relieve him from the Injuries of the Place.

He was several times very hardly used; he was so beat with a most terrible Instrument of Correction, a *Bull's-pizzle*, that his Clothes were forced to be cut off his Body.

There is no punishing the Body without the Concurrence of the Mind. The Prisoner sent for this poor Man out of this terrible Place, in Sport and Ridicule, to the Lodge where he had Company; and there had an Iron Instrument fixed upon his Head, Thumb-screws on his Thumbs, that the Blood started from his Thumbs. He had another Instrument, called a Collar, put about his Neck; it was very far from being easy; it there made an Impression that the Mark plainly appeared: He had a Load of heavy Irons on, worse than any Yoke of Servitude; after these Instruments were fixed on him, he had Fetters put upon his Legs, of great Weight.

What

What then were the Fetters put on for? To add to the Affliction of the Man, and to ſhew the Cruelty of the Priſoner, I have already mentioned, that he was a Priſoner for Debt: They ſhould not be loaded with Fetters, upon any Pretence whatever.

Indeed, by an old Act of Parliament, where Auditors of Accounts were found indebted to their Principal, and are impriſoned, and refuſe to account, they may be ironed; but this is an obſolete, diſuſed Law, and being in a particular Caſe excludes all others. Lord *Coke* takes Notice, that it is not lawful, that Priſoners for Debt by the Common Law ſhould be put in Dureſs.

The Indictment does not ſay, that it was the Occaſion of his immediate Death; but it would have been better that one of thoſe Inſtruments had put an End to his Life, that he had expired under theſe Cruelties, his Death would have put an End to him and them together; for every body would rather chooſe to die immediately, than to be ſo puniſhed, when Death muſt be the Conſequence. But though he ſurvived them, the Effects remained; the Man ſoon died, and that ſhews that it was the Cauſe of his Death. The Indictment charges, that the Priſoner killed and murdered him. If we prove the Facts, they will juſtify that Concluſion; and then we muſt ſubmit to your Lordſhip, if it is Murder. If a Gaoler brings a Priſoner to his Death by Dureſs, it is Murder; and the Law in ſuch Caſe judges it to be Malice prepenſe.

There is one Thing I ſhould have taken Notice of; that in Caſe of the Death of any Priſoner, the Law requires the Gaoler to have the Coroner's Inqueſt to ſit upon the Body, to inquire the Cauſe of his Death: I don't find that was done.

Mr. *Ward.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am Counſel of the ſame Side. If a Gaoler, or the Servant of a Gaoler, kills a Priſoner by Dureſs, I take that to be Murder; the Reaſon of the Law is plain: By the Conſtitution of this Country, a Priſon is only for the ſafe Cuſtody of the Priſoners till tried or diſcharged: If that is turned into Cruelty, it is contrary to the Law; and he muſt anſwer for it. If *Bliſs* came to his Death by *Acton*, if that Uſage was the Occaſion of his Death, I muſt conclude, as in the Indictment, that he is guilty of Murder. To ſhew you, Gentlemen, that *Acton* uſed him in that barbarous manner, we ſhall ſhew, that the Place he kept him in was unfit for any human Creature; it was not defended from the Violence of the Rains and Seaſons, which made it moiſt and damp, and very unwholeſome. He was kept here without a Bed; this might be the Occaſion of his Death; but if he had Force uſed upon him afterwards, there can be no Reaſon to doubt it.

We ſhall ſhew you that he had actual Force uſed upon him. He had a Cap of Iron fixed on his Head, and a Collar of Iron on his Neck, ſo that he could not open his Jaws; even his Suſtenance was forced to be pulled into little Pieces, for it was impoſſible before to get it into his Mouth, which was occaſioned by the Weight of his Collar. The Man did addreſs himſelf to a Perſon, who condeſcended to chew it fit for him to get it into his Mouth.

Beſides theſe Irons he had Thumb-Screws on his Thumbs, and the Blood guſhed out of them; beſides this, he was beat with a Bull's Pizzle and a Rope, and was black all over. Not content with this, the Priſoner at the Bar ſtamped upon his Belly, till the Swelling was ſo great, that his Clothes were forced to be cut off his Body.

Further, to be more barbarous, he put him into Fetters ſo ſtrait, that they made an Impreſſion on his Legs, and eat into the Skin; which occaſioned a Wound and Mortification in his Legs. This was the Uſage of the Priſoner, to a poor Man who was only to be kept in ſafe Cuſtody by him. If he did not die immediately, but languiſhed of his Wounds, and then died of them; that will be as much chargeable upon him.

If we call our Evidence, and prove the Caſe, you will find him Guilty: That he feloniouſly, and of Malice aforethought, aſſaulted and murdered *Thomas Bliſs*.

Mr. *Trigg.* A Perſon confined for a very ſmall Debt, to have all thoſe Engines of Torture upon him, is contrary to Law.

Mr. *Ward.* It is ſet forth in the Indictment, that *Darby* was Keeper of the Priſon; therefore it is proper to proceed to prove that firſt.

John Wilſon *being produced.*

Mr. *Marſh.* What is your Name?---Mr. *Wilſon.* *John Wilſon.*

Mr. *Marſh.* Have you been ſworn?---Mr. *Wil.* Yes.

Mr. *Marſh.* Do you know the *Marſhalſea* Priſon?

Mr. *Wil.* Yes, I have been a Priſoner there ever ſince *April* 1726.

Mr. *Marſh.* Who was the Keeper?---Mr. *Wil.* *John Darby.*

Mr. *Marſh.* Do you know the Priſoner at the Bar, *William Acton?*

Mr. *Wil.* Yes.

Mr. *Marſh.* In the Year 1726 was Mr. *Acton* concerned, and in what Manner?

Mr. *Wil.* He acted as chief Turnkey, and ſucceeded one *Burleigh.*

Mr. *Marſh.* What is the Nature of Turnkey?

Mr. *Wil.* He acted under Mr. *Darby*, in taking care of the Priſoners.

Mr. *Marſh.* Acquaint my Lord, and the Jury, if you remember *Thomas Bliſs.*---Mr. *Wil.* Yes.

Mr. Baron *Carter.* I muſt put you in mind, you have only examined to the Year 1726.

Mr. *Marſh.* How long did he *(Acton)* continue under Mr. *Darby?*

Mr. *Wil.* I can't juſtly ſay how long; till Mr. *Darby* farmed out the Gaol.

Mr. *Marſh.* How long had it been farmed out?

Mr. *Wil.* I believe it had been farmed out a Year, more or leſs.

Mr. *Marſh.* When was it farmed out?--Mr. *Wil.* I believe in *May* 1727.

Mr. *Ward.* You ſay, you believe it was farmed out in 1727; Who took care of the Priſoners then? Who in *May* 1727?

Mr. Baron *Carter.* You need not go ſo far; take any Part of the Year 1727, to the Death of *Bliſs.*

Mr. *Ward.* From what do you know he was Turnkey? How long was he ſo before 1727?

Mr. *Wil.* He was ſo the Time I was committed. I was committed in 1726.

Mr. *Ward.* You believe he did continue as ſuch from 1726 to 1727.

Mr. *Wil.* Yes.

Mr. *Ward.* Did *Acton* act?

Mr. *Wil.* *Acton* did act. I ſeldom ſaw *Darby* there.

Mr. *Marſh.* Give an Account what Condition *Bliſs* was in.

Mr. *Wil.* When I was committed a Priſoner in 1726, he was then put in the ſick Ward; a little before the Act paſſed, to prevent frivolous and vexatious Arreſts, there was a Draught made of four Priſoners out of each Ward, to be put into the Pump-Ward, and I and *Bliſs* were among them: He then appeared to be a ſad Object, very lame, and I took an Opportunity to aſk him the Cauſe of it, and he told me that he attempted to eſcape; but being ſeen by a Woman, he was diſcovered in the Attempt, and fell down and diſlocated his Ankle; and that one *Rogers* and *Page* took him, and brought him into the Gaol again, who he ſaid had beat him.

Mr. *Acton.* I deſire, my Lord, he may may be aſked, if he ever ſaw *Bliſs* in Irons?

Mr. Baron *Carter.* Anſwer that.—Mr. *Wil.* No, my Lord.

Mr. *Acton.* Pleaſe to aſk him, my Lord, if *Bliſs* ever fell off the Top of the Houſe.

Mr. Baron *Carter.* What ſay you to that?—Mr. *Wil.* He did.

Mr. Baron *Carter.* He ſaid ſo before.

Mr. *Acton.* Pleaſe to aſk, my Lord, if he ever ſaw *Bliſs* beat, or confined in the Strong Room.----Mr. *Wil.* I never ſaw him beat.

Mr. *Acton.* Pleaſe to aſk, my Lord, if he ſaw my Behaviour to the Priſoners in general.

Mr. Baron *Car.* What ſay you to that?

Mr. *Wil.* I have ſeen People beat, and put in Irons.

Mr. *Ward.* By whoſe Directions?—Mr. *Wil.* I believe by *Acton's.*

Mr. *Ward.* Have you ſeen *Acton* ſtrike Priſoners?

Mr. *Wil.* I have ſeen him ſtrike Priſoners with his Fiſt.

Mr. *Ward.* Did you ſee *Bliſs* with an Iron Inſtrument on?--Mr. *Wil.* No.

Mr. Bar. *Carter.* What Behaviour did *Acton* uſe towards his Priſoners?

Mr. *Wil.* He behaved very well to ſome, and uſed others ill.

Mr. *Strange.* *Wilſon's* Evidence is Hear-ſay, being only the Declaration of the Deceaſed.

Mrs. Anne Bliſs *ſworn.*

Mr. *Marſh.* Did you know *Thomas Bils?*---Mrs. *Bliſs.* Yes.

Mr. *Marſh.* Who was he?---Mrs. *Bliſs.* My Huſband.

Mr. *Marſh.* Do you remember the Time when he was put into the Strong Room?

Mrs. *Bliſs.* He was a Priſoner in the *Marſhalſea* for a ſmall Debt.

Mr. *Marſh.* Did you uſe to viſit him?

Mrs. *Bliſs.* I went to him every Night and Morning.

Mr. *Marſh.* Acquaint my Lord, and the Jury, with every Step as to the Treatment of your Huſband.

Mrs. *Bliſs.* My Huſband went to make his Eſcape, and was betrayed.

Mr. *Ward.* Tell the Time.

Mrs. *Bliſs.* He and ſix or ſeven others went to break into a Baker's, and *Acton* came in.

Mr. *Ward.* Name the Time.

Mrs. *Bliſs.* I can't be ſure when it was, but one *Murlimus*, when he was put in, was there, and was collared.

Mr. *Marſh.* Wa you by?

Mrs. *Bliſs.* I ſaw it next Morning; I went into the Strong Room, and *Murlimus* had an Iron Collar on, but my Huſband was only fettered.

Mr. *Marſh.* I confine my Queſtion only to your Huſband. What Room was he in?---Mrs. *Bliſs.* The Strong Room.

Mr. *Marſh.* Deſcribe it.

Mrs. *Bliſs.* It is a Room floored with Boards, and there is a Hole big enough to put in a Pot of Beer, and I ſaw him in there thro' the Hole.

Mr. *Marſh.* How long did he lie there?

Mrs. *Bliſs.* He lay there three Weeks, in the Winter-Time.

Mr. *Ward.* You ſay, there is a little Hole, big enough to put in a Quart Pot?---Mrs. *Bliſs.* Yes, there is, juſt on the Side of the Door.

Mr. Baron *Carter.* Stay a little, I can't hear one Word. You ſay you could not go into the Room, but looked thro' the Hole?---Mrs. *Bliſs.* Yes.

Mr. Baron *Carter.* Did you obſerve the Condition of the Room?

Mrs. *Bliſs.* The Floor was very damp, and it had rained that Night, and had rained in.

Mr. Baron *Carter.* Was it covered at Top?

Mrs. *Bliſs.* Yes, but the Rain came in through the Boards.

Mr. *Foſter.* Were the Irons heavy he had on?

Mrs. *Bliſs.* Yes, they were.

Mr. *Ward.* What Time of the Year was it?

Mrs. *Bliſs.* It was much about *Chriſtmas* Time.

Mr. *Ward.* How long ago?

Mrs. *Bliſs.* About three Months after he was in Gaol.

Mr. *Ward.* What Time did he firſt go into Gaol?

Mrs. *Bliſs.* I cannot tell the Month.

Mr. *Ward.* Can't you be certain as to the Time?

Mrs. *Bliſs.* I think it was after *Chriſtmas*, not much.

Mr. *Ward.* How long ſince?

Mrs. *Bliſs.* It was much about three Years; it was much about four Years ſince the firſt Time he attempted to eſcape. He went to make an Eſcape a ſecond Time, by a Rope, about two or three Months after the firſt Attempt; and then *Acton* purſued after him, and took him.

Mr. *Ward.* Do you know this of your own Knowledge?

Mrs. *Bliſs.* When I came the next Day to the Priſon, *Nichols* ſaid, there is the Bitch his Wife, and *Acton* ordered me to be called into the Lodge; and ſaid, Damn you, Madam, I will have you before Juſtice *Ladd*, for bringing the Rope to your Huſband: Damn you, I will confine you; and he put me into the Place where they put the Irons in, adjoining to the Lodge, and kept me there an Hour. Whilſt I was there, he ſent for my Huſband into the Lodge, and put on the Scull-cap, Collar, Thumb-Screws, and Fetters.

Mr. *Ward.* Were they all put on at the ſame Time?--Mrs. *Bliſs.* Yes.

Mr. *Ward.* Who put them on?

Mrs. *Bliſs.* They were put on by *Acton's* Order.

Mr. *Ward.* Did you ſee him order it?

Mrs. *Bliſs.* I heard him order it, I did not ſee it.

Mr. *Ward.* Did you ſee them on your Huſband?

Mrs. *Bliſs.* I did. My Huſband ſaid, As you are a Man, I hope you will uſe me as ſuch; *Acton* ſaid, If you will confeſs who brought you the Rope; and ordered him into a Place called the Dungeon; and when he was put there, ſent for me, and ſaid, I will now have you before Juſtice *Ladd*; but having a Friend there, who interceeded, I was let go out of the Gaol, and came the next Morning, and found my Huſband in the Dungeon; he ſpoke to me thro' the Hole.

Mr. *Ward.* Did you ſee him?

Mrs. *Bliſs.* I did not ſee him, but thro' the Hole. He ſaid, This Place, and the cruel Uſage I have had, will be the Death of me. He was beat ſo, that his Cloaths were forced to be cut off, and his Body, Stomach, and Belly, were very much ſwelled.

Mr. *Ward.* Did you ſee him beat?----Mrs. *Bliſs.* I ſaw the Marks.

Mr. *Ward.* When did you ſee him in the Strong Room?

Mrs. *Bliſs.* About two Hours after I came in, in the Morning; *Acton* came down the Yard at the ſame Time.

Mr. *Ward.* Had he all theſe Irons on when *Acton* came down?

Mrs. *Bliſs.* He had them all on.

Mr. *Ward.* When were his Cloaths cut off?

Mrs. *Bliſs.* His Cloaths were cut off from his Body after *Nichels* beat him, becauſe he was ſwelled.

Mr. *Ward.* You told us that you ſaw your Huſband, what had he on?

Mrs. *Bliſs.* I ſaw him with the Scull-cap, Collar, and Irons on.

Mr. *Ward.* By whoſe Order were they put on?

Mrs. *Bliſs.* I heard *Acton* order them to be put on.

Mr. *Ward.* What was he ſwelled with?

Mrs. *Bliſs.* He was ſwelled with the Blows that *Acton* had given him, as my Huſband told me.

Mr. *Foſter.* How long was this before his Death?

Mrs. *Bliſs.* His Cloaths were forced to be cut down; and *Acton* told the Nurſe of the ſick Ward, to take a deal of Care of him.

Mr. *Foſter.* Recollect what Year this was in?

Mrs. *Bliſs.* It was about two Years and Three Quarters ago.

Mr. *Richardſon.* When he was in this Place, (the Strong Room) did you ſee any Blood about him?

Mrs. *Bliſs.* He bled at the Mouth, and he told me, that it was cauſed by having the Iron Inſtrument on his Head; and the Blood flowed from under the Nails of his Thumbs.

Mr. *Harding.* Did you make any Complaint of this Uſage?

Mrs. *Bliſs.* A Friend of mine did.

Mr. *Harding.* How long did he continue in the Strong Room?

Mrs. *Bliſs.* Above a Month at one Time, a Week at another, and another Time about three Days.

Mr. *Harding.* How long before he died?

Mrs. *Bliſs.* About ſeven or eight Months before he died.

Mr. *Richardſon.* Did you ſee your Huſband beat?

Mrs. *Bliſs.* He was black as any thing with the Marks of the Bull's-pizzle *Acton* kept. *Rogers* and *Nichels* knocked him down with a Bunch of Keys, as I was told.

Mr. *Richardſon.* From the time you ſaw him in this Condition, till he died, how long was it?

Mrs. *Bliſs.* About ſeven or eight Months.

Mr. *Richardſon.* When did he die?

Mrs. *Bliſs.* He died on *Lady-day.*

Mr. *Richardſon.* What Condition of Health was he in?

Mrs. *Bliſs.* He was a pretty while in the ſick Ward, and then was removed into his own Ward.

Mr. *Richardſon.* How long after this Uſage was it before he died?

Mrs. *Bliſs.* Seven or eight Months.

Mr. *Richardſon.* Was it in Summer-time?

Mrs. *Bliſs.* It was at the Beginning of Summer.

Mr. Baron *Carter.* I muſt be forced to tell you, not to aſk the ſame Queſtions over and over again.

Mr. *Richardſon.* What was the Occaſion of Death?

Mrs. *Bliſs.* I verily believe the cruel Uſage of *Acton* and *Nichols*; for he ſaid to me a little before he died, I muſt ſoon leave you, and Nobody is the Death of me but *Acton* and *Nichols.*

Mr. Baron *Carter.* The firſt Witneſs, *Wilſon*, put it right, when he came in *April* 1726, to *Lady-day* 1727; you muſt keep her to that Time.

Mr. *Harding.* What Time did you ſee him in Fetters?

Mrs. *Bliſs.* Seven or eight Months before he died.

Mr. *Acton.* My Lord, pleaſe to aſk her if I was by when the Scull-cap was upon her Huſband's Head.

Mr. Baron *Carter.* What ſay you to that?

Mrs. *Bliſs.* I ſaw it on in the Strong Room.

Mr. *Acton.* Pleaſe to aſk, my Lord, if he was not well after this, and went into the Country to work.

Mr. Baron *Carter.* Anſwer that Queſtion?

Mrs. *Bliſs.* He went to *Enfield* to work, but was ſo ill he could not work; he did not do three Hours Work there.

Mr. *Acton.* I deſire ſhe may be aſked, if he had not got a violent Cold by working.

Mrs. *Bliſs.* When he came home, he ſaid he was very bad, and I got him Half a Pint of Wine, and put him to Bed; he continued very ill for a Week, keeping his Bed ſome Part of the Time, and ſome Part ſat up; and then deſired me to get him into the Hoſpital, for that he could not recover it, and *Acton* was the Occaſion of his Death.

Mr. *Acton.* Pleaſe to aſk, if any body was by when her Huſband told her I was the Occaſion of his Death.

Mrs. *Bliſs.* He made the Declaration as I was ſitting on the Side of the Bed.

Mr. *Acton.* I deſire ſhe may be aſked, if he had not ſtrained his Ankle by a Fall from the Houſe, when he attempted to eſcape.—Mrs. *Bliſs.* Yes.

Mr. *Acton.* Pleaſe to aſk, my Lord, how long it was after her Huſband died, before ſhe complained to any body that I was the Cauſe of his Death.

Mrs. *Bliſs.* I never complained to any body, becauſe I had no Money to go to Law, nor Friends, nor any body elſe to ſtand by me.

Mr. *Acton.* Pleaſe to aſk, who ſhe lodged with when her Huſband died.

Mr. Baron *Carter.* Anſwer that?---Mrs. *Bliſs.* I lodged with my Siſter.

Mr. *Acton.* Pleaſe to aſk her, if ſhe ever complained to her Siſter.

Mr. Baron *Carter.* What ſay you to that?---Mrs. *Bliſs.* No, I did not.

Mr. *Acton.* Pleaſe to aſk, if ſhe complained to her Father or Mother.

Mrs. *Bliſs.* I had no Father, and as to my Mother, I did not ſee her in half a Year; it was above a Quarter of a Year after my Huſband's Death.

Mr. *Acton.* I deſire ſhe may be aſked again, if ſhe did not tell her Mother.

Mr. Baron *Carter.* Did not you tell your Mother?

Mrs. *Bliſs.* No, I had a Difference with my Mother, on account of her marrying a ſecond Huſband.

Mr. *Acton.* I deſire ſhe may be aſked, when was the firſt time of her complaining, whether it was voluntarily, or whether ſhe was ſent for, and by whom, and whereto.

Mr. Baron *Carter.* You hear the Queſtion.

Mrs. *Bliſs.* One Mr. *Newland*, an Acquaintance of my Father's, knowing how my Huſband was uſed, ſent for me.

Mr. *Acton.* I deſire ſhe may be aſked, when and where.

Mrs. *Bliſs.* To his own Houſe.

Mr. *Acton.* Pleaſe, my Lord, to aſk how long ago.

Mr. Baron *Carter.* Anſwer that.——Mrs. *Bliſs.* I believe half a Year.

Mr. *Acton.* Pleaſe to aſk her, my Lord, when Mr. *Newland* ſent for her, what he ſent for her for; and whether he did not ſay there was Money for her.

Mr. Baron *Carter.* What ſay you to that?

Mrs. *Bliſs.* Knowing how barbarouſly my Huſband was uſed, he ſaid he would have me right his Death; and ordered me to go to a Gentleman about it; but ſaid nothing of Money.

Mr. *Acton.* Pleaſe to aſk, my Lord, if ſhe did not tell *Heſter Long* ſhe was to have Money to ſwear her Huſband's Death to me.

Mr. Baron *Carter.* Did you tell *Heſter Long* ſo?

Mrs. *Bliſs.* No; my Siſter came to me, and ſaid, Mr. *Newland* deſired to ſee me; and ſhe ſaid, ſhe believed there was Money for me. Afterwards I ſaw *Newland*, and he told me to go to the Gentleman.

Mr. *Acton.* I deſire ſhe may be aſked again, if ſhe did not tell *Heſter Long*, ſhe was to have Money to ſwear her Huſband's Death to me.

Mrs. *Bliſs.* No.

Mr. *Acton.* Pleaſe to aſk her, if ſhe did not tell *Heſter Long*, ſhe was to have fifty Shillings, or three Pounds.

Mr. Baron *Carter.* I muſt take care you do not aſk her Queſtions to injure herſelf.

Suſannah Dodd, *being produced and ſworn.*

Mr. *Marſh.* Did you ſee *Bliſs* in Priſon?

Mrs. *Dodd.* Yes, a hundred times, and once in Irons.

Mr. *Marſh.* What Time did you ſee him Irons?

Mrs. *Dodd.* He had them on the next Day after he was put in the Strong Room.

Mr. *Marſh.* What Time of the Year?

Mrs. *Dodd.* Between Winter and Summer.

Mr. *Marſh.* How long before he died?—Mrs. *Dodd.* A Quarter of a Year.

Mr. *Marſh.* Do you know when he died?

Mrs. *Dodd.* I was not with him.

Mr. *Marſh.* When do you know he died? Have you been told when he died?

Mrs. *Dodd.* I knew he was dead, becauſe his Wife came and ſaid he was dead.

Mr. Baron *Carter.* Was it the firſt or ſecond Time he made his eſcape he was out two or three Months?

Mr. *Acton.* My Lord, he was not out then at all.

Mr. Baron *Carter.* I will call the Woman again.

Mrs. Bliſs *being called.*

Mr. Baron *Carter.* Was your Huſband twice in Goal, or once?

Mrs. *Bliſs.* Only once.

Mr. *Marſh.* What Gentleman did Mr. *Newland* ſend you to?

Mr. Baron *Carter.* It is not uſual to aſk Queſtions after a Witneſs has been examined, and only called again to explain a Fact.

Mr. *Marſh.* It is only to clear up what ſhe has already given in Evidence.

Mrs. *Bliſs.* Mr. *Newland*, an Acquaintance of my Father's, only ſent for me.

Mr. *Marſh.* How long ſince?----Mrs. *Bliſs.* Three Weeks laſt *Sunday.*

Mr. Baron *Carter.* Who is *Newland?*---Mrs. *Bliſs.* He lives in *Southwark.*

Mr. Baron *Carter.* What is he?----Mrs. *Bliſs.* He is a Baker.

Mrs. Dodd *ſtanding up again.*

Mr. *Ward.* When did you ſee him laſt in Gaol?

Mrs. *Dodd.* About three Months before he died.

Mr. *Ward.* When did he die?

Mrs. *Dodd.* I can't be certain when he died.

Mr. *Ward.* What Condition did yo ſee him in?

Mrs. *Dodd.* I went to the Strong Room to carry him ſome Victuals, and he had Thumb-ſcrews on his Thumbs, Irons on his Legs, an Iron Cap on his Head.

Mr. *Ward.* Had he Fetters on his Legs?

Mrs. *Dodd.* He had very large Fetters on his Legs, and Irons croſs his Legs too. I ſpoke to him thro' the Hole.

The ſaid Irons being produced and viewed by the Witneſs.

Mr. *Ward.* Are thoſe the ſame you ſaw upon *Bliſs?*

Mrs. *Dodd.* They are.

The Irons called Sheers being ſhewn her particularly.

Mr. *Ward.* Look on them, had he any other Irons on his Legs than thoſe?

Mrs. *Dodd.* He had the *Sheers* croſs his Legs, and Fetters on beſides. The Deceaſed aſked me to give him Relief, and deſired me to chew his Victuals, for his Mouth was ſore; and I pulled it to Pieces, and fed him.

Mr. *Ward.* What was the Occaſion of his Mouth being ſore?

Mrs. *Dodd.* He was confined two Days in this Condition.

Mr. *Ward.* How do you know it?

Mrs. *Dodd.* By being ſent backwards and forwards of Errands.

Mr. *Ward.* Did he ſpeak to you?

Mrs. *Dodd.* Yes, he ſpoke to me ſeveral times.

Mr. *Hard.* Could he chew?---Mrs. *Dodd.* I don't believe he could chew.

Mr. *Foſter.* How long was he in this Condition in the Strong Room?

Mrs. *Dodd.* A Day or two.

Mr. *Ward.* How long ago?----Mrs. *Dodd.* Five or ſix Months ago.

Mr. *Ward.* How long ago is it ſince you ſaw him in that Condition? Recollect yourſelf, how long ago it might be.

Mrs. *Dodd.* I can't tell exactly.

Mr. *Ward.* How long was it after he was turned out, before it was reported he was dead?---Mrs. *Dodd.* About half a Year.

Mr. *Ward.* How long was it then, before he was in that Condition?

Mrs. *Dodd.* This was about a Quarter of a Year before.

Mr. *Ward.* What Time of the Year was it?

Mrs. *Dodd.* It was about *Southwark* Fair-time.

Mr. *Ward.* Did you see him bleed at the Mouth, or any where else?

Mrs. *Dodd.* There is a great Hole on the Side of the Door, and I saw him screwed, and saw him bleeding at his Thumb Nails.

Being again shewn the Iron Instrument called the Sheers.

Mr. *Ward.* How was it used?---Mrs. *Dodd.* It goes between the Legs.

Mr. *Harding.* What Sort of a Place is the Strong Room?

Mrs. *Dodd.* It is a large Room, and strong.

Mr. *Harding.* Describe the Room. Is it damp?

Mrs. *Dodd.* It is not damp; it is dry enough.

Mr. *Harding.* Is it covered at Top?

Mrs. *Dodd.* It is leaded over at Top. I gave him Drink through the Hole by the Door, while he held his Head backward; he could not take it himself, because of his Hands being confined.

Mr. *Acton.* Please to ask, my Lord, if he was well in Health when he came to lodge at the House where she lived?

Mrs. *Dodd.* He was only lame in his Legs; he was well as to every Thing else.

Mr. *Acton.* Please to ask her, if she did not see him the Day after he came out of the Strong Room.

Mr. Baron *Carter.* Did you see him the Day after he came out of the Strong Room?---Mrs. *Dodd.* No, it was two Days after.

Mr. Baron *Carter.* Did you see him when his Cloaths were cut off?

Mrs. *Dodd.* No.

Ruth Butler, *being produced, was sworn.*

Mr. *Ward.* Did you see *Bliss* in the Gaol?

Mrs. *Butler.* I was a Prisoner in 1725.

Mr. *Ward.* How long did you continue a Prisoner?

Mrs. *Butler.* I continued till I was cleared by the late Act, about fourteen Days ago.

Mr. *Ward.* Did you see *Bliss?*---Mrs. *Butler.* I did.

Mr. *Ward.* How long was he in Prison, while you was there? Give an Account of what you knew of *Bliss.*

Mrs. *Butler.* He was a Prisoner, I cannot say how long; but I saw him going over the House, and he fell off; and was taken on the other Side, and brought in again; and was put in the Strong Room by *Acton, Thomas Nichols, Rogers* and *Page.*

Mr. *Ward.* Did you see *Acton* put him there?

Mrs. *Butler.* I saw *Acton* concerned in putting him there. He kept him there till the other Prisoners were locked up, and then brought him into the sick Ward, and *Acton* beat him with a *Bull's-pizzle* there, and stamped upon his Body several Times, he *(Bliss)* lying upon the Ground. He had hurt his Leg with the Fall, and thought it was broke. He continued in the sick Ward that Night, and the next Day they carried him into the Lodge, and there put Irons on.

Mr. *Ward.* What Irons?

Mrs. *Butler.* They put on long Irons, that kept his Legs to a vast Extent.

Mr. *Ward.* When was this?

Mrs. *Butler.* The next Morning after he fell in going over the House; in the latter End of *February,* or the Beginning of *March.*

Mr. Baron *Carter.* You say it was the latter End of *February,* or the Beginning of *March.* Was it the first Time of his escaping?

Mrs. *Butler.* Yes.

Mr. *Richardson.* Did you see him after he went out of Gaol?

Mrs. *Butler.* I never saw him after he went out of Gaol.

Mr. *Ward.* How long was he out of Gaol before he died?

Mrs. *Butler.* I don't know.

Mr. *Ward.* Recollect the last Time you saw him in Gaol; when was it?

Mrs. *Butler.* I cannot say.

Mr. *Harding.* Did you see him when he left the Gaol? How was he?

Mrs. *Butler.* He was very bad, very ill; I heard him often say after this Usage, that the Bruises and Hurts *Acton* gave him by stamping upon him, would be the Occasion of his Death?

Mr. *Richardson.* Do you believe that those Bruises and that ill Usage was the Occasion of his Death?

Mrs. *Butler.* I verily believe they were the Occasion of his Death.

Mr. *Richardson.* What State of Health was he in when he left the Gaol?

Mrs *Butler.* In a very ill State of Health.

Mr. Baron *Carter.* For my Satisfaction and the Jury's, give an Account particularly when he was beat with the *Bull's-pizzle.*

Mrs. *Butler.* He was first beat with the *Bull's-pizzle*; then flung upon the Ground, and stamped upon.

Mr. Baron *Carter.* Whereabouts did *Acton* stamp upon him?

Mrs. *Butler.* Betwixt his Belly and his Stomach, and upon his Belly.

Mr. Baron *Carter.* How many Times did you observe him to stamp upon him *(Bliss)*?---Mrs. *Butler.* Three Times.

Mr. *Richardson.* I will ask you one Question.

Mr. Baron *Carter.* I can't admit you to ask any Questions now; I asked them for my own, not your Information.

Matthew Bacon *(being called and sworn.)*

Mr. *Ward.* Did you see the Deceased?

Mr. *Bacon.* Yes, several Times; I saw him when he was sick, and when his Legs were swelled.

Mr. *Ward.* What State of Health was he in?

Mr. *Bacon.* He was very sickly and very lame; his Legs were swelled, and he complained of the Bruises that he had received from *Acton.*

Mr. *Ward.* Did you see him in the Strong Room?

Mr. *Bacon.* I was not a Prisoner then; I was a Prisoner from about the latter End of *April* to *Michaelmas* following, and then I was discharged. He was sick great Part of that Time, and said he should do well enough, if not for the Bruises; and that that Rogue, *Acton,* had done that to him which he should never recover.

Mr. *Harding.* What State of Health was he in when you left the Prison?

Mr. *Bacon.* He was sickly.

Mr. *Richardson.* Do you know the Strong Room?

Mr. *Bacon.* Yes; it is standing at the South-East Part of the Gaol; and is a Terror to all those that behave themselves ill; and is not fit to put a human Creature in, to remain there.

Mr. *Ward.* Did you see him after you was discharged?

Mr. *Bacon.* I was discharged about *Michaelmas,* 1726, and went to the Gaol to see him between *Michaelmas* and *Christmas*; and I am positive he was never well while I saw him in Gaol.

Mr. *Word.* Did he complain of any Thing?

Mr. *Bacon.* He complained of Pains in his Side, which he attributed to *Acton.*

Mr. *Harding.* What Sort of a Place is the Strong Room?

Mr. *Bacon.* It is a Square, as big as the Square between the Posts in the Court; and has no Light but through a little Hole on the Side of the Door; and it is damp.

Mr. *Harding.* Is it unwholesome?

Mr. *Bacon.* It is undeniably to all Mankind unwholesome. I have seen People dead in it.

Mr. Baron *Carter.* What is the Prisoner's general Character in the Gaol?

Mr. *Bacon.* A great many give him an ill Character, but I never had any Abuse from him; I never deserved it.

Mary Gillis *(being sworn.)*

Mr. *Ward.* Do you know *Bliss?*

Mrs. *Gillis.* Yes; I was a Prisoner nineteen Months, and remember *Bliss* very well.

Mr. *Ward.* Give an Account of what you know in relation to *Bliss.*

Mrs. *Gillis.* The Account I can give is this: The Man was almost perished for Want, and with a Rope had attempted to escape, being tied round his Middle; but being discovered, the Rope was cut, and he fell into the Yard on the other Side, and received Damage in one of his Legs; and though he could not stand, *Acton* and his Servants brought him into the Lodge.

Mr. *Ward.* When was it?

Mrs. *Gillis.* In an Evening; about the Beginning of *March.*

Mr. *Ward.* Who were *Acton*'s Servants? Name them.

Mrs. *Gillis. Richard Page, Nichols* and *Rogers. Acton* was there himself; they pulled and hawled him about, and *Acton* beat him with a Bull's-pizzle; he stood upon one Leg, for he could not set the other to the Ground, and cried out for Mercy; and they asked him, who gave him the Rope? He said, *Thomas Crabb.* Then they put him in a Hole, a little Place under the Stairs, and he lay there a little while; and when he came out, they ironed him on one Leg.

Mr. *Ward.* Do you believe this Usage was the Occasion of his Death?

Mrs. *Gillis.* I believe in my Heart he died for Want of Food, as well as by being so used.

Mr. *Richardson.* Did you see his Body?---Mrs. *Gillis.* I never did.

Mr. *Harding.* They wanted him to confess who brought the Rope?

Mrs. *Gillis.* Yes; they did ask him who brought it.

Mr. *Harding.* What Time was it?

Mrs. *Gillis.* It was Candle-light; I came out of one *Carey's* Shop.

Mr. *Ward.* What State of Health was he in when he left the Gaol?

Mrs. *Gillis.* I came out before him. He was sick in the Sick Ward when I came out.

Mr. *Ward.* What Irons had he on?

Mrs. *Gillis.* I never saw him but with one Iron on.

Mr. *Ward.* Did you see him beat?

Mrs. *Gillis.* Yes; I did stand by, and saw him beat; and he fell down through Weakness from the Hurt.

Mr. *Hard.* Did you ever hear him complain of the Injuries he received?

Mrs. *Gillis.* I never went near him, nor asked him.

Mr. *Harding.* How many Blows did you see him receive?

Mrs. *Gillis.* I cannot tell.

Mr. *Harding.* How long were they using him in that Manner?

Mrs. *Gillis.* They were Half a Quarter of an Hour using him in that Manner.

Mr. *Harding.* Was *Acton* by?

Mrs. *Gillis.* He was present at the same Time he was beat; but he was beat mostly by *Nichols.*

James Abbot *was sworn.*

Mr. *Ward.* Did you see *Bliss?*

Mr. *Abbot.* Yes; I saw him drubbed, so that no Man was so drubbed.

Mr. *Ward.* By whom?---Mr. *Abbot.* By *Acton*'s Servants.

Mr. *Ward.* With what?---Mr. *Abbot.* With a Rope and a Bull's-pizzle.

Mr. *Ward.* Was *Acton* by?---Mr. *Abbot.* I can't say that.

Mr. *Ward.* Who were they that beat him?

Mr. *Abbot.* He was beat by *Page* and *Nichols.*

Mr. *Ward.* You say they beat him with a Bull's-pizzle and a Rope?

Mr. *Abbot.* Yes.

Mr. *Ward.* Was *Acton* in the Prison then?---Mr. *Abbot,* Yes, he was.

Mr. *Ward.* Was *Acton* in the Yard?

Mr. *Richardson.* Did you see *Bliss* in the Strong Room?

Mr. *Abbot.* No.

Mr. Baron *Carter.* Will you (speaking to the Prisoner) ask any Questions?

Mr. *Acton.* My Lord, please to ask the Question, Whether I ever used the Prisoners ill during the Time he was there.

Mr. *Abbot.* I did see him beat a great many People, but can't say who.

Matthew Brandon *was sworn.*

Mr. *Ward.* Did you know *Bliss?*

Mr. *Brandon. Bliss* was a Prisoner when I came in, in 1726; I went there on the 16th of *March,* 1726.

Mr. *Ward.* How long did you continue there?

Mr. *Brandon.* Six Months.

Mr. *Ward.* Did you see *Bliss?*---Mr. *Brandon.* Yes.

Mr. *Ward.* What Condition did you see him in?

Mr. *Brandon.* He was a Cripple.

Mr. *Ward.* From what Time do you count the Year?

Mr. *Brandon.* From the 25th of *March*; I cannot be sure whether it was 1725 or 1726.

Mr. *Trigg.* What Manner did you see his Legs in?

Mr.

Mr. *Brandon.* I ſaw one very much bruiſed by the Irons that were put on. There was a Mark about as big as the Top of one's Finger.

Mr. *Ward.* Was his Leg ſwelled?

Mr. *Bran.* It was very much ſwelled.

Mr. *Ward.* Did you ſee both his Legs?

Mr. *Bran.* I took it to be the left Leg.

Mr. *Ward.* Was his Ankle ſtrained?

Mr. *Bran.* I don't know any thing of the ſtraining of his Ankle; it was much about the Ankle.

Mr. Baron *Carter.* If it was his Leg that he hurt; that's an Anſwer.

Mr. *Ward.* That remains upon them to prove. Had the Skin been broke?

Mr. *Bran.* The Skin had been broke, and it was ſwelled above and below, and there was the Mark of the Iron.

Mr. *Harding.* What Sort of Mark was it?

Mr. *Bran.* It was a circular Mark.

Mr. *Hard.* Did he make any Complaint to you?

Mr. *Bran.* I gave him Part of a Mug of Ale; and as he was relating his Grievances to me, he told me he deſired me to ſee *Acton* proſecuted, in in caſe he died.

Mr. *Hard.* What did he tell you?—Mr. *Bran.* He told me he was very barbarouſly uſed by *Acton*, and he was the Occaſion of his Death.

Mr. *Hard.* How long was it before you left him in Gaol, that he made this Declaration? What Time of the Year was you diſcharged?

Mr. *Bran.* I went out in *Auguſt.*

Mr. *Acton.* My Lord, pleaſe to aſk, how long it was after *Bliſs*'s Death before he made Complaint.

Mr. Bar. *Car.* What ſay you to that?

Mr. *Bran.* I made no Complaint of this but ſince I have been at home; I have been beyond the Seas.

Mr. *Acton.* Pleaſe to aſk, how long it was before he went out of *England*, after he was diſcharged.

Mr. Baron *Carter.* Anſwer that.

Mr. *Bran.* I was diſcharged in *Auguſt*, and went abroad in about two Months Time; and it is three Months ſince I came home again.

Mr. *Ward.* Did you ever ſee any Irons upon *Bliſs?*---Mr. *Bran.* No.

Mr. *Ward.* Did you ever ſee him beat?---Mr. *Bran.* No.

Mary Renwood *was ſworn.*

Mr. Baron *Carter.* I beg you would let us know the Time better; I ſhould be glad to be ſatisfied as to that.

Mr. *Ward.* Give an Account of what you know of *Bliſs.*

Mrs. *Renwood.* I never was a Priſoner, but carried him Victuals.

Mr. Baron *Carter.* You knew *Bliſs*; Did you ſee him in Irons?

Mrs. *Ren.* Yes, my Lord, once. After his Fetters were taken off, I ſaw his Legs where the Irons had been on; and the Irons had eat very deep into both his Legs.

Mr. Baron *Carter.* Did you ſee the Irons on?

Mrs. *Ren.* I ſaw the Irons on in the Yard, but that was before.

Mr. Baron *Carter.* Was the Soreneſs of his Legs occaſioned by the Irons?---Mrs. *Ren.* Yes.

Mr. Baron *Carter.* Upon what Occaſion did you go to him?

Mrs. *Ren.* I went to carry him Victuals and Clothes. When I ſaw him in the Sick Ward, the Small of his Legs were ſwelled as big as the Calf.

Mr. *Ward.* When was this?—Mrs. *Ren.* I can't be certain as to the Time.

Mr. *Ward.* Go on.

Mrs. *Ren.* The Skin was broke, and his Legs were ſore and raw in the Places where the Marks of the Irons were.

Mr. *Richardſon.* What did you carry him?

Mrs. *Ren.* I carried him a Pair of Stockings, but he could not put them on.

Mr. *Ward.* Had he no Stockings on?---Mrs. *Ren.* When I went to him, he had no Stockings, no Shirt, only a Blanket.

Mr. *Ward.* What Size were the Stockings?

Mrs. *Ren.* They were my Huſband's Stockings, but of a Small Size.

Mr. *Ward.* If his Legs had not been ſwelled, might he have got them on?---Mrs. *Ren.* I believe he might.

Mr. *Ward.* Did he make any Complaint to you?

Mrs. *Ren.* He ſaid, he was afraid he ſhould never be his own Man again, by the ill Uſage he had received in the Gaol.

Mr. *Ward.* Did he ſay who uſed him ill?

Mrs. *Ren.* No; I did not aſk him.

Peter Purchace *being ſworn.*

Mr. *Ward.* Did you know *Bliſs* when in Priſon?

Mr. *Purchace.* Yes; he was a Priſoner ſome time before I was a Priſoner, in the Year 1726; and he related to me the Uſage he had had.

Mr. *Ward.* When was you a Priſoner?—Mr. *Pur.* I became a Priſoner the 26th of *March* 1726. I was diſcharged ſome time before he was.

Mr. *Ward.* When had you the Diſcourſe with him?

Mr. *Pur.* In *May* or *June.*

Mr. *Ward.* How long did he continue in Gaol?

Mr. *Pur.* He was there 10 Months during the Time I was there; he told me he was ironed, and——

Mr. Baron *Carter.* You muſt not ſpeak to Hear-ſay. What he told you don't ſignify. Did you ſee his Legs?

Mr. *Pur.* I did; and the Marks of the Irons were upon them. His Legs were ſwelled very much both of them; and one continued ſwelled until he went out of the Gaol.

Mr. *Ward.* What was the Occaſion of their being ſwelled?

Mr. *Pur.* It was occaſioned by wearing the Irons.

Mr. *Ward.* Were they raw?---Mr. *Pur.* They were not raw; but I ſaw the Marks of the Irons upon them.

Mr. *Ward.* Did you ſee his Thumbs?

Mr. *Pur.* I did; and he told me, that he had been Thumb-ſcrewed.

Mr. *Ward.* Did you ſee any Marks upon them?

Mr. *Pur.* I ſaw his Thumbs very black, and much bruiſed about the Joints; and he told me, he had wore the Scull-cap.

Mr. *Ward.* Did he complain of any Bruiſes?

Mr. *Pur.* He complained of his Side.

Mr. *Ward* When did he go out?---Mr. *Pur.* I cannot tell the exact Time; I went out a little before him.

Edmond Commins, *being ſworn.*

Mr. *Ward.* Did you know *Bliſs?*---Mr. *Commins.* Yes.

Mr. *Ward.* Did you ſee *Acton* do any thing to him?---Mr. *Com.* No; but he told me, he believed he had got his Death by *Acton.*

Mr. *Ward.* Did you ſee any Irons on him?

Mr. *Com.* I ſaw them; they were very remarkable; he declared to me that *Acton* put them on, and beat and abuſed him.

Mr. *Ward.* Did you ſee his Legs?---Mr. *Com.* I did; and his Legs were like a Horſe's Fetlock cut with a Clog.

Mr. *Ward.* What Time?---Mr. *Com.* I cannot ſay.

Mr. *Ward.* How long before his Death?

Mr. *Com.* A conſiderable Time; when he died, I was abroad in *India*; I was there two Years and three Months. I was by when *Acton* put *Bliſs* and ſome others in the Strong Room; and I heard him ſay to *Bliſs*, I thought I had given you enough already, but I will give you more.

Mr. *Ward.* What kind of a Place is the Strong Room?

Mr. *Com.* I have been twice in that Priſon; it is very damp, and if it rains never ſo little, it comes through.

Mr. *Ward.* Had he any Bed?

Mr. *Com.* No; there is no Bed allowed to be carried in.

Mr. *Ward.* Is there any Place to let in the Air or Light?

Mr. *Com.* There is a ſmall Hole, about twelve Inches, on the Side of the Door.

Mr. *Ward.* Was it proper to put a human Creature in?

Mr. *Com.* No; I have ſeen Hogs lie in a better Place: The Common Sewer runs underneath it, and the Drain from the Vault.

Mr. *Ward.* Is it unwholeſome?---Mr. *Com.* It is very unwholeſome.

Edward Murfey *was ſworn.*

Mr. *Richardſon.* Did you know the Deceaſed?

Mr. *Mur.* I did; he was in Priſon when I came.

Mr. *Rich.* What Condition was he in? Did you ſee him?

Mr. *Mur.* Yes; I heard him ſay, that he had ſo much beating in the Lodge, that he could never recover it.

Mr. *Rich.* Did you ſee any Irons upon him?

Mr. *Mur.* I ſaw him in the Strong Room with Handcuffs on his Hands, and large Fetters on his Legs.

Mr. *Rich.* Did you ſee his Legs? What Condition were they in?

Mr. *Mur.* I ſaw them; they were black and blue; and they were raw in a Circle, and the Skin was off.

Mr. *Rich.* Did he complain of any Bruiſes?

Mr. *Mur.* He complained of his Side.

Mr. *Acton.* Did he never talk of falling off the Houſe, and that he was hurt thereby?---Mr. *Mur.* I never heard him.

Ellis Roberts *was ſworn.*

Mr. *Ward.* Did you know *Bliſs?*---Mr. *Roberts.* I ſaw him in Priſon, and ſaw the Fetters upon both his Legs.

Mr. *Ward.* Did you ſee him after he went out?---Mr. *Rob.* I can't ſay.

Mr. *Ward.* Did he make any Complaint to you?

Mr. *Rob.* He told me, that his Legs were very bad, and deſired me to go to Mr. *Darby* about it; which I did, but was afraid to ſpeak in the Priſon, ſeeing People uſed ſo ill; and I ſpoke to him at the Door, and *Darby* ſaid——

Mr. Baron *Carter.* What *Darby* ſaid is no Evidence.

Mr. *Ward.* Upon what Account did you go to him?

Mr. *Rob.* I went to *Darby* to deſire the Fetters might be taken off; or otherwiſe, that thoſe might be taken off, and bigger put on; for his Legs were ſwelled ſo much, that they hid the Irons; the Iron hung almoſt out of Sight on one Side.

Mr. *Ward.* Did he ſhew you any other Marks?---Mr. *Rob.* No.

Mr. *Ward.* Did you ſee him in the Strong Room?

Mr. *Rob.* I did ſee him in the Strong Room; and I ſaw ſeveral more there lying upon the Ground, coming to ſee him after Work.

Mr. *Ward.* What Sort of a Place is it?

Mr. *Rob.* There is only one Place to look in at, a Hole on the Side of the Door. It is very diſmal to look into.

Mr. *Ward.* Was it dry?

Mr. *Rob.* I can't ſay. At the ſame Time *Bliſs* was there, I ſaw another Man with an Iron about his Neck in the ſame Room.

Mr. Baron *Carter.* Would you (ſpeaking to the Priſoner) have me aſk any Queſtions?—Mr. *Acton.* No, my Lord.

Mr. *Rich.* It was inſinuated, that the Man went to work. We ſhall produce the Perſon where he went to work, to ſhew he was not able.

William Cowley, *Maſter Carpenter, was ſworn.*

Mr. *Marſh.* Did you know *Bliſs?*

Mr. *Cowley.* I remember his coming out of Gaol; and after he came out of Gaol, he came to work with me.

Mr. *Marſh.* What Trade are you?

Mr. *Cowley.* A Carpenter.

Mr. *Marſh.* Give an Account what State of Health *Bliſs* was in when he came to work for you?

Mr. *Cowley.* I had a Job of Work at *Southgate*, and came to Town generally on a *Saturday* Night; and he came the Day after, and ſaid he was coming to work for me; I ſaid he was too weak, and he had better be purged and blooded before he went down. I left him in Town, and when I came again from the Country, he came to me; I aſked him, How he did then? He ſaid, Pretty hearty. I and the reſt of the Men went down; and on *Monday* he came down after us to *Southgate.* I aſked him, How he got down, and if he came to work? He ſaid, I don't doubt but I ſhall, in Grace of God. I got him ſome Mutton, and made Broth of it; and he endeavoured to work, but was very little able, and did nothing that Day. The next Day he came to work, and plained three Boards; and then ſaid, he could not work any longer. I aſked him, What he would have? Give me, ſays he, a Dram of Geneva, or Brandy, one of which they got; and laid him down, and threw their Clothes over him. I aſked him, if he could eat any thing? He ſaid, He believed he could eat ſome Bacon; but when it came, he could not touch a Bit. I ſaid, Can you eat any thing elſe? He ſaid,

No,

No, nothing. I then ſpoke to the Woman of the Houſe to get him Sugar-ſops, which ſhe did; but it did him no good; he grew worſe and worſe. I aſked him, if I ſhould ſend to the Apothecary? He ſaid, No: He attempted to come up, but could not. On *Saturday* Night I came to *London*; I aſked him, if I ſhould leave any thing? He ſaid, No; but deſired his Siſter might be ſent for; and I think I ſent for her, and my Son, *Thomas*, ſent for the Apothecary. And when I came back on the *Monday* he was worſe, and the People were uneaſy with me for bringing a ſick Man; ſo I got the Man, that carried my Timber, to bring him to *London*; and he was put into the Hoſpital; and on the 25th or 26th of *March* he died.

Mr. *Marſh.* Was you with him in the Hoſpital?

Mr. *Cowley.* Hearing he was abuſed, I went to ſee him. He had Holes in his Legs when he came down to me; and his Words were, Maſter, that Rogue, *Acton*, and thoſe other Rogues, are the Death of me; this was about a Month before he died.

Mr. *Marſh.* How long was he with you in the Country?

Mr. *Cowley.* About nine Days.

Mr. *Marſh.* Did he complain of any thing?—Mr. *Cowley.* About a Month before he died, he complained for a Week together.

Mr. Baron *Carter.* Did the Deceaſed complain of his Side?

Mr. *Cowley.* He told me, that they took and held him by the Legs, and his Head knocked on the Ground; and kept him chained in Irons.

Mr. Baron *Carter.* Did he complain of his Side?

Mr. *Cowley.* He complained of inward Bruiſes.

William Cowley, junior, *ſworn.*

Mr. *Marſh.* Acquaint my Lord with what you know of *Bliſs*.

Mr. *Cowley.* After he came out of Priſon he come to ſee for me at my Lodgings.

Mr. *Marſh.* Don't tell all you know in your Life-time.

Mr. *Cowley.* When *Bliſs* came to ſee for me, I met him in *Crooked Lane*, and aſked him, How he did? He ſaid, as well as can be expected; for the Bruiſes I have received from thoſe Rogues I ſhall never recover.

Mr. Baron *Carter.* Did you ſee his Legs?

Mr. *Cowley.* Yes, and they were black, blue, and yellow, about the Calf. When he came to *Southgate*, I aſked him then how he did; he ſaid as well as can be expected; for I have got thoſe Bruiſes I ſhall never recover.

Mr. *Marſh.* Tell how he was at *Southgate?*

Mr. *Cowley.* After he had done Work, he went up to Bed, and ſaid, I hope I ſhall do well; and putting his Hand to his Breaſt, ſaid he was very ſore. After he began to work, he fainted. We had a Fire made, and laid him down, and aſked him if he could eat; he ſaid if we could get him ſome Bacon; but when it came he could not touch it. Then we got him ſome Bread and Ale, and he could but juſt take it down, and brought it up again, and complained of Pains. He was afterwards blooded, and the Blood was of all Manner of Colours, and mighty watery.

Mr. *Marſh.* Did you ſee any Marks but in his Legs?---Mr. *Cowley.* He ſaid thoſe Rogues had given him Bruiſes he ſhould never recover.

Mr. *Marſh.* Did he name any body?

Mr. *Cowley.* Yes, he named *Acton*, and a little Fellow he had ſhewn to me when at the Gaol.

Mr. Baron *Carter.* When he was going away, what did he complain of?

Mr. *Cowley.* He ſaid, I ſhall never overcome the Blows received by theſe Villains; and I muſt lay my Death to *Acton* and thoſe Rogues.

Samuel Parker *was ſworn.*

Mr. *Marſh.* Did you know *Thomas Bliſs?*

Mr. *Parker.* I knew *Thomas Bliſs* when he came out of Gaol; I ſaw him come down to *Southgate* to work, but he was fitter to go to Bed. He worked with me, and lay down on the Bench ſeven or eight times.

Mr. *Marſh.* Did he complain?

Mr. *Parker.* He complained of his Stomach and Legs, and ſaid that his Stomach was beat to a great Degree, and that *Acton* had put on Irons on his Legs, (which extended them a Yard) and put on an Iron on his Head, Thumb-ſcrews on his Thumbs, ſo that the Blood guſhed out at the End of his Thumbs.

Mr. *Marſh.* Did you ſee his Legs?

Mr. *Parker.* Yes; they were ſwelled ſo, that he was forced to wear old Slippers; and they looked of many Colours; and there was a Hole in one of them big enough to put your Thumb in.

Mr. *Marſh.* What Condition was he in?

Mr. *Parker.* In a very weak Condition, not fit to work.

Mr. *Marſh.* How long did he work?

Mr. *Parker.* About a Quarter of an Hour, and then ſaid, Maſter, I can't work any more; he then laid down, and they made a Fire for him.

Mr. *Marſh.* Had he any Apprehenſion of Death?

Mr. *Parker.* He ſaid, that the Bruiſes and the Blows he had received were the Occaſion of his Death, and he ſhould never recover them, and hoped ſome good Perſon or other would proſecute them for it.

Mr. Baron *Carter.* Now, you have heard the Charge againſt you, by ſixteen Witneſſes, you ſtand upon your Defence.

Mr. *Acton.* Notwithſtanding what the People have ſwore againſt me, I hope to make it appear that I am innocent.

Thomas Bliſs, was a Priſoner in *December* 1725, and he attempted to eſcape by a Rope, to get over a Houſe; but ſome People ſeeing him, he fell off the Houſe on the other Side, which is twenty-four Feet high: I went round, and found him lying on the Ground; I took him up by the Arm, and aſked him the Reaſon why he did ſo; he ſaid, he was poor, and he could not get out, without Somebody would aſſiſt him: I put him into the ſick Ward, to be taken Care of, and allowed him Two-pence per Day; and had a Surgeon to bathe his Leg, which he had hurt in the Fall. He continued in Cuſtody, and continued in the ſick Ward only till his Leg was well, and then went into the Pump Ward, where he was choſe Conſtable, but for ſome Miſdemeanor was turned out; it was for cheating the other Priſoners of the Ward. After he was diſcharged, he continued three Weeks at one *Greſham*'s near the *Marſhalſea* Gate, and was ſuddled ſeveral Days. He went into the Country and came up again, and ſaid he had catched Cold, was put into the Hoſpital, and there died of a Fever. My Lord, ſince his Fall, he never had any Irons on, and he lived near twelve Months after. I have ſeveral Witneſſes ready to prove thoſe Facts, which I will call.

Samuel Bullock *was ſworn.*

Mr. *Acton.* Give an Account of what Uſage *Bliſs* had in the Priſon.

Mr. *Bul.* (*After making a long Pauſe.*) My Lord, I may be a little ſtartled, having never been before ſuch an Audience before, therefore deſire a little time to recover myſelf.

Mr. Baron *Carter.* You muſt propoſe what Queſtions you would have aſked, to the Court.

Mr. *Acton.* Pleaſe to aſk, my Lord, if *Bliſs* was on the Top of the Houſe, and what Uſage he ſaw when he came back.

Mr. *Bul.* In *March* 1725, or 1726, I went to ſee Mr. *Acton*, and there was an Out-cry He was here, he was there; and *Acton* went into *Axe and Bottle Yard*, and brought *Bliſs* along with him. I ſaw no Barbarity uſed, but ſaw ſome of them ſtrike him.

Mr. *Acton.* Pleaſe to aſk, if he ſaw any Irons on.

Mr. Baron *Carter.* What ſay you to that?

Mr. *Bul.* I ſaw no Irons on. He continued with Mr. *Acton* till he was confined in the ſick Ward, and a Friend and myſelf gave a Shilling a-piece, becauſe he complained he was deſtitute, and had no Suſtenance.

Mr. *Acton.* My Lord, pleaſe to aſk, if he did not complain of his Legs and Back by the Fall.

Mr. *Bul.* I ſaw him in a miſerable Condition.

Mr. Baron *Carter.* The Queſtion was, if he did not complain of his Leg and Back by the Fall?

Mr. *Bul.* He complained of his Ankle and his Side.

Mr. *Acton.* Pleaſe to aſk, my Lord, if there was any Irons on ſhould he have ſeen them.

Mr. Baron *Carter.* I think that Queſtion will not be ſo much for your Service; you may have it aſked if you pleaſe.

Robert Holmes *was ſworn.*

Mr. *Acton.* Pleaſe to aſk him, my Lord, whether he remembers the Eſcape of *Bliſs*, and when.

Mr. *Holmes.* I know of *Bliſs*'s breaking out into *Axe and Bottle Yard*, and ſaw *Acton* and *Rogers* bring him into the Priſon, ſupporting him upon their Shoulders.

Mr. *Acton.* Pleaſe to aſk, if he had any Irons on, or Abuſe given him.

Mr. *Holmes.* He had no Irons on, no Abuſe given.

Mr. *Acton.* What did he complain of?

Mr. *Holmes.* He only complained of his Legs.

Mr. *Acton.* Where did he go after he was diſcharged?

Mr. *Holmes.* He went and lodged at one *Greſham*'s, and I drank with him very often in an Evening, and he and I took a Walk together, and he then declared to me, that *Acton* had uſed him very well, and if it had not been for him, he muſt have periſhed before he got diſcharged; and when we came back to Mr. *Greſham*'s he told me, he was to go to Work at *Southgate*, which he did, and ſtaid there nine Days; and when he came back, he ſaid he had catched an Ague, and took a Sweat; and two or three Days after that went into St. *Thomas*'s Hoſpital. I met *Bliſs*'s Wife on the Bridge, and ſhe ſaid ———

Mr. *Marſh.* I apprehend what ſhe ſaid cannot be Evidence.

Mr. Baron *Carter.* I tell you how far; ſhe is a good Witneſs to contradict herſelf.

Mr. *Marſh.* You can only call this Witneſs to invalidate her Teſtimony. What did ſhe ſay about her Huſband's Death?

Mr. Baron *Carter.* She has ſaid, the Blows he received from *Acton* were the Occaſion of his Death; and the Witneſs may be aſked to what ſhe ſaid as to that. Did you ſee any Irons upon *Bliſs*, after the Fall from the Houſe?

Mr. *Holmes.* No.

Mr. Baron *Carter.* Was he in the Strong Room?

Mr. *Holmes.* No, he was in the Sick Ward.

Mr. *Acton.* Pleaſe to aſk, my Lord, how long he was in Priſon after he came out of the Sick Ward.

Mr. Baron *Carter.* What ſay you to that Queſtion?

Mr. *Holmes* Seven or eight Months.

Mr. *Acton.* What Condition of Health was he in?

Mr. *Holmes.* Very good.

Mr. *Act.* Pleaſe to aſk, if he ever complained of any thing but his lame Leg.

Mr. *Holmes.* I never heard him complain of any thing elſe. He was at Work ſeveral times in my Room.

Mr. *Ward.* He did complain of one Leg you ſay; did he not complain of both?---Mr. *Holmes.* No, he never did.

Mr. *Harding.* Did you never ſee him ſettered after he attempted to eſcape?

Mr. *Holmes.* No, I never did.

Mr. B. *Carter.* Before he went into the Sick Ward, was he in the Lodge?

Mr. *Holmes.* I came down into the Lodge with him.

Mr. Baron *Carter.* Where was he carried next?

Mr. *Holmes.* He was ſet down there.

Mr. Baron *Carter.* You did not ſee him in the Yard?---Mr. *Holmes.* No.

Mr. Baron *Carter.* The Witneſſes ſay, that he was firſt brought into the Lodge, and there had Irons put on, and then was carried into the Yard, and there it was that all the Witneſſes ſay he was beat.

Mr. *Marſh.* I did not hear that.

Mr. Baron *Carter.* It is ſo ſaid.

Mr. *Marſh.* When did he fall from the Houſe?

Mr. *Holmes.* About ſeven or eight o'Clock at Night.

Mr. *Marſh.* What time of the Year was it?

Mr. *Holmes.* I can't ſay, I believe about *March*.

Mr. Baron *Carter.* Let the Time be whenever it will, it muſt be taken after the Fall off the Houſe.

Mr. *Marſh.* When did he fall?---Mr. *Holmes.* As near as I can gueſs, in *March* next coming, four Years ago.

Mr. *Marſh.* You was ſpeaking of his continuing well when he came out of the Sick Ward; When did he come out?

Mr. *Holmes.* About two Months after *March*.

Mr. *Marſh.* Was you a Priſoner then?

Mr. *Holmes.* No, I was a Priſoner before.

Mr. *Marſh.* You was diſcharged then, and lived in the Priſon?

Mr. *Holmes.* Yes.

Mr. *Marſh.* Had you not the Privilege of the Gate?

Mr. *Holmes.* I was no Priſoner.

Mr. *Marſh.* Had you no Privilege granted you?

Mr.

Mr. *Holmes.* Yes, by Mr. *Darby.* I had the Privilege of lodging in the Priſon; he gave it me *Gratis.*

Mr. *Marſo.* When was you diſcharged?

Mr. *Holmes.* About four Years ſince, by the Act of Inſolvency.

Mrs. Bliſs, *being in Court to confront* Holmes.

Mr. *Acton.* I deſire he may give an Account of the Converſation he had with Mrs. *Bliſs.*

Mr. *Holmes.* I met Mrs. *Bliſs* on *Saffron-hill*, and ſhe told me, ſhe thanked God her Huſband was dead.

Mr. Baron *Carter.* Did ſhe tell you what was the Occaſion of his Death? What did ſhe tell you he died of?

Mr. *Holmes.* That he died of an Ague and Fever in St. *Thomas*'s Hoſpital. I met her on *Tueſday* laſt.

Mrs. *Bliſs.* My Lord, I did meet him on *Tueſday*, but never ſaid any ſuch Words; there was no ſuch Word ſpoke.

Henry Chapman *was ſworn.*

Mr. *Acton.* Don't you remember *Bliſs*'s Attempt to eſcape?

Mr. Baron *Carter.* I would have you take one thing for granted, that he fell off the Houſe; aſk any thing that was the Conſequence of that.

Mr. *Acton.* Pleaſe to aſk him, if he ſaw *Bliſs* after he fell off the Houſe.

Mr. *Chapman.* *Bliſs* was found in the *Axe and Bottle Yard*, and was brought in; he had hurt his Leg, and as ſoon as he came, he was put into the Sick Ward; Dr. *Draper* was ſent for to him, and uſed what Means he thought proper.

Mr. Bar. *Cart.* Tell me, if you ſaw him when he went back to the Lodge?

Mr. *Chapman.* He was carried to the Sick Ward directly. I ſaw nothing of him till he was brought into the Sick Ward.

Mr. *Acton.* My Lord, *Chapman* was not out at all.

Mr Baron *Carter.* *Bliſs* muſt come into the Lodge?

Mr. *Chap.* Yes.

Mr. Baron *Carter.* Where does he go, thro' the Yard to the Lodge?

Mr. *Chap.* I ſaw nothing there; but he was carried to the Sick Ward, and the Doctor was called out of Bed to him.

Mr. *Acton.* I deſire he may be aſked, whether I did not order the Doctor to come to him, and let him have Three-pence *per* Day while he was Sick.

Mr. *Chap.* Yes.

Mr. Baron *Carter.* How long did he continue in the Sick Ward?

Mr. *Chapman.* I can't tell how long.

Mr. *Acton.* Pleaſe to aſk him, if he don't remember *Bliſs*'s being Conſtable of the Pump Ward, and drawing Garniſhes for his Fellow-Priſoners.

Mr. *Chap.* Yes, I do remember it very well.

Mr. *Acton.* What Condition was *Bliſs* in when he was brought out of the Sick Ward?

Mr. *Chap.* He was healthful, but complained of the Hurt of his Leg.

Mr. *Acton.* Did you ever ſee any Irons on him?---Mr. *Chap.* No.

Mr. *Acton.* Did you ſee him in the Strong Room?---Mr. *Chap.* No.

Mr. *Acton.* Pleaſe to aſk, my Lord, if he did not uſually ſee *Bliſs* every Day.

Mr. *Chap.* I ſaw him frequently.

Mr. *Acton.* Did you ever hear him complain of having Irons on?

Mr. *Chap.* No; but he deſired me to make Intereſt to get him the Charity Money, to get him out of the Gaol.

Mr. *Acton.* Pleaſe to aſk, if he did not go with *Bliſs* into the Sick Ward, and if I ſtamped upon his Breaſt. How long did he continue in Health after he came out of the Sick Ward?

Mr. *Chap.* It was, to the beſt of my Memory——

Mr. *Strange.* Was it a great or a little while?

Mr. *Chap.* It was a conſiderable Time; but I can't be certain.

Mr. *Acton.* Pleaſe to aſk, whether he never ſaw *Bliſs* at Mr. *Greſham*'s.

Mr. *Chap.* I drank with him there.

Mr. *Acton.* How was he in Health there?

Mr. *Chap.* He was well in Health; and he ſaid himſelf, he was as well as ever he was in his Life.

Mr. Bar. *Carter.* Who is *Greſham?*

Mr. *Chap.* He keeps the *Dolphin* Ale-houſe, at the Gaol Door.

Mr. Baron *Carter.* You ſaw him when he came from *Southgate*; tell me whether he was well in Health then?

Mr. *Chap.* He was well then; but he complained of a Stitch in his Side, and that he had an Ailment, and that Work did not agree with him.

Mr. Baron *Carter.* Was he well in Health then?

Mr. *Chap.* He was well in Health, but wiſhed to get into the Hoſpital.

Mr. Baron *Carter.* Did he complain of any ill Uſage of *Acton?*

Mr. *Chap.* Never in his Life.

Mr. *Acton.* Be pleaſed, my Lord, to aſk him as to the Strong Room; whether if he was to be locked up, he would not rather chooſe to be locked up there, than in the Wards.

Mr. *Chap.* Yes.

Mr. *Acton.* Whether Priſoners have not choſe to lye there, rather than in any other Room?

Mr. *Chap.* I have heard ſeveral People requeſt it.

Mr. *Acton.* Is there any common Sewer runs under the Strong Room?

Mr. *Chap.* No.

Mr. *Marſh.* You ſay, there is no common Sewer under the Strong Room?

Mr. *Chap.* I am ſure of it.

Mr. *Marſh.* Have you no Place or Office in the Gaol?

Mr. *Chap.* I draw Beer for Twelve-pence a Barrel, which Mr. *Halſey* gives me; and Victuals and Drink from Mr. *Wilſon*, and ſince he died, from Mr. *Acton.*

Mr. *Marſh* What *Halſey?*---Mr. *Chap.* *Halſey* the Brewer.

Mr. *Ward.* You ſay, you heard *Bliſs* complain after he was at *Southgate*; What did he complain of?

Mr. *Chap.* He did complain of his Legs ſwelling, and other Pains, and wiſhed to be in the Hoſpital.

Thomas Fletcher, *Surgeon, was ſworn.*

Mr. *Acton.* Mr. *Fletcher*, pray tell the Court, after *Bliſs* fell from the Houſe, whether you looked after him in the Sick Ward.

Mr. *Fletcher.* I viſited People in the Sick Ward, and the Deceaſed asked me to look at his Leg; I did look upon it, and ſaw a large Tumour, and uſed the beſt Means I could. I went to my own Ward, and got ſome Oils, and uſed them firſt, and then applied a Plaiſter. I often asked him where his Pain was? He ſaid, he felt no Pains but in that Part. In about fourteen Days time I took off that Plaiſter, and put on another, and then he was removed into another Ward. I was then releaſed, but I went to ſee him now and then; and in the Month of *February* or *March* following, I aſked him how he did? He had either a Rule or Stick in his Hand, and pointed to his Ankle, and ſaid he ſhould never be well as long as he lived. I afterwards met him in *Weſtminſter-Hall*, and he told me, that he was releaſed by ſome Charity Money, thro' Mr *Acton*'s Means.

Mr. Baron *Carter.* Who was the Occaſion of his being let out?

Mr. *Fletcher.* He always gave *Acton* a good Word; and ſaid, he was releaſed by a Gentleman coming there with Charity-Money.

Mr. *Acton.* I deſire, my Lord, he may be aſked, if he (*Bliſs*) had any Irons on.

Mr. *Fletcher.* I never ſaw him with Irons on.

Mr. Baron *Carter.* When he came out of that Room, and was put into the Sick Ward, had he any Irons on then.

Mr. *Fletcher.* He had no Irons on.

Mr. *Acton.* Pleaſe to aſk, if there was any Bedding.

Mr. *Fletcher.* I ſaw ſome Bedding, and aſked who lay There. They did not tell me the particular Man, but told me a Gentleman.

Mr. *Acton.* Pleaſe to ask him, as to the Strong Room, if it was damp.

Mr. *Fletcher.* I do not think it was any ways damp.

Mr. *Ward.* You ſay, there was a great Swelling upon one of his Legs; Was it not eat into?---Mr. *Fletcher.* No.

Mr. *Acton.* Pleaſe to ask, if there was any Contuſion of the other Leg.

Mr. *Fletcher.* There was not.

Mr. *Acton.* Did you ever ſee *Bliſs* in Irons?

Mr. *Fletcher.* I have ſeen him with Fetters on.

Mr *Trigg.* Do you remember the Time of *Bliſs*'s making his Eſcape?

Mr. *Fletcher.* Yes.

Mr. *Trigg.* Were there other People put in Irons?

Mr. *Acton.* I deſire he may be aſked, whether he ever ſaw *Bliſs* in Irons, after his laſt Attempt to eſcape.---Mr. *Fletcher.* I did not.

Mr. Baron *Carter.* What was *Acton*'s Behavour to the Priſoners, according to your Obſervations.

Mr. *Fletcher.* I never ſaw him appear otherwiſe than very handſome, and very well to them.

Thomas Whitford *was ſworn.*

Mr. *Acton.* I deſire, my Lord, he may be aſked, if *Bliſs* did not attempt to eſcape.

Mr. Baron *Carter.* It is agreed.——Tell me how he was after his Fall off the Houſe.

Mr. *Whitford.* I ſaw him in Priſon.

Mr. Baron *Carter.* Tell me how he was.

Mr. *Whitford.* From *October* to *February* (I was diſcharged the ſame Day) he was as well as ever.

Mr. *Acton.* Pleaſe to ask, what he ſaid in relation to me.

Mr. *Whitford.* He (*Bliſs*) ſaid, that if it had not been for *Acton*, he ſhould not have got out of Priſon; and he himſelf had ſpoke reſpectfully of him, and ſo had his Wife.

Mr. *Acton.* Did you go to Mrs. *Bliſs?*

Mr. *Whitford.* I went to Mrs. *Bliſs*, in the Alehouſe, where ſhe lived; and ſhe deſired I would take no notice that her Huſband was dead; and told me, he went into the Country to work, and there catched Cold, and was carried into the Hoſpital, and died of it; which was thought the Occaſion of his Death.

Mr. *Acton.* What do you think of the Strong Room?

Mr. *Whitford.* It is a Strong Room, but the beſt Room on the Common Side of the Gaol.

Mr. Baron *Carter.* Do you ſay, it is the beſt Room on the Common Side?---Mr. *Whitford.* Yes, for Wholeſomeneſs and Cleanneſs.

Mr. *Acton.* Pleaſe to aſk, what was my general Behaviour to the reſt of the Priſoners.

Mr. *Whitford.* I never ſaw you ſtrike a Man.

Mr. *Acton.* What was my Character among them?

Mr. *Whitford.* You had a very good Character; you gave Victuals to them every Week.

Robert Walter *was ſworn.*

Mr. *Acton.* Did you ever ſee me miſuſe *Bliſs?*

Mr. *Walter.* *Bliſs* was never uſed ill by you.

Mr. *Acton.* Had he any Irons on?---Mr. *Walter.* No.

Mr. *Acton.* Did he make any Complaint? Was I there?

Mr. Baron *Carter.* I remember the Queſtion when *Huggins* was tried; it was aſked then, if he was there or not? You know I adviſed *Huggins* againſt anſwering it (*ſpeaking to Mr.* Strange). What Condition of Health was *Bliſs* in after his Fall?

Mr. *Walter.* In a ſmall Proceſs of Time he walked about the Gaol as well as I did, and ſpoke hearty.

Mr. Baron *Carter.* Did you hear *Bliſs* ſay any thing of *Acton?*

Mr. *Walter.* Never any thing unhandſome.

Mr. Baron *Carter.* That is not the Queſtion. Have you heard him ſay any thing about *Acton?*

Mr. *Walter.* I have heard him ſpeak in praiſe of him.

John Chope *was ſworn.*

Mr. *Acton.* Pleaſe to ask, my Lord, what State of Health *Bliſs* was in.

Mr. Baron *Carter.* Did you ſee *Bliſs?* What Condition was he in after his Fall?

Mr. *Chope.* He was in very good Condition. About *February* I eat and drank with him out of the Place at *Greſham*'s, and he was in good Health then, and talked of going into the Country to work.

Mr. Baron *Carter.* What did he complain of?---Mr. *Chope.* Nothing.

Mr. Bar. *Cart.* Did you ſee him when he came back from the Country?

Mr. *Chope.* I did; and he ſaid, the Country Air did not agree with him.

Mr. Bar. *Cart.* Did you ever hear him complain of the ill Uſage of *Acton?*

Mr. *Chope.* No, his Wife told me——

Mr. Baron *Carter.* I muſt not hear you tell any thing of her, but what may contradict what ſhe (*Bliſs*) ſaid. Pray, what did you hear Mrs. *Bliſs* ſay, in relation to her Huſband's Death?---Mr. *Chope.* Nothing.

William Bolland *was ſworn.*

Mr. Baron *Carter.* What have you to ſay? Do you know of *Bliſs*'s breaking out?---Mr. *Bolland.* I ſaw him after it.

Mr. Baron *Carter*. What did he complain of?
Mr. *Belland*. Only of hurting one Leg.
Mr. *Acton*. Pleaſe, my Lord, to aſk, how he was in Health.
Mr. *Bol*. In as good as I am.
Mr. *Acton*. Did you eat and drink with him?
Mr. *Bol*. Often, at one *Greſham*'s.
Mr. *Acton*. Pleaſe o aſk, if he did not fetch Bread.
Mr. Baron *Carter*. What ſignifies that, I don't ſee how it affects you one way or the other. Did you ſee him after he was out of Cuſtody?
Mr. *Bol*. Yes, I ſaw him at *Greſham*'s; and I met his Wife on *Tueſday* laſt, and aſked her to drink ſome Gin.
Mr. Baron *Carter*. I muſt not let you go on ſo.—What did he *(Bliſs)* ſay of the Priſoner?--- Mr. *Bol*. That he was very civil and kind to him.
Mr. *Ward*. Did Mrs. *Bliſs* tell you what her Huſband died of?
Mr. *Bol*. She ſaid, ſhe believed he died of an Ague and Fever.
Mr. *Ward*. Did you ſee his Legs after he fell?
Mr. *Bol*. Yes, both, and one of them was ſwelled.
Mr. *Ward*. You are ſure both were not ſwelled.
Mr. *Bol*. No, only one.
Mr. Baron *Carter*. What is that he ſays?
Mr. *Strange*. Repeat the Anſwer to my Lord.
Mr. *Bol*. I ſaw only one of his Legs ſwelled.

John Weſtby *was ſworn*.

Mr. *Acton*. How was *Bliſs* in Health, after the ſecond Attempt to eſcape?
Mr. *Weſtby*. I ſaw him the Night he was brought in.
Mr. Baron *Carter*. Did he complain of one or both Legs?
Mr. *Weſtby*. One only.
Mr. Baron *Carter*. What Health was he in?
Mr. *Weſtby*. He was in the Sick Ward, and I don't apprehend he wanted Health; he was only lame.
Mr. Baron *Carter*. What did *Bliſs* ſay was the Occaſion of his Death?
Mr. *Weſtby*. His Wife told me, he was at *Southgate* at Work four or five Days, and he came home on the *Sunday* following; and his Wife ſaid, he was very well, but the Country was too cold for him; but he went back the Week following, and ſhe ſaid, he worked a Day, or a Day and Half, but the Country was ſo cold he could not bear it. I did not ſee her after his Death.
Mr. Baron *Carter*. What did Mrs. *Bliſs* ſay?—Mr. *Weſtby*. That he had caught Cold, which ſhe took to be the Cauſe of his Illneſs.

Chriſtian Fandy *was ſworn*.

Mr. Baron *Carter*. Did you ſee *Bliſs* after the Fall from the Houſe?
Mr. *Fandy*. He lay by me four Months in the Queen's Ward.
Mr. Baron *Carter*. The Queen's Ward?
Mr. *Acton*. He was removed from the Sick Ward to the Queen's.
Mr. Baron *Carter*. What Health was he in? Did he make any Complaint?
Mr. *Fandy*. I never heard him make any Complaint, but of his Ankle.
Mr. Baron *Carter*. Did he complain only of one Leg?
Mr. *Fandy*. It muſt be one Leg. He could not lye down at Nights; and the other Leg was only ſwelled.
Mr. Baron *Carter*. Did you ſee him at the *Dolphin?*
Mr. *Fandy*. I did ſeveral Times.
Mr. Baron *Carter*. Did he complain of any thing at his coming out of the Gaol?
Mr. *Fandy*. He deſired me to lend him Half a Guinea, and he would go to Work.
Mr. *Acton*. Be pleaſed, my Lord, to aſk, if he ſaw him in the Hoſpital.
Mr. Baron *Carter*. What ſay you to that?
Mr. *Fandy*. Mrs. *Bliſs* told me her Huſband was gone to the Hoſpital; and I went into the Hoſpital to him, and aſked him how he came there? He ſaid, he was at work in the Country, and pulled off his Waiſtcoat, and catched Cold.
Mr. Baron *Carter*. What was the Priſoner's general Behaviour?
Mr. *Fandy*. I had been there ten Months, and never ſaw any Harm done to any Priſoner in that Time.

Heſter Long *was ſworn*.

Mr. *Acton*. I deſire, my Lord, ſhe may be aſked, if ſhe ſaw *Bliſs* after he came out of Priſon.
Mr. Baron *Carter*. What ſay you to that?
Mrs. *Long*. I ſtaid at the *Dolphin* Ale-houſe to drink when he came out, and I wiſhed him well of being out; he thanked me, and ſaid it was owing to Mr. *Acton*; and ſaid, God bleſs him, he got me out. I aſked him, If he was arreſted again, what he would do? he ſaid, *Acton* would ſtand by him. Mrs. *Bliſs*, my Siſter-in-law, came there, and ſhe ſaid, that he was as well as ever in his Life; and on the *Saturday* Se'nnight after, he came to my Houſe, in *Eaſt-Smithfield*, and ſaid to his Wife, Go home to Dinner, for I muſt go to Mr. *Cowley*, for I have ſeven Shillings and Six-pence to take of him for Wages; and afterwards I ſaw him in the Hoſpital.
Mr. Baron *Carter*. What was the matter with him?
Mrs. *Long*. Mrs. *Bliſs* deſired to lodge with me; which ſhe did, and ſhe told me, her Huſband wanted to ſee me; and when I went to him, he ſaid, Siſter, I am going to leave the World: I ſaid, it was only going a little before me.
Mr. Baron *Carter*. Pray tell whether he made any Complaint to you of any thing?———Mrs. *Long*. No.
Mr. Baron *Carter*. What Diſtemper did he die of in the Hoſpital?
Mrs. *Long*. He ſaid no more, than that he catched Cold at *Southgate*.
Mr. *Acton*. I deſire, ſhe may be aſked, what ſhe heard Mrs. *Bliſs* talk about any Money ſhe was to have in this Proſecution, and from whom.
Mr. Baron *Carter*. Anſwer that Queſtion.
Mrs. *Long*. I never heard no more talk till within theſe four Months; and then a Meſſenger came, and ſaid, there was Money for Mrs. *Bliſs* in *Southwark*; and when ſhe went there, the Gentleman was not at home; and when ſhe came back, ſhe ſaid, ſhe ſhould have thirty or forty Shillings. I aſked for what? She ſaid upon account of going to ſwear againſt Mr. *Acton*.
Mr. *Acton*. Pleaſe to aſk, whether Somebody gave her any Cloaths, and who.
Mrs. *Long*. The next Day after, ſhe gave out, that ſhe was to go to ſome Gentleman; and I aſked to whom? She ſaid, to the Committee, and ſhe ſhould have forty or fifty Pounds; and when ſhe came home, I ſaid, *Nanny*, I hope you will not be ſo fooliſh to go to take away the Life of a Man for forty or fifty Pounds. After that ſhe went to Service.

Mr. *Acton*. Did you not ſee *Bliſs* and her Brother together, and what was the Converſation?
Mrs. *Long*. I ſaid *Anne Bliſs* and her Brother together, and he cautioned her to take care what ſhe did; and ſhe ſaid ſhe was to have forty or fifty Guineas; and he ſaid, Make it up; if you go to *Acton*, he will give you a couple of Guineas; and ſhe ſaid ſhe could not go, for her Maſter ſaid ſhe ſhould take a hundred Pounds. She *(Bliſs)* came and ſaid, ſome time after, ſhe had two Guineas given her by one of the Gentlemen of the Committee, and that ſhe did go and live with him in an Alley by *Little Moor Fields*.
Mr. Baron *Carter*. You talk faſter than I can take Notes of what you ſay; you have no Occaſion to talk ſo much. Who did did you ſay, ſhe ſaid, ſhe went to live with?
Mrs. *Long*. One of the Committee.
Mr. *Oglethorpe*. My Lord, with humble Submiſſion, I deſire leave to ſpeak.
Mr. Baron *Carter*. Sir, you may.
Mr. *Oglethorpe*. Then, my Lord, I deſire this Matter may be thoroughly ſifted, and the Evidences may be confronted.

(Upon which Mrs. Bliſs *was called to* confront *Heſter Long.)*

Mrs. *Bliſs*. When I went to my Siſter *Long*, ſhe ſaid, ſhe would have me conſider, not to be ruled by Mr. *Newland*, and if I would, ſhe could go to Mr. *Acton* and make it up, and he would give me ſomething: I told her, ſhe never liked my Huſband, and Mr. *Jennings* would not forgive me, if I made up my Huſband's Death; and ſhe *(Long)* ſaid again, her Huſband would not forgive me, and wondered how I could pretend to go. I told her after that, my Maſter *Jennings* had lent me two Guineas, and deſired the Gentleman, where I went to live, that he would ſee the Money laid out; and gave the Gentleman the Money with his own Hands, and his Wife laid it out for me.
Mr. Baron *Carter*. Did you not ſay, that you was to have forty or fifty Pounds?
Mrs. *Bliſs*. I ſaid no ſuch thing.
Mrs. *Long*. The Perſon that came from *Newland* ſaid, it would be a great deal in her way.
Mr. *Oglethorpe*. I deſire ſhe may be aſked, who that Perſon was, and whether he was one of the Committee.
Mr. Baron *Carter*. Who was Mr. *Newland?*
Mrs. *Long*. A Baker in *Southwark*.
Mr. Baron *Carter*. Mrs. *Bliſs*, I aſk you, whether you ſaid, that Mr. *Jennings* told you, that you ſhould not take 100*l*.
Mrs. *Bliſs*. He ſaid, if they were to offer me 100*l*. I ſhould not take it, not to do Juſtice to my Huſband.
Mr. Baron *Carter*. How came you to leave *Jennings*'s Service?
Mrs. *Bliſs*. There were ſo many came flocking up and down after me, that I could not live with him. There came two Gentlemen laſt *Sunday*.
Mr. *Richardſon*. You ſay you could not live with your Maſter, becauſe ſo many people came after you. Who did they come from?
Mrs. *Bliſs*. They ſaid they came from *Acton*.
Mr. Baron *Carter*. What they ſaid is no Evidence.
Mr. *Oglethrope*. My Lord, I muſt with all humble Submiſſion beg leave to ſpeak. Reputation is a very valuable Thing; and here is an Aſperſion thrown out at random againſt a Member of a Committee, which may affect the Characters of ſeveral Gentlemen who are not here preſent.
Mr. Baron *Carter*. There are many Committees, and I ſhould have taken notice if any thing had been ſaid of any Committee of the Houſe of Commons.
Mr. *Oglethorpe*. There are many Committees, as your Lordſhip ſays; there is one of Aldermen, there was alſo another, which I find is not forgot. I would have them explain what Committee they mean; the Charge is a very heavy one, no leſs than Subornation of Perjury, and this founded on a Hearſay, ſo as to render it impoſſible for any Perſons to juſtify themſelves; I therefore deſire this may be ſtrictly examined into, and inſiſt upon knowing who this Perſon was, and his Name.
Mr. Baron *Carter*. Was there any Name mentioned?
Mrs. *Long*. She ſaid, one of the Committee, and the Committee's Spouſe was to lay out the Money for Cloaths.
Mr. *Richardſon*. I aſk you, whether or no ſhe ſaid ſhe was to have two Guineas from *Jennings*, or any one elſe?
Mrs. *Long*. From Nobody but Mr. *Jennings*.

Robert Cole *was ſworn*,

Mr. *Acton*. My Lord, pleaſe to aſk *Robert Cole* if I gave *Bliſs* Money?
Mr. *Cole*. Some time after the Committee met they had ſat once or twice, I met Mrs. *Bliſs* on *London-Bridge*, and aſked her, if ſhe had been with the Committee or *Acton*. She ſaid, No; but if *Acton* would give her five Pounds, ſhe would not mention any thing of her Huſband's Death.
Mr. Baron *Carter*. How long was this before *Acton* was taken up?
Mr. *Cole*. About three Weeks; I can't be certain.
Mrs. *Bliſs*. I ſaid no ſuch Thing.
Mr. *Richardſon*. Are you ſubpœna'd?-----Mr. *Cole*. No.
Mr. *Richardſon*. How came you here, if not ſubpœna'd?
Mr. *Cole*. Hearing Mr. *Acton* was to be tried.
Mr. *Richardſon*. How did you know he was to be tried?
Mr. *Cole*. I heard it by being in the *Marſhalſea* as a Priſoner.

Thomas Rogers *was ſworn*.

Mr. *Acton*. What Uſage did *Bliſs* receive after he fell off the Houſe at the *Marſhalſea?*
Mr. *Rogers*. His Ankle was ſwelled as big as his Calf.
Mr. *Acton*. I deſire he may be aſked, how the other Leg was.
Mr. Baron *Carter*. What ſay you to that?——Mr. *Rogers*. As uſual.
Mr. *Acton*. I beg he may be aſked, whether he was with *Bliſs* when he was brought into the Lodge?
Mr. *Rogers*. Mr. *Acton* and I ſupported him.
Mr. Baron *Carter*. This Man was accuſed of beating *Bliſs*; I will not preſs the Thing upon him to affect himſelf.
Mr. Serj. *Baynes*. If he thinks himſelf innocent, he may be voluntarily a Witneſs, though he could not be obliged to it.
Mr. Baron *Carter*. He may be a Witneſs; but don't let me lead him into any thing that may injure himſelf.
Mr. *Acton*. I deſire then he may may be aſked, if he ſaw *Bliſs* in the Sick Ward?

Mr. *Rogers*. I did; and Mr. *Acton* ſent for a Surgeon into the Sick Ward to bathe his Leg.

Mr. *Acton*. I deſire he may be aſked, if he was put in Irons.

Mr. *Rogers*. He was not.

Mr. *Acton*. Was you by there all the while?—Mr. *Rogers*. I was.

Mr. *Acton*. I deſire he may be aſked, if he continued a Priſoner after *Bliſs* was diſcharged.———Mr. *Rogers*. I did.

Mr. *Ward*. You are aſking too many Queſtions.

Mr. *Acton*. I deſire he may be aſked, if he ever ſaw him after he was diſcharged.

Mr. *Rogers*. I did ſee him, and drank with him; and he was very merry and well.

Mr. *Acton*. *Rogers*, my Lord, was in the Gaol; I beg he may be aſked, if the Iron Cap was ever made uſe of?

Mr. Baron *Carter*. That is a proper Queſtion. Did you ever know that it was made uſe of?

Mr. *Rogers*. I ſaw it there in *Burleigh*'s Time, and never ſaw it uſed from that Time to the Time of my Diſcharge; it hung up.

Mr. *Ward*. I aſk you, whether you never ſaw *Bliſs* beat with a Bull's-pizzle, or Rope?——Mr. *Rogers*. I never ſaw him beat at all.

(*Mr.* Baugh *was ſworn.*)

Mr. *Acton*. I deſire Mr. *Baugh* may be examined (he has belonged to this Court many Years), whether he has not ſeen ſuch an Inſtrument uſed in burning Felons in the Cheek.

Mr. *Baugh*. I have ſeen ſuch an Inſtrument uſed to burn People in the Cheek.

(John Grace *was ſworn.*)

Mr. *Acton*. I deſire he may be aſked, whether the Iron Cap was not in the Priſon before I came.

Mr. *Grace*. My Lord, I remember the *Marſhalſea* Priſon above a Year before Mr. *Acton* knew it; and the Iron Cap hung up there, and I enquired the Uſe of it. There was an Act in King *William*'s Time for burning Felons in the Cheek; and it was uſed for that Purpoſe; and that was the County Gaol, till within theſe five Years and an Half.

Mr. *Acton*. Pleaſe to aſk if there were not Irons left behind?

Mr. *Grace*. Theſe Irons were.

Mr. *Ward*. How do you know?

Mr. *Grace*. I was Clerk of the Papers five Years.

Mr. *Acton*. Pleaſe to aſk if there was not an Inventory left.

Mr. *Grace*. When *Burleigh* left the Gaol, there was an Inventory.

(John Boſwell *was ſworn.*)

Mr. Baron *Carter*. Did you ſee *Bliſs* after his Fall?

Mr. *Boſwell*. I ſaw *Bliſs* brought in: I was in the Lodge at that Time, and *Acton* had him to the Sick Ward, and had a Surgeon to bleed him, and ſent for Ointment to anoint him.

Mr. Baron *Carter*. Where was he hurt?

Mr. *Boſwell*. It was the Small of both his Legs.

Mr. Baron *Carter*. Did he complain of both Legs being hurt with the Fall off the Houſe?

Mr. *Boſwell*. He did; it was twenty-four Feet high.

Mr. *Ward*. Was he dreſſed of both his Legs?——Mr. *Boſwell*. Yes.

Mr. *Ward*. Whether the Deceaſed, before he went into the Sick Ward, had any Irons or Thumb-ſcrews on him?——Mr. *Boſwell*. No.

Mr. Baron *Carter*. Did you ſee him carried through the Lodge into the Sick Ward?——Mr. *Boſwell*. Yes.

Mr. Baron *Carter*. What way was he carried?

Mr. *Boſwell*. Croſs the Yard.

Mr. Baron *Carter*. How long was he in the Sick Ward?

Mr. *Boſwell*. Two Months.

Mr. Baron *Carter*. Where was he afterwards?

Mr. *Boſwell*. In the Queen's Ward.

Mr. Baron *Carter*. Did he go out of the Sick Ward into the Queen's Ward?

Mr. *Boſwell*. He went into another Ward before?

Mr. Baron *Carter*. Was it the Pump Ward?

Mr. *Boſwell*. Yes; he went into the Pump Ward.

Mr. Baron *Carter*. Did any one meddle with him when he went croſs the Yard?—Mr. *Boſwell*. Nobody.

Mr. *Acton*. Pleaſe to aſk, my Lord, how he was in Health after he was abroad.

Mr. *Boſwell*. He lay three Weeks next Door to the Gaol, at the *Dolphin*; being very intimate, I aſked him how he did; he ſaid, very well. And he worked for me in the Gaol now and then a Day, when he was able.

Mr. Baron *Carter*. How was he when he was out of the Gaol?

Mr. *Boſwell*. He ſaid he was very well in Health, but his Legs were not quite come to.

Mr. Baron *Carter*. Did he complain of one or both Legs?

Mr. *Boſwell*. Of both.

(Samuel Daveniſh.)

Mr. Baron *Carter*. Did you ſee *Bliſs* after his Fall from the Houſe?

Mr. *Daveniſh*. Yes.

Mr. Baron *Carter*. What State of Health was he in?

Mr. *Daveniſh*. In a good State of Health, only lame of his Foot; I never ſaw any thing otherwiſe.

Mr. Baron *Carter*. Did you ſee him after he was out of Gaol?

Mr. *Daveniſh*. I did, and drank with him at the *Marſhalſea* Gate; he was in very good Health.

Mr. *Acton*. Pleaſe to aſk, if he ever ſaw any Irons upon *Bliſs*.

Mr. Baron *Carter*. You hear the Queſtion, anſwer it.

Mr. *Daveniſh*. No, directly or indirectly.

Mr. Baron *Carter*. Did *Acton* behave himſelf well to his Priſoners?

Mr. *Daveniſh*. He never behaved himſelf indecently to any of the Priſoners.

Mr. Baron *Carter*. Was his Behaviour good or bad?

Mr. *Daveniſh*. Very good; I never ſaw an ill Action of his in my Life.

(Benjamin Brown *was ſworn.*)

Mr. Baron *Carter*. What do you ſay?

Mr. *Brown*. As to what?

Mr. Baron *Carter*. As to *Bliſs*?

Mr. *Brown*. I ſaw *Bliſs* when he fell from the Houſe, and he complained of both Legs; one was worſe than the other.

Mr. Baron *Carter*. What was *Acton*'s Behaviour towards the Priſoners in general?——Mr. *Brown*. Very good.

(John Bowdler *was ſworn.*)

Mr. Baron *Carter*. What do you know of *Bliſs*?

Mr. *Bowdler*. I was in the ſame Ward with him ſeven Months; and he was very hearty and well.

Mr. Baron *Carter*. How was he after the Fall from the Houſe?

Mr. *Bowdler*. He had hurt one Leg by the Fall.

Mr. Baron *Carter*. What was the Priſoner's general Behaviour?

Mr. *Bowdler*. I never had any thing but very good Uſage while I was there, which was three Years and three Months.

Mr. Baron *Carter*. Was the Priſoner there all that Time?

Mr. *Bowdler*. Yes.

(Elizabeth Goſling *was ſworn.*)

Mr. Baron *Carter*. How was *Bliſs* after his Fall, when he was brought into Priſon?

Mrs. *Goſling*. He had ſprained one of his Ankles, and was carried into the Sick Ward for three Months; he lived at my Houſe, and ſaid, he was as hearty as ever in his Life, only as to the Sprain of his Ankle.

Mr. Baron *Carter*. What was the general Behaviour of the Priſoner?

Mrs. *Goſling*. I never heard him have an ill Character, or that he ſtruck any one in his Life.

(Robert Greſham, *the Man that kept the* Dolphin *Alehouſe, was ſworn.*)

Mr. Baron *Carter*. What State of Health was *Bliſs* in after he came out of Priſon?—Mr. *Greſham*. In *February* 1726, or 1727 he came to lodge at my Houſe, with two more, and lodged there near three Weeks.

Mr. Baron *Carter*. Pray take Notice of the Queſtion that was aſked. What State of Health was he in?

Mr. *Greſham*. He looked pale, but eat his Victuals well.

Mr. Baron *Carter*. Did he complain of any ill Uſage?

Mr. *Greſham*. I never heard him complain of any ill Uſage.

Mr. Baron *Carter*. Did you ſee him after he had been in the Country?

Mr. *Greſham*. Yes; he came to my Houſe, I was not at Home when he came, but went up after; and he ſaid the Weather was too ſharp for him, and he caught Cold, and could not ſtay in the Country.

(Jane Lapworth *was ſworn.*)

Mr. Baron *Carter*. What are you?——Mrs. *Lapworth*. Nurſe of the Hoſpital. I was there on the 11th of *March*; *Bliſs* was in there a few Days before.

Mr. Baron *Carter*. What Condition was he in?

Mrs. *Lapworth*. He was ill of a Fever, Dr. *Coatſworth* had the Care of him, and he took Medicines for a Fever and Flux.

Mr. Baron *Carter*. When did he die?——Mrs. *Lapworth*. I went to the Hoſpital on the 11th, and he died on the 25th or 26th.

Mr. Baron *Carter*. Did he ſay what was the Occaſion of his Death?

Mrs. *Lapworth*, I heard him ſay no more, than that he had been in the Country, and caught an Ague and an intermitting Fever.

Mr. Baron *Carter*. What do you take to be the Cauſe of his Death?

Mrs. *Lapworth*. The Fever was the Cauſe of his Death.

Mr. *Acton*. I deſire ſhe may aſked, whether after he was laid out there were any Bruiſes in his Head or Face.

Mr. Baron *Carter*. What ſay you to that Queſtion, Woman?

Mrs. *Lapworth*. His Head was ſhaved, and I ſaw no Wound, Bruiſes, or Scabs in any Part whatſoever.

Mr. *Acton*. Pleaſe to aſk if his Wife was there.—Mrs. *Lapworth*. No.

Mr. *Acton*. Did ſhe ſit up with him in his Illneſs?

Mrs. *Lapworth*. She ſat up one Night.

Mr. *Acton*. Pleaſe to aſk, if he voided Blood or not.

Mr. Baron *Carter*. Anſwer that.———What do you heſitate at?

Mrs. *Lapworth*. Not during my Time, from the 11th to the 26th of *March*.

Mr. *Harding*. Did you ſee no Marks about him?—Mrs. *Lapworth*. No.

Mr. *Acton*. My Lord, I'll reſt this Part of my Defence here, but beg Leave to call ſome Witneſſes to my Character.

Mr. Baron *Carter*. Call who you will.

(*Sir* John Darnell, *Serjeant at Law, and Judge of the* Marſhalſea *Court, was ſworn.*)

Sir *John Darnell*. My Lord, I did not hear any thing of this Affair, till I came here to the Aſſizes. I think, my Lord, 'tis five Years ago ſince I had the Honour of having the Patent for Steward of the Palace-Court; and it is three Years ſince *Acton* has been in the Office that he now is in; and in all the Time that I have known, him both as Turnkey, and when he bame to be Deputy, I always thought him a very humane Man. I have often heard Complaints of the Priſoners, and have ſpent whole Days to mediate between their Keeper and them; and never found but he was very willing to have them made eaſy. This only I muſt ſay, that he was careful of the Cuſtody of them. In my whole Obſervation, I neither thought him cruel or ſevere.

Mr. *Ward*. Do you believe he was guilty of murdering Priſoners by Dureſs?——Mr. Baron *Carter*. I can't aſk him that Queſtion.

Mr. *Marſh*. Was there no Application by Petition to you, as Judge of the Court, from the Deceaſed?

Sir *John Darnell*. No; I never heard that he was a Priſoner.

Mr. *Marſh*. Was there no Petition to you in relation to ſix Perſons being put in Irons?——Sir *John Darnell*. No.

(Edmond Halſey, *Eſq. was ſworn.*)

Mr. Baron *Carter*, Sir, the Priſoner calls you to his Character.

Mr. *Halſey*. I have known the Priſoner ever ſince he was at the *Marſhalſea*, both before and ſince he was Deputy, and never heard an ill Character of him, but that he was a very honeſt Trader, and a humane Man, and paid very well for what he had.

Mr. *Ward*. Does he keep a Shop?—Mr. *Halſey*. He buys Bread and Beer.

(Malthus Ryall, *Eſq. one of his Majeſty's Juſtices of the Peace for the County of* Surry, *was ſworn.*)

Mr. *Ryall*. I have known the Priſoner better than twelve Months, and I thought him improper for the Poſt he was in, from his too great Compaſſion.

John

John Lade, *Esq. (one of his Majesty's Justices of Peace for the said County) was sworn.*

Mr. Baron *Carter*. You must speak to the general Character of the Prisoner.

Mr. *Lade*. I live in the Neighbourhood, and most commonly am applied to if any Abuses have been committed in the Prison; and I never have heard any Complaint of the ill Usage of Prisoners.

Mr. Baron *Carter*. What is his general Character?

Mr. *Lade*. His general Character is good.

Mr. Hayley *was sworn.*

Mr. *Hayley*. The Prisoner was four Years a Servant with my Father, and his Behaviour was very well; he was a good-natur'd Man.

Mr. *Ward*. In what Capacity did he serve your Father?

Mr. *Hayley*. As a Butcher.

John Morris *was sworn.*

Mr. *Morris*. For almost fifty Years last past I have visited all the Prisons about *London*, and I believe I have discharged three hundred poor Prisoners, and I never found better Usage in any Gaol than in this.

Mr. *Acton*. I desire he may give an Account what Sort of Place the Strong Room is.

Mr. *Morris*. I have been of the building Trade, and have taken particular Notice of the Strong Room; and would choose it rather than any other on the Common Side. This rises ten Inches from the Surface, and is boarded, and covered at Top with a Tarpaulin; and the others go down a Step.

Mr. *Acton*. Please to ask if any Wet could come in.

Mr. *Morris*. I don't believe any Wet could get in.

Mr. *Marsh*. It had not been built long when he saw it.

Mr. Terrant, *in the* Borough.

Mr. *Terrant*. I live in the *Borough*, and the Prisoner has as good a Character as any one in the Neighbourhood.

Mr. *Acton*. I desire, my Lord, he may be asked as to the Strong Room.

Mr. *Terrant*. I was curious to see the Strong Room. It is a boarded Place of nine Feet Square.

Mr. Baron *Carter*. Did you see it?—Mr. *Terrant*. Yes.

Mr. Baron *Carter*. Was it dry?—Mr. *Terrant*. It was.

Mr. Baron *Carter*. Was there any Stench?—Mr. *Terrant*. It is very close.

Mr. *Marsh*. When did you go to see it?

Mr. *Terrant*. About two Months ago.

Mr. *Marsh*. Was it over the Common Sewer?---Mr. *Terrant*. No.

Mr. *Ward*. Was it dry Weather when you saw it?---Mr. *Terrant*. It was.

Mr. Taylor, *of the* Borough.

Mr. *Acton*. I desire he may acquaint the Court what is my Character.

Mr. *Taylor*. In relation to his Character he is a very honest Man, and a Man of Humanity to all People.

Mr. *Acton*. I desire he may be asked as to the Strong Room.

Mr. *Taylor*. The Strong Room is dry; there is a Drain runs some Distance from it, but not near it.

Mr. Whitaker, *of the* Borough.

Mr. *Whitaker*. I have been with *Acton* in and out of Gaol, and never saw him do any thing ill.

Mr. *Acton*. Please to ask him, my Lord, about the Strong Room.

Mr. Baron *Carter*. Give an Account of what you know of that.

Mr. *Whitaker*. The Strong Room is dry, there is no Drain runs under it, but there is a Drain about five Yards from it.

Mr. Lamb *was sworn.*

Mr. *Lamb*. I have had the Happiness of knowing him these three or four Years. He has had a good Character, and was a Man of Humanity.

Mr. Sydall, *of the* Borough, *Apothecary.*

Mr. Baron *Carter*. What was the Prisoner's Character?

Mr. *Sydall*. Having had recourse to the Gaol, the Prisoners told me he had a very good Character.

Mr. Brown *was sworn.*

Mr. Baron *Carter*. What Character had the Prisoner?

Mr. *Brown*. I believe as good as any Man's can be.

Mr. Harrison *was sworn.*

Mr. *Harrison*. I have known his Character these three or four Years, and he is a very modest Man, and of a good Behaviour.

Mr. *Acton*. My Lord, I humbly apprehend I have called a sufficient Number of Witnesses to my Character, and will rest my Defence here. I apprehend it can't be conceived, that any Man can be guilty of such Inhumanity as is here laid to my Charge, and to live a Year.

Mr. Baron *Carter*. You must not say that; for then there could have been no Room for the Prosecution.

Mr. *Acton*. By all Circumstances, my Lord, this Man must certainly die a natural Death; and I humbly apprehend, that they must be mistaken in point of Time, for that no Irons were used the second time of his attempting to escape.

Mr. *Marsh*. I would not be wanting to my Clients, and yet would preserve all Rule and Order, and must beg leave to observe——

Mr. Serj. *Baynes*. I have been concerned in several criminal Prosecutions, and never knew it admitted.

Mr. *Strange*. The Prisoner is not allowed Counsel to speak for him in his Defence; therefore the King's Counsel have no Right of Reply. It was not allowed in *Huggins*'s Trial.

Mr. Baron *Carter*. In *Huggins*'s Trial, Mr. Justice *Page* and myself would not allow it.

Mr. Baron *Carter*. Gentlemen of the Jury, the Prisoner stands indicted for the Murder of *Thomas Bliss*.

To prove this, a great Number of Witnesses have been called on the Part of the King, not less than sixteen, to make good the Charge.

The first Thing necessary to be proved is, that the Prisoner at the Bar had the Care and Custody of the Prisoners; for which Purpose *John Wilson* was called, who proved that *Darby* was Keeper, and the Prisoner *Acton* Turnkey and Servant, and acted under *Darby*. That Part stands plain, that the Prisoner at the Bar had the Care and Custody of the Prisoners; and if he has behaved in such a Manner to Prisoners as Death ensues, he must answer for it. It is said, that every Prisoner must be treated with Humanity, and the Law is very tender, and directs that no Prisoner shall die in Gaol, but the Coroner's Inquest must sit upon his Body; and the Reason of that is, that he should not be killed by the Duress of the Gaol.

The Question stands singly, whether upon what you have heard, there has been such a Behaviour of the Prisoner to *Bliss*, that it has been the Occasion of his Death. If that is so, then you will find the Prisoner Guilty.

Wilson spoke much of the Escape; he talked about it, but did not know when he escaped; he only goes to that. He says, that he never did see *Acton* beat him; but that he was well to some, and beat others, which came from the Prisoner's own Question; therefore I was put to ask it, and I have told you the Answer.

The next Witness, the Wife of the unfortunate Man, says, that her Husband was there for a small Sum of Money, but that is not material; her Husband was almost famished and starved, and therefore attempted a second Time to escape. The Means he used to escape is not material, that is not what you are to rely upon. She says, there was some Assistance given him; a Rope was provided, and he unfortunately miscarried in the Attempt; and he was brought back into the Prison again, and she saw him beaten by *Nichols*, *Page*, and *Rogers*; and, what is remarkable, she saw the Prisoner beat him with a Bull's-pizzle, and the End of a Rope; that he cried out, if he had any Mercy, he would have Mercy upon him. He then put him into the Strong Room. As to the Nature of the Place, that is a Consideration I shall take up by and bye. She says, she saw him with an Instrument of Iron on his Head; that the Blood came out of his Mouth, and out of his Thumbs; that he had Thumb-screws on his Thumbs, and Sheers on his Legs; that she saw him flung down, and saw the Prisoner on Top of him several times. After he had treated him in this Manner, he began to relent, thinking he might die, and it was time for him to take Care of him, and sent him a Piece of Meat. She says, his Legs were swollen, his Body was swollen; she got him a Pair of Stockings, but his Legs were so swollen, she could not get them on. After this, when he was removed to another Ward, she said, he grew something better. That when he was discharged, he used his Endeavours to get Work; (Gentlemen, you did observe the Question came from the Prisoner) but tho' he was with the Man that he treated with, he got another, he could not work, his Legs were swollen, and there were Marks on them. All the Time, to the Time he was put into the Strong Room, he constantly complained of one Breast and his Side; and afterwards, when he became so bad that he could not work, he was put into the Hospital. One thing is very observable, that all his Discourse was, when any one asked him concerning his Usage, that he said, he did believe that he should never recover it, but would lay his Death to *Acton*; this Evidence was given by the Widow; she was asked by a Question from the Prisoner, whether she told her Sister of this? She said, No; did you tell your Mother, No; her Mother and she were not upon good Terms, and she never was with her but a very short Time. Then she was asked, if *Newland* did not send for her; she said Yes; it was thought that he was a very considerable Man; and when she was asked, what did he say to you, he said, he would have her Husband done Right to. Then there was a Question asked of *Hester Long*, as to Money, she (*Bliss*) said she was to have; and *Bliss* says, that she never did say any such thing.

Susannah Dodd; she gives you an Account that she has seen *Bliss* in Irons in the Strong Room; that he was treated cruelly; that he had then Screws upon his Thumbs. There was a very particular Circumstance, that he desired her to chew his Meat for him, for that he could not do it himself, by reason of having the Scull-cap on; that she carried him a Three-farthing Mug of Ale, and the Screws were upon his Thumbs, therefore, she was forced to give him the Drink, as he could not put the Mug to his Mouth to drink, because of his Thumbs being confined: that she saw Fetters, very large ones, on his Legs, and there was a Pair of Sheers cross his Legs; that he continued there two Days, and she saw him after, and saw his Thumbs bleed; and the Strong Room was a Strong Room, and ledead, and that she thinks it not an unhealthful Room.

Butler, she gives an Account of his Attempt to escape; and tells you, that she saw the Prisoner beat him (*Bliss*) with a Bull's-pizzle, and that when *Nichols* was beating him, she saw him fling the Deceased down, and saw *Acton* stamp upon him three times, and shewed the Place of his Breast that he complained of, and that his Death was owing to such Usage. It was his Belly and Stomach that he stamped upon, and that he was very ill when he did it; that both Legs were swelled; but that he said, he should do very well but for the Pain in his Side. She says, that the Strong Room was not fit to put in any human Creature; that he went out about *August*, and came about *Christmas*. The Prisoner asked as to his Character: she said, it was good and bad; and says, that she heard there was a Complaint made, that *Acton* was the Author of his Death.

Matthew Bacon taken no notice of, *Sic MS.*

Mrs. *Gillis*, she agrees as to the Fall from the House; and she says, that *Nicholas*, *Page*, and *Rogers* held *Bliss* till *Acton* beat him with a Bull's-pizzle; that he was carried to the Sick Ward. She was asked how long they were using him in this Manner; she said, half a quarter of an Hour. Reputation is not so material to be made use of; you are to consider if the Fact was done.

The next Witness was one *James Abbot*; he saw *Bliss*, (I will take it in his own Words) he saw him so drubbed, that he never saw any one so drubbed in his Life, with a Rope and Bull's-pizzle. He says, he did not see *Acton* there, but after charges him with it; and he agrees as to the cruel Behaviour of *Acton*. If the Act was committed, he might be there, and yet *Acton* not seen by him. He was asked, as to his (*Acton*'s) Character; and he said, he saw him beat many.

Matthew Brandon says, that his Legs were much swollen, and the Skin was broke; that he saw the Marks of the Irons. As to the Fall from the House, and the straining of one of his Legs, he knows nothing of it. He swears directly to the Skin's being broke of both Legs; and he says, that he often talked with *Bliss*, and he said, that he did believe the Injuries he had received from the Prisoner would be the Death of him, and gave an Account, that the Marks round his Legs were circular; that it must be owing to the Irons, and not to arise by a Strain, is the Observation the Counsel make, but you will be governed by Sense and Reason.

Mary Renwood; ſhe ſays, that ſhe ſaw him very often, and that his Legs were ſo bad, that the Irons were forced to be pulled off; that the Irons eat into his Legs; and into his Ankle, they had eat very deep; that the Skin was broke, and they were ſore; this ſhe ſaw in the Sick Ward: That he was in ſo terrible a Condition from his Poverty, that he had nothing to help him, no Cloaths, but a Piece of Blanket; ſhe relieved him, and carried him ſome of her Huſband's Cloaths. It is remarkable, that ſhe carried him a Pair of Stockings, and they would not fit; ſhe could not get them on. She ſays, they were her Huſband's, and that her Huſband was not a very large Man.

Peter Purchace; he ſays, that his Legs were very much ſwelled, and he took it to be the Marks of the Irons; he ſaw his Thumbs very black, which he took to be hurt by the Thumb-ſcrews.

Cummins; he ſays, that his Legs were very much ſwelled, and apprehends it to be occaſioned by the Irons; compares it to the Fetlock of a Horſe cut with a Clog; that the Strong Room was a Place of Terror, to keep them from being diſorderly; and that he heard *Acton* ſay to *Bliſs*, he thought he had given him enough, but he would give him more.

Edward Murfey ſays, That he never ſaw any thing ſo much beaten in his whole Life; that his Legs were black and blue, and green. The Counſel deſired you, Gentlemen, to take Notice what this Witneſs ſaid, that he complained of his Side, which had been hurt by the Bruiſes he had received from *Acton*.

Roberts ſays, That he went to Mr. *Darby* upon a particular Occaſion; but I can't mention to you what he ſaid, becauſe 'tis not Evidence; that he confirms the others in ſome Meaſure, that he had rather have larger Irons; that his Legs were ſo ſwelled, that he could ſcarce ſee the Pair of Fetters on the Side, becauſe the Swelling came over.

The King's Counſel called three Witneſſes, as to the Deceaſed working at *Southgate*. *Cowley* ſays, he wanted Work, and he was willing to let him have it. The Man went down, and came up again, and the ſecond Day he treated him with Mutton Broth, *&c.* but this is not material. But he ſays, he complained of his Side, and always ſaid he had received it from the Priſoner at the Bar; he ſaid, there were Holes in his Legs, and that *Acton* was the Author of his Death.

Cowley, the younger, ſays the ſame; that they treated him like an old Acquaintance, and provided him with Broth; that the Man was ſo ſick he could not work; that his Legs were ſwollen black and blue, and he complained of his Breaſt; both ſhewed with their Hands how, by pointing to their own Breaſt, and ſaid, he pointed to his; and that *Bliſs* ſaid, if he died, he would lay his Death to that Rogue *Acton*.

Parker ſays, That he was to be his Comrade, to be employed in ſome Tuſk-work; that though they laid him by the Fire, his Sickneſs increaſed, and they brought him to Town in a Cart; and all his Complaint was, thro' the Injury he had received from *Acton*; that his Legs were ſwollen.

Therefore, upon the whole, what Credit you will give to the Witneſſes for the King, is in your own Breaſts.

Now, as you have given great Attention to what has been ſaid againſt him, you will take Notice of what has been ſaid on his own Part; if it is contradictory, I can't ſay any Thing to that, you will weigh them in an equal Balance.

He has called twenty-three Witneſſes, to anſwer the Evidence for the King. The firſt is,

Samuel Bullock; he ſays, That he ſaw *Bliſs* brought in after his Fall; that he had hurt his Ankle; but he ſaw no Barbarity uſed; and ſaw him carried into the Sick Ward. The next is,

Robert Holmes; he ſays, That there were no Irons only on one Leg; and *Acton* always uſed him well, and if it had not been for *Acton*, he would have periſhed. This Character differs from what has been laid before you: He gave an Account that he caught a ſad Cold, which was the Occaſion of his Death; he ſays, that he never ſaw him in the Strong Room; and that as to his Health, it was very good the whole Time. This is their Opinion of *Bliſs*; theſe People would make you believe that he was perfectly well, and had received no Injuries from *Acton*. He ſays, further, that he met the Woman on *Saffron-Hill*, he aſked how her Huſband did? When he aſked her, ſhe ſaid, ſhe thanked God he was dead, (the Woman was glad to get ſhut of him) and ſaid he died of an Ague and Fever.

Chapman ſaw him after the Fall. The firſt Place he begins with, is the Sick Ward, and that *Acton* ſent Doctor *Draper*, and that nothing was done to him in the Yard. The Yard is the Place that the principal Evidences ſpeak to; that the Priſoner was humane to him, that he had ſo great Compaſſion for him, that he allowed him Two-pence Halfpenny or Three-pence a Day, till he was better; therefore, he would have you to believe he was a very humane Man, and that he could not uſe the Man as others ſay the Priſoner did. He ſays, that he was removed to the Pump Ward, and was Conſtable there, and came to the Tap; that he ſaw him at *Greſham*'s very well, and ſaw him after he came from *Southgate* very well. It is very remarkable he ſhould never complain of *Acton*. He ſays, that he looked upon it that the Occaſion of his Death was, from the Cold he caught at *Southgate*; that the Strong Room was not ſo terrible a Place; that it was a dry Room, though a Strong Room; that the Priſoners were ſo far from thinking this Room a Terror, that they choſe it; that he complained only of one Leg, which differs from the other Witneſſes. All were converſant with it.

Thomas Fletcher you will find was a Surgeon; he ſays, one Leg was very much ſwollen, from the Fall he got; he ſaid it was a Tumour, in his Way of Dialect; he went home, and brought proper Things, got ſome Ointment and a Sear-Cloth. He ſays, that *Bliſs* told him he ſhould never have been diſcharged but for *Acton*.

Thomas Whitfield; he tells you Mrs. *Bliſs* told him, that her Huſband had got Cold in the Country, and had a Fever and Ague. He was aſked in relation to the Strong Room, which he ſaid was the beſt Place on the Common Side; that the Priſoner had a good Character, and gave Victuals to many of the Priſoners that wanted.

Robert Walter ſays, he was not privy to any ill Uſage *Bliſs* received from the Priſoner; that he walked well, and talked heartily, and complained of nothing, only one Leg, which he apprehended he had hurt by the Fall. He ſpoke in praiſe of the Priſoner for his Humanity.

The next is *John Chepe*; he ſays, *Bliſs* was well in the *February* before he died; he complained of nothing of the Priſoner; that after he was diſcharged, he ſays, he went to *Southgate*; that he came from thence, and after that complained of a great Cold.

William Belland ſays, that he never ſaw the Priſoner miſuſe *Bliſs*; that he complained only of his Leg; that he eat and drank well; that he ſaw him after he was diſcharged, and he ſaid, that the Priſoner had been civil and kind to him.

Weſtbury ſays, That he complained of one Leg only; that he went into the Country and catched Cold, and that was the Occaſion of his Illneſs.

Fandy; he ſays, that he lay with him in the Queen's Ward ſeveral Months. I don't apprehend he was in the Queen's Ward, but he did prove him to be there. I will tell you how that Matter was: This Man ſpeaks to a conſiderable Length of Time after his eſcaping; the Time is not ſettled, both are at a Loſs on the one Side and the other; it ſhould have been reduced to a Certainty, becauſe the Indictment is confined to the Second Eſcape. He ſays, one Leg was bruiſed only, the other ſwelled; that he liked to drink, and did not go to Bed, and ſat up, and that was the Reaſon of it; that he ſaw *Bliſs* in the Hoſpital, and he ſaid to him that he had catched cold; that he was at Work in the Country, and that he was brought into that Condition by an Ague and Fever.

Heſter Long has given a long Evidence; I hope you have taken it, becauſe it is a very long Evidence, and affects the Character of *Bliſs*. She ſays, That ſhe ſaw him ſeveral Times, and that he was as well as ever he was in his Life; that he was to go to his Maſter for Seven Shillings and Sixpence, the Profits of his Labour; therefore he was fit to work, and had obtained that Liberty from *Acton*. It ſeemed ſhe had ſome Diſcourſe with Mrs. *Bliſs*, and ſaid ſhe was her Siſter-in-Law, and ſhe deſired Leave to lodge with her. After the Death of her Huſband, ſhe never heard any Complaint made about *Bliſs*; that four Months ago, a Gentleman ſent to her (*Bliſs*) to ſwear againſt *Acton*; that *Long* was there, and *Anne Bliſs*'s Brother, and he cautioned her not to concern herſelf; that a Man's Life ought to be taken care of with the utmoſt Caution; that ſhe was to leave her Maſter, one *Jennings*, to go to another Place; and *Jennings* ſaid, that ſhe ſhould not make it up for forty or fifty Pounds. Her Brother ſaid, that if ſhe would make it up with *Acton*, ſhe might have forty or fifty Shillings. *Bliſs* denies that ſhe had any Sum, that ſhe was never offered forty or fifty Pounds to ſwear, and her Maſter ſaid ſhe ſhould not take any, and adviſed her, that if they would give a hundred Pounds not to take it, to hinder the Proſecution. She (*Bliſs*) ſays, that *Jennings* let her have two or three Guineas, and ſhe went into another Service, and not being very capable, had two or three with her to lay it out for her.

Cole ſays, That *Anne Bliſs* told him, ſhe was to have five Pounds for ſwearing againſt *Acton*. This Diſcourſe was upon *London Bridge*. How far you will think this probable, not having any other Diſcourſe, that ſhe ſhould immediately introduce this, I muſt leave to you.

Rogers; he ſays, That he held the Man after the Fall; that he ſaw him that very Day; that he complained only of one Leg, and that he never knew the Scull-cap uſed.

Grace ſays, That he had ſeen ſuch an Inſtrument in the Priſon, and that it was made uſe of to keep their Heads ſteady, when Felons were burnt in the Cheek; that this Inſtrument was never deſigned for any Priſoner; that this was the County Gaol a few Years ago, and that it was not made uſe of ſince.

Boſwell ſays, He knew *Bliſs* when in the Sick Ward; that he was lame of both Legs; ſometimes was lame of one, ſometimes of both, but was very well in Health.

Samuel Davenish ſays, That he was with him frequently, and that he was always very well, only had a lame Foot, and ſaid he had no Irons on. The Priſoner aſked him in reſpect of his Behaviour; he gives him a very good Character, that his Behaviour was juſt, charitable, and humane.

Brown ſays, That he complained of both Legs, one was worſe than the other; and as to his Behaviour, gives him a very good Character.

Bowdler, he was with him in the ſame Ward; and ſays, that he only complained of one Leg, the other was very well, and gave him a very good Character.

Goſling ſaw him carried into the Sick Ward, and ſays he only complained of his Ankle.

Robert Greſham ſays, That he lodged at his Houſe three Weeks after he was diſcharged, and only complained of a Cold he had got from the bad Weather in the Country.

Jane Lapworth, the Nurſe; ſhe is a very materal Witneſs indeed; ſhe ſays, that he had an Ague and Fever, and gave a Deſcription of the different Operations of it. He, poor Man, died of a Fever; he had Medicines applied by Doctor *Coatſworth*. She ſays, ſhe apprehended he died of a Cold, which brought him into a Fever; what was very remarkable, ſhe laid him out, and there were no Bruiſes on his Head; all his Body was clean from Scabs, or any thing that looked like ill Uſage.

Now, Gentlemen, what Credit this will receive from you, I can't ſay; but this Evidence ſtrongly contradicts all that have given you a different Account. I am very glad you have taken Notes; and I deſire, if I have made any Miſtake, you will tell me, on either Side.

As to the Character of the Priſoner, his Witneſſes ſay he is a very humane Man; and if you have them down, they are in Number ſufficient too.

My Brother *Darnell* ſays, he has been Steward of the Palace Court about five Years, and never heard any Complaint againſt the Priſoner; that it is three Years ſince *Acton* has been in the Office he now is in, and in all that Time he thought him a very humane Man, and never thought him cruel or ſevere.

Mr. *Halſey* ſays, he was a very humane Man.

Mr. *Ryall*, Mr. *Lade*, Mr. *Hayſey*, give him a very good Character.

Mr. *Morriſon* ſays, That the other Rooms were under Ground, and this Strong Room was ten Inches above; it was a dry Place, and covered over the Top with Lead.

Mr. *Terrant* ſays, That he thinks the Strong Room a very dry Place; and gives *Acton* a good Character.

Then, Gentlemen, Mr. *Taylor* ſays, he was a Man of Humanity; and that there was no Drain near the Strong Room.

Mr. *Bowdler* gives him a good Character; and four or five other Witneſſes have been called up, and given him a very good Character. As to the Strong Room, I don't find much Evidence to affect the Priſoner as to that. There is great Difference in Opinion as to what immediately

gave him the Diſtemper to carry him off. A great many again ſay, that he did ſeem to be pretty well in Health; but what will particularly affect the Priſoner, is what happened in the Priſon Yard. Upon the whole, if you are ſatisfied that the Priſoner treated *Bliſs* in that Manner as the King's Witneſſes ſaid, and that was the Occaſion of his Death, and that he had treated him ill, and beat him, you will find him Guilty; but if he was not ſo treated, and it was not the Occaſion of his Death, you will find him Not Guilty.

There are great Contradictions in the Evidence, I ſcarce ever heard ſo great. It is a Matter of great Conſequence, and deſerves your mature Conſideration.

Then one was ſworn to keep the Jury, and they withdrew, and Baron Carter *went to Dinner; and when he returned, they gave their Verdict.*

Cl. of Arraigns. Gentlemen, are you all agreed in your Verdict?

Omnes. Yes.

Cl. of Arraigns. Who ſhall ſay for you?

Omnes. Foreman.

Clerk of Arraigns. *William Acton*, hold up thy hand. (*Which he did.*) Look upon the Priſoner; how ſay you; Is he guilty of the Felony and Murder whereof he ſtands indicted, or Not Guilty?

Foreman. Not Guilty.

XV. The Trial of William Acton, for the Murder of John Bromfield, at *Kingſton upon Thames*, in *Surrey*, before the Hon. Mr. Baron *Carter*, *Auguſt* 2, 1729.

Die Sabbati, 2 Die Auguſti, 1729.

Proclamation was made for all Perſons concerned to attend.

Clerk of Arraigns.

YOU good Men that are impannelled to inquire, &c. anſwer to your Names, and ſave your Fines.

Clerk of Arraigns. *William Acton*, hold up your Hand. (*Which he did.*) You ſtand indicted by the Name of *William Acton*, &c.

How ſayeſt thou, *William Acton*, art thou guilty of the Felony and Murder whereof thou ſtandeſt indicted, or Not Guilty?

William Acton. Not Guilty.

Cl. of Ar. Culprit, how wilt thou be tried?

William Acton. By God and my Country.

Cl. of Ar. God ſend you a good Deliverance.

He was alſo ſeverally arraigned upon two other Indictments; one for the Murder of Robert Newton, *and the other for the Murder of* James Thompſon, *to which he ſeverally pleaded Not Guilty, and put himſelf upon God and his Country in Manner aforeſaid.*

Then Proclamation was made for Information.

Cl. of Ar. Thou the Priſoner at the Bar, thoſe Men that thou ſhalt hear called are to paſs between our Sovereign Lord the King and thee, upon the Trial of thy Life and Death; therefore if thou wilt challenge them, or any of them, your Time to ſpeak is as they come to the Book to be ſworn, before they are ſworn.

Then the ſame Pannel was going to be called over, which had tried him the Day before.

Upon which Mr. Paxton, *the Sollicitor for the Crown, three ſeveral Times inſiſted upon a new Pannel.*

Mr. *Strange.* The other Pannel cannot write; theſe are Men of Ability and Experience.

Then the Pannel was called over.

Mr. *Ward.* We challenge *Robert Parkhurſt*, we have an Affidavit ready to produce if Occaſion (but the Challenge being allowed, the Affidavit was not read).

Then the Jury ſworn were as follows:

Thomas Cole,	*William Goſwell,*	*William Browne,*
Miles Poole,	*John Sigins,*	*John Walter,*
Vincent Hollis,	*George Wadbrook,*	*Robert Patten,*
Charles Buckland,	*Thomas Bandford,*	*James Wellbeloved.*

Cl. of Ar. *William Acton*, hold up thy Hand. (*Which he did.*)

Mr. *Strange.* My Lord, you will pleaſe to admit him to the other Bar.

Mr. Baron *Carter.* It ſhall be allowed.

Cl. of Ar. You of the Jury, look upon the Priſoner, and hearken to his Charge. He ſtands indicted by the Name of *William Acton*, &c. (*prout* in the Indictment *mutatis mutandis.*)

Mr. *Acton.* I deſire it may be read in *Latin*.

Mr. Baron *Carter.* You had the Indictment Yeſterday read in *Latin*, you found it no Advantage to you; if you purpoſe any Advantage by it, you may have it read.

Mr. *Acton.* I deſire my Counſel may hear it read.

Mr. Baron *Carter.* Let it be read. (*Which was accordingly done.*)

Mr. *Harding.* My Lord, and you Gentlemen of the Jury, I am Counſel for the King. The Priſoner at the Bar ſtands indicted for the Murder of *John Bromfield*. The Indictment ſets forth, That———

We will call our Witneſſes, and don't doubt, if we prove him guilty, but you will find him ſo.

Mr. *Ward.* Gentlemen of the Jury, you ſee what the Nature of the Indictment is; it is for the inhumane and barbarous Treatment of *John Bromfield*, of which he died. If we ſhew you, that that was the real and true Cauſe of his Death, it cannot be doubted but that he put him to Death. Gaolers ought to treat their Priſoners with Humanity; they are to confine them in a Place of a ſecure Cuſtody, but not to treat them inhumanely.

On the firſt of *March*, 1725, Capt. *Bromfield* became a Priſoner in the *Marſhalſea* Priſon, Gentlemen; he fell under the Diſpleaſure of *Acton*, the Priſoner at the Bar, and in order to ſatisfy his Reſentment, he beat him inhumanely and unmercifully, that the Marks and Strokes of the Blows were viſible after his Death. Not ſatisfied with this, he put him in double Irons, which the Man could ſcarce well bear; and put him into a Hole which is damp, dirty, and ſtrait; ſo that he could not ſtand upright, or lie at length: He was kept there for ſeveral Days. The Priſoner then began to relent, and took him into another Place, but did not take the Irons off at that Time; but the Man having contracted an ill State of Health, when the Priſoner thought it would be the Occaſion of his Death, he then took off the Irons; but that was too late, for he ſoon died. This, Gentlemen, will ſhew you the Reaſon why, conſequently, the Coroner's Inqueſt ſhould have ſat upon the Body of Captain *Bromfield*; but no Coroner's Inqueſt did ſit; and the Reaſon is plain that it did not, for if it had, they would have ſeen that he had come to his Death by a violent Occaſion. If we prove this to be the Caſe, Gentlemen, you will do Juſtice to your Country, and find him guilty.

We will call our Witneſſes to prove the Facts.

William Wheeler *was ſworn.*

Mr. *Ward.* Do you know the Priſoner at the Bar?

Mr. *Wheeler.* Yes.

Mr. *Ward.* Do you know whether he was Turnkey in 1725?

Mr. *Wheeler.* He was Turnkey to Mr. *Darby*.

Mr. *Ward.* What was the Buſineſs of Turnkey?

Mr. *Wheeler.* To take care of the Priſon and Priſoners.

Mr. *Ward.* Did you know Captain *Bromfield* to be a Priſoner then?

Mr. *Wheeler.* Yes; he was a Priſoner in the Beginning of the Year 1725.

Mr. *Ward.* Give an Account of what Uſage you ſaw Captain *Bromfield* have.

Mr. *Wheeler.* I lodged in the ſame Room with him. We were locked up; and coming down Stairs there was a Hatch, which was locked, and one *Perkins* kept the Key of it; and he made Words to let Captain *Bromfield* come down.

Mr. *Ward.* What was *Perkins?*

Mr. *Wheeler.* Servant to the Gaoler.

Mr. *Ward.* Go on.

Mr. *Wheeler.* There were ſome Words paſſed; but at laſt *Perkins* did let the Captain down, and he went into the Chandler's Shop, and *Perkins* and the Captain fell into greater Diſputes; and the Captain took a Knife, and jabbed it into *Perkins*'s Breaſt.

Mr. *Ward.* Did you ſee *Acton* there?

Mr. Baron *Carter.* What did he do then?

Mr. *Wheeler.* He dropt down the Penknife, and it was found in the Chandler's Shop. The Captain was carried into the Pound.

Mr. Baron *Carter.* Where is the Pound?

Mr. *Wheeler.* The Pound and the Chandler's Shop join.

Mr. Baron *Carter.* Where was he carried from thence?

Mr. *Wheeler.* He was carried from the Pound to the Lodge; further I could not ſee. He took him away refractory.

Mr. *Ward.* Did you ſee him with Irons on?

Mr. *Wheeler.* I ſaw him with Irons on in the Evening.

Mr. *Foſter.* What did *Acton* order?

Mr. *Wheeler.* After the Court broke up, *Acton* came down and ſpoke to the Captain; and aſked him, what was the Reaſon that he ſtabbed the Man in a Paſſion.

Mr. *Ward.* Did you ſee the Fetters on?---Mr. *Wheeler.* I did.

Mr. *Ward.* How long was he confined in the Hole?

Mr. *Wheeler.* He continued in the Hole from the Time he was taken out of the Lodge, till the next Day Nine of the Clock.

Mr. *Ward.* Did you ſee *Acton* with him during all or any Part of this Time?

Mr. *Wheeler.* When *Acton* had ironed him, he turned him over from the Maſter's to the Common Side.

Mr. *Ward.* How long had he the Irons on?

Mr. *Wheeler.* He had the Irons on about five Days; *Acton* ſent him from the Hole to the Common Side, to *George's Ward*.

Mr. *Ward.* When did he die?

Mr. *Wheeler.* He died the latter End of *June*

Mr. Baron *Carter.* When did he die?

Mr. *Wheeler.* About four Years ago, the latter Part of *June* 1725.

Mr. Baron *Carter.* Tell me when the Fact was?

Mr. *Wheeler.* I can't tell the Month.

Mr. *Ward.* Did you ſee him after he was dead?---Mr. *Wheeler.* Yes.

Mr. *Ward.* What Condition was his Body in?

Mr. *Wheeler.* It was all black.

Mr. *Ward.* What was the Occaſion of its being black?

Mr. *Wheeler.* It was ſaid to be the Jaundice.

Mr. *Ward.* When did it turn black?

Mr. *Wheeler.* It turned black after his Deceaſe.

Mr. *Ward.* Was it one continued black, or was it in Streaks?

Mr. *Wheeler.* It was one intire black.

Mr. *Ward.* Did the Coroner's Inqueſt ſit upon him?

Mr. Baron *Carter.* That is no Charge upon the Priſoner. It was not, in *Fiens*'s Caſe; if the Coroner's Inqueſt had ſat on all others, and had not ſat upon this Man, then this had been Evidence; but as 'tis generally omitted, it is no Evidence.

Hugh Martin *was ſworn.*

Mr. *Ward.* Did you know Capt. *Bromfield?*

Mr. *Martin.* Yes; he was Priſoner about the Beginning of the Year 1725.

Mr. *Ward.* Give an Account of what Uſage he received from *Acton*.

Mr. *Martin.* He was Bedfellow with me in the Nurſery Ward, and on a Court Day he was down in the Chandler's Shop; and one of *Acton*'s Servants would have had him go up into his Ward, but he refuſed to go; and, upon that, the Servant would force him up.

Mr. *Ward.* What is the Servant's Name?

Mr. *Martin.* *John Perkins*.

Mr. *Ward.* Go on.

Mr. *Martin.* As they had a Scuffle together, Capt. *Bromfield* privately ſtabb'd him, and dropt down the Knife. There was an Outcry, and a Doctor was ſent for; and in the Time that he was called, *Acton*'s Servant carried the Captain to the Common Side.

Mr. *Ward.* Was *Acton* there at that Time?
Mr. *Martin.* I did not see *Acton.*
Mr. *Ward.* Who took him away?——Mr. *Martin. Acton*'s Servants.
Mr. *Ward.* Did *Acton* give any Orders?—Mr. *Martin.* I don't know.
Mr. *Ward.* Did you see *Acton* in the Yard?——Mr. *Martin.* I saw *Acton* in the Yard, or between that and the Lodge.
Mr. *Ward.* Which Way was Captain *Bromfield* carried?—Mr. *Martin.* He was taken out of the Chandler's Shop, and carried through the Pound.
Mr. *Ward.* Was *Acton* in the Chandler's Shop, or Pound?
Mr. *Martin.* No.
Mr. *Ward.* Did you see *Acton* before Captain *Bromfield* was carried into the Yard?
Mr. Baron *Carter.* You say you saw *Acton* in the Yard, and that Captain *Bromfield* was put on the Common Side?——Mr. *Martin.* Yes.
Mr. *Ward.* After he was brought into the Yard, did you see any Thing done to him?——Mr. *Martin.* I did not see any Thing done to him, because I could not go out, I was confined.
Mr. *Ward.* Did you see any body beat him?
Mr. *Martin.* No, but I saw Irons on him.
Mr. *Ward.* What Irons?
Mr. *Martin.* They were double Irons; I saw him come out of the Hole the next Morning with Irons on, between eight and nine o'Clock.
Mr. *Ward.* Who put him in the Hole?
Mr. *Martin.* I was not there to see it.
Mr. *Ward.* What Sort of a Place is the Hole?
Mr. *Martin.* It is a little Place under the Stairs; a little bigger than a large Coffin in Width and Length.
Mr. *Ward.* Did he lye or stand?—Mr. *Martin.* He stood, but could hardly stand upright; he had nothing but the Earth to lie on.
Mr. *Ward.* Was the Earth wet?——Mr. *Martin.* It was dampish.
Mr. *Ward.* How do you know?—Mr. *Martin.* I saw it at that Time.
Mr. *Harding.* Was there any Door to it?—Mr. *Martin.* There was.
Mr. *Harding.* When it was shut, was there any Place to let in the Light?
Mr. *Martin.* There was the Key-hole, and a Crevice of the Door.
Mr. *Ward.* When did he come out?
Mr. *Martin.* Between eight and nine O'clock the next Morning.
Mr. *Ward.* Where did he go afterwards?
Mr. *Martin.* Afterwards he lodged in *George's Ward*, opposite against the Hole, upon the Left-hand; I think it is called *George's Ward.*
Mr. *Ward.* Had he Irons on in *George's Ward?*—Mr. *Martin.* Yes.
Mr. *Ward.* How long?—Mr. *Martin.* I don't know.
Mr. *Ward.* Did you see him after he was dead?
Mr. *Martin.* I did; I helped him into his Coffin. His Body was a sad Spectacle; but I can't say whether by the Distemper or not.
Mr. *Ward.* What State of Health was he in before he was confined in this Hole?——Mr. *Martin.* He was in good Health on the Day the Scuffle happened.
Mr. *Ward.* What sized Man was he?
Mr. *Martin.* A middle-sized Man.
Mr. *Ward.* Was he in bodily Health?—Mr. *Martin.* I did not discern his Body; he was healthy, and eat his Victuals when he had it.
Mr. *Ward.* Did you hear him complain of any Illness?
Mr. *Martin.* I never did.
Mr. *Harding.* How did he appear?
Mr. *Martin.* As a Man used to appear with Irons on. He was altered miserably after, about a Week before his Death
Mr. *Harding.* How long was it from the Time of his coming out of the Hole, to the Time of his Death?——Mr. *Martin.* I believe it may be three Weeks or a Month, to the best of my Knowledge.
Mr. *Harding.* How soon did you see him after he was taken out of the Hole?——Mr. *Martin.* I saw him the same Morning he was put in *George's Ward.*
Mr. *Harding.* How was he then?——Mr. *Martin.* He was in good Health, but went cripling by, having the Irons on.
Mr. *Harding.* What do you apprehend was the Occasion of his Death?
Mr. *Martin.* I believe the ill Usage, and lying in the Hole, were the Occasion of his Death, and for want of Necessaries.
Mr. *Acton.* When he was in *George's Ward*, whether he did not lye in a Hammock?——Mr. *Martin.* He lay under a Hammock.
Mr. Baron *Carter.* What Distemper do you look upon it he died of?
Mr. *Martin.* Some People were apt to judge that he died of the Jaundice.

(John Saunders *was sworn.*)

Mr. *Ward.* Did you know Captain *Bromfield?*
Mr. *Saunders.* I did; he was a Prisoner on the Master Side; he came on the first of *March*, 1725.
Mr. *Ward.* Give an Account of what Usage he had.
Mr. *Saunders.* It was upon a Court Day, at the latter End of *May*, Captain *Bromfield* was brought up from the Master Side to the Common Side, and there locked up.
Mr. *Ward.* Did you see him brought along?
Mr. *Saunders.* He was brought along by *Rogers* and *Nichols*, and *Acton* followed, and ordered him to be taken to the Lodge, and ironed, and from thence they brought and put him into the Hole, under the Stairs, adjoining to *George's Ward.*
Mr. *Ward.* How long did he continue there?
Mr. *Saunders.* Three or four Nights and Days.
Mr. *Ward.* Was he let out in that Time?——Mr. *Saunders.* He was let out sometimes, when they thought fitting, to ease his Body.
Mr. *Ward.* What Sort of a Place is it?
Mr. *Saunders.* It is a Place under the Stairs, which a Woman used to put Greens in; it was not fit for a Christian to be in; there was no Floor, and a Cold Place, and there was nothing to sit on, but what the Woman put her Greens on, which was an old broken Chair.
Mr. *Ward.* Did you see him there?
Mr. *Saunders.* I saw him every Day.
Mr. *Ward.* What sized Man was he?
Mr. *Saunders.* He was taller than me, and I don't believe he could stand upright in the Hole.
Mr. *Ward.* Could he lye down?——Mr. *Saunders.* He could not lye at Length, and he durst not lye down, it was so damp and wet.
Mr. *Ward.* What did *Acton* order?
Mr. *Saunders. Acton* ordered him to be taken to the Lodge, and ironed.
Mr. Baron *Carter.* What did he order after?
Mr. *Ward.* Was there any Application made to *Acton?*
Mr. *Saunders.* One *King* attended *Bromfield*, and *Bromfield* desired me to go along with him to *Acton*; and I said it was more proper for *King.*
Mr. Baron *Carter.* Answer my Question.
Mr. *Saunders.* I saw Captain *Bromfield* carried into the Lodge, and from thence immediately into the Hole.
Mr. *Ward.* Was *Acton* there?——Mr. *Saunders.* I saw *Acton* there at the Time when he was carried to the Hole.
Mr. *Ward.* Was he by when the Irons were put on?
Mr. *Saunders.* He was by then, and ordered the Captain to be carried from the Lodge into the Hole.
Mr. *Ward.* Was he first ordered to the Lodge?——Mr. *Saunders.* That Order to carry him to the Lodge was first given.
Mr. *Ward.* What did he order after?
Mr. *Saunders.* He then ordered him to be carried into the Hole.
Mr. *Ward.* Whether you saw any other Force or Violence used to him by any one?——Mr. *Saunders.* As to this Purpose, *Acton* came himself, and saw the Irons put on.
Mr. *Ward.* Were the Irons taken off?——Mr. *Saunders.* I heard they were taken off by *King* and *Rogers*, with *Darby*'s Leave.
Mr. *Ward.* Where was Captain *Bromfield* put, when he was taken out of the Hole?——Mr. *Saunders.* He was carried into *George's Ward*; I went with him into the Ward.
Mr. *Ward.* Were his Irons taken off then?
Mr. *Saunders.* They were taken off when he was ill and weak.
Mr. *Ward.* What State of Health was he in before he was put into the Hole?——Mr. *Saunders.* He appeared to me to be a Man in perfect Health; if he had any Distemper, I did not know it.
Mr. *Ward.* Do you believe his being confined in the Hole, and the ill Usage, were the Occasion of his Death?——Mr. *Saunders.* I do, in my Conscience, believe they were the Occasion of his Death.
Mr. *Ward.* How long did he live after this Usage?
Mr. *Saunders.* I believe, from his being first put into the Hole, to the Day of his Death, was about fourteen Days.
Mr. *Ward.* Did you see him after he was dead?
Mr. *Saunders.* I helped to put him into his Coffin, and his Body was of several Colours, black and yellow.
Mr. *Ward.* Were there any Marks upon his Body?
Mr. *Saunders.* I saw no Marks.
Mr. *Harding.* Was you with him when he died?
Mr. *Saunders.* I staid by him when he died; (he said the Night before he should not live till Morning) and he gave me his Hand, moved his Mouth, but could not speak.
Mr. *Ward.* You was with him when he died; did he declare then, or at any other Time, what was the Cause of his Death?
Mr. *Saunders.* The Night before he died he declared, that the Punishment (which was being put in Irons, and confined in the Hole) was the Occasion of his Death. In the Morning he could not speak.
Mr. *Ward.* Was there any Coroner's Inquest sat on the Deceased?
Mr. *Saunders.* No, there was no Coroner's Inquest sat upon any one then.
Mr. Baron *Carter.* If the Coroner's Inquest had sat upon all others, and not sat upon this Man, then this had been Evidence; but as it is not generally so, it is no Evidence.
Mr. *Ward.* How soon was he buried after he died?
Mr. *Saunders.* He was hurried away, I believe, the same Day of his Death.

(Martha Johnson *was sworn.*)

Mr. *Ward.* Did you know Captain *Bromfield?*—Mrs. *Johnson.* Yes.
Mr. *Ward.* Give an Account of the Usage he had.
Mrs. *Johnson.* I never saw any thing done to him.
Mr. *Ward.* Did you see him in Irons?——Mrs. *Johnson.* I saw him come out of the Hole in Irons, and go into *George's Ward.*
Mr. *Ward.* Who brought him out?
Mrs. *Johnson.* When the Door was unlocked, he came out of himself.
Mr. *Ward.* Did you see him after he was dead?
Mrs. *Johnson.* I saw his Body.
Mr. Baron *Carter.* When you saw his Body, did you see any Marks?
Mrs. *Johnson.* His Body was covered when I saw it, he did not lie naked.
Mr. *Ward.* We shall call no more Witnesses; for if what *John Saunders* says is true, it is a full Proof of the Indictment.
Mr. Baron *Carter.* You have heard the Charge and Evidence against you, you may now proceed upon your Defence.
Mr. *Acton.* Captain *Bromfield* stabbed *Perkins*, and I went for a Surgeon, and whilst I was gone, *Bromfield* was put in Irons. Mr. *Darby* had him put in Irons, till the Man was out of Danger. After this, he was very well; and had the Yellow Jaundice, of which he died. As to the Coroner's Inquest, there was none ever sat upon the Bodies of any Prisoners at that Time.
Mr. Baron *Carter.* You are not to answer for that.
Mr. *Acton.* I will call my Witnesses. Call *George Carew.*

(George Carew *was sworn.*)

Mr. *Acton.* My Lord, one Witness says, that Captain *Bromfield* continued one Night in the Hole, and the other says, he continued two or three Nights.——Did you see Captain *Bromfield* stab *Perkins?*
Mr. *Carew. Acton* went for a Surgeon.
Mr. *Acton.* What was done whilst I went for a Surgeon?
Mr. *Carew. John Littleton*, who was Turnkey, came in with two or three more, and took *Bromfield* from the Pound, and carried him to the Lodge, and ironed him.
Mr. *Acton.* What was done with him after?
Mr. *Carew.* He was brought on the Common Side, and there ordered to be put in *George's Ward.*
Mr. Baron *Carter.* Who brought him there?
Mr. *Carew. John Littleton.*

Mr.

Mr. Baron *Carter*. Did *Acton* give any Directions for putting him into the Hole?---Mr. *Carew*. No.

Mr. Baron *Carter*. Who put him in?

Mr. *Carew*. *John Littleton* put him in.

Mr. Baron *Carter*. How long did he continue there?

Mr. *Carew*. Three or four Hours, as I heard.

Mr. *Acton*. How was he after he came out of the Hole, as to his Health?

Mr. *Carew*. I saw him come out of the Hole, and he was very well in Health.

Mr. *Ward*. He has contradicted himself; he just now said, he was carried from the Common Side to *George's Ward*.

Mr. Baron *Carter*. If the Man mistakes, you must allow him to correct himself. How soon after he came out of the Hole did you see him?

Mr. *Carew*. The next Day, I saw him walk about the Yard.

Mr. *Acton*. Please to ask, whether *Bromfield* was in Irons before I returned back from the Surgeon.

Mr. *Carew*. Yes, and he was put on the Common Side.

Mr. *Acton*. When did he die?

Mr. *Carew*. He was on the Common Side a Month before he had any Sickness.

Mr. Baron *Carter*. When did he die?---Mr. *Carew*. In six Weeks Time.

Mr. Baron *Carter*. What Distemper did he die of?

Mr. *Carew*. Of the Black Jaundice, as it was given out in the Gaol.

Mr. *Acton*. Did you see him a Week before he died?

Mr. *Carew*. Yes, and his Face was yellow and black.

Mr. *Ward*. You saw him when the Scuffle happened; he was very well then?---Mr. *Carew*. I can't say he was very healthy in Constitution.

Mr. *Ward*. Who carried him to the Hole?

Mr. *Carew*. He was carried by *John Littleton* to the Place.

Mr. *Ward*. Were there no Orders given by *Acton*?

Mr. *Carew*. *Acton* was gone before *John Littleton* came into the Pound for him; he was gone for the Surgeon, as he said he would.

Mr. *Ward*. Who carried him to the Lodge?

Mr. *Carew*. *Littleton* carried him to the Lodge, and after that to the Common Side.

Mr. *Ward*. Was not the Common Side shut?---Mr. *Carew*. It was then.

Mr. *Ward*. How did he get in?---Mr. *Carew*. He was let in.

Mr. *Ward*. How long did he continue on the Common Side?

Mr. *Carew*. Six Weeks.

Mr. *Ward*. Was he not put in the Hole?

Mr. *Carew*. I don't know that he was in the Hole at all, for I saw him put on the Common Side.

Mr. *Harding*. After the Stroke with the Penknife, was not *Bromfield* seized?---Mr. *Carew*. No.

Mr. *Harding*. When did *Acton* come?

Mr. *Carew*. *Acton* came down when *Bromfield* was in the Pound.

Mr. *Harding*. How long was *Acton* gone?---Mr. *Carew*. Some Minutes.

Mr. *Harding*. Might not *Acton* give Orders to *Littleton*, before he went for the Surgeon?

Mr. Baron *Carter*. I must not hang a Man upon a might or might not. Did *Acton* come back with the Surgeon?---Mr. *Carew*. He brought the Surgeon back, and stood by till *Perkins* was dressed.

Francis Cartwright *was sworn*.

Mr. *Acton*. I desire, he may give an Account of what he knows of this Matter.

Mr. *Cartwright*. Mr. *Acton* came out of the Court into the Pound, hearing a Noise, and they told him that Captain *Bromfield* had stabbed *Perkins*; *Bromfield* was ironed, and *Littleton* put him into the Hole, without *Acton*'s Directions.

Mr. Baron *Carter*. Was he in the Pound before *Acton* came down?

Mr. *Cartwright*. Yes.

Mr. Baron *Carter*. Did *Acton* say any Thing about ironing him?

Mr. *Cartwright*. No, but said, that he would fetch a Surgeon.

Mr. Baron *Carter*. When was he taken out of the Hole?

Mr. *Cartwright*. He was taken out in about six Hours. They usually lock up the Prisoners at nine o'Clock at Night, after *Lady-Day*, and he was taken out, and put in *George's Ward*, about that Time.

Mr. Baron *Carter*. How long did he remain there?

Mr. *Cartwright*. He staid there three or four Months after the Thing was done.

Mr. Baron *Carter*. Who used to lock the Prisoners up?

Mr. *Cartwright*. The Servants to *Acton* used to lock them up every Night.

Mr. Baron *Carter*. Answer me another Question. What State of Health was Captain *Bromfield* in?---Mr. *Cartwright*. He was always a very weakly Man, but very mischievous.

Mr. Baron *Carter*. When was he taken ill?

Mr. *Cartwright*. After I was gone.

Mr. Baron *Carter*. Was he ill whilst you was there?

Mr. *Cartwright*. He was not ill, only poor and weak.

Mr. *Ward*. When was *Bromfield* ironed?---Mr. *Cart*. *Littleton* ironed him, while *Acton* was gone for the Surgeon, and put him into the Hole.

Mr. *Ward*. Where was he ironed?

Mr. *Cartwright*. He was carried first into the Lodge and ironed, and then put into the Hole.

Mr. *Ward*. Where is the Hole?---Mr. *Cart*. On the Common Side.

Mr. *Ward*. Did you see *George Carew* there?!

Mr. *Cartwright*. I don't know whether he followed him down.

Mr. *Ward*. Did *Carew* go along with *Littleton*, when he put him into the Hole?---Mr. *Cartwright*. I can't say, whether he did or not.

Joseph Wood, *a Surgeon, was sworn*.

Mr. *Acton*. Please to ask him, my Lord, if I came to fetch him.

Mr. Baron *Carter*. What say you to that?

Mr. *Wood*. *Acton* came to me, and desired me to go along with him; which I did, and found a Person stabbed in the Breast. The next Day I went to the Person who had wounded him, and I asked him how he could be so barbarous.

Mr. Baron *Carter*. That is not material. What State of Health did *Bromfield* seem to be in?

Mr. *Wood*. *Bromfield* seemed to be pretty well in Health.

Mr. *Acton*. Where did you see *Bromfield*?---Mr. *Wood*. In the Lodge.

Mr. *Acton*. Did you say any Thing to him?

Mr. *Wood*. I said, I find you are ironed: I think you deserve it; and he said, that *Darby* ordered him to be ironed, and he was glad *Acton* went for a Surgeon.

Mr. *Ward*. What Time did you see *Bromfield*?

Mr. *Wood*. The next Morning, about nine o'Clock.

Mr. *Ward* Where did you see him?---Mr. *Wood*. In the Yard.

Mr. *Ward*. How long did you stay there?

Mr. *Wood*. I staid there a trifling Time, about half an Hour, and left him there.

Lewis Jones.

Mr. *Acton*. I desire, my Lord, he may give an Account of what he knows as to Captain *Bromfield*.

Mr. *Jones*. *Bromfield* came in *April* from the Master Side to the Common Side, and was put in Irons by *John Littleton*.

Mr. *Acton*. Please to ask what State of Health he was in.

Mr. *Jones*. *Bromfield* was in a sad State of Health, he fell sick of the Gaol Distemper, he had the Jaundice on him.

Mr. *Acton*. What did he die of?---Mr. *Jones*. A Fever.

Mr. *Acton*. How do you know?

Mr. *Jones*. I am a Surgeon; I took Notice of him continually.

Mr. *Acton*. How did I behave myself to Captain *Bromfield*?

Mr. *Jones*. You was kind to him at all Times.

Mr. *Acton*. Please to ask, my Lord, how I behaved myself to the Prisoners in general.

Mr. *Jones*. *Acton* would never suffer any Thing of Hardship.

Mr. *Acton*. Have you seen any Acts of Friendship?

Mr. *Jones*. Both your Pocket and your Table have been made use of.

Mr. Baron *Carter*. Did you see Captain *Bromfield* put in the Hole?

Mr. *Jones*. I saw Nobody put in the Hole.

Mr. *Ward*. Did not you see *Bromfield* in the Hole?

Mr. *Jones*. I never saw him in the Hole.

Mr. *Harding*. I beg leave to make an Observation (and was going on).

Mr. Baron *Carter*. You can't observe; I don't think you have used me me well before. A Gentleman that is a young Counsel, should open no more than the Record.

Mr. *Harding*. I opened no more than the Fact.

Mr. Baron *Carter*. Gentlemen of the Jury, the Prisoner at the Bar stands indicted for the Murder of *John Bromfield*. The Indictment sets forth,——

You are to consider, whether you have sufficient Evidence, to induce you to believe him Guilty of this Fact. Whatever is opened by the Counsel, that is not proved to you, is to have no Weight with you. It is set forth, that he was beat, and that the Marks and Strokes were upon him. I don't observe by the Evidence, that any Stroke was given to the Man at all.

Gentlemen, let the Consequence be what it will, Evidence is to determine every Man's Fate.

The Indictment sets forth, that *Darby* was Keeper of the Gaol on the 15th of *July*, and that *Bromfield* died the second.

The Fact is charged preceding to that Time; the Fact is laid in *April*, and all this is laid to be in the Space of five Days.

Wheeler, the first Evidence for the King; he says, that *Acton* was Turnkey, and Servant to *Darby*; that he knew *Bromfield*; that he lodged in the Nursery, and coming down the Stairs, there was a Hatch upon the Stairs, and *Perkins* kept the Key; that he and the Captain quarrelled, and that they went into the Chandler's Shop, and quarrelled further, and then *Bromfield* stabbed him with a Pen-knife, and thereupon dropt the Knife. He was carried from thence to the Pound, and carried from thence away to the Lodge, and was refractory; but he did not hear *Acton* order any Thing.

He says, Gentlemen, that he saw Fetters on him, when he came out of the Hole the next Morning; and that he was turned from the Master's to the Common Side; that his Body was all over black, and turned so after his Decease. He says, that it was not in Streaks, but one continued Blackness.

The second Witness, *Hugh Martin*, says, that he knew Captain *Bromfield*; that he was his Bedfellow; that he saw the Captain in the Chandler's Shop, and *Perkins* refused him a Favour, and *Bromfield* stabbed him; that he did not see *Acton* there, but saw him in the Yard, and saw him go to the Court-House. That he saw *Bromfield* on the Common Side with Fetters on, and saw him in the Hole, but saw no Beating; that he continued in there all Night, and the Hole is a little Place, has no Floor, and is damp; that there is no Place to let in the Air and Light, but the Key-hole and Crevice. He says, that he saw *Bromfield* in *George's Ward* in Irons; that it was three Weeks or a Month before he died; that he wanted Necessaries, and that he was apt to judge he died of the Jaundice.

On the 1st of *March*, 1725, *Saunders* says, that *Bromfield* became a Prisoner; that *Nichols* and *Littleton* brought *Bromfield* along; and that he saw him ironed by *Acton*'s Orders. This is the only Witness that says *Acton* ordered it. That *Bromfield*, he believes, was in the Hole three Days, it might be a little longer; that the Hole was under a Pair of Stairs, there was no Light, nothing in it, but a Piece of a Chair that a Woman set her Greens on: That *Bromfield* could not stand upright, that he dared not lie down, because it was so wet; that *King and Bromfield* spoke to *Acton* to take the Irons off, but he could not do it without *Darby*'s Order. It was his Opinion that *Bromfield* was well, and that the hard Usage was the Occasion of his Death. That he saw his Body after he was dead, and it was of several Colours. He was asked, if he saw any Sign of a Stroke on his Body, and he said that it was all of a Colour. He says that *Bromfield* told him, that the Usage of the Hole, and the Fetters, where the Occasion of his Death, the Night before he died. So that what he said is Evidence, and ought to have its Weight; such Cruelty should not have been continued.

Martha Johnson; she says, that she saw *Bromfield* come out of the Hole in Irons.

So that there is but one Witness that says he was put there by *Acton*'s Order; and the Prisoner insists, that he did not order him there; and if he did, he did not die by Duress, but by the Jaundice.

George

George Carew, the first Witness for the Prisoner, says, he was there; and *Acton* went for a Surgeon, and *Littleton* came from the Lodge, and took *Bromfield* there, and ironed him, and put him into *George's Ward*, but that *Acton* gave no Directions; that he was in there three or four Hours, and that he saw him well the next Day, and that he walked about the Yard. That he fell ill of the Jaundice, and his Face was black and yellow a Week before he died. He was asked by the King's Counsel, if he was a healthful Man? And he said, he was not. He says, that *Acton* was gone before *Littleton* came; so that in his Opinion, *Acton* did nothing; and says, that *Bromfield* died of the Jaundice.

The second Witness for the Prisoner says, that he saw *Acton* run out of the Court into the Pound, and *Acton* said he would go for a Surgeon. That *Littleton* ironed him, and put him into the Hole, and it was all done before *Acton* came from the Surgeon. He was there before *Littleton* came, and said, he would go and fetch a Surgeon. He says, that *Bromfield* was in the Hole six Hours; that he locked him up every Night, and he looked upon him to be a weak Man.

Wood says, that he saw *Bromfield* the next Day, and talked with him about Irons; and he said he was ironed by the Direction of Mr. *Darby*; and that *Acton* was always very kind to him.

Jones says, that *Littleton* ironed *Bromfield*; and that it was in *April*, and he died in *June*. He says, that he was a Surgeon, and that *Acton* was always very kind to the Deceased.

Gentlemen, in the first place you are to consider, whether the Man was put into the Hole by the Direction of *Acton*; and in the next Place, if it was done by *Acton*, and this was not the Occasion of his Death, you will acquit him as to that. But if you believe *Acton* ordered him into his Hole, and that it was the Occasion of his Death, he was guilty of Duress; but that will be contrary, four Witnesses to one.

The Jury agreed upon their Verdict immediately, without going out of Court.

Clerk of Arraigns. Gentlemen, are you you all agreed in your Verdict?
Omnes. Yes.
Cl. of Ar. Who shall say for you?
Omnes. Our Foreman.
Cl. of Ar. Hold up thy Hand. (*Which he did.*) Look upon the Prisoner; How say you; Is he Guilty of the Murder and Felony whereof he stands indicted, or Not Guilty?
Foreman. Not Guilty.

XVI. The Trial of William Acton, for the Murder of Robert Newton, before Mr. Baron *Carter*, at the Assizes held at *Kingston upon Thames*, for the County of *Surry*, *August* 2, 1729.

Die Sabbati, 2 Die Augusti 1729.

The said William Acton *having been before arraigned for the Murder of* Robert Newton, *the Counsel proceeded as follows:*

Mr. *Harding.* MY Lord, and you Gentlemen of the Jury, I am of Counsel for the King. This is an Indictment against *William Acton* for the Murder of *Robert Newton*. The Indictment sets forth——

Mr. *Marsh.* My Lord, and you Gentlemen of the Jury, this is an Indictment against the Prisoner at the Bar, *William Acton*, for the Murder of one *Robert Newton*. It sets forth that *Darby* was principal Gaoler, and *Acton* under him. *Newton* and *Hartness* were Chums or Ward-mates: and whilst they were there, one of them attempted to escape; they were prevented in that; and *Acton* clapped on *Newton* very severe Shackles, and he was ordered into a Place called the Strong Room, a Place, we think to satisfy you, was a Room not at all fit to put Persons into. We say it is a very bad Place, and a very dangerous Place to the Health; there this *Newton* was confined for a considerable Time; there he was locked up, and the Key kept by an inferior Officer of the Gaol. And *Acton* was so very sensible he was in a declining Way, that purely for his own Safety, he first ordered him out of that Place into the Lodge, then carried him into the Sick Ward. He continued there some time, and complained of this Hardship, this Imprisonment, and the Hardship put upon him by *Acton*; and that that Rogue of a Man was his Murderer: For that he had applied to the Judge of the Court, and he was pleased to make an Order, after being very angry with what *Acton* had done, to release him out of his Hardship; but he, notwithstanding, disobeyed that Order. Therefore, if we call our Witnesses to shew he contracted by this Usage an Illness of which he languished and died, it will remain on the Prisoner to shew what he died of, and that he died of some other Distemper; and then you will judge of the Fact.

Mr. *Ward.* I am Counsel of the same Side, and we will call our Witnesses.

Captain Tudman *was sworn.*

Mr. *Ward.* Did you know *Robert Newton?*
Mr. *Tudman.* I did; he was a Prisoner in *May* 1725.
Mr. *Ward.* Give an Account of what you know concerning him?
Mr. *Tud. Newton* and *Hartness* lay in the Park when they were Prisoners in the *Marshalsea*; and they broke out, and afterwards were retaken, and committed to the Prison again; and *Acton* put them in Irons. *Newton* fell sick, and languished for some time, and died.
Mr. *Ward.* Who had the Care of the Prisoners then?
Mr. *Tud.* Mr. *Darby* was Head Man, and *Acton* was under him.
Mr. *Ward.* Was *Newton* Ironed?
Mr. *Tud.* I went to see him in the Lodge; he was ironed there, and then sent to the Strong Room.
Mr. *Ward.* How long were the Irons continued on?
Mr. *Tud.* Till he petitioned Sir *John Darnell.*
Mr. *Strange.* If he petitioned Sir *John Darnell*, and there was any Order, they ought to produce it in Writing, and prove it. It might be a Parole Order, and that may be given in Evidence.
Mr. *Ward.* Did you hear any verbal Order given by Sir *John Darnell* for his Releasement?---Mr. *Tud.* No.
Mr. *Ward.* How long did *Newton* lie in the Strong Room?
Mr. *Tud.* I can't guess at the Time.
Mr. *Ward.* What was done after the Irons were put on?
Mr. *Tud.* I cannot say.
Mr. *Ward.* Where did he die?
Mr. *Tud.* He died in the Sick Ward. I saw him four or five Days before he died.
Mr. *Ward.* What Sort of a Place is the Strong Room?
Mr. *Tud.* The strong Room is built of Wood, and is a very strong Place to keep Prisoners in like a Shed.
Mr. *Ward.* Is there not a Common Sewer runs under it?
Mr. *Tud.* The Common Sewer is pretty near it, within twenty or thirty Yards.
Mr. *Ward.* Who was he ironed by?
Mr. *Tud.* I saw him ironed by *Darby.*
Mr. *Ward.* Was *Acton* Head Turnkey?---Mr. *Tud.* Yes.
Mr. *Marsh.* Was there any Coroner's Inquest sat upon him after he was dead?---Mr. *Tud.* There was not.
Mr. *Harding.* Was there any Place to let in the Air?
Mr. *Tud.* There was a little Hole to let in the Air.
Mr. Baron *Carter.* From the Time that he was put in Irons, how long did he live?---Mr. *Tud.* I can't charge my Memory.
Mr. *Marsh.* Had he any Illness before he was put in Irons?
Mr. *Tud.* He had no Illness before he was put in Irons; he was a hale, strong, young Man.

Edmund Carr.

Mr. *Marsh.* Did you see *Newton* in the *Marshalsea?*
Mr. *Carr.* I was a Prisoner there when he and another broke out; they were taken again, and carried into the Lodge, and when I saw them come out of the Lodge, they were brought along by *Rogers* in Irons, and put into the the Strong Room, and he locked them up there.
Mr. Baron *Carter.* What was the Name of the other?
Mr. *Carr.* I have forgot.
Mr. Baron *Carter.* Was it *Hartness?*---Mr. *Carr.* Yes.
Mr. *Ward.* How long did he continue in the Strong Room?
Mr. *Carr.* He continued there two Court Days, which is about fourteen Days.
Mr. *Ward.* You knew *Newton.* What State of Health was he in before he was put in that Room?
Mr. *Carr.* I knew *Newton* very well; he was a fat, jolly young Man, and seemingly very well.
Mr. *Ward.* When did he die?
Mr. *Carr.* He fell sick in the Strong Room, and was carried to the Sick Ward.
Mr. *Ward.* How long did he live after?---Mr. *Carr.* I cannot tell.
Mr. *Ward.* What was the Distemper he had in the Strong Room?
Mr. *Carr.* I do believe that it was the Gaol Distemper he took in the Strong Room.
Mr. Baron *Carter.* What is the Distemper of the Gaol?
Mr. *Carr.* The Ague and Jaundice.
Mr. *Ward.* You say he took the Distemper in the Strong Room; do you believe that was the Occasion of it?
Mr. *Carr.* I do believe that did occasion the Distemper.
Mr. *Ward.* What Irons had he on?
Mr. *Carr.* Double Irons; an Iron on each Leg, such as I had.
Mr. *Ward.* What might the Irons weigh?
Mr. *Carr.* Twenty Pounds, or less.
Mr. *Ward.* Who was with him, when he was brought from the Lodge?
Mr. *Carr.* I saw Nobody but *Rogers* and *Clark.*
Mr. *Ward.* Did you see *Acton* in the Lodge?
Mr. *Carr.* I did not look in to see if he was there or not.
Mr. *Marsh.* Who ordered the Irons to be put on?
Mr. *Carr.* I don't know.
Mr. *Marsh.* Did *Acton* go to the Strong Room?--Mr. *Carr.* I can't tell.
Mr. *Marsh.* Was *Newton* locked up there?
Mr. *Carr.* He was locked up every Night close.
Mr. *Marsh.* Had he Liberty of coming out of Days?
Mr. *Carr.* Not at first.
Mr. *Marsh.* How long was he confined in the Strong Room, before he had Leave to come out?---Mr. *Carr.* I cannot tell.
Mr. *Marsh.* How long was he in the Strong Room before he fell sick?
Mr. *Carr.* About fourteen Days or more.
Mr. *Marsh.* What Sort of a Place is the Strong Room?
Mr. *Carr.* It is a boarded Place, and there is a damp Hole under it; and there is no Drain to carry the Water off.
Mr. *Marsh.* I ask you, what kind of a Place it is? Whether there is any Place to let in the Air; and whether the Sun visits it?
Mr. *Carr.* It is an odious Place, and there is only a little Hole to let in the Air; it is built against the Side of a Wall, and the Sun does not visit it; it is covered with Boards, and seemed like the Deck of a Ship.
Mr. *Marsh.* What was the Occasion of his being taken out of that Room?----Mr. *Carr.* He was taken out for Sickness.
Mr. *Marsh.* How long was he in the Strong Room in all?
Mr. *Carr.* About fourteen Days.
Mr. *Marsh.* How long did he lie sick in the Strong Room?
Mr. *Carr.* I cannot tell.
Mr. *Marsh.* Where was he carried when taken out of the Strong Room?
Mr. *Carr.* To the Sick Ward.
Mr. *Marsh.* What Condition was he in when carried to the Strong Room?

Mr. *Carr.* He was very well; he then was a hale, jolly Man.
Mr. *Marſh.* Was you with him in the Sick Ward?
Mr. *Carr.* I was almoſt every Day.
Mr. *Marſh.* How long before he died?——Mr. *Carr.* I cannot tell.
Mr. *Marſh.* Was it within a Day or two?
Mr. *Carr.* Within a Week.
Mr. *Marſh.* Did he tell you what was the Occaſion of his Death?
Mr. *Carr.* He ſaid, that the Confinement in the Strong Room was the Occaſion of his Death.
Mr. *Marſh.* Do you believe it to be the Occaſion of his Death?
Mr. *Carr.* He being a hale Man, and coming in freſh, I believe the Confinement was the Occaſion of it.
Mr. *Marſh.* Was there any Coroner's Inqueſt ſat upon his Body?
Mr. *Carr.* There was no Inqueſt ſat upon him or any other.
Mr. *Acton.* Pleaſe to aſk, my Lord, if they were not let out of the Strong Room.
Mr. Baron *Carter.* What ſay you to that?
Mr. *Carr.* At firſt they were not, but afterwards they were.
Mr. Baron *Carter.* What became of *Hartneſs?*
Mr. *Carr.* He was let out.
Mr. Baron *Carter.* Did he lie there as long as the other?
Mr. *Carr.* Yes.
Mr. Baron *Carter.* Did he contract any Illneſs?—Mr. *Carr.* No.
Mr. Baron *Carter.* Were his Irons as heavy as *Newton*'s?
Mr. *Carr.* I can't tell, I never weighed them.
Mr. Baron *Carter.* The Queſtion I aſk you is, whether the Irons were one as heavy as the other? Which I expect you to anſwer.
Mr. *Carr.* I believe they were coequal.
Mr. Baron *Carter.* Anſwer me another Queſtion. You was ſaying there was no Drain to carry off the Water, where does the Water come in?
Mr. *Carr.* There was a Place about as big as the Table in the Court, where the Water ſettles, and runs under the Room, and makes it damp.
Mr. Baron *Carter.* What ill Smell is there?—Mr. *Carr.* A Sort of a damp Smell; and Abundance of Rats creep into it.
Mr. Baron *Carter.* When the Priſoners are let out of Days, is the Door always kept ſhut or not?
Mr. *Carr.* Sometimes 'tis locked up, ſometimes not.

(Edward Phillips *was ſworn.*)

Mr. *Ameron.* Did you know *Newton?*
Mr. *Phillips.* I was a Priſoner in the *Marſhalſea* during the Time *Newton* and *Hartneſs* were in the Gaol.
Mr. *Ameron.* Did you ſee him in Irons?——Mr. *Phillips.* I ſaw *Acton* and *Rogers* in the Lodge when they were ironed.
Mr. *Ameron.* Where were they carried after?
Mr. *Phillips.* They were carried to the Strong Room.
Mr. *Ameron.* What Kind of a Place is it?
Mr. *Phillips.* It is a Place not fit for a human Perſon to be in.
Mr. *Ameron.* Is the Common Sewer under it?
Mr. *Phillips.* The Common Sewer runs by it.
Mr. *Ameron.* How long did *Newton* ſtay there?
Mr. *Phillips.* About fourteen Days.
Mr. *Ameron.* How near is the Common Sewer to it?
Mr. *Phillips.* The Soil that comes from the Neceſſary-houſe runs within three or four Yards of it.
Mr. *Marſh.* Was it infeſted with Vermin?
Mr. *Phillips.* I ſaw Rats there, and the Side of a Man's Face eat away in three or four Hours after he was dead.
Mr. *Marſh.* What might be the Weight of the Irons *Newton* had on?
Mr. *Phillips.* The Irons he had on were twenty Pounds Weight.
Mr. *Marſh.* How long was *Newton* in the Strong Room before he was taken ſick?——Mr. *Phillips.* Ten or twelve Days.
Mr. *Marſh.* What became of him then?
Mr. *Phillips.* He was carried to the Sick Ward.
Mr. *Marſh.* How long was he ſick in the Strong Room?
Mr. *Phillips.* I cannot ſay.
Mr. *Marſh.* Were his Irons taken off?
Mr. *Phillips.* His Irons were taken off, I believe, by Petition.
Mr. *Marſh.* Who was the other Man?
Mr. *Phillips.* The other was one *Hartneſs.*
Mr. *Marſh.* How was he as to his Health?—Mr. *Phillips.* Very well.
Mr. *Marſh.* What Sort of a Man was *Newton?*
Mr. *Phillips.* He was a robuſt Man.
Mr. *Marſh.* From the Time of his being put firſt into the Sick Ward, to the Time of his Death, how was he?
Mr. *Phillips.* He continued to grow worſe and worſe till he died.
Mr. *Marſh.* Did he ſay what was the Occaſion of his Death?
Mr. *Phillips.* I heard him ſay, that the ill Uſage and Confinement were the Occaſion of his Death.
Mr. *Marſh.* What was your Opinion of him before he was put in the Strong Room?——Mr. *Phillips.* My Opinion is, that he was a ſtrong young Man when he came in.
Mr. *Marſh.* When did he tell you that his Death was occaſioned by his Confinement and Uſage?
Mr. *Phillips.* I believe it was ſome Days after he was in the Sick Ward.
Mr. *Marſh.* What, in your Opinion, was the Cauſe of his Death?
Mr. *Phillips.* My Opinion is, that the Confinement and Uſage were the Cauſe of his Death.
Mr. *Marſh.* Was the Priſoner at the Bar in the Lodge when the Irons were put on?——Mr. *Phillips.* The Priſoner at the Bar was there with *Rogers* when they were put on.
Mr. *Marſh.* Was there any Bed in the Strong Room?
Mr. *Phillips.* There was no Bed there; and if he had had one, they would have prevented its coming in.
Mr. *Marſh.* Do you know of any Application made to *Darby*, in relation to *Newton?*——Mr. *Phillips.* No.

(Robert Smith *was ſworn.*)

Mr. *Ward.* Did you know *Newton?*
Mr. *Smith.* I knew *Newton* very well; I knew him to be a luſty, hale Man; and that he was confined in the Strong Room eight or ten Days; or more.
Mr. *Ward.* Did you ſee him in the Strong Room?
Mr. *Smith.* I never ſaw him but through the Hole.
Mr. *Ward.* Did he complain of his Irons?——Mr. *Smith.* Yes.
Mr. *Ward.* Did you draw a Petition for him?——Mr. *Smith.* I did.
Mr. *Ward.* You have ſeen the Strong Room, what Sort of a Place is it?
Mr. *Smith.* I have ſmelt noiſome Stenches, and ſeen Perſons dying in it.
Mr. *Ward.* was it damp?
Mr. *Smith.* I believe it was damp; I ſaw it once open.
Mr. *Ward.* Was it open when you ſaw *Newton* there?—Mr. *Smith.* No. I ſaw him through the Hole; Nobody was admitted to him then.
Mr. *Ward.* How often was you there?
Mr. *Smith.* I was there twice or thrice in the Middle of the Day to ſee him, and the Door was always ſhut.

(*Mr.* Demotet *was ſworn.*)

Mr. *Ward.* Did you know *Newton?*
Mr. *Demotet.* I knew *Newton* before he come in de Park, (which he ſpoke in a very broken Manner); I cannot ſpeak *Engliſh* well.
Mr. *Ward.* He is a Foreigner, and can't ſpeak *Engliſh* to be underſtood, therefore we deſire he may be allowed an Interpreter, who is here ready.
Mr. *Acton.* He can ſpeak *Engliſh* very well; here is one that heard him, who can prove it.
Mr. Baron *Carter.* When I went the *Oxford* Circuit, the *Welch* would not ſpeak *Engliſh*, becauſe it was a Diſhonour to their Country. If he can talk *Engliſh* to be underſtood (which I ſhall judge of when he is examined), I can't allow him an Interpreter.
Mr. *Ward.* Give an Account, as well as you can, of what you know of *Newton.*
Mr. *Demotet.* I knew *Newton* the Time he broke out of the Room; he was retaken three or four Months after, and was carried into the Strong Room very ſoon in the Morning.
Mr. *Ward.* How long did he continue there?
Mr. *Demotet.* He continued there fourteen or fifteen Days, and lay on the Ground, and had nothing to keep him there.
Mr. *Ward.* Was he ironed?
Mr. *Demotet.* He came ironed out of the Lodge.
Mr. *Ward.* Who brought him out of the Lodge?
Mr. *Demotet. Rogers* and *Nichols* brought him down.
Mr. *Ward.* Was *Acton* there?
Mr. *Demotet. Acton* came and ſaw *Newton* locked into the Strong Room. When he was firſt put in, Capt. *Delagol* was confined there at the ſame time.
Mr. *Ward.* Was *Newton* ſick in the Strong Room?
Mr. *Demotet.* He fell ſick there; both of them were louſy; his Wife and young Child came to take care of her Huſband, and petitioned to Sir *John Darnell* to have him releaſed; he was put in the Sick Room, and there died in four or five Days after. His Wife broke her Heart, and ſhe and the little Child died in the ſame Week.
Mr. *Ward.* What was the Occaſion of his being ſick?
Mr. *Demotet.* That he was on the Ground, he had no Bed to ly on, and the Water came in at the Top.
Mr. *Ward.* What Kind of a Place is the Strong Room?
Mr. *Demotet.* It is not fit to put a Man in, the Rain comes in.
Mr. Baron *Carter.* Was you ever in it?
Mr. *Demotet.* I was in it myſelf; *Grace* put me in there.
Mr. Baron *Carter.* How long was you in the Strong Room?
Mr. *Demotet.* I was in there for ten Minutes, and there were two dead Men in it at the ſame Time, and I fell ſick for five Months.
Mr. *Marſh.* Was it infeſted with Rats?
Mr. *Demotet.* It was very much infeſted with Rats and Vermin.
Mr. *Acton.* Do you know *Heſter Overſtoun?*
Mr. *Demotet.* I do not know her. (All ſpoke in broken *Engliſh.*)

(Martha Johnſon *was ſworn.*)

Mr. *Marſh.* Did you know *Newton?*——Mrs. *Johnſon.* I did, he lived in the Park, on the Maſter Side, before he broke out.
Mr. *Marſh.* Did you ſee him confined in the Strong Room?
Mrs. *Johnſon.* I never ſaw him confined in any Place, but I ſaw him in Irons.

(John Johnſon *was ſworn.*)

Mr. *Ward.* Give an Account of what you know of *Newton.*
Mr. *Johnſon.* I ſaw *Newton* in the Strong Room.
Mr. *Ward.* What Sort of a Place is it?
Mr. *Johnſon.* It is a cloſe Place.
Mr. *Ward.* Is it fit to put any one in?
Mr. *Johnſon.* It is not fit to put a Man into.
Mr. *Ward.* Was there any Smell there?——Mr. *Johnſon.* There was a noiſome Smell, and ſo there was on all the Common Side.
Mr. *Ward.* Is it more or leſs healthy than the other Rooms on the Common Side?
Mr. *Johnſon.* They are all unhealthy, it is much the ſame as the reſt.
Mr. *Acton.* I deſire he may be aſked, when he went to Captain *Delagoll* in the Strong Room, if the Door was open.
Mr. *Johnſon.* It was open; it was opened for me to go to ſhave him.

(Ruth Butler *was ſworn.*)

Mr. *Ward.* Did you know *Newton?*
Mrs. *Butler.* I remember *Newton* very well; he was confined on the Maſter Side in the Park, and there broke out; he was retaken, and brought to the Priſon again, and put into the Strong Room by Mr. *Acton*'s Order; I heard *Acton* give the Orders.
Mr. *Ward.* Was he ironed?——Mrs. *Butler.* He was ironed on both Legs; I heard *Acton* order them to be put on.
Mr. *Ward.* How long did he continue in the Strong Room?
Mrs. *Butler.* He continued there a good while, more than a Month; he was ſick there.
Mr. *Ward.* How long was *Newton* confined in the Strong Room?
Mrs. *Butler.* About two Months.
Mr. *Ward.* Are you ſure it was two Months?
Mrs. *Butler.* I really think it was ſo long.
Mr. *Ward.* When was he taken ill?

Mrs. *Butler.* He fell ill in the Strong Room, and continued there ſome time after he was taken ſick, and then was carried to the Sick Ward, and died in three or four Days after he was put there.

Mr. *Ward.* When were his Irons taken off?

Mrs. *But.* His Irons were taken off in the Strong Room.

Mr. *Ward.* What was the Occaſion of his Sickneſs?

Mrs. *But.* I can't tell what it was occaſioned by, unleſs by the Rain and Wet that came in.

Mr. *Ward.* Was it covered at Top?

Mrs. *But.* It was bearded at Top, but the Rain came through the Top, the Boards not being cloſe enough to keep the Rain out.

Mr. *Ward.* How near is the Common Sewer to it?

Mrs. *But.* The Common Sewer runs juſt by it, and ſmells very offenſive.

Mr. *Ward.* Had *Newton* any Bed there?---Mrs. *But.* No.

Mr. *Ward.* Was it a fit Place for any Man to be put in?

Mrs. *But.* It was not fit for any Man to be in it.

Mr. *Ward.* What gave the Man his Sickneſs?

Mr. Bar. *Car.* She has anſwered that Queſtion already.

Mr. *Ward.* Did he make any Complaint?

Mrs. *But.* He complained his Legs were ſore with the Irons; I ſaw his Legs when his Stockings were off, in the Sick Ward, and his Legs were ſwelled, the Irons being too tight for him.

Mr. Bar. *Car.* Will you aſk her any Queſtions?

Mr. *Acton.* No, my Lord.

Nicholas Purden *was ſworn.*

Mr. *Ward.* Do you know the Strong Room?

Mr. *Purden.* I was in it ſeveral Times, when two unhappy Men were in it, who came from the *King's-Bench.* Every Time it rains, the Rain runs through, and there ſtagnates, till it dries through the Boards.

Mr. Bar. *Car.* When was that?

Mr. *Pur.* About a Year and a Half ago.

Mr. Bar. *Car.* That is ſhort of the Time laid in the Indictment.

Mr. *Ward.* I allow it ſhort of the Time.

Edmund Cummins *was ſworn.*

Mr. *Ward.* Give an Account of what you know of *Newton.*

Mr. *Cummins.* I remember *Newton*'s being put in the Strong Room; at that Time it rained in, and ſettled between the Joiſts.

Mr. *Ward.* Did it rain in when *Newton* was there?

Mr. *Cum.* It did rain in then, and ſo it did when I was there.

Mr. *Ward.* Had *Newton* Irons on?

Mr. *Cum.* I ſaw him in Irons in the Strong Room.

Mr. *Ward.* What kind of a Place was it?

Mr. *Cum.* It was wet and dirty, the Rain coming thro' at that Time; and it was not fit to put any Perſon into.

Mr. *Ward.* Was it a wholeſome Place?---Mr. *Cum.* No.

Mr. *Ward.* We ſhall call no more Witneſſes.

Mr. Bar. *Car.* Now, Priſoner, ſay what you will.

Mr. *Acton.* On the 26th Day of *July*, *Hartneſs* and *Newton* broke out of Gaol, and were retaken in *Kent*, and brought to the Gaol; and I diſpatched a Meſſenger to Mr. *Darby*, to know if he would have them put in Irons; and he ſent Word back, they ſhould. They were not put in that Night, but were put in Irons the next Day, and went about the Yard; and in about eight or nine Days time were diſcharged. *Newton* was afterwards taken ill, and put in the Sick Ward, and there died.

Robert Holmes *was ſworn.*

Mr. *Acton.* Pleaſe to aſk him, what he knows of *Newton.*

Mr. Bar. *Car.* Give an Account of what you know.

Mr. *Holmes.* *Newton* eſcaped out of a Room in the Park, and was retaken and brought to the Gaol, and I helped one of them down into the Lodge, and *Acton* bid me go to Mr. *Darby*, to know how to diſpoſe of them; and *Darby*'s Orders were to iron them, and put them in the Strong Room.

Mr. *Acton.* Pleaſe to aſk, my Lord, if he brought the Meſſage back to me, or any other Perſon.

Mr. *Holmes.* I came back to *Acton*, and told him, that Mr. *Darby*'s Orders were to have them put in the Strong Room, and ironed; and the next Day they were put in Irons by *Greenway* and *Nichols.*

Mr. *Acton.* Did *Darby* come there the next Day?---Mr. *Holmes.* Yes.

Mr. *Acton.* Pleaſe to aſk, if they were locked up and unlocked, as the reſt of the Priſoners.---Mr. *Holmes.* Yes, they were.

Mr. Bar. *Car.* What Irons had they on?

Mr. *Holmes.* Common Irons, as the Felons uſed to wear.

Mr. Bar. *Car.* How long were they confined there?

Mr. *Holmes.* Seven or eight Nights.

Mr. Bar. *Car.* What Day did they come in?--Mr. *Hol.* On a *Thurſday.*

Mr. Bar. *Car.* How long were they in Irons?

Mr. *Holmes.* Seven or eight Days.

Mr. Bar. *Car.* What Condition of Health were they in then?

Mr. *Holmes.* In perfect good Health.

Mr. *Acton.* How long did *Newton* continue ſo, after he was taken out of the Strong Room?

Mr. *Holmes.* *Newton* went into the Duke's Ward, and ſtaid there ſix Weeks, and was in good Health all that Time; I drank with him ſeveral Times, and played at Trap-ball with him.

Mr. *Acton.* Pleaſe to aſk, whether his Friends did not bring him Neceſſaries.

Mr. *Holmes.* There were his Wife and Siſter came to him; but *Hartneſs*'s Wife did more than either.

Mr. *Acton.* What was the Cauſe of his Death?

Mr. *Holmes.* The Gaol-Diſtemper; there were a great many ſick at that Time.

Mr. *Acton.* Were other Perſons ſick of the ſame Diſtemper at the ſame Time?---Mr. *Holmes.* It is my Opinion, but I can't be certain.

Mr. *Acton.* What think you of the Strong Room?

Mr. *Holmes.* I think it is the beſt Room on the Common Side for any two or three to lie in, and I have known ſeveral deſire to lie there.

Mr. *Marſh.* Conſider with yourſelf, that many Perſons have ſaid, that he lay fourteen or fifteen Days in the Strong Room, and was then carried to the Sick Ward; and you ſay, that he was ſix Weeks in the Duke's Ward.

Mr. *Holmes.* It was when he was taken out of the Strong Room, and carried to the Duke's Ward, he got his Illneſs, to the beſt of my Knowledge.

Mr. *Marſh.* When was he taken after the Eſcape?

Mr. *Holmes.* He was taken the latter End of *Auguſt.*

Mr. *Marſh.* When was he put in the Strong Room?

Mr. *Holmes.* He was brought to the Gaol the latter End of *Auguſt*, and put in the Strong Room on a *Thurſday.*

Mr. *Marſh.* How long did he continue in the Strong Room?

Mr. *Holmes.* He continued there eight Nights.

Mr. *Marſh.* Was he ſick there?---Mr. *Holmes.* He was not.

Mr. *Marſh.* What Day did he die on?

Mr. *Holmes.* I can't tell what Day.

Mr. *Marſh.* Do you know the Month?--Mr. *Hol.* He died in *November.*

Mr. *Acton.* Pleaſe to aſk, whether, when his Siſter or *Hartneſs*'s Wife viſited him, he made any Complaints to them.---Mr. *Holmes.* No.

Mr. *Marſh.* What Sort of a Place is the Duke's Ward?

Mr. *Holmes.* It is a Place that will contain thirty or forty, and there are as many put in on Nights; it is the common Place where People are put into when they come into the Gaol. I imagine he got his Illneſs there.

Mr. *Marſh.* How long did he lie in the Sick Ward before he died?

Mr. *Holmes.* I did not viſit him.

Mr. Bar. *Car.* If you can, aſcertain the Time he died.

Mr. *Marſh.* I aſk you when he was carried to the Strong Room, and how long he continued there?

Mr. *Holmes.* He was carried into the Strong Room on *Thurſday* Night, and continued there till *Thurſday* Se'nnight.

Mr. *Ward.* Where did he go afterwards?

Mr. *Holmes.* From the Strong he went into the Duke's Ward, and continued there ſix Weeks.

Mr. *Ward.* Are you ſure he continued there ſix Weeks?

Mr. *Holmes.* I am ſure he continued there above a Month.

Mr. *Ward.* What Service have you, or what Capacity are you in? Do you ſerve in the Gaol under *Acton?*

Mr. *Holmes.* None. By Mr. *Darby*'s Leave I have a Lodging there.

Mr. *Ward.* You ſay, Priſoners have choſe to lye in the Strong Room; pray name one.

Mr. *Holmes.* Capt. *Thompſon* deſired me to go to Mr. *Acton*, to let him lie there.

Mr. Bar. *Car.* When was the Strong Room built.

Mr. *Holmes.* It has been built about four years, rather more.

Mr. *Ward.* How many Years ago is it that you was ſpeaking of *Newton?*

Mr. *Holmes.* About three Years.

Robert Walter *was ſworn.*

Mr. Bar. *Car.* What do you know of *Newton?*

Mr. *Walter.* After he was retaken, he was put into the Strong Room, and remained there eight Days, and then was put into the Duke's Ward, and continued there five Weeks.

Mr. Bar. *Car.* What Condition was he in?

Mr. *Wal.* He never complained for Want.

Mr. Bar. *Car.* What Diſtemper had he?

Mr. *Wal.* It was commonly ſaid, the Gaol Diſtemper.

Mr. Bar. *Car.* What do you think of the Strong Room?

Mr. *Wal.* I have worked many a Day and many a Week in it, and aſked it as a Favour to be there.

Mr. *Acton.* Had *Newton* a Bed there?

Mr. *Wal.* *Newton* had a Bed, I lent it him.

Mr. *Acton.* Was *Newton* confined there continually, or let out?

Mr. *Wal.* He was locked up, and let out as we were.

Mr. *Marſh.* When did *Newton* die?---Mr. *Wal.* I can't tell juſtly, in about ten or twelve Weeks after he was retaken.

Mr. *Marſh.* When was he retaken?--Mr. *Wal.* The latter End of *Auguſt.*

Mr. *Marſh.* When did he die?

Mr. *Wal.* He died in *November*, to the beſt of my Knowledge.

Mr. *Marſh.* How long did he continue in the Strong Room?

Mr. *Wal.* Seven or eight Days.

Mr. *Marſh.* When was he put in the Strong Room?

Mr. *Wal.* The next Morning after he was retaken.

Mr. *Marſh.* How long did he continue in the Duke's Ward?

Mr. *Wal.* A Month or five Weeks, and then was removed into the Sick Ward.

Mr. *Marſh.* How long did he lie there?

Mr. *Wal.* He lay in the Sick Ward five or ſix Weeks, or more.

Mr. *Marſh.* Did he make any Complaint to you?

Mr. *Wal.* I never converſed with him.

Mr. *Marſh.* When you worked in the Strong Room, had you any other Place to work in?

Mr. *Wal.* I had another Place to work in, in *George*'s Ward, but I was hunted about by other Priſoners. I would chooſe to lie there, and have lain there for a Week together, rather than lie in a Place where there are thirty or forty; for it is better to lie in a clean Place where there are not ſo many.

Mr. *Ward.* You ſay, you furniſhed *Thompſon* with a Bed; How came you to have a Bed to ſpare?

Mr. *Wal.* I purchaſed ſeveral Beds, and let them out to hire.

Mr. Bar. *Car.* He ſaid he ſent in a Bed like an Upholder.

Mr. *Ward.* I was really ſurprized, that a Priſoner ſhould have more than one.

Sarah Hartneſs, *Wife of* —— Hartneſs, *was ſworn.*

Mr. *Acton.* Pleaſe to aſk, if ſhe was in the Strong Room when *Newton* was there, if he had a Bed.

Mr. Bar. *Car.* What ſay you to that?

Mrs. *Hart.* I was in the Room with *Newton*, and he had a Bed there.

Mr. Bar. *Car.* Had he Liberty to go out?

Mrs. *Hart.* He had Liberty to go out of Days.

Mr. Bar. *Car.* When he went out of the Strong Room, where did he go?

Mrs.

Mrs. *Hartneſs.* I think he went into the ſick Ward.
Mr. Baron *Carter.* When he went out of that Room, how was he?
Mrs. *Hartneſs.* Very well.
Mr. Baron *Carter.* How long after was it before he was taken ill?
Mrs. *Hartneſs.* He was not taken ill in three Weeks after.
Mr. Baron *Carter.* Where did your Huſband go, when he left the Strong Room?---Mrs. *Hartneſs.* Into the Petitioning-Room.
Mr. Baron *Carter.* How long did *Newton* live after he went out of the Strong Room?---Mrs. *Hartneſs.* Six Weeks, or better.
Mr. *Acton.* Pleaſe to aſk her, if one Captain *Delagoll* was not there at the ſame Time?
Mrs. *Hartneſs.* He was; and my Huſband and *Newton* were very glad that they were favoured ſo much, in having ſo good a Gentleman with them, he having Candle there.
Mr. Baron *Carter.* What Sort of a Place was the Strong Room?
Mrs. *Hartneſs.* It was clean and dry; I could have wiſhed my Huſband there all the Time.
Mr. *Acton.* Pleaſe to aſk, my Lord, whether ſhe ever heard them complain of ill Uſage.---Mrs. *Hartneſs.* No.
Mr. Baron *Carter.* Did *Newton* complain that the Irons had hurt his Legs, and that they were ſwelled?---Mrs. *Hartneſs.* No.
Mr. Baron *Carter.* Who were the Irons taken off by?
Mrs. *Hartneſs.* They were taken off by *Darby*'s Order.
Mr. *Acton.* Pleaſe to aſk, if *Newton* ever complained of me?
Mrs. *Hartneſs.* I never heard him ſay a miſs Word of you.
Mr. *Acton.* Pleaſe to aſk, my Lord, if ſhe applied to *Darby* to have the Irons taken off.
Mrs. *Hartneſs.* I went to *Darby* on a Court Day, and he ſaid, he would have them off.
Mr. *Ward.* Who do you live with?---Mrs. *Hart.* One Col. *Brown.*
Mr. *Ward.* Where does he live;
Mrs. *Hartneſs.* He lives in *Charles-ſtreet, Covent-Garden.*
Mr. *Ward.* How comes it that you live with Colonel *Brown?*
Mrs. *Hartneſs.* I am Servant to Colonel *Brown.*
Mr. *Ward.* What is your Huſband?
Mrs. *Hartneſs.* He is Cook to the Coptain of a Ship.
Mr. *Ward.* Where did *Newton* lye after he came out of the Strong Room?---Mrs. *Hartneſs.* My Huſband and *Newton* were Bedfellows.
Mr. *Ward.* I expected you worſe than I find you. After your Huſband came out of the Strong Room, where was he carried to?
Mrs. *Hartneſs.* To the Petitioning-Room.
Mr. *Ward.* Was your Huſband in the ſick Ward?---Mrs. *Hart.* No.
Mr. *Ward.* How could they lye together?
Mrs. *Hartneſs.* I ſpoke of this before they went out.
Mr. Baron *Carter.* She does not ſay a Word as to the Strong Room; one lay in the Petitioning-Room, and the other in the Sick Ward.

Mary Berkley *was ſworn.*

Mr. *Acton.* Do you remember *Newton* being in the Strong-Room?
Mrs. *Berkley.* I do.
Mr. *Acton.* Had he a Bed there?---Mrs. *Berkley.* He had.
Mr. *Acton.* What kind of a Place is the Strong Room?
Mrs. *Berkley.* It is a boarded Room, and floored at Bottom; it was every Day waſhed; I waſhed it.
Mr. Baron *Carter.* Did he not complain of any Hardſhip?
Mrs. *Berkley.* No.
Mr. Baron *Carter.* Where did he go when he came out of the Strong Room?
Mrs. *Berkley.* He went into the Duke's Ward.
Mr. Baron *Carter.* How long was he there?---Mrs. *Berk.* Seven Weeks.
Mr. Baron *Carter.* Where did *Newton* fall ill?
Mrs. *Berkley.* In the Duke's Ward.
Mr. Baron *Carter.* Did you ſee *Newton* when ſick?
Mrs. *Berkley.* I did ſee him, I was Nurſe; his Diſtemper was the Gaol Diſtemper, an Ague and Fever; he was taken ill with a Shivering and Shaking.
Mr. Baron *Carter.* Did you look after him all the Time he was ill?
Mrs. *Berkley.* Yes.
Mr. Baron *Carter.* When did he die?
Mrs. *Berkley.* He died in *November.*
Mr. Baron *Carter.* Did he complain of any hard Uſage?
Mrs. *Berkley.* No; he went about with his Fetters.
Mr. *Acton.* Did you ſee him after he died?
Mrs. *Berkley.* Yes, I waſhed him; he was a very clever, clean Corpſe, without Spot or Blemiſh.
Mr. *Marſh.* Did you ſee no Marks of the Irons?---Mrs. *Berkley.* No.
Mr. *Marſh.* Did you waſh the Strong Room with the Water that fell from the Heavens? You dried it up——
Mr. Baron *Carter.* Did it rain in?
Mrs. *Berkley.* It never rained in there; it was a dry, neat Place.
Mr. *Ward.* Have you no Office in the Gaol?
Mrs. *Berkley.* I looked after the Sick.
Mr. *Ward.* Had you any Allowance as Nurſe, and by whom paid?
Mrs. *Berkley.* I had no Allowance.
Mr. *Ward.* Had you nothing paid you?
Mrs. *Berk.* Who ſhould pay me?
Mr. *Ward.* What did you do it for?
Mrs. *Berkley.* I did it for Chriſtianity Sake.
Mr. Baron *Carter.* Did *Acton* make you any Allowance?
Mrs. *Berkley.* I had Three-pence a-piece from the People that came into the Ward, which was paid at the Bar.
Mr. *Ward.* Had you nothing but Three-pence?---Mrs. *Berkley.* No.
Mr. *Ward.* Who was you appointed by?
Mrs. *Berkley.* The Men in the Gaol choſe me.
Mr. *Ward.* How came they to chooſe you?
Mrs. *Berk.* They took me to be a ſober, modeſt Woman, and ſo choſe me.
Mr. Baron *Carter.* You ſee you have an Anſwer; ſhe is a ſober, modeſt Woman.
Mr. *Ward.* But 'tis difficult to get the Truth out of her.

John Boſwell *was ſworn.*

Mr. *Acton.* Did you build the Strong Room?
Mr. *Boſwell.* I did; it was made to put Pirates in.
Mr. *Acton.* Is it a wholeſome Place?
Mr. *Boſwell.* It is a very wholeſome Place; it is nine Inches from the Ground.
Mr. Baron *Carter.* Is the Common Sewer under it?
Mr. *Boſwell.* It is not, it is twenty-four Feet from it.
Mr. Baron *Carter.* How come you to know it?
Mr. *Boſwell.* Becauſe I meaſured it ſeveral Times.
Mr. *Acton.* Was there a Covering at the Top?
Mr. *Boſwell.* It was covered with whole Deals, and pitched and tarred.

Mr. Morris *was ſworn.*

Mr. *Acton.* Do you know the Strong Room?
Mr. *Morris.* I do, and it is better than any Ground-Room on the Common Side; there is a Step up above the Surface.
Mr. *Acton.* Pleaſe to aſk him, what Buſineſs he is.
Mr. *Morris.* I am a Carpenter.
Mr. Baron *Carter.* How is the Room covered?
Mr. *Morris.* With Boards, and I think there is a Tarpaulin at Top.
Mr. Baron *Carter.* How near is the Common Sewer to it?
Mr. *Morris.* It is above eighteen Feet from it.
Mr. Baron *Carter.* Is it offenſive?
Mr. *Morris.* I don't think there is any Thing offenſive.
Mr. *Ward.* Do you know when it was built?
Mr. *Morris.* It was built about four or five Years ago.

—— Overſton *was ſworn.*

Mr. *Acton.* What did you hear Mr. *Demotet* ſay concerning me?
Mrs. *Overſton.* I heard Mr. *Demotet* ſay, he would hang *Acton*, right or wrong, to be an Example to all other Gaolers; and that he was maintained by ſome Gentlemen to hang him.
Mr. *Ward.* How long ago was it that you heard him ſay this?
Mrs. *Over.* It was the fourteenth Day of *July* laſt, in the Cellar of the *Fleet* Priſon.
Mr. *Marſh.* How came you to be in the *Fleet?*
Mrs. *Over.* I went backward and forward to the *Fleet.*
Mr. *Marſh.* What are you?
Mrs. *Over.* A Servant, I live in *Fetter-Lane.*

Mr. Demotet *was called, to confront* Overſton.

Mr. *Marſh.* Do you know that Woman?---Mr. *Demetet.* I do.
Mr. *Marſh.* What was it you ſaid to her?
Mr. *Demotet.* I ſaid, I would ſay nothing but the Truth, and do nothing but what the Law required.
Mr. *Marſh. Overſton*, What was it *Demotet* ſaid to you on the 14th of *July*, in the *Fleet* Priſon?
Mrs. *Overſton.* He was in the Cellar there, and ſaid he would ſwear againſt Mr. *Acton*, right or wrong, in order to make an Example of him.
Mr. *Demotet.* I ſaid, I would ſay what was Truth.

Elizabeth Clayton *was ſworn.*

Mr. *Acton.* What did you hear *Demotet* ſay?
Mrs. *Clayton.* In the Cellar in the *Fleet* Priſon?
Mr. *Marſh.* Miſtreſs, hold; Was not you a Priſoner in the *Marſhalſea?*
Mrs. *Clayton.* I was a Priſoner there twelve Months; but hearing that *Demotet* had ſworn againſt *Acton*, I had a mind to talk with him about it; and he ſaid, that *Acton* had killed a hundred, and that he would be revenged of him, if he ſwore himſelf to the Devil.
Mr. *Marſh.* She was a Priſoner in the *Marſhalſea*; how came ſhe into the *Fleet?*
Mr. Baron *Carter.* How came you there?
Mr. *Clayton.* I went to Mrs. *Overſton*, ſhe was at one Mr. *Solas* Wife's.
Mr. *Dem.* (*In a Paſſion*) She is an old Bawd, and brought Whores to *Solas.*
Mr. Baron *Carter.* You muſt not behave yourſelf ill to Witneſſes.
Mr. *Demotet.* What ſhe has ſaid, is not true.

John Hull *was ſworn.*

Mr. *Acton.* Pleaſe to aſk him, what *Demotet* declared to him.
Mr. *Hull.* Mr. *Demotet* declared, that he would hang *Acton* right or wrong, to be an Example to all other Gaolers.
Mr. *Ward.* There is a very remarkable Difference in the Witneſſes, in relation to the Place the Man was ſuppoſed to go to, after he came out of the Strong Room.
Mr. Baron *Carter.* Gentlemen of the Jury, the Priſoner at the Bar ſtands indicted for the Murder of *Robert Newton*; the Indictment ſets forth, that he put him, againſt his Will, into a Place called the Strong Room, and kept him there fourteen Days; that there were unwholeſome, noiſome Smells; that it was damp and wet, and that he got a Diſtemper there whereof he died. To prove this, they called ſeveral Witneſſes. The firſt, was Captain *Tudman*; he ſays, that he knew *Newton* and *Hartneſs*, and that they broke out; and in a Month or two after, *Newton* was taken again, and brought into the Lodge, and ironed, and then carried into the Strong Room; he ſays, that there is a little Hole to put in Drink; and ſays, that before *Newton* went into this Place, he was a hale, ſtrong young Fellow.
Carr; he ſays, that he ſaw *Newton* in the *Marſhalſea*; that he came ironed out of the Lodge, and that he was brought out by *Rogers*, and carried to the Strong Room, and he, and *Hartneſs*, remained there two Court Days; that *Newton* was a ſtrong, hale Fellow, and that he fell ill in the Strong Room; Gentlemen, it was of the Gaol Diſtemper, which he thought the Jaundice, ſuch as they were uſed to, no uncommon Diſeaſe. He was aſked then, whether the Strong Room was opened on Days, and locked up on Nights; he ſays, that after two or three Days, the Door was opened on Days.——He ſays, Gentlemen, that there was no Drain to carry off the Water; that the Sun does not viſit it; that it is built in a Corner in the Yard, and the Sun does not ſhine upon it, and ſays, that Wet comes from the Top; that he was with *Newton* a Week before he died, and *Newton* ſaid, that the Confinement was the Occaſion of his Death, and the Witneſs thinks ſo too. He ſays, Gentlemen, *Hartneſs* was all the Time in the Strong Room, and ironed, and caught no Diſtemper.
Edward Phillips ſays, that he knew the Strong Room; that there is a Sort of a Pool, where the Water ſettles, that comes from the Neceſſary-houſe that is under it, ſo makes it damp: and ſays, that it was ſometimes open: That, upon aſking him his Opinion, if there were any noiſome Smells, he ſays, that it was a noiſome Place, and not fit for a human Creature

to

to be in. He says, that the Irons were small; and he believes *Newton* was in the Strong Room ten or twelve Days, and that it was so long before he was taken ill; that *Hartness* was not so strong a Man as *Newton*, and he received no Injury by being there; but that *Newton*'s Confinement was the Occasion of his Sickness.

Robert Smith says, that he knew *Newton*; that he was a lusty, hale Man; but he can't say that he was sick in the Strong Room; he was in it, and saw it opened.

Mr. *Demotet* says, that he knew *Newton*; that he broke out, and was retaken, and was put in the Strong Room, and continued there fourteen or fifteen Days, on the Ground, without having a Bed; that he came out of the Lodge ironed, and *Acton* came and followed him, and saw him locked up in the Strong Room; that his Wife came to see him, and he died in three or four Days after he came into the sick Ward; and that the Occasion of his Death was Vermin and Lice; that the Water came in at the Top, and it was not fit to put a Man in; that the Floor was bad. He says, that he himself was in the Strong Room about ten Minutes, and it was infested with Rats.

Martha Johnson; she says, she never saw him confined.

John Johnson; he says, that he saw *Newton* once in the Strong Room; that it is a close Place; that there is no Air, and it has the same noisome Smell as the Common Side, and the Door was opened for him to go and shave him.

Ruth Butler says, that she knew *Newton*; that he was retaken and put in the Strong Room; that Irons were put on his Legs; that he fell sick there, and died in three or four Days in the sick Ward; that she can't tell the Occasion of his Death, unless the Injury caused from his Confinement. She says, that the Strong Room is boarded at the Top, but that the Rain comes in. Gentlemen, she says, what was not mentioned before, that he complained of his Legs.

Nicholas Purden said nothing to the purpose.

Cummins said, that it was an ugly Room; that it was never swept, and was wet and dirty.

This is the Substance of the Evidence for the King.

The Prisoner is insisted upon to be a severe Man; it is said, that he put *Newton* into this Place; now says he, if I did not do it, I am not affected.

What was the Consequence; if he did not put him into Irons, he put him in the Strong Room.

Holmes, the first Witness for the Prisoner, says, he was there when the Man came back, and said, that *Darby* ordered him to be put in Irons; admit he had given Orders, the Irons were not of so extraordinary a Weight; the Room was not so bad.

The Witnesses called for the King all agree, that he fell ill in the Strong Room; now the Witnesses for the Prisoner will shew you, that the Man was taken out of the Strong Room, and was taken into the Duke's Ward, where he remained a considerable Time; that when *Hartness* and *Newton* were uneasy under the Irons, they desired to have Relief, and applied to *Darby*, and he ordered the Irons to be taken off. That is a Confirmation that *Darby* had the sole Power. This is the Manner of the Evidence in his Favour. If *Darby* did do it, *Acton* was not to answer for it.

The first Witness is at a Loss as to the Time of the Man's Death. When he came in, according to the Evidence given for the King, he remained fourteen or fifteen Days in the Strong Room, and was carried to the Sick Ward, and died in three or four Days.

Holmes says, he was in very good Health; he drank with him several Times, and played at Trap-ball; and he believes he remained six Weeks before he died, and that he died of the Gaol Distemper. He says, that he was retaken the latter End of *August*, and died in *November*; here are two Months complete; and the Witnesses for the Crown account but for six Weeks. He says, that it is the best Room on the Common Side for two or three to be in; and that several, of his own Knowledge, desired to be there. The Counsel pressed him very much, to name any one Person that was there, by his own Desire; so he said, that one *Thompson* was there. He says, that it could not rain through, because it was just built.

Walter says, that he knew *Newton* in the Duke's Ward; and says, that he was there about four Weeks; that he heard him make no Complaint, but just before he was carried there: He had a good Opinion of the Strong Room, and requested to work there, and says, that he let *Newton* have a Bed; which contradicts all the other Evidences. He was asked about the Beds, and said, that he got them by his Savings; and that he let them out to hire.

Hartness says, that she knows very well that *Newton* had a Bed; and her Husband and he lay together, and a Captain was there; that she never found the Room wet, nor any thing like it; that they went out of Days, and were locked up in the Strong Room of Nights; that *Newton* was six Weeks or two Months, before he died, in the Duke's Ward; that her Husband received no Damage. She says, that it was a clean Room; that she never heard *Newton* complain of his Irons, or ill Usage of the Prisoner. She says, that she went to *Darby* to have the Irons taken off, and he ordered them to be taken off, while she stood by, and gave Directions accordingly.

Burton; she says, that she saw *Newton* in the Strong Room, and she saw a Bed; so there are three Witnesses as to that. She says, she washed the Room every Day; it is very extraordinary, after so many have swore it to be very dirty. She says, that he never did complain of the Prisoner; that he went into the Duke's Ward for seven Weeks; that she was Nurse, and that he died in *November*, and died of an Ague and Fever; that she laid him out, and never saw a finer Corpse; and that the Rain never came into the Strong Room. In order to take off Part of her Testimony, she was asked, Whether she was not obliged to the Prisoner at the Bar? She said, that she was Nurse, and that she had Three-pence a-piece of those she took care of; and that she was chosen by the free Election of the Prisoners.

The Prisoner called two or three others, to the Strong Room.

Boswell says, he built it, and that it was very wholesome, and it was twenty-four Feet from the Common Sewer.

Morris says, the Strong Room was very wholesome, and that it was better than any Ground-Room on the Common Side, and that there was a Tarpaulin at Top.

Overston was called to impeach the Credit of *Demotet*. She says, that in the *Fleet* Cellar, she heard him say, that he would hang *Acton* right or wrong, as an Example to other Gaolers, to deter them from being Rogues. The Prisoner called two others. *Elizabeth Clayton*; she heard him say, that he would hang *Acton*, tho' he sent himself to the Devil; and the other, *John Hull*, heard him say, that he would hang *Acton* right or wrong.—— *Demotet*, being called to confront these Witnesses, denies he ever said what they assert he did.

This is the Evidence on both Sides; therefore you will consider if *Acton* caused him to be put into the Strong Room; for if he did not, then he must be acquitted: If he did put him in, you are to consider, whether this Place is such a Place as they have set forth.

There is not a single Witness for the King that does not give the same Account of the Strong Room: It is pretty extraordinary, that to a Man the Witnesses should remain in one Opinion for the self same Purpose; their Words were, that it was not fit for a Human Creature to be in.

The Witnesses for the King say, that he died in two or three Days after he was taken out of the Strong Room; the others say, that he lived two Months; therefore consider, if he was put in this Room, and it was not the Occasion of his Death, he ought not to be found Guilty, in that he was very well for a Month, some say six Weeks after; and that he fell sick of the Gaol Distemper in the Sick Ward.

If he did nothing in relation to the Irons, he must be acquitted as to that.

If the Room was such as was fit for a Man to be put in, there was no Harm in putting him in there.

If he did not die by Duress, by being put in that Room, I believe he must be acquitted on that Head.

If he was put in the Strong Room by *Acton*, against his Will, and it was so unwholesome that he caught a bad Distemper, and died of it, you must find him Guilty.

The Jury agreed upon their Verdict immediately, without going out of Court.

Clerk of Arraigns. Gentlemen, are you all agreed in your Verdict?

Omnes. Yes.

Clerk of Arraigns. Who shall say for you?

Omnes. Foreman.

Clerk of Arraigns. William Acton, hold up thy Hand. (*Which he did.*) Look upon the Prisoner. How say you, Is he Guilty of the Felony and Murder whereof he stands indicted, or Not Guilty?

Foreman. Not Guilty.

XVII. The Trial of William Acton, for the Murder of James Thompson, at the Assizes held at *Kingston upon Thames*, in *Surrey*, before the Hon. Mr. Baron *Carter*, *August* 2, 1729.

Die Sabbati, 2 Augusti, 1729.

William Acton *having been before arraigned for the Murder of* James Thompson, *and pleaded Not Guilty, the Counsel proceeded as follows.*

Mr. *Middleton.* MY Lord, and you Gentlemen of the Jury, I am of Counsel for the King. The Indictment sets forth--- *We will call our Witnesses to prove the Fact.*

Mr. *Marsh.* My Lord, and you Gentlemen of the Jury, the Evidence for the King against the Prisoner at the Bar for murdering one *James Thompson*, is to this Effect: That the poor Man had the Misfortune to be troubled with a Diabetes; and, according to the Account given of that Distemper, it does occasion Persons to void a great deal of Water. The Prisoner was so far from compassionating of him, that he put him against his Will into the Strong Room, and he lay there ten Days or more in a bad Condition; that no Regard was had to him; he was there suffered to continue without a Bed till his Left Side mortified. It was a very bad Place. Some of the Witnesses for the Prisoner did give an Account of it, that it was built for Felons and Pirates: This Place was built up for them, that is now said by the Prisoner to be the best Room in this Gaol. One of the Witnesses in the last Cause spoke of the Pirates being put there. When *Thompson* was in this Place, this was done; his miserable Condition was represented to *Acton*, and he made use of a very harsh Expression, 'Damn him, let him lie there, and perish.' We will call our Witnesses to shew the Fact, and it must be left to you to consider whether he is Guilty or not.

There was so little Care taken of this Man, that after he was carried into the Duke's Ward, he was suffered to be put again into this Place, and there died.

Edmund Cummins *was sworn.*

Mr. *Marsh.* Did you know *James Thompson*?---Mr. *Cummins.* Yes.

Mr. *Marsh.* Whose Care was he under?

Mr. *Cummins.* He was under the Care of *Acton*.

Mr. *Marsh.* Who put *Thompson* in the Strong Room?

Mr. *Cummins.* He was put in the Strong Room out of the Ward.

Mr. *Marsh.* What was the Occasion of his being put there?

Mr. *Cummins.* I don't know what was the Reason of his being put there; but *Acton* gave that Reason, that the Ward Company complained of him.

Mr. Baron *Carter.* He was asked, who put him into the Strong Room? And he told you the Ward Company.

Mr. *Cummins.* My Lord I could not say so.

Mr. Baron *Carter.* I heard you say so.

Mr. *Cummins.* My Lord, I heard you——just now indulge a Witness for the Prisoner to explain herself. I thought your Lordship would not take so much notice of one of the King's Evidence making a Mistake. I came here to speak the Truth; and if your Lordship will not give me leave to explain myself, I will go down.

Mr. Baron *Carter.* Indeed you behave yourself very impertinently; but go on.

Mr. *Cummins.* Mr. *Acton* did say that was the Reason, that the Ward Company complained of him for making Water.

Mr. *Marſh.* How long was *Thompſon* in the Strong Room?

Mr. *Cummins.* He was there five or ſix Days; I ſaw him whilſt he was alive there; he lay there on Nights, and had no Bed.

Mr. *Marſh.* When you ſaw him there, what Condition was he in?

Mr. *Cum.* I ſaw him in a bad Condition.

Mr. *Marſh.* Where did he die?——Mr. *Cum.* In the Strong Room.

Mr. *Marſh.* Did you hear *Acton* ſay any thing about it?---Mr. *Cum.* No.

Mr. *Marſh.* Did you ſee him after he was dead?---Mr. *Cum.* I did.

Mr. *Marſh.* How long was he dead when you ſaw him?

Mr. *Cum.* He was alive over Night, and I ſaw him dead the next Morning. He had only a Night-Gown with him.

Mr. *Marſh.* Did you ſee his Face?

Mr. *Cum.* His Face was diſfigured with the Rats; I ſaw the Marks.

Mr. *Marſh.* What was the Occaſion of *Thompſon*'s Death?

Mr. *Cum.* He might die by lying in that Room.

Mr. *Marſh.* What do you, in your Opinion, believe to be the Occaſion of his Death?

Mr. *Cum.* I believe his being put there was the Occaſion of his Death.

Mr. *Marſh.* How ſoon was he buried after he died?

Mr. *Cum.* He was hurried away in an Hour or two after he died, and was buried.

Mr. *Marſh.* Who gave any Orders for hurrying him away?

Mr. *Cum.* The Men carried him away that uſed to do it.

Mr. *Marſh.* When was he carried away?

Mr. *Cum.* The very ſame Morning he died; in two Hours after.

Mr. *Marſh.* How long was he in the Strong Room?

Mr. *Cum.* Five, ſix, or ſeven Days.

Mr. *Marſh.* Had he any Bed to lie on?——Mr. *Cum.* He had not.

Mr. *Marſh.* I aſk you, whether you ſaw him carried to the Strong Room, and whether *Acton* was preſent?

Mr. *Cum.* Mr. *Acton* was there; and the Man was unwilling to go, and deſired to ſtay; but *Acton* ſaid, he ſhould not.

Matthew Brandon *was ſworn.*

Mr. *Marſh.* Did you know Captain *Thompſon?*

Mr. *Brandon.* I did; he was in the ſame Ward I belonged to, which is called Pump Ward.

Mr. *Marſh.* Had he any Infirmity?

Mr. *Bran.* When he was in the Ward he made a little Water; and ſome Complaint was made, and he was turned into the Strong Room.

Mr. *Marſh.* Did you viſit him when he was there?

Mr. *Bran.* Several Times.

Mr. *Marſh.* Did you hear *Acton* give any Orders about his being there?

Mr. *Bran.* I did not.

Mr. *Marſh.* How long did he lie there?

Mr. *Bran.* Ten Days; then he was remanded back to his Ward, and lay there one Night; and then remanded back, and put in the Strong Room again.

Mr. *Marſh.* Did he tell you any thing?

Mr. *Bran.* He told me, that he was unwilling to go back to the Strong Room, for that it would be his Death.

Mr. *Marſh.* Did you viſit him there?

Mr. *Bran.* Several Times; and the firſt Time I ſaw him he had nothing to lie on, and I furniſhed him with a Piece of a Blanket, and after with a Piece of a Quilt.

Mr. *Marſh.* How long was it before he died that you ſaw him?

Mr. *Bran.* I ſaw him two Days before his Death.

Mr. *Marſh.* What Condition was he in?

Mr. *Bran.* He could not ſtir; three or four Days before he died, he lay on his left Side.

Mr. *Marſh.* Did you not ſee one of his Hips very ſore, angry, and bad?

Mr. Bar. *Car.* You know you muſt not lead the Evidence.

Mr. *Bran.* There was a very bad, angry, ſore Place.

Mr. *Marſh.* Where was it?---Mr. *Bran.* It was in one of his Thighs.

Mr. *Marſh.* When did you ſee it?——Mr. *Bran.* It was ſo when he was in that Room; I don't remember it before.

Mr. *Marſh.* Did Capt. *Thompſon* complain to you of any thing?

Mr. *Bran.* He complained, before he went into the Strong Room a ſecond Time, if he was to go in there again, it would be the Death of him.

Mr. *Marſh.* How many Days was it after he was put in again to the Strong Room before he died.

Mr. *Bran.* I can't juſtly ſay, but I believe about ſix or eight Days.

Mr. *Marſh.* Where did he die?---Mr. *Bran.* In the Strong Room.

Mr. *Marſh.* Did you ſee him after he was dead?

Mr. *Bran.* I ſaw him the next Morning after; his Thigh looked not quite ſo angry, but there was a ſore Place there.

Mr. *Marſh.* Did you, in Behalf of the Captain, make any Application to *Acton?*

Mr. *Bran. Wilſon, Cummins*, and myſelf went to *Acton*, and repreſented his Condition to him, and deſired he would be pleaſed to let him go to the Sick Ward; and *Acton* bid *Wilſon* go about his Buſineſs; and that was all the Anſwer we could get.

Mr. *Marſh.* When you ſaw him after he was dead, did you ſee any Marks about him?

Mr. *Bran.* I ſaw his Noſe and Ear, and Part of his Cheek eat away.

William Jennings *was ſworn.*

Mr. *Marſh.* Did you know *James Thompſon?*

Mr. *Jen.* Yes; he was a Priſoner in the *Marſhalſea*, in 1726.

Mr. *Marſh.* Had he any Diſtemper then?

Mr. *Jen.* He had no Diſtemper when he firſt came into the Ward.

Mr. *Ameron.* What was the Occaſion of his being removed out of the Ward?

Mr. *Jen.* They found fault that he was troubled with a Diabetes.

Mr. *Amer.* Did you hear *Acton* give any Orders to carry him to the Strong Room?

Mr. *Jen. Acton* did order him into the Strong Room.

Mr. *Amer.* How long did he remain there?

Mr. *Jen.* He remained there eight or ten Days, at firſt, and then was put into the Pump Ward, and ſtayed there two Nights, and then was put into the Strong Room again.

Mr. *Amer.* Did *Acton* order him in again?

Mr. *Jen.* I heard *Acton* order him to be put there again.

Mr. *Amer.* What was you then?

Mr. *Jen.* I was then one of *Acton*'s Watchmen; I went to ſee the Gentleman, and he ſaid, he ſhould certainly periſh if continued in that Place; and I deſired *Acton* to have him removed; and *Acton* ſaid, What Buſineſs have you to meddle with it? Let him die like a Son of a Bitch, and be damned.

Mr. *Amer.* What, in your Opinion, was the Occaſion of his Death?

Mr. *Jen.* I believe his lying there in that Place was the Occaſion of his Death.

Mr. *Marſh.* It was repreſented to be a clean Room, was it waſhed?

Mr. *Jen.* I don't believe it was.

Mr. *Marſh.* How long was you belonging to the *Marſhalſea?*

Mr. *Jen.* I lived four Years out of ſeven there.

Mr. *Marſh.* Was it waſhed during that Time?

Mr. *Jen.* It was very ſeldom, if ever waſhed.

Mr. *Marſh.* Did you go into the Room?

Mr. *Jen.* I have been in it ſeveral Times; I have rough ſwept it.

Mr. *Marſh.* Is it dry at Top?——Mr. *Jen.* No, the Rain comes in.

Mr. *Richardſon.* Had Captain *Thompſon* committed any Crime before he was put in there?——Mr. *Jen.* No.

Mary Seaſband *was ſworn.*

Mr. *Marſh.* Did you know Captain *Thompſon?*

Mrs. *Seaſband.* I remember him; he was a Priſoner in Pump Ward, and he was removed from thence into the Strong Room; but I don't know upon what Occaſion

Mr. *Marſh.* By whoſe Order was he carried there?

Mrs. *Seaſ.* By Mr. *Acton*'s.

Mr. *Marſh.* How do you know?——Mrs. *Seaſ. Thompſon* ſaid ſo.

Mr. *Marſh.* You never heard *Acton* give Orders?---Mrs. *Seaſ.* No.

Mr. *Marſh.* Did you ſee Captain *Thompſon* when in the Strong Room?

Mrs. *Seaſ.* I did; he had no Bed to lie on, and the Wet was under him.

Mr. *Marſh.* How long was it before he died, that you ſaw him?

Mrs. *Seaſ.* I ſaw him the Minute he died.

Mr. *Marſh.* Did he then declare any thing to you?

Mrs. *Seaſ.* He declared nothing to me then; but three Days before he died, a Gentleman came in to ſee him, and *Thompſon* told him, it would be the Occaſion of his Death if he was not removed.

Mr. *Marſh.* What Condition was he in in the Strong Room?

Mrs. *Seaſ.* His left Side mortified, which was occaſioned by his hard lying on the Ground, and in the Wet.

Mr. *Marſh.* Was not Part of his Face eat away?

Mrs. *Seaſ.* The Rats had eat out his left Eye.

Mr. *Marſh.* How long did he continue in the Strong Room?

Mrs. *Seaſ.* I can't ſay how many Days, I believe he was there three Weeks.

Mr. *Marſh.* How do you know that his Face was eat away by the Rats?

Mrs. *Seaſ.* I have Reaſon to know, for they were very troubleſome when I was there.

Mr. *Marſh.* Was it a proper Room to put any one in?---Mrs. *Seaſ.* No.

Mr. *Marſh.* Was it ſwept?——Mrs. *Seaſ.* I never ſaw it ſwept; I was in it from the firſt of *January* till the ſixth, Night and Day.

Mr. *Marſh.* Was it waſhed?——Mrs. *Seaſ.* It was not waſhed while I was there; there were ſeveral Barrows-full of Dung in it then.

Mr. *Marſh.* What was there in it?

Mrs. *Seaſ.* Wet, and Straw, and Dirt.

Mr. *Marſh.* How did it ſmell?

Mrs. *Seaſ.* Very badly; I have ſeen there a Score of Rats at a Time.

Mr. *Acton.* Pleaſe to aſk, what Time of the Day Capt. *Thompſon* died.

Mr. Bar. *Car.* What ſay you to that?

Mrs. *Seaſ.* He died about ſix o'Clock in the Morning, and was buried before Ten.

Mr. *Acton.* Who gave Directions for his Burial?

Mrs. *Seaſ.* I don't know.

Mr. *Acton.* Was there any Perſon to view the Body?

Mrs. *Seaſ.* There were no Searchers.

Mr. *Acton.* Who ſent you to Capt. *Thompſon?*

Mrs. *Seaſ.* Nobody ſent me, I went of my own accord; I carried him twice Mutton Broth.

Call Thomas Snape. *(Who was ſworn.)*

Mr. *Ward.* Did you know Capt. *Thompſon?*

Mr. *Snape.* Yes, he was firſt in the Pump Ward, and went from thence into the Strong Room.

Mr. *Ward.* By whoſe Orders?

Mr. *Snape.* I can't tell; he was removed from the Pump Ward to the Strong Room, and was there for ſome Time, and then went into Pump Ward again, and was there ſome ſmall Time, and then carried back again to the Strong Room.

Mr. *Ward.* How long did he continue in the Strong Room the ſecond Time?

Mr. *Snape.* He was there nine or ten Days both Times.

Mr. *Ward.* Did he die in the Strong Room?——Mr. *Snape.* Yes.

Mr. *Ward.* Did you ſee him after he was dead?

Mr. *Snape.* Yes, I ſaw his Corpſe laid out, and his Side was very bad; it was black, and turned as to a Mortification.

Mr. *Ward.* How long was it before he died that you ſaw him?

Mr. *Snape.* Three or four Days.

Mr. *Ward.* Did he make any Complaint?——Mr. *Snape.* No.

Mr. *Acton.* Was he confined there all the Time, or did he go about?

Mr. *Snape.* I ſaw him go out and in to the Strong Room.

Mr. *Ward.* When was he laid out?

Mr. *Snape.* Between ſix and ſeven o'Clock in the Morning.

Eleanor Ewer *was ſworn.*

Mr. *Ward.* Did you know Captain *Thompſon?*

Mrs.

Mrs. *Ewer.* I remember the Captain; he was in good Health when he went into Gaol.

Mr. *Ward.* When did he die?

Mrs. *Ewer.* He died the ninth or tenth of *July.*

Matthew Bacon *was ſworn.*

Mr. *Marſh.* Did you know Captain *Thompſon?*

Mr. *Bacon.* I did; he was arreſted and put into Priſon the Letter-end of *May*, 1726. I remember he was brought into the Pump Ward, and continued there three Weeks; and then was removed to the Strong Room.

Mr. *Marſh.* How long did he continue in the Strong Room?

Mr. *Bacon.* He lay there about ten Nights, and then came into the Pump Ward, and remained a Night or two; and from the Pump Ward, went back again to the Strong Room.

Mr. *Marſh.* How long was he in the Strong Room the ſecond Time?

Mr. *Bacon.* He was there about ten Days more before he died.

Mr. *Marſh.* Did you ſee him there, the Latter-part of the time, before he died?---Mr. *Bacon.* I did.

Mr. *Marſh.* In what Condition did he lye?---Mr. *Bacon.* He had bundled up a Piece of a Blanket to lay his Head upon.

Mr. *Marſh.* Did he make any Complaints of his Hardſhips?

Mr. *Bacon.* He ſaid, a Day or two before he died, that the cruel Uſage, and lying hard, would kill him.

Mr. *Marſh.* Did he complain of any Sore, or Hurt, or of his Side?

Mr. *Bacon.* I can't ſay he did; but after he was dead, his left Hip appeared black.

Mr. *Marſh.* What, in your Opinion, was the Occaſion of his Death?

Mr. *Bacon.* The hard and cruel Uſage was the Occaſion of his Death.

Mr. *Marſh.* Was the Strong Room waſhed, or ſwept, or kept clean?

Mr. *Bacon.* It was not; and if any Perſon ſwore ſo, they did not ſwear true.

Mr. Baron *Carter.* Was you there every Day?

Mr. *Bacon.* I can't ſay every Day.

Mr. *Richardſon.* Was it fit to put a Man in?

Mr. *Bacon.* It was contrived for a Puniſhment, for People who had committed great Crimes againſt the Government.

Mr. *Richardſon.* Were there other Rooms fit to put *Thompſon* in?

Mr. *Bacon.* Yes, there were.

Mr. *Richardſon.* Was there any Application to have him removed?

Mr. *Bacon.* There was none by me.

Peter Purchace *was ſworn.*

Mr. *Ward.* What Part of the Priſon was *Thompſon* confined in?

Mr. *Purchace.* He was firſt in the Pump Ward, and was taken out of that Room contrary to his Inclination, and put in the Strong Room.

Mr. *Ward.* How do you know it was contrary to his Inclination?

Mr. *Purchace.* He often ſaid ſo.

Mr. *Ward.* Did you ſee him removed from the Pump Ward to the Strong Room?---Mr. *Purchace.* Yes.

Mr. *Ward.* Was he carried there?---Mr. *Purchace.* No, he walked there.

Mr. *Ward.* You was by when he went into the Strong Room?

Mr. *Purchace.* Yes.

Mr. *Ward.* Was you by when *Acton* gave Orders to carry him there?

Mr. *Purchace.* No.

Mr. *Ward.* Who was with *Thompſon* when he went there?

Mr. *Purchace.* *Nichols* and *Rogers* went along with him; and they ſaid, they had Orders to go to the Strong Room.

Mr. *Ward.* How long did he continue in the Strong Room?

Mr. *Purchace.* I can't be certain of the Time.

Mr. *Ward.* But you ſaw him in the Strong Room?

Mr. *Purchace.* I frequently viſited him in the Strong Room.

Mr. *Ward.* Did you obſerve that it was waſhed or cleanſed?

Mr. *Purchace.* It was not, during the Time I was a Priſoner there.

Mr. *Ward.* What kind of a Place was it?---Mr. *Purchace.* It was a wet, damp, naſty Place, not fit for a Chriſtian to be in.

Mr. *Ward.* Do you know of any Application made to *Acton* concerning Captain *Thompſon?*

Mr. *Purchace.* *Wilſon* and I went to the Lodge to inquire for *Acton*, and told him, that *Thompſon* ſaid, the Confinement in that miſerable Place, would be the Cauſe of his Death, and he deſired to be removed to another Place; but *Acton* would not hear us, but bid us go about our Buſineſs.

Mr. *Ward.* When did you ſee him laſt, before he died?

Mr. *Purchace.* I ſaw him the Night before he died; and he then ſaid, that the Confinement in that Place would be his Death.

Mr. *Ward.* Did you ſee him after he was dead?---Mr. *Purchace.* I ſaw his Body; he had on his Thigh ſomething like a Mortification.

Mr. *Ward.* What was the Occaſion of his Death?---Mr. *Purchace.* I believe, lying upon the bare Boards was the Occaſion of his Death.

Mr. *Ward.* Was there any Water in the Room?

Mr. *Purchace.* At ſome times there was; when it rained, the Water came in at Top; I have ſeen the Rain come in.

John Wilſon *was ſworn.*

Mr. *Marſh.* Did you know Captain *Thompſon?*

Mr. *Wilſon.* Yes, he was committed a Priſoner the Latter-end of *May*; he was a Fortnight or three Weeks in the Pump Ward.

Mr. *Marſh.* What Sort of a Man was he?

Mr. *Wilſon.* He was a hearty, ſtrong Man, of a merry Diſpoſition, ſinging Songs, and Chorus's. He was in the Pump Ward, and after was put into the Strong Room; ſome People came to fetch him, and ſaid it was by the Order of *Nichols*, *Rogers*, and others.

Mr. *Marſh.* How long did he remain there?

Mr. *Wilſon.* He remained there a Week and better, in a bad Condition.

Mr. *Marſh.* Had he any thing to lye on?

Mr. *Wilſon.* He had on a Banyan Camblet Night-gown, but lay upon the bare Floor, which was wet with the Water that came in.

Mr. *Marſh.* Where did the Water come from?

Mr. *Wilſon.* It came from the Top of the Room; I ſaw it rain through.

Mr. *Marſh.* Could he come out?

Mr. *Wilſon.* He had a Power of coming out of the Room in the Day-time, but he had no Power of coming to lye any where elſe on Nights; he lay two Days in the Pump Ward, and then was put into the Strong Room again; and then deſired me to go to the Petitioning Room, to get him into another Place.

Mr. *Marſh.* Did you make any Application in his Behalf?

Mr. *Wilſon.* I went with *Purchace* to *Acton*, but was not heard.

Mr. *Marſh.* What did *Acton* ſay to you?—Mr. *Wilſon.* I began to tell the Story relating to the Man's Miſery, and *Acton* ſaid——

Mr. *Marſh.* What did you tell *Acton?*

Mr. *Wilſon.* I ſaid, he would periſh if not removed; and *Acton* bid me go and trouble my Head with my own Buſineſs.

Mr. *Marſh.* Did he order him to be taken out of the Strong Room?

Mr. *Wilſon.* No.—I then went to the Nurſe of the Sick Ward, to deſire her to entertain him in that Ward; and ſhe would not do it, becauſe ſhe had not Orders; ſo he continued in the Strong Room very miſerable. I took him out, and put him in the Chimney Corner to dry himſelf; and when he came to dry himſelf before the Fire, he ſmelt very ugly and naſty (this was after the ſecond time of his going into the Strong Room); then he went back, and lay very miſerably for three or four Days.

Mr. *Ward.* Did you ever ſee the Strong Room waſhed?

Mr. *Wilſon.* I never ſaw it waſhed all the Time the Captain was there; within theſe twelve Months, or within theſe ſix Months, it has been waſhed.

Mr. *Ward.* Was it covered at Top?

Mr. *Wilſon.* There was a Tarpaulin laid over it lately, ſince he was there.

Mr. *Ward.* What State and Condition was it in when *Thompſon* was there?

Mr. *Wilſon.* It is in a better State and Condition now; I have ſeen the Water pour in, and it was in as bad a State when he was there, as ever; and there was no Tarpaulin put upon it, till within theſe twelve Months.

Mr. *Ward.* How was the Floor?

Mr. *Wilſon.* The Floor lies five Inches higher than the Ground, but the Boards not being thick, they were grown rotten, with the great deal of Water that ſettled there after a Rain, for the Room was worſe the next Day.

Mr. *Ward.* What, in your Conſcience, do yo believe to be the Occaſion of his Death?

Mr. *Wilſon.* I believe, in my Conſcience, that he was ſeemingly of a ſtrong Conſtitution, and continued the ſame till his going into that Place; and that the Severity of the Weather, and his hard lying, were the Cauſe of his Sickneſs, of which he languiſhed and died.

—— Phillips *was ſworn.*

Mr. *Marſh.* Did you know Captain *Thompſon?*

Mr. *Phillips.* Very well; he was troubled with a Diabetes when he firſt came in; he was put in the Pump Ward, and there he continued three Weeks or a Month; he was then removed to the Strong Room; I ſaw *Acton* and his two Servants there.

Mr. *Marſh.* What Condition was he in?

Mr. *Phillips.* He was in a very miſerable, deplorable Condition, for he had that Diſtemper when he went into the Strong Room; he was offenſive to the reſt of the People of the Ward.

Mr. *Marſh.* Did you viſit him in the Strong Room?

Mr. *Phillips.* I frequently went to him.

Mr. *Marſh.* How long was he there before he died?

Mr. *Phillips.* Ten Days.

Mr. *Marſh.* Did you ſee him there in a good or bad Condition?

Mr. *Phillips.* He lay in a miſerable, deplorable Condition.

Mr. *Marſh.* Did you make any Application to *Acton* in his Behalf?

Mr. *Phillips.* I had endeavoured to ſpeak to him, but never could meet with him.

Mr. *Marſh.* How long before he died was it that you ſaw him?

Mr. *Phillips.* I ſaw him the Night before he died.

Mr. *Marſh.* Did he make any Complaint to you?

Mr. *Phillips.* He ſaid, that lying in that Condition would be the Death of him; and ſaid, that it was by *Acton*'s Order that he was put there.

Mr. *Marſh.* When did he ſay this?

Mr. *Phillips.* Some Days before he died.

Mr. *Marſh.* Did you ever ſee the Strong Room waſhed?

Mr. *Phillips.* I was in the Gaol nine or ten Months, and never ſaw it waſhed.

Mr. *Marſh.* How long ago?—Mr. *Phillips.* Two or three Years.

Mr. *Marſh.* Did it rain in?—Mr. *Phillips.* The Rain did come in; I ſaw Puddles of Water in it ſeveral times.

Mr. *Marſh.* Was it fit to put any one into?

Mr. *Phillips.* It was a Terror to every body to go there.

Mr. *Marſh.* What do you believe was the Occaſion of his Death?

Mr. *Phillips.* I believe the Diabetes, and lying in that Manner, were the Occaſion of his Death.

Mr. *Marſh.* Was there any other Room empty, fit to put him in?

Mr. *Phillips.* There was a Room over againſt his own Ward that was empty. There was another Room empty, and proper for any body to be put in, called the Petitioning Room.

Mr. *Marſh.* Had he any Marks about him when dead?

Mr. *Phillips.* I ſaw a Wound, and put my Fiſt in, which looked as if the Fleſh had been gnawed away.

Mr. *Marſh.* There was a Ward called the Sick Ward; was there Room there for Captain *Thompſon?*—Mr. *Phillips.* Yes.

Mr. *Marſh.* We ſhall call no more Witneſſes. There is ſtrong Evidence given as to the Fact, and the Strong Room.

Mr. *Acton.* With humble Submiſſion to your Lordſhip, Captain *Thompſon* was put into the Pump Ward, and a Complaint came from Captain *Thompſon*; I will acquaint your Lordſhip what was the Manner of it. Captain *Thompſon* had the Diabetes, and his Ward-mates ſaid he ſtunk, and fined him, and took his Coat from him, and carried it away, and the Man had not Money to redeem it, or wherewithal to raiſe any, and deſired he might go to ſome Place where he might be in Peace; I

aſked

aſked him, if there was any particular Perſon he deſired to be with, or if he would go into the Sick Ward? He ſaid, he had rather go into the Strong Room, for if he went into the Sick Ward, they would fine him there again.

Chriſtopher Goſling *was ſworn.*

Mr. *Acton.* I deſire he may give an Account of what he knows about Captain *Thompſon.*

Mr. *Goſling.* I was ſitting at the Lodge Door, and Captain *Thompſon* came up to *Acton*, and deſired him to let him go into the Strong Room; *Acton* ſaid, he might go into the Sick Ward; and *Thompſon* ſaid, the Men in the Ward had tormented him ſo, that he had rather lie in the Strong Room; and *Acton* made Anſwer, You may lie there.

Mr. Baron *Carter.* What did they torment him about?

Mr. *Goſling.* About Piſſing; he piſſed very much there.

Mr. Baron *Carter.* What Anſwer did *Acton* make him?

Mr. *Goſling.* He bid him do what he would.

Mr. *Acton.* When he was in the Strong Room, did they not uſe to torment him?---Mr. *Goſling.* Yes.

Mr. Baron *Carter.* How long did he lie there?

Mr. *Goſling.* Five or ſix Weeks.

Mr. *Acton.* Pleaſe to aſk him, if Captain *Thompſon* did not ſay he was much beholden to me.---Mr. *Goſling.* He ſaid ſo.

Mr. *Acton.* Was there any Anger, or any thing between us?

Mr. *Goſling.* No.

Mr. *Acton.* Did not Captain *Thompſon* ſay, he deſired to go into the Strong Room?

Mr. *Goſling.* He expreſly deſired to be removed into the Strong Room.

Mr. *Acton.* Had he a Bed there?---Mr. *Goſling.* Yes.

Mr. *Ward.* What do you call a Bed?

Mr. *Goſling.* A Pillow and Blanket.

Mr. *Richardſon.* Is it very uſual for People to lie in ſuch Beds?

Robert Holmes *was ſworn.*

Mr. *Acton.* Pleaſe to aſk, if he did not come to me from Captain *Thompſon*, and what was his Requeſt.

Mr. Baron *Carter.* What ſay you to that?

Mr. *Holmes.* He was ſo tormented by the Ward, that he deſired me to go to Mr. *Acton*, to deſire him to let him (Captain *Thompſon*) go into the Strong Room; and I aſked Mr. *Acton*, and he gave him leave, and offered him to go into the Sick Ward.

Mr. *Acton.* What was the Occaſion of his deſiring to go there?

Mr. *Holmes.* He was ſo naſty, that the Ward chid him, and he could lye ſweet and clean in the Strong Room.

Mr. Baron *Carter.* Did *Thompſon* come up along with you?

Mr. *Holmes.* He did; he was not ſick at that Time, but ſome Time after he fell ſick and died.

Mr. Baron *Carter.* Did he make any Complaint?

Mr. *Holmes.* At laſt he did make Complaint, that he was ill, but did not then deſire to be releaſed.

Mr. *Acton.* Had he Liberty to go in and out of the Strong Room?

Mr. *Holmes.* He had, whenever he pleaſed, only ſome unlucky Fellows locked him in.

Mr. *Ward.* Had he Liberty to lye out?---Mr. *Holmes.* No.

Mr. *Ward.* I aſk you whether *Acton* went with him to the Strong Room?

Mr. *Holmes.* I can't ſay he did; he gave him Leave to go into the Strong Room.

Elizabeth Goſling *was ſworn.*

Mr. Baron *Carter.* How came Captain *Thompſon* to be in the Strong Room?

Mrs. *Goſling.* By his own Deſire, he was troubled with an Infirmity.

Mr. Baron *Carter.* How do you know it was by his own Deſire?

Mrs. *Goſling.* I heard him ſay ſo.

Mr. Baron *Carter.* Had he Liberty to go out Night or Day?

Mrs. *Goſling.* He had the Liberty to come in and out.

Mr. *Ward.* What are you?

Mrs. *Goſling.* My Huſband is a Priſoner.

Mr. *Ward.* I aſk you whether he has any Office in the Gaol?

Mrs. *Goſling.* My Huſband took a Room before of Mr. *Burleigh*, and continues under Mr. *Acton.*

Benjamin Brown *was ſworn.*

Mr. Baron *Carter.* What do you know about *Thompſon?*

Mr. *Brown.* He ſaid, God bleſs Mr. *Acton*, for he had ſaved his Life by putting him in the Strong Room, for if he had continued in the Ward, he had died.

Mr. *Richardſon.* Did he give any particular Reaſon why he ſhould have died?

Mr. *Brown.* That if he made Water in the Room, he was to pay a Quartern of Gin.

Mr. *Richardſon.* Did you viſit him in the Strong Room?

Mr. *Brown.* I oftentimes viſited him.

Mr. *Richard.* Had he a Bed?---Mr. *Brown.* He had a Gaol Bed.

Mr. Baron *Carter.* Had he the Liberty of going in and out?

Mr. *Brown.* Yes.

Mr. *Richard.* Was not the Strong Room a Place of Confinement?

Mr. *Brown.* Yes; but when I was a Priſoner, I had the Liberty of the Gate, having ſeveral Cauſes in my own Right.

Mary Barton *was ſworn.*

Mr. *Acton.* What did you hear Captain *Thompſon* ſay?

Mrs. *Barton.* I heard him ſay that he aſked Leave to lie in the Strong Room, and that he was diſturbed in his own Ward.

Mr. *Acton.* Pleaſe to aſk, if he did not ſay, that he had rather go to the Strong Room, than come to the Sick Ward.

Mr. Baron *Carter.* Anſwer that.

Mrs. *Barton.* He ſaid, He might have gone, if he would, into the Sick Ward, but he had rather go to the Strong Room, becauſe he could be there in Peace.

Mr. *Acton.* Had he a Bed in the Strong Room?

Mrs. *Barton.* Yes, ſuch a Bed as poor People lye on, a Flock-bed; it was a broad Bolſter, which he could lye at his whole length, and turn himſelf upon, ſuch as they had in the Gaol.

Mr. Baron *Carter.* Was he locked up on Nights?---Mrs. *Barton.* No.

Mr. *Ward.* She is kept by *Acton*; ſhe had Three-pence out of every Priſoner.

Mr. Baron *Carter:* She was put in by the Gentlemen.

Mrs. *Barton.* Yes, or elſe they would have tore the Gaoler to Pieces.

John Bowdler *was ſworn.*

Mr. *Bowdler.* I was in the Ward when Captain *Thompſon* went out; and the Ward being uneaſy with him, he ſaid he would make Intereſt to Mr. *Acton* to go into the Strong Room; and he took his Bed and Bedding, and went into the Strong Room.

Mr. *Acton.* Pleaſe to aſk, whether *Thompſon* told him he had made Intereſt.

Mr. *Bowdler.* *Thompſon* ſaid, that he had aſked Leave of *Acton*, and he had granted it.

Daveniſh *was ſworn.*

Mr. *Daveniſh.* In the Month of *June* 1726, I was ſent into the Pump Ward to Captain *Thompſon*, and his Ward-Mates ſwore at him, and called him Naſty Son of a Bitch.

That his Ward-Mates were very uncivil; that he was troubled with a Diabetes; and he ſaid, he would deſire Mr. *Acton* to let him go to the Strong Room; and the next Day I ſaw a Woman waſhing of it. When he was there, I asked him ſeveral Times if he wanted any thing; for Mr. *Wittingham* ſaid, he would relieve him if he wanted for any thing; and he ſaid, the Woman of the Sick Ward came to him, and he wanted for nothing.

Robert Walker *was ſworn.*

Mr. Baron *Carter.* What do you know about Captain *Thompſon?*

Mr. *Walker.* He was carried to the Strong Room by his own Conſent; and aſking him the next Morning how he did, he ſaid, extraordinary well.

Mr. Baron *Carter.* Had he a Bed there?---Mr. *Walker.* Yes.

Mr. Baron *Carter.* Did he complain of any Illneſs?

Mr *Walker.* I ſaw the People making Game of him.

Mr. Baron *Carter.* Was he locked up on Nights?---Mr. *Walker.* No.

Mr. *Acton.* A Nurſe ſat up with him on Nights, Mrs. *Conner*; ſhe had been Nurſe of the Sick Ward.

Benjamin Johnſon *was ſworn.*

Mr. Baron *Carter.* What have you to ſay to *Thompſon*'s conſenting to go to the Strong Room?

Mr. *Johnſon.* I ſpoke to him two Days before he went there; and he ſaid, he ſhould be glad if *Acton* would grant him the Favour of lying there.

Mr. Baron *Carter.* Had he a Bed there?

Mr. *Johnſon.* I ſaw him carry his Bed there; and he thanked God that Mr. *Acton* was ſo good to let him lie there, for he hoped it would be the ſaving of his Life.

Ralph Malban *was ſworn.*

Mr. Baron *Carter.* What do you know of Captain *Thompſon?*

Mr. *Malban.* I can ſay nothing, but that when I was in the Ward one Night I ſaw a great deal of Abuſe offered him; and the next Day I asked him how he came to ſuffer ſuch Abuſes; and he ſaid he had a noiſome Diſtemper, and ſo they abuſed him; and in a Month or three Weeks I ſaw him again, and he then ſaid, he had Leave to get into the Strong Room, and thanked God for it.

Thomas Fletcher *was ſworn.*

Mr. Baron *Carter.* What do you know of *Thompſon?*

Mr. *Fletcher.* I know *Thompſon* had the Diabetes, and that his Fellow-Priſoners did often reflect upon him. I was out of Priſon, and then came in again, and I asked *Thompſon* how he did; he ſaid, very well as to his Health, except as to the Diabetes; and *Acton* had given him Leave to lie in the Strong Room.

Here the Priſoner reſted his Defence.

Mr. Baron *Carter.* Gentlemen of the Jury, the Priſoner at the Bar ſtands indicted for the Murder of one *James Thompſon.* The Indictment ſets forth, that the ſaid *James Thompſon* died by Dureſs, ſo that the Priſoner was thereby Guilty of Murder.

There were ſeveral Witneſſes called for the King. The firſt was *Edmund Cummins*; he ſays, that he knew *Thompſon* very well; that he was in the Pump-Ward, and that he was put in the Strong Room, as *Acton* ſaid for having the Diabetes, ſome of the Ward complaining of his being naſty; that he came out ſometimes, and he ſaw him after he died; and he was very quickly buried; and he ſaw a Mark upon his Face. He ſays, that *Acton* did order his Burial, becauſe he was carried by thoſe that uſually carry Corpſe to be buried. He ſays, that he was reſolved to ſtay in the Ward, and would not have gone out, but *Acton* would not let him ſtay.

Matthew Brandon ſays, he ſaw *Thompſon* in the Strong Room, and he did hear the Priſoner order him to be put there. He ſays, that there was a Complaint of the Ward that he was nauſeous: That two Days before his Death he could not ſtir at all; that he had a ſore Place on his left Side, and he ſays, that he complained if he ſhould go there again it would be the Death of him. He ſays, that *Wilſon* and *Cummins* went to *Acton*, and they repreſented the Condition he was in, and deſired he might go to the Sick Ward; and *Acton* ſaid to *Wilſon*, Go about your Buſineſs. He ſays, that there was a Mark upon his Noſe and Ear, and the Wound was not ſo angry after his Death as it was before.

Jennings ſays, he was not ſo ill when he came there, but only had the Diabetes, and the Priſoner ordered him into the Strong Room where he continued eight or ten Days, and then came out for two Days; and then was ordered back by the Priſoner. He deſired *Acton* to have *Thompſon* removed; and *Acton* ſaid, Let him die like a Son of a Bitch, and be damned. He ſaid, he died the next Morning, and died in this Strong Room. That the Strong Room was ſeldom waſhed, it was rough-ſwept; but what he means by that I cannot ſee: He ſays, that it was not dry over Head.

Mary Seaſband ſays, that he was removed into the Strong Room, and *Acton* gave no Orders concerning him; there was ſome Wet under him, but ſhe does not explain from whence it came, therefore it might come from the Diſtemper. She ſays, that his Side mortified; that there was ſome Diſfiguration on the Side of his Face, it was eat by the Rats. She thinks it a very ſtrong Room, and it was not a proper Place to put any Perſon in; that it was never waſhed; that about Six in the Morning he died, and was buried about Ten.

Snape cannot ſay, whether *Thompſon* went by his own Conſent or not; but that he went from the Pump-Ward to the Strong Room, and ſtaid nine or ten Days, and then ſtaid two or three Days in the Pump-Ward, and went back again, and ſtaid nine or ten Days both Times. He ſays, he came in and out when he pleaſed. He ſays, that he ſaw his Corpſe, and one Side of his Thigh was black, he ſaw him three or four

four Days before he died, and he never complained of his Thigh: It was very wonderful he ſhould not complain of it.

Eleanor Ewer ſaid nothing to the Purpoſe.

Bacon ſays, that he came in the latter End of *May* 1726, and *Thompſon* and he were in the Pump-Ward; that *Thompſon* remained there three Weeks, and was carried from thence into the Strong Room; that he has ſeen twenty Rats there at a Time; when he had been there ten Days he came back, and ſtaid in the Pump Ward two Days, and then returned; that he had no Bed, or but a little Piece of one. He ſays, that *Thompſon* complained of the ſevere Uſage, and that it would be the Occaſion of his Death; but not of the Sore. He ſays, the Room was made on purpoſe to puniſh People for great Crimes againſt the Government; and *Thompſon* told him, that it would be the Occaſion of his Death.

Purchace ſays, that he ſaw him removed, and ſaid he walked there; that he viſited him very frequently, and the Room was not waſhed all the Time he was there a Priſoner; that there was no Complaint of his Sore, but of his Uſage; he ſays, that it was wet, and the Rain came in at Top.

Wilſon ſays, *Thompſon* was in the Pump Ward; that he was very hearty and merry, and gave ſome Inſtances of his Mirth; that he was put in the Strong Room, and was in a bad Condition. He gives you an Account of the Floor; that there was Water there; that ſome came down from above, and ſome was made by *Thompſon*. He ſays, that he was locked up on Nights, but not on Days; he went to *Acton* to intreat him to remove him, and he bid him hold his Tongue; he told him he ſhould die if he was not put in another Place; and thereupon he went to the Nurſe of the Sick Ward, but ſhe refuſed his coming there. He ſays, there was a Tarpaulin put on the Top of the Strong Room about a Year ago, and before that the Wet came in, and he believes that this was the Cauſe of his Illneſs and Death.

Phillips ſays, that *Thompſon* was troubled with a Diabetes; that he was in a miſerable Condition; that he was in the Room ten Days before he died; and that he laid upon the Ground all the Time, and he was put there by the Priſoner's Order; and that he never ſaw the Room waſhed. He ſays, that he might have been put in a better Place, for there was Room in the Sick Ward; and he might have been put in a Room againſt his own Ward, for it was empty.

Gentlemen of the Jury, you will conſider the State of this Indictment; and that there are neceſſary to be taken Notice of two Things.

The firſt is, that *Thompſon* was put in the Strong Room againſt his Conſent.

The next is, that the Confinement there, was the Occaſion of his Death.

The Priſoner ſays, that he was very far from putting him there, for he aſked Leave to go; ſo that a Charge is laid upon him who never gave *Thompſon* any Offence, or uſed any hard Words to him; therefore he cannot be ſo barbarous as repreſented.

There are eleven Witneſſes that he has called, who give an Account of *Thompſon*'s having the Diabetes, that the Ward was very uneaſy with him; and becauſe he had done in the Ward, what they uſed not to have done there, they took all his Cloaths away.

Chriſtopher Goſling ſays, that *Thompſon* was offered by the Priſoner to go into the Sick Ward, and he refuſed, which confirms what the other Witneſſes ſay, (and then *Acton* bid him go whither he would,) and he ſaid he would go into the Strong Room; and *Acton* ſaid, if you go into ſuch a Room (the Witneſs naming the Room) won't that be as well. If he went into the Strong Room on his own Deſire, *Acton* is not guilty.

He ſays, that *Thompſon* had a Pillow and Blanket, which is explained afterwards, that he could lie upon it and turn.

Holmes ſays, that *Thompſon* was ſo tormented by the Ward, that *Thompſon* deſired him to go to *Acton*, to deſire he might go into the Strong Room, and upon that *Acton* gave leave; and ſays, that he was deſired to go to the Sick Ward; and ſays, that he was not confined in the Day-time, unleſs he was bolted in by his Fellow-Priſoners, that had played the Rogue with him.

Elizabeth Goſling; ſhe gives an Account as her Huſband did; that *Thompſon* owned how friendly the Priſoner had been to him, and that it was ſo far from being looked on as a Puniſhment, that it was a Matter of Favour thought by *Thompſon* to be there.

Brown ſays, that he talked with *Thompſon*, and *Thompſon* ſaid, God bleſs *Acton*, he had ſaved his Life, for if he had ſtayed any longer in the Ward, he ſhould have died; and ſays, there was a Bed there.

Barton; ſhe heard the Captain ſay, that he aſked Leave to go into the Strong Room, being quiet and eaſy to be there; and that he had rather be there, becauſe he was always at Eaſe.

Bowdler ſays, that the Ward was uneaſy; upon which *Thompſon* made Intereſt to go there, and took his Bed and Bedding, and aſked Leave of *Acton* to go.

Daveniſh ſays, that the People of the Ward came for him, and he ſaw him carried quite through. He goes into the Strong Room, and aſked *Thompſon*, how he came to be there; and he owned, by the Civility of *Acton* that he was there. He ſays, that *Thompſon* had a Bed, and that he went out and in when he pleaſed.

Johnſon ſays, that *Thompſon* ſaid, that he thanked God that *Acton* was ſo good to let him be there.

There were two other Witneſſes, who ſpoke to his aſking Leave.

Gentlemen, now you will conſider how the two Evidences tally, and what Injury there was done to *Thompſon*.

For the King, they ſay, that he was put there without, and againſt his Conſent; and for the Priſoner, eleven Witneſſes ſay, it was with his Conſent. If you ſhould be of an Opinion that it was without his Conſent, then it deſerves another Conſideration; but if you ſhould be of an Opinion that it was with his Conſent, then there muſt be an End of this.

In the next Place, you will conſider in relation to the Diſtemper. As to the Diabetes, ſome have ſaid on one Side, that they looked upon it to be mortal, and that he never complained. It is very obſervable, that he never ſhould complain.

In the next Place, they tell you, how he caught it, by lying upon the bare Boards. Some of the Witneſſes for the King ſay, he had only a Sort of a Bed; and eleven Witneſſes for the Priſoner ſay, he had a Bed; and if he had; he did not lie on the Ground, and could not have the Diſtemper from lying there; it was impoſſible.

The third Part is, whether he was a Priſoner in the Strong Room? You have heard, the Witneſſes for the King all agreed that he went out on Days, though he was locked up on Nights.

The Witneſſes for the Priſoner all agree, he went out on Days, and he was not locked up on Nights.

As to his going to the Sick Ward, the Witneſſes ſay, that *Acton* ordered it, and he refuſed to go.

If this Place gave him the Diſtemper of which he died, and if he went without his Conſent, you will find the Priſoner Guilty; but if he went out and in when he would, in conſequence, he was not confined there; there is no Reaſon to find him guilty.

When he aſked Leave to go to the Strong Room, the Priſoner gave it in a very humane Manner, and gave him his Choice, to go there, or into the Sick Ward.

Upon the whole, I muſt leave it to you.

The Jury agreed upon their Verdict immediately, without going out of Court.

Clerk of Arraigns. Gentlemen, are you all agreed in your Verdict?

Omnes. Yes.

Clerk of Arraigns. Who ſhall ſay for you?—*Omnes.* Foreman.

Clerk of Arraigns. *William Acton*, hold up thy Hand. (*Which he did.*) Look upon the Priſoner, how ſay you; Is he Guilty of the Felony and Murder whereof he ſtands indicted, or Not Guilty?—*Fore.* Not Guilty.

Mr. *Strange.* The Priſoner, my Lord, has been very much fatigued, and deſires, upon paying his Fees, he may be now diſcharged.

Mr. *Acton.* My Lord, I deſire you will diſcharge me now.

Mr. Bar. *Car.* I can't comply with your Requeſt.

Mr. *Strange.* Mr. *Paxton*, ſpeak to the Judge. Upon which Mr. *Paxton* went out of Court.

Mr. *Strange.* Mr. *Ogletborpe*, I deſire you will interfere, and ſpeak to the Judge, and that you'll give your Opinion. Pray ſpeak, pray tell whether you conſent.

Mr. *Ogle.* Were I Proſecutor, I ſhould deſire the Priſoner might be releaſed; not that I think him innocent, but that every *Engliſhman*, let him be never ſo unjuſtly acquitted, hath, by the *Habeas Corpus* Act, on his Acquittal, a Right to be diſcharged; nor can any Subornation of Perjury, or any Management of a Jury, prevent it, for they are cognizable at another Time.

(There being then a great Noiſe in the Court, interrupted his ſpeaking for ſome Time, and as ſoon as it ceaſed, he went on again.)

As I ſaid before, I am not the Proſecutor; if I were, I knew what I ſhould have done. The Attorney General was ordered to proſecute by the Crown; and it is he, or his Repreſentative, that ſhould anſwer this Queſtion, and not me; and ſince I am ſpeaking, I deſire to be indulged a Word more, that I may tell the Reaſon of my coming here.

Having had the Honour of being one of thoſe Gentlemen who were appointed to inquire into ſeveral Matters, ſome of which have been this Day under your Conſideration; not knowing, therefore, what Queſtions might ariſe, for the clearing up of which I might be neceſſary, I thought it incumbent on me to attend.

I have had nothing to do in conducting the Proſecution here, which has appeared evidently; therefore I can't imagine why any Application ſhould be made to me.

Dominus Rex verſus Acton.
Michaelmas Term. 3 *Geo.* II *.

The Defendant was Deputy-Keeper of the *Marſhalſea* Priſon; and upon the Addreſs of the Houſe of Commons, was proſecuted for ſeveral Murders, ſuppoſed to have been committed by him on Priſoners in his Cuſtody. He was tried on four ſeveral Indictments, whereon the only Queſtion was, 'Whether a Place within the Priſon, called *the Strong Room*, was a proper Place to confine diſorderly Priſoners in? And the Jury upon all the four Trials acquitted him, to the Satisfaction of almoſt every Body; and in conſequence of theſe Acquittals he was diſcharged. Preſently after he was at Liberty, a ſingle Juſtice of the Peace, upon Information of a fifth Perſon's having been put into the ſame *Strong Room*, and dying within a Year after, thought fit to commit the Defendant again for Murder; and upon a *Habeas Corpus*, *Strange pro Def.* moved he might be admitted to Bail, on producing Copies of the Informations, and Affidavits of the former Trials, and of the identical Nature of the Offences; but the Court refuſed to look into the Informations, though they were preſſed with the Lord *Mohun*'s Caſe, *Salk.* 124. where they looked into the Depoſitions taken by the Coroner, upon a Motion to bail: And, in the preſent Caſe, they remanded the Defendant; who lay in Priſon till the next Aſſizes; when the Grand Jury did him the Juſtice to return the Bill *Ignoramus*, and he was diſcharged.

XVIII. Several Proceedings relating to the bailing Mr. BAMBRIDGE, both at the *King's-Bench*, and at the *Seſſion's-Houſe*, in the *Old-Bailey*, in 1729, previous to his Trial for Felony.

At the King's-Bench.

June 7, 1729.

THIS Morning Mr. *Bambridge* was brought by *Habeas Corpus* from *Newgate* to the Court of *King's-Bench*. The *Habeas Corpus*, and the Return, which contained the ſeveral Matters, wherewith he was charged, were read, *viz.* 1. A Commitment by the Honourable Houſe of Commons, for many Barbarities, Cruelties, and Crimes, in the Execution of the Office of Warden of the *Fleet*. 2. An Indictment for the Murder of Mr. *Caſtell*. 3. A Charge of Felony for ſtealing Goods.

* Sir *John Strange*'s Reports, Vol. II. p. 851.

The Priſoner's Counſel moved the Court, that he might be admitted to Bail; for that as to the firſt of the ſaid Commitments it was ended by the Expiration of the Seſſions of Parliament; as to the ſecond, the Priſoner, upon a fair Trial, had been acquitted; and as to the third, it was a Charge brought in upon the Priſoner, on his being acquitted of the Murder, and no Bill of Indictment either found, or offered to the Grand Jury, though they continued ſitting till the Day after the Trial; and more eſpecially, was it reaſonable to admit him to Bail, for that by a late Act of Parliament, he is obliged, on the Pains and Penalties of Felony, *Forthwith* to make out true and perfect Liſts of all the Priſoners in the *Fleet*, till *June* fourteen, and to give up all Securities, *&c.* which it was impoſſible for him to do, without having his Liberty to go to the *Fleet*, to inſpect the Books, and examine the Officers there; and eight Perſons being ready to become his Sureties, whereof Notice was given; therefore, it was hoped the Court would admit him to Bail. The King's Counſel alledged, that the Crime which the Priſoner ſtood charged with, on Oath, was Felony, without Benefit of Clergy: That, as to what was ſaid of the Priſoner's being liable to the Pains of Death, in caſe he refuſes or neglects *forthwith* to make out the ſaid Liſts, *&c.* the ſaid Word *forthwith*, in this Caſe, imports a convenient Time, or as ſoon as is reaſonable; and therefore, on behalf of the King, they hoped he ſhould not be admitted to Bail. The Court were of Opinion, that as this Caſe is circumſtanced, there were not ſufficient Reaſons to admit the Priſoner to Bail, the Crime he is charged with being Capital; and one of the King's Evidence being out of the way, the laſt Day of the Seſſions at the *Old Bailey*, the Bill againſt him was not preferred, and the Court there having ordered the Priſoner's Detainer till next Seſſions. The Court alſo declared their Opinion, that in caſe the Priſoner, to the utmoſt of his Power, complied with the Act of Parliament, in delivering ſuch Liſts, *&c.* he would be no way liable to the Penalties thereof; in the End he was remanded to *Newgate*.

Dns. Rex ver. Bambridge. } At the Seſſions of Oyer and Terminer, and Gaol Delivery, held at *Juſtice-Hall*, at the *Old Bailey*, on the ninth Day of *July*, 1729, before Sir *Robert Baylis*, Knight, Lord Mayor, and others his Majeſty's Juſtices.

The Sollicitor for the Crown not being ready to try *Thomas Bambridge*, who ſtood indicted for Felony; the King's Counſel did not attend till the 9th of *July*, the 1ſt Day of the Seſſions; when Lord Chief Baron *Pengelly*, being ill, was out of Town; and Mr. Juſtice *Reynolds*, being obliged to go the Circuit; there were only on the Bench, Sir *William Thompſon* the Recorder, and Mr. Serjeant *Raby* the Deputy Recorder.

When Mr. *Bambridge* was brought from *Newgate* to the *Old Bailey*, he petitioned the Court, that he might be either tried, bailed, or diſcharged; and that in the mean time he might, under the Cuſtody of the Keeper of *Newgate*, be permitted to go to the Judges Chambers, to inſpect the Bail-books and Commitments, to enable him to perfect the Liſts of all his Priſoners, which the preſent Warden had demanded; and which by a late Act of Parliament he is obliged to deliver, on the Pains of Felony without Benefit of Clergy; and the Judges going their Circuits on *Monday* next, his Petition ſet forth, that it might be too late for him, after the End of the Seſſions, to inſpect the ſaid Books. The Court were pleaſed to Record the Petition, and to grant the firſt Part of it, *viz.* That he ſhould either be tried, bailed, or diſcharged; and as to the other Part of his Petition, declared that he could not incur the Penalties in the ſaid Act, if he did the utmoſt in his Power to perfect the ſaid Liſts.—And next Day, (*July* 10,) Mr. *Bambridge*, who had petitioned the Court to be trid, bailed, or diſcharged, was indicted, together with *James Douglas*, and *William Pindar*, (his Accomplices) for breaking open the Door, and feloniouſly ſtealing the Goods of Mrs. *Berkley*, a Priſoner in the *Fleet*; when the Grand Jury found the Bill againſt them all; whereupon *Douglas* and *Pindar* abſconded.

And on 12th *July* 1729, being the laſt Day of the Seſſions,

Thomas Bambridge (being before arraigned) was brought to the Bar, to be tried for the Felony whereof he ſtood indicted; when Sir *William Thompſon* ſpoke as follows:

Sir *William Thompſon.* As I have the Honour to be a Member of the Houſe of Commons, and as this Proſecution was ordered by Addreſs from the Houſe of Commons, it may be objected by the Priſoner, that I am both a Proſecutor and Judge.

Mr. *Bambridge.* I have no perſonal Objection to your trying me; but as you are a Member of the Houſe of Commons, I have long had a Regard for you, and I beg I may not be underſtood as having any perſonal Objection to you; but I beg no Perſon belonging to the Houſe of Commons may have any thing to do with it.

Sir *William Thompſon. Mr. Attorney*, you ſee the Priſoner thinks me not a proper Judge to try him.

Mr. Att. Gen. I apprehend it is not a legal Objection; I believe it has frequently happened, that Members have ſat as Judges, where Proſecutions have been ordered by the Houſe of Commons.

Sir *William Thompſon.* He may not think me diveſted of Partiality; it may be thought in me a remote Objection, but I would avoid lying under any Imputation of Partiality.

Mr. Att. Gen. I don't ſay it is not a legal Objection; as the Priſoner does inſiſt upon it, it is not right in me to inſiſt upon your trying him; but if you do not think proper to try him for the Sake of the Proſecution, and the Solemnity of it, I hope the Trial will go off till a Judge is here: But I am told there is Danger that ſome of the Witneſſes may be gone out of the way; and as Witneſſes are the moſt material in all Trials, I ſhould be glad of its coming on as ſoon as poſſible.

Sir *William Thompſon.* I will tell you how that Matter happens; there is not a Day next Week, that my Lord Mayor is not engaged in Buſineſs; ſuppoſe it ſhould be put off till *Monday* Se'n-night, ſome of the Judges may be come home from their Circuits on *Saturday* Night; the Seſſions ſhall be adjourned on purpoſe; there ſhall be all the Care in the World to ſupport the Proſecution. As this Matter does happen, and the Priſoner ſtill inſiſts upon it, let it be *Wedneſday* or *Monday* Se'n-night.

Mr. Att. Gen. I believe *Monday* will be the propereſt Day; Lord Chief Juſtice *Eyre*, and Baron *Carter*, may be in Town then.

Sir *William Thompſon.* He ſees the Inconvenience; if he will wave the Objection, I am ready to try him, and he ſhall have all the Indulgence the Law will allow; I do it not to wave the Fatigue; and as for Mr. Serjeant *Raby*, he is not well, he has had an ill State of Health for ſome Time, and is not able to try him.

Mr. Attorney. If it goes off to *Monday* ſeven-night, it may be put off till next Seſſions; therefore I ſhould think it better for the Priſoner to be tried now: I don't deſire him; it ſhall be voluntary in him.

Bambridge. I inſiſt upon the Objection.

Mr. Attorney. Pray let it be on *Monday* ſeven-night.

Sir *William Thompſon.* It is the Attorney's Deſire, that it may be adjourned till *Monday* ſeven-night.

Bambridge. The Trial I went under laſt Seſſions, for the Murder of Mr. *Caſtell*, met with falſe Repreſentations in the Papers; therefore, rather than run any Hazard of a Miſrepreſentation, I deſire it may be adjourned to the Time *Mr. Attorney* mentions.

Sir *William Thompſon.* What was inſerted in the Papers I have nothing to ſay to.

Bambridge. If Things were miſrepreſented then, they may again; and I have ſuffered ſo much in my Character under ſuch Miſrepreſentations, that I ought to be cautious how I conduct myſelf.

Then the Court was adjourned to *Monday* ſeven-night.

Lunæ 21° *die Julii*, 1729.

Proclamation was made for Information.

Clerk of Arraigns. Set up *Thomas Bambridge.* (*Which was accordingly done, and the Indictment read in* Engliſh.)

Sir *William Thompſon.* This Matter was put off till To-day (the Priſoner having thought fit to object againſt me), in expectation that ſome of the Judges would come to Town.

My Lord Mayor has ſent to thoſe in Town, and they ſent Word, that it would not be convenient for them, being fatigued with the Circuit.

Mr. Attorney. Mr. Serjeant *Cheſhire* and myſelf are ready, and the King's Witneſſes are ready.

Sir *William Thompſon.* I have had the Objection in my Mind; and the more I conſider of it, the more I think it will be very improper for me to try him. I know no Inſtance, no Parallel.

There was an Act paſſed laſt Seſſions of Parliament, to which I was a Party; the Proſecution was ordered by Addreſs from the Houſe of Commons, to which I was a Party; and it does remain a Scruple with me, that it does not become me to try this Man.

The Trial muſt be put off till next Seſſions.

Lord Mayor. The Judges ſent Word, that they were ſo fatigued with the Aſſizes, that their Health would not permit them to attend.

Mr. Attorney. I have been here twice: Next Seſſions is the 27th of *Auguſt*; I muſt be out of Town, and cannot be able to attend the Trial.

Mr. Serj. *Cheſhire.* I ſhall be one hundred and fifty Miles out of Town at that Time.

Sir *William Thompſon.* The Seſſions you don't uſually attend; I wiſh it was otherwiſe: If you can tell me of any Caſe where a Judge acted as Proſecutor and Judge, I will try him.

Mr. Attorney. I can't recollect any Precedent; but the Court of *King's Bench* grants Informations, and try the Cauſe after.

Sir *William Thompſon.* After the Court of *King's Bench* grants Informations, they hear both Parties. Whoever reads the Act paſſed laſt Seſſions, if I had tried him, would ſay I was not impartial.

Mr. Attorney. If it is a Scruple the Priſoner makes, he cannot be diſcharged.

Sir *William Thompſon.* The Trial muſt go over; it muſt take its Fate. Mr. *Allen*, take care of the Priſoner.

Dns. Rex ver. Bambridge. } *At the* Old Bailey.

Mercurii 27° *die Auguſti*, 1729.

MR. *Conningſby* attended on Behalf of the Crown, and made a Motion to put off the Trial of *Thomas Bambridge* till next Seſſions; but the Court did not think fit to enter into the Argument then, and deferred it till the 29th of the ſame Inſtant.

Veneris 29° *die Auguſti*, 1729.

Mr. *Conningſby.* I am of Counſel for the King, my Lord. I have an humble Motion to make to the Court, that the Trial of Mr. *Bambridge* may be put off till the next Seſſions; and when I aſk this, it will be neceſſary to aſſign ſome Reaſon: The laſt Time I made the Motion to the Court, your Lordſhip was pleaſed to determine, that the Priſoner was not in the Meaning of the *Habeas Corpus* Act, as he waved being tried himſelf; and therefore it is diſcretionary in the Court what they will do in this Matter, as the Trial was before put off by the Priſoner's Concurrence. My Lord, the King's Counſel being out of Town, or upon the Circuits, is one Reaſon; but I don't barely inſiſt upon that; for I have an Affidavit, that a material Witneſs for the King is abſent, and can't be found; that he has abſconded for Debt; but that we ſhall be able to have him by next Seſſions, though not now; I ſubmit it upon that.

Then the Affidavit was read, which was to the following Effect:

"*Nicholas Comer* maketh Oath, That he had ſought after *Gifford Lane*, "formerly Clerk to Mr. *Gybbon*, late Deputy Warden of the *Fleet*, to "ſerve him with a Subpœna; but could not find him out, becauſe he has "abſconded for Debt; but believes he ſhall find him by the next enſuing "Seſſions; and that it was not ſafe to proceed to Trial without his Teſ-"timony, *&c.*"

Mr. *Conningſby.* I hope, upon this, my Lord, the Trial will be put off.

Mr. Juſt. *Probyn.* While Mr. *Wynn* is ſpeaking, I deſire I may look over the Affidavit.

Mr. *Wynn.* (*Counſel for the Priſoner.*) My Lord, I hope the Reaſon given is not ſufficient to put off the Trial: I will not mention now the long Time that he has been kept in Priſon, it is ſo freſh in Memory.

As to the Abſence of the King's Counſel, there is no Occaſion for them, as that learned Gentleman is preſent; and I humbly apprehend, that can be no Foundation to put the Trial off.

The next Argument is founded upon the Affidavit of *Nicholas Comer*, That he had not been able to find *Lane*; and that *Lane* was a material Witneſs for the King: What Foundation he had to believe *Lane* a material Witneſs does not appear; and it is very eaſy to ſeek for a Man where he

he is not to be found. The other Day, my Lord, there was nothing then pretended but the firſt Part of the Motion; and Mr. *Paxton* himſelf will own, that he could aſſign no other Reaſon than the Abſence of the King's Counſel; and, I preſume, as your Lordſhip would not allow that as a ſufficient Reaſon then, I hope you will not now. At the latter End of a Seſſions no Affidavit, they themſelves are conſcious, can have any Weight.

They ſuppoſed that your Lordſhip would hardly enter into it now; and, for that Reaſon, have very artfully ſpun it out: I called upon them then to give a Reaſon for putting the Trial off. Why was there not a proper Application Yeſterday? The Affidavit would have been filed, and the Priſoner would have had a proper Opportunity to give Evidence as to the Character of *Comer*; and if any Thing is to be preſumed, your Lordſhip will preſume it in Favour of the Priſoner.

I will not take up any more of your Lordſhip's Time; but humbly inſiſt, that your Lordſhip will proceed upon the Trial, or admit him to Bail.

Mr. *Conningſby*. The learned Gentleman, my Lord, inſinuates, that we ſearched for *Lane* where he was not to be found: The Affidavit ſets forth, That *Comer* ſearched at his Place of Abode, and at other Places, where it was thought he was likely to be. We do take upon us to ſay, he is a material Witneſs: If we ſwear falſely, that lies upon us to anſwer; and, I apprehend, the Crown would be no more ſurpriſed than the Priſoner.

Mr. *Bambridge*. As to *Lane*'s being a material Witneſs, if you look upon the Indictment, you'll not ſee him upon the Back of it.

Mr. *Paxton*. That's not to the Purpoſe; for we ſeldom put the moſt material Evidence on the Back of the Indictment.

Mr. *Bambridge*. I beg Leave, my Lord, to mention one Circumſtance, which is notorious, and now publickly talked of: There was one Gentleman of the Grand Jury, who was very ſolicitous to the reſt of his Brethren to find this Bill, has laid violent Hands upon himſelf for the Injury done to me.

Mr. Juſtice *Probyn*. That is not to the Purpoſe.

Mr. *Bambridge*. He has not ſworn to *Lane*'s Place of Abode

Mr. *Paxton*. There is one remarkable Circumſtance, that the Court was adjourned for ſeveral Days, that the Priſoner might have a legal Trial, and it went off upon the Priſoner's Account.

Mr. *Bambridge*, I am ſurpriſed Mr. *Paxton* ſhould ſay that; I did not ſpeak one Word that Day.——I have in Writing what was ſaid, which there is one ready to ſwear to; which he read over.

Mr. Juſtice *Probyn*. That relates to the Prayer of the *Habeas Corpus* Act.

When People are in Cuſtody a conſiderable Time, without ſome particular Reaſon, they ſhould be diſcharged.

One of the Reaſons always admitted, is the want of Evidence for the Proſecutor: If Endeavours have been uſed, and they cannot be had, that always is a ſufficient Reaſon. As to the Affidavit, it is not ſo ſtrong as uſually is made upon ſuch Occaſions; It ſays, that he was concerned for the Proſecutor; but it don't appear how he was concerned. He ſays, that he had made Enquiry at Mr. *Gybbons*'s Houſe, but don't ſay that he ever lodged there; but goes on and ſays, that he enquired at ſeveral other Places where it was likely to find him; but don't ſay he lodged at thoſe Places. Why won't you conſent that the Priſoner ſhould be bailed?

Mr. *Conningsby*. I don't know what Service it will be to him.

Mr. *Wynn* (afterwards Serjeant). I am ſurprized that any thing ſhould be mentioned about the Appeal, which is a private Cauſe.

Mr. *Conningsby*. I mentioned nothing of the Appeal now.

Mr. *Wynn*. You did the other Day.

Mr. Baron *Comyns*. As, on the one Hand, Care ſhould be taken that the Proſecution ſhould be ſo carried on, that the Perſon guilty ſhould be puniſhed; ſo, on the other Hand, it ſhould be carried on with ſuch Speed, that no Perſon ſhould be longer confined than neceſſary. It does appear, by the Conceſſions on all Hands, that the Priſoner has continued in Priſon ever ſince *May* laſt: Though, by the Waver of not being tried, he is not intitled to his Diſcharge, yet he ought to be conſidered as to the Length of Time he has continued in Priſon; unleſs you can ſhow any Diſadvantage to the Crown, if he is admitted to Bail. If it ſecures the Liberty of the Subject, on the one Hand, we ſhall take care, on the other, that the Bail ſhall be ſo ſufficient, that he may be amenable to Juſtice.

Mr. *Paxton*. The Trial was put off upon Mr. *Bambridge*'s own Motion.

Mr. Juſtice *Probyn*. He ought to be admitted to Bail. Mr. *Bambridge*, have you Bail ready?

Mr. *Bambridge*. I can't ſay I have this Inſtant; but if it is your Lordſhip's Pleaſure to order Bail, upon giving Notice to the Sollicitor for the Crown, I'll get them ready.

Mr. Juſtice *Probyn*. Give the Names of the Bail as ſoon as conveniently you can; for it ſhould be done in Court.

Mr. *Wynn*. Can you undertake to get them ready in two or three Hours.

Mr. *Bambridge*. I have two or three ready in Court now.

Mr. *Wynn*. What Sum, my Lord, ſhall they be bound in?

Mr. *Paxton*. I deſire, my Lord, they may juſtify in a particular Sum.

Mr. Juſtice *Probyn*. He ſhall enter into a Recognizance himſelf of two thouſand Pounds, and the Bail one thouſand Pounds a-piece.

Mr. *Paxton*. I ſhould have an Opportunity to enquire into their Circumſtances.

Mr. *Williams*. You know me.

Mr. *Paxton*. I know you to be a Tradeſman in *Long-Acre*; but don't know what you are worth.

Mr. Juſtice *Probyn*. You that are here now may juſtify: You ſay you know one of them, only want to be ſatisfied as to his Circumſtances.

Mr. *William Beatniff* (Coachmaker in *High-Holborn*). I am ready, my Lord, to juſtify.

Mr. Juſtice *Probyn*. Is he ſworn?—— Mr. *Tanner*. Yes, my Lord.

Mr. Juſtice *Probyn*. Mr. *Beatniff*, are you worth a Thouſand Pounds when all your Debts are paid?——Mr. *Beatniff*. I am, my Lord.

Mr. Juſtice *Probyn*. Is *Williams* ſworn?——Mr. *Tanner*. He is.

Mr. *Williams*. I cannot ſwear to a thouſand Pounds; but I will ſwear to five hundred Pounds.

Mr. Juſtice *Probyn*. Are you worth five hundred Pounds, when all your Debts are paid?——Mr. *Williams*. I am, my Lord.

Mr. *Bambridge*. There is one of the Serjeants of the Compter has offered to be the other.

Mr. Juſtice *Probyn*. Let him be ſworn.—*Titus Parker*, are you a Houſekeeper?——Mr. *Parker*. Yes.

Mr. Juſtice *Probyn*. Are you worth five hundred Pounds, when all your Debts are paid?——Mr. *Parker*. I am, with my Place.

Mr. Juſtice *Probyn*. I have nothing to ſay how you make it up; but I aſk you, Whether you are worth five hundred Pounds, over and above what is neceſſary to pay your Debts?

Mr. *Parker*. I really believe I am.

Mr. Juſtice *Probyn*. That is not enough for you to ſay.

Upon which he would not ſwear otherwiſe, and withdrew; and Mr. *Bambridge* was directed to get another.

Sabbati, 30° *die Auguſti*, 1729.

The Calendar being called over, Mr. Bambridge *was brought to the Bar.*

Mr. *Bambridge*. The Perſon that I did propoſe for the third Man. I cannot have while the Court is ſitting, for he is out of Town.

Serj. *Raby*. Then you can't comply with the whole.

Mr. *Bambridge*. I can't now; therefore I deſire I may be referred to the Lord Mayor to take the Bail.

Mr. *Harbing*. The third Perſon was juſt now in Town; I ſaw him with an Agent of Mr. *Bambridge* at *Fleet-Ditch*.

Mr. *Bambridge*. My Lord, *Harbing* is one in the Conſpiracy: I ſhall have you, and *Comer* too, by and bye.

Mr. *Harbing*. That audacious Front of your's will do you no Service.

Serj. *Raby*. You ſay you can't be able now to comply; you can't give Security now; and you deſire it may be referred: Whoever takes that Authority upon them, will do it by the Order of the Court. Let it be referred to the Lord Mayor, and any two of the Aldermen upon the Rota. When do you propoſe to give in Bail?

Mr. *Bambridge*. I propoſe on *Tueſday* Morning.

Serj. *Raby*. Let it be *Wedneſday*, and give three Days Notice: It will be better for you; for the Sollicitor for the Crown may ſay that he had not ſufficient Notice, and that may delay you.

Lord Mayor. You may attend me on *Wedneſday* Morning at Ten o'Clock. Take care to give Mr. *Paxton* Notice.

On *September* 9th, he was bailed before the Lord Mayor and Court of Aldermen, at *Guildhall*, for the Felony of which he ſtood indicted; having given ſufficient Sureties for his Appearance at the next Seſſions at the *Old Bailey*; though he was continued a Priſoner in *Newgate*, being charged on an Appeal for the Murder of Mr. *Caſtell*.

Dns Rex ver. Bambridge, At the Old Bailey, 20 October, 1729.

THE ſaid *Thomas Bambridge* being brought to the Bar (the King's Counſel not being then in Court), Proclamation was made for Information.

Clerk of Arraigns. Thou the Priſoner at the Bar, theſe Men that thou ſhalt hear called, and perſonally appear, are to paſs between our Sovereign Lord the King and thee, upon the Trial of thy Life and Death; therefore, if you challenge them, or any of them, your Time to ſpeak is as they come to the Book to be ſworn, before they are ſworn. [Then Part of the Pannel was called over, as follows:]

Clerk of Arraigns. Robert Johnſon.

Johnſon. Here.

Mr. *Bambridge*. I object to him. I am ſurpriſed he ſhould be ſummoned: He was a Priſoner in the *Fleet*, and was cleared by the late Act of Inſolvency; and ſo are half of the Perſons that are now ſummoned.

Officer. I took the beſt Care I could.

Mr. *Bambridge*. Theſe ought not to have been upon the Pannel: I am ready to be tried by any twelve honeſt and indifferent Men.

Lord Chief Juſtice *Raymond*. I don't know how this Matter is; if you have any juſt Cauſe, you may challenge any of them.

Clerk of Arraigns. John Lewis. (*Who anſwered, and was ſworn.*)

Mr. *Bambridge*. Half of them were Priſoners.

Mr. *Matthews*. Have you any other Pannel?

Officer. There is another Pannel.

Clerk of Arraigns. William Berry (not here).

John Fowler (anſwered, and was ſworn).

Clerk of Arraigns. Richard Evans.

Richard Evans. Here.

Clerk of Arraigns. Look upon the Priſoner.

Mr. *Kettleby*. Let the Priſoner look upon him, to ſee if he knows him.

[*Then the King's Counſel came into Court.*]

Mr. Serj. *Cheſhire*. My Lord, there is a Witneſs, that is to go through the whole Cauſe, one *Turner*, who is very ill; and we ſhall have an Affidavit preſently, that he can't, without Peril of his Life, come out. He was here on *Friday*, and this is the Act of God: Three or four Times the King's Counſel have attended, and hoped this would have been the laſt. It is our Duty to acquaint your Lordſhip, that he goes through the whole Cauſe: We are very ſorry it has ſo happened; but we cannot try it, unleſs we are to try the Cauſe without this Witneſs.

Mr. Attorney General. It is impoſſible for us to go on without this Witneſs; this Accident is what we did not meet withal till the Court was ſitting; there is a Meſſenger ſent, and an Apothecary, to deſire him, if poſſible, to come in any Manner, in a Chair, or otherwiſe; if not, we ſhall lay before your Lordſhips, by Affidavit, the Condition he is in when the Apothecary comes. This Witneſs is the moſt material in the Cauſe; it is impoſſible to charge the Priſoner, or try the Cauſe without him. The Witneſs was here on *Friday*, and there can be no Inconvenience to the Priſoner, for that in regard to this Indictment he is bailed; he is not in the ſame Caſe where he would be kept in Cuſtody; but if that was the Caſe, it is a ſufficient Cauſe to put off the Trial, ſuppoſing he was not upon Bail. I have attended here ſeveral Times, and ſhould be glad to have done with this Attendance.

Lord Chief Juſtice *Raymond*. I can't ſay any thing to it till the Affidavit comes.

Mr. *Bambridge*. I did not hear one Word that that Gentleman ſaid.

Lord Chief Juſtice. They have alledged, that a material Witneſs, that goes through the whole Cauſe, cannot with any Safety to his life attend.

There is no Affidavit come, ſo it cannot be taken Notice of till it does, and they ſay it cannot be any Inconvenience to you, becauſe you are already bailed. I wiſh you hear me, for I am hoarſe.

Mr. *Bambridge.* My Lord, I do hear you, this Cauſe has been depending ever ſince *May* laſt.

Lord Chief Juſtice. You have no Occaſion to take notice of that.

Mr. *Bambridge.* I don't know but this Witneſs is one of the People maintained in the *Fleet*, at Board-wages. It has been put off already ſeveral Times, and your Lordſhip knows, I ſurrendered on *Friday* to take my Trial.

Mr. Attorney-General. It was not our Fault it was not tried in *July* laſt, we had all our Witneſſes then ready.

Mr. *Strange.* An Honourable Gentlemen made the Objection, then upon the Bench.

Mr. Attorney-General. I muſt obſerve, that the Priſoner inſiſted upon it himſelf.

Mr. *Bambridge.* I am very ſorry, ſo weak a Stratagem as this is made uſe of to put it off.

Lord Chief Juſtice. Have a little Patience till the Affidavit comes, I cannot ſay any thing to it till then.

Mr. *Bambridge.* I have had a great deal of uncommon Sufferings in this Cauſe.

Lord Chief Juſtice. That is nothing to me, I can't ſay any thing to it; I am here only to try the Cauſe.

Mr. *Bambridge.* I have brought a Gentleman, Mr. *Holder*, one hundred Miles, and this Trial being put off from Time to Time, the Expence is ſo great, that it is enough to ruin any Man.

Lord Chief Juſtice. You muſt ſtay till the Affidavit comes.

Mr. Serj. *Cheſhire.* This Witneſs ſwears to the ſtealing the Goods.

Then Mr. *Bambridge* went from the Bar, and the Court waiting ſome time,

Mr. *Paxton* produced an Affidavit, which the Parties ſwore to in Court.

Mr. Attorney-General. I believe you ſhould bring the Priſoner to the Bar. *(Which was done accordingly.)*

Mr. Serj. *Cheſhire.* Now the Affidavit is come, there are three Witneſſes, though I mentioned but one. Now it appears, from the Evidence of three Perſons, that there is another Perſon, a Priſoner in the *Fleet*, that cannot come; he has had a violent Fever, that fell into one of his Thighs, and cauſed a dangerous Wound to be made, ſix Inches in Length and three in Depth.

Mr. Attorney-General. My Lord, we pray the Affidavit may be read. *(which was accordingly done,)* and is to the following Effect:

James Current, Surgeon, ——— *Goodacre*, Apothecary, *Nicholas Comer*, ſeverally make Oath, each for himſelf; and *James Current* ſaith, "That "he hath attended Captain *John Lillingſton* about fourteen Days laſt paſt, "and that he was ſeized with a violent Fever, which fell into his Thigh, "and occaſioned a Tumor, which was forced to be laid open; and *Lil-* "*lingſton* now lies dangerouſly ill; that the Wound is ſix Inches long, "and three deep, and he cannot be brought out without manifeſt Danger "of his Life.

"*Goodacre*; he ſwears that he has been to viſit *John Turner*, and that "he found him violently ill of a Pleuretick Fever, and he cannot be "brought out of his Lodging without Danger of his Life.

"*Nicholas Comer*; he ſays, he was employed by Mr. *Paxton*, and he is "well acquainted with *John Turner* and *John Lillingſton*, and is well ac- "quainted with their Affidavits, and ſays, that they are very material "Witneſſes, and it is not ſafe to proceed to Trial, without the Benefit of "their Teſtimony; and that *Turner* did attend on *Friday*, though he was "then ill."

Mr. Attorney-General. We that are Counſel for the King, cannot oblige the Attendance of Witneſſes; we cannot keep them in Health; I ſhould have been very glad to have went on with the Trial; what has been one of the Means of putting it off, was the Priſoner's inſiſting upon an Objection, that was made by an honourable Perſon, then upon the Bench. The Affidavit is ſo full, that I need not trouble your Lordſhip with any Obſervations upon it. The Courſe of all Courts is upon ſuch an Affidavit to put off the Cauſe, and it is not ſafe to go to Trial without this Witneſs. By my Brief we cannot ſafely proceed, for the Priſoner was committed upon the Affidavit of *Turner*.

Mr. Sollicitor-General. I apprehend, that what we apply for, is ſo reaſonable, it will be granted.

Lord Chief Juſtice. The Affidavit is ſworn by three Witneſſes.

Mr. *Kettleby.* I am Counſel for the Priſoner. In Caſes of Felony, Counſel may be aſſigned for the Priſoner upon Motions, but not upon Trials.

Lord Chief Juſtice. I allow it to be ſo, you may go on.

Mr. *Kettleby.* I hope the Trial will not be put off at this Time; this is ſo ſmall a Matter to object, to put off the Trial; they don't mention when they firſt came to the Knowledge of this: If they came to the Knowledge of it ſo ſoon, that the Defendant might have had an Opportunity to ſend People to view the Perſons ill too, then this Affidavit is not ſufficient.———

Lord Chief Juſtice. He was here on *Friday*.

Mr. *Strange.* It is not ſaid in the Affidavit, that he was ſubpœna'd, he might attend as a Hearer.

Mr. Attorney-General. None of us knew it till juſt now. He don't lye in Priſon upon this; he is confined upon the Appeal.

Mr. *Kettleby.* He has an Iron knocked off one Leg, and ready to be put upon the other.

And if this holds him, he may be continued for ever. I ſubmit to your Lordſhip, that they muſt give Notice to put off the Trial, if it is to be put off; they don't ſay whether they knew of this Cauſe before, or not; *Mr. Attorney* ſaid, he did not know of *Lillingſton*'s being ill.

Mr. Attorney-General. I knew *Lillingſton*'s being a Witneſs, by my Brief.

Mr. *Kettleby.* They ſhould have ſet forth in the Affidavit, that they did not know of the Illneſs till this Morning, and that they did not know it before: If that had been the Caſe, it had been ſome Excuſe; beſides, the Jury has been charged with the Priſoner; the Attorney did not come in ſo ſoon: he has made an Objection againſt the Pannel, before the King's Counſel came in; they ſaid they were to have an Information, of the Diſability of one Witneſs. Now there are two ill, without ſaying when they firſt knew of their Diſability.

Comer ſays, that he was employed under Mr. *Paxton*, and he knows they are material Witneſſes. If Mr. *Paxton* had given it upon Oath, that they were material Witneſſes, I ſhould have believed it; I don't know from whence *Comer* comes, I do not ſee it in the Information; he ſays, that he is acquainted with them, therefore concludes, they are material Witneſſes. I muſt ſubmit it, if they are material Witneſſes or not; it is an eaſy Matter to get three or four People, may be Clerks Clerks, to ſwear, that they are material Witneſſes, who I have no reaſon to believe had ſufficient Reaſons to ground their Belief upon that they were material Witneſſes; ſhould we not have had ſome Information before? Perhaps the Priſoner might have ſent one to viſit theſe People, who might have ſwore, that they were as able to come, as theſe ſay they were unable; and I humbly beg leave to ſay, that the Affidavit is not ſufficient. Beſides, there is another Reaſon, why it ſhould not be put off, he is ſurrendered by his Bail to take his Trial, and we do not know that they will ſtand again.

Mr. Attorney-General. They muſt ſtand till they are diſcharged by the Court.

Mr. *Kettleby.* They have not ſo much as given Notice to ſtand again, he has not had ſo much as an Opportunity of aſking; I hope he may be tried, or elſe the Conſequence muſt be, that he muſt lye by till *December*, and then Somebody elſe may have a broken Leg.

Mr. *Wynn.* I can't paſs over this Affidavit, without making one Obſervation; I ſhall not call it an affected Delay, though it looks exceeding like it. The Affidavit laſt Seſſions was not ſhewed the Beginning of the Seſſions, that he might have had an Opportunity to anſwer it, but the laſt Day of the Seſſions; I am ſure then it looked like an affected Delay. The Affidavit was then not looked upon to be ſufficient; the Objection then to Mr. *Comer* was, that he was no Sollicitor. Is a Perſon ſufficient to ſwear to Witneſſes being material, that has only ſerved a Subpœna? Mr. *Paxton* is the only Perſon that has appeared as a Sollicitor. Another thing that is pretty extraordinary is, that the Bail is diſcharged; there may be no Render, but the Goaler will hardly part with him without freſh Bail.

I ſhould be glad to know, if the Goaler will give Liberty for him or no; I would not add more to your Lordſhip's Trouble; but as this Caſe is, there is no Manner of Reaſon to put off the Trial.

Mr. *Strange.* I am Counſel of the ſame Side, and I muſt obſerve to your Lordſhip, that this Affidavit is not ſufficient as to the Inability or Materialneſs of the Witneſſes; as to the firſt it appears, that they muſt have had fourteen Days Time to have made this Inquiry; as to *Lillingſton*, and though they pretend to ſay *Turner* was here on *Friday*, they do not ſay *Lillingſton* was; they could have gone on without this *Lillingſton* then, for it does not appear that he was here on *Friday* laſt.

That if it had ſuited the Convenience of the Court to have gone on on *Friday*, they muſt have gone on without *Lillingſton*. There is a great Ambiguity in the Affidavit; it ſays, that the Tumor had been laid open, and that he had a Hole in his Leg, and lies in the *Fleet*, and that *Lillingſton* poſitively cannot be brought out. Really, as to *Lillingſton*, he has fallen in very particularly; the Objection aroſe as to him above fourteen Days ago, and they might have applied to the Court in time, ſo he ought to be laid out of the Caſe, and he is to be laid out of the Caſe.—It is ſworn as to the other, that he was out on *Friday*; but whether he was ſubpœna'd or not, is not ſworn. As to their Indiſpoſition, the Apothecary only ſwears, that *Turner* was ill of a Pleuretick Fever; but I ſubmit it, whether they muſt not ſwear poſitively, that he cannot come out. I dare ſay, there is no ſuch Witneſs wanted. I take notice of this, to ſhew, that when they come to ſpeak of *Turner*, they cannot ſpeak ſo full as they do to *Lillingſton*. *Comer* ſays, that it is not ſafe to go to Trial without this Witneſs, but he don't ſay whether it is ſafe to proceed to Trial with; I don't know whether the Trial is ſafe, if he was tried upon this Witneſs. Here is the Sollicitor for the Crown, to be ſure he knows the Secrets of the Cauſe, if this Man is ſo material a Witneſs, he ought to ſwear to it: We ought to have the beſt Account we can; and now we have not the beſt Account, becauſe the Sollicitor for the Crown does not take upon him to ſwear to the Fact. It is not made out that they are ſo material, that they can't go on without them; nor does it appear, that they are ſo bad not to be able to come out; though *Mr. Attorney* is pleaſed to ſay, that it cannot be any Injury to the Priſoner, for that his Bail muſt ſtand; I don't believe the Keeper of *Newgate* will venture to let him go out without freſh Bail, and whether that Bail will ſtand or not, I don't know.

Mr. *Bambridge.* On the 8th of this Inſtant, I ſerved Notice on Mr. *Paxton*, that I would ſurrender myſelf on *Friday*, to take my Trial, and it is fourteen Days ſince *Lillingſton* has been ſo ill: This is an Indictment for ſtealing the Goods of one Mrs. *Berkley*, who has lately declared that ſhe is not concerned in the Trial. As to *Comer*, who has made the Affidavit, he is a common Ubiquitarian, and if I am to be confined upon his Affidavits and *Harbing*'s, and the reſt of the Conſpirators, I ſhall be kept in Gaol to the Day of Judgment; and it is ſuch an Expence, it will ruin any one. I am under a Neceſſity to importune the Court to be put upon my Trial, for there is a Perſon come out in a Chair, that is a material Witneſs for me, that is in danger of his Life, and cannot, in all Probability, live till next Seſſions; it is Mr. *John Boncham*, the King's Jeweller.

Lord Chief Juſtice. You muſt make an Affidavit of it; I cannot mind any thing but upon Oath. You have mentioned, that there has been great Delays in this Affair: You ſhould acquaint the Court that it has been put off irregularly: Has it not been done in this Place, that the ſame Seſſions, that a Man has been brought to be tried, it has been put off? This is the Act of God.

Mr. *Bambridge.* They ſhould have ſet forth the Time when they were taken ill.

Mr. Attorney-General. There is no Criticiſm in the Affidavit: I will aſk any of thoſe Gentlemen, whether they ever knew in the *King's-Bench*, or Court of *Exchequer*, the Times mentioned?

Mr. *Strange.* In the laſt Inſtance (that they had been ſubpœna'd).

Lord Chief Juſtice. Subpœna'd is not the Queſtion.

Mr. Attorney-General. Did you ever ſay they were ſubpœna'd in an Affidavit?

Lord Chief Juſtice. As to the Merits, I know nothing of that: This is nothing but a Motion to put off the Trial; I don't ſee any thing diſtinguiſhable in it. It would be very hard for him to lie in Gaol, if he was not admitted to Bail.

Mr. Serj. *Cheſhire.* They ſay, it don't appear that the Man was ſubpœna'd: I aſk any of thoſe Gentlemen, to ſhew, if ever they found

it ſo in an Affidavit? I was ſurpriſed when either of them mentioned it: They inſiſt ſo much upon it, that they will think there is ſomething in it at laſt.

Lord Chief Juſtice. They muſt ſay what they can for their Clients.

Mr. *Kettleby.* We don't know who this *Comer* is: If Mr. *Paxton* will ſwear theſe People are material Witneſſes, we will give it up.

L. C. J. Has not *Comer* been employed in the whole Proſecution, and been fully apprized of the Affidavits?

Mr. Att. Gen. This is the ſlighteſt of all their Objections; for they may as well deſire the Attorney General to make an Affidavit: The Court expects no more than that a Perſon, acquainted with the Merits of the Cauſe, ſhould ſwear that they are Material Witneſſes. If it is done by a Perſon to ſhow to the Court, that they have Reaſon to believe that they are material Witneſſes, that is ſufficient. He ſwears, that he had been employed to carry on the Proſecution for Felony againſt *Bambridge*, of which he is indicted, and acquainted with the Informations taken upon Oath. It is ſaid, why did not Mr. *Paxton* ſwear it? May there not be two Solicitors in a Cauſe? Does it not often happen, that there is a Clerk in Court and Solicitor concerned in one Cauſe? Why don't they ſay a Clerk in Court ſhould make it? We have done all that is requiſite to ſhow that they are material Witneſſes. He could not ſwear it, unleſs he himſelf had ſeen the Informations.

L. C. J. He ſwears, that they cannot ſafely go to Trial without theſe Witneſſes.

Mr. Att. Gen. He ſays, they both are material Witneſſes, and it is not ſafe to proceed to Trial without them; and that is taking upon him to ſwear as much as ever was required. It is urged, that Mr. *Bambridge*'s Bail has ſurrendered him: Suppoſing that he was quite out of Cuſtody, and that he gave Notice that ſuch a Day he would take his Trial, is that a Diſcharge of his Bail? No; his Bail is bound till he is diſcharged by the Judgment of the Court: Such Notice to take his Trial can be no Diſcharge. One of the Gentlemen ſays, that there was ſomething like an affected Delay; we were ready to have tried him in *July* laſt.

L. C. J. That don't appear from you: Who has it ariſen from?

Mr. Att. Gen. It might have been tried in *July:* There was then a Tenderneſs in the Judge, and a very laudable one; but he ſaid, if Mr. *Bambridge* did not inſiſt upon it, he would try him. When the Witneſſes are here, then the Priſoner is for having it put off; when they are not here, then he is for having it tried.

Mr. *Bambridge.* That honourable Gentleman cauſed the Trial to be adjourned; and I muſt ſubmit, whether it was known for a Judge, that was a Party, ever to try any Man. What the Attorney urged before was, that the Court of *King's Bench* ordered Informations, and then proceeded to the Trial of them. As to *Comer*, he is not a Clerk of Mr. *Paxton*'s; he is only a *Hic & Ubiquitarian.*

Mr. Juſtice *Denton.* I am of the ſame Opinion as my Brother *Raymond.*

Mr. *Bambridge.* I will not take up the Time of the Court. If this Gentleman, who I before mentioned to be a material Witneſs for me, ſhould die, it will be greatly detrimental to me; therefore, if your Lordſhip will let him be examined in Court, and leave the Ring in Court, I will conſent to let the Trial be put off.

Mr. *Kettleby.* I ſhould be very glad the Attorney General will take the Trouble to examine him.

Mr. Att. Gen. I can't take upon me to conſent to any thing particular; but muſt ſubmit it to your Lordſhip.

Mr. Juſtice *Denton.* Mr. *Bambridge*, why won't you bring your Witneſs into Court?

Mr. *Bambridge.* The High Sheriff, he not being well, was ſo good to let him be in his Room; he is there, and is coming in.

Mr. Att. Gen. I never knew it done in capital Caſes.

L. C. J. I don't know that ever it was done.

Mr. Juſtice *Denton.* What do you ſay, that he may not live till next Seſſions?

L. C. J. He is weak and aged; but, if I was upon my Oath, I don't ſee any Likelihood of his immediately dying.

Mr. *Bambridge.* He is ſeventy Years of Age.

L. C. J. He may live five Weeks.

Mr. *Bambridge.* If you will let him declare, that I bought the Ring of him ——

L. C. J. It can't be done. In ſeveral Caſes, where Witneſſes have been going abroad in Civil Cauſes, it has been done.

Mr. *Kettleby.* If your Lordſhip don't conſent to this, I hope the Court will indulge us in another Thing we pray ——

Mr. Juſtice *Denton.* *Mr. Attorney General* ſays he won't conſent.

Mr. *Kettleby.* Whether, if you put off the Trial, you won't admit this Gentleman to be examined?

Mr. Att. Gen. It never has been done without Conſent; and I never knew it done in Capital Caſes: I ſhould be very tender to come to make a Precedent in a Capital Caſe: I have known it done in Civil Caſes with Conſent.

Mr. *Kettleby.* If this Affidavit won't do, I beg Leave further to deſire there may be two Juries.

L. C. J. Let us make an End of one Thing firſt. We are all of Opinion the Affidavit is full.

Mr. *Kettleby.* I ſubmit it entirely; and when I know your Lordſhip's Opinion, I am not only ready to give over, but am always convinced; and though *Mr. Attorney* is unwilling to make a bad Precedent in one Caſe, I hope he will be willing to make a good one in another. He was not here when the Priſoner made his Objections to the Jury, to have a diſintereſted Pannel to try him: It would be very odd to try the Warden of the *Fleet* by a Jury that came out of *Domus Manſionalis*; Priſoners that have been diſcharged by the late Act.

L. C. J. What would you have me do?

Mr. *Kettleby.* If it goes over to another Time, I hope the Sheriff will take care to have a good Jury: The firſt Pannel were moſt of them Priſoners; I am ſure the Sheriff will do every thing that is right.

Sir *John Williams* (one of the Sheriffs). There is a new Pannel, where this Perſon, *Johnſon*, is not one.

L. C. J. What do you think of the Sheriffs?

Mr. *Kettleby.* I have no ill Opinion of them; I would be bound Body for Body for them.

Mr. Att. Gen. This is the firſt time I heard of this Objection: I don't know any Foundation for it; for my Part, I never trouble my Head about Juries, nor ever will. I take it for granted, the Officer that ſummons them will do his Duty; if he don't, the Party has his legal Challenge.

Mr. *Strange.* If it is ſo underſtood, that he may be let out, according to the former Recognizance, we ſhall ſubmit.

L. C. J. I don't ſee but he may be admitted to Bail upon that.

Mr. *Bambridge.* The Recognizance is here.

Mr. Att. Gen. Was it not to appear upon the Party's ſurrendering him in Court?

Clerk of Arraigns. It was.

L. C. J. Let me ſee the Recognizance; don't let me do Things in the Dark.

Clerk of Arraigns. The Recognizance is not returned: All that he prayed was, that the Appearance might be entered.

Mr. *Bambridge.* The Recognizance was to appear here, and not to be diſcharged without Licence.

L. C. J. The Recognizance is continued; it can't be diſcharged, without all the Conditions are performed.

Mr. *Bambridge.* I did not hear your Lordſhip before.

Whereupon the Priſoner withdrew.

XIX. The Trial of Thomas Bambridge, Eſq. for Felony, before the Right Hon. Sir *Richard Brocas*, Knt. Lord Mayor of the City of *London*, the Right Hon. Lord Chief Juſtice *Eyre*, the Hon. Mr. Juſtice *Reynolds*, the Hon. Mr. Baron *Carter*, the Worſhipful Mr. Serjeant *Raby*, and others, his Majeſty's Juſtices of *Oyer* and *Terminer*, and Goal Delivery, for the City of *London*, and Gaol Delivery of *Newgate*, for the ſaid City and County of *Middleſex*, held at *Juſtice-Hall* in the *Old Bailey*, on *Wednesday*, *Thurſday*, *Friday*, and *Saturday*, being the 3d, 4th, 5th, and 6th Days of *December*, 1729, in the third Year of Majeſty's Reign.

Veneris 5° Die Decembris, 1729.

Proclamation was made for all Perſons concerned to attend.

Clerk of Arraigns.

IS the *London* Jury here?

Officer. Yes.

Clerk of Arraigns. Set Mr. *Bambridge* to the Bar. *(Which was accordingly done.)* You ſtand indicted by the Name of *Thomas Bambridge*, late of the Pariſh of *St. Bride*'s, *London*; for feloniouſly ſtealing one Feather-Bed, a Bolſter, two Pillows, two Blankets, one Quilt, two Cane Chairs, one Eaſy Chair and Cuſhion, two Stuff Chairs, two Tables, a Looking-Glaſs, Fire-Shovel and Tongs, Gridiron, one Pair of Bellows, three Pair of Window Curtains, *China* Ware, Value 5*l.* a Head of *Mecklin* Lace, Value 10*l.* a Head of *Flanders* Lace, Value 6*l.* ſix Silver-handled Knives, Value 3*l.* ſix Silver Forks, Value 40*s.* two Tea-Spoons, Strainer, and Tongs; four Ounces of Gold Lace, Value 10*l.* two Gold Seals; one Emerald, Value 3*l.* five Diaper Napkins, one Piece of Dimitty, a Sable Tippet, Value 3*l.* a Piece of blue and white Sattin, Value 7*l.* two Stone Seals ſet in Gold, Value 3*l.* three Silk Gowns, Value 6*l.* two Pieces of Sarſenet, Value 55*s.* a Garnet and other Rings, with other Things of conſiderable Value, the Goods of *Elizabeth Berkley*, on the 31ſt Day of *October*, 1727.

Clerk of Arraigns. How ſay'ſt thou, *Thomas Bambridge*, art thou Guilty of the Felony whereof thou ſtandeſt indicted, or Not Guilty?

Mr. *Bambridge.* Not Guilty.

Clerk of Arraigns. How wilt thou be be tried?

Mr. *Bambridge.* By God and my Country.

Clerk of Arraigns. God ſend thee a good Deliverance.

—— Thou the Priſoner at the Bar, theſe Men that thou ſhalt hear called, and perſonally appear, are to paſs between our Sovereign Lord the King and thee, upon the Trial of thy Life and Death; therefore, if thou wilt challenge them, or any of them, thy time to ſpeak is as they come to the Book to be ſworn, before they are ſworn.

Then the Pannel was called over, and the following Perſons challenged by the Priſoner:

Francis Nolder,	*Joſ. Hartwell,*	*John Palmer,*
John Mich. Harnick,	*Richard Hughes,*	*John Baſſet,*
Thomas Caddey,	*John Batler,*	*Stephen Brin,*
Henry Houghton,	*John Hopkins,*	*William Saul.*

Then the Jury ſworn were as follows:

Richard Collier,	*Hery Palmer,*	*Auſtin Tyer,*
Henry Clark,	*Thomas Mallet,*	*William Lyon,*
John Poole,	*Joſ. Collier,*	*John Taylor,*
Edward Jones,	*John Lyddall,*	*Thomas Teſt.*

Then Proclamation was made for Information.

Clerk. Thomas Bambridge, hold up thy Hand. *(Which he did.)* You of the Jury look on the Priſoner, and hearken to his Charge: He ſtands indicted by the Name of *Thomas Bambridge (prout* in the Indictment, *mutatis mutandis).* And as the Clerk was reading the ſeveral Parcels, particularly when he came to the Rings, Mr. *Bambridge* ſpoke as follows:

Mr. *Bambridge.* I deſire to know, how many Rings there are mentioned in the Indictment; whether one, two, or three, or four Score.

Then the Clerk did read the ſeveral Rings mentioned in the Indictment, and went on with reading the following Part of the Indictment.

Mr. *Bambridge.* I will not give your Lordſhip any unneceſſary Trouble; but I deſire the Clerk may read the Form of the Indictment in *Latin.*

L. C. J. *Eyre.* What do you deſire?

Mr. *Bambridge.* The whole Indictment to be read, except the Parcels of the Goods.

L. C. J. Mr. *Matthews*, ſpeak loud, when you read.

Mr. *Bambridge.* Is it *viceſimo die?*

Clerk. It is *triceſimo primo Octobris.* And then the Clerk of the Arraigns went on with reading the other Part of the Indictment.

Mr. *Bambridge.* That is not all the Indictment; I am informed, that ſeveral others are mentioned as Accomplices.

Mr. *Kettleby.* There are *Pindar* and *Douglas.*

L. C. J. Mr. *Matthews,* have you read all the Indictment? Are they mentioned?

Mr *Matthews.* The latter Part of the Indictment is relating to *Pindar* and *Douglas.*

L. C. J. I have not that in my Paper: You ſhould have put it in.

Mr. *Matthews.* My Lord, they are not here.

L. C. J. Read it.

Mr. *Kettleby* You ſhould have read it before.

Then Mr. Matthews *read the remaining Part of the Indictment relating to them.*

Mr. *Holland.* May it pleaſe your Lordſhp, and you Gentlemen of the Jury, I am of Counſel for the King. This is an Indictment againſt *Thomas Bambridge*, for feloniouſly ſtealing and taking away ſeveral Goods, the Property of *Elizabeth Berkley.* The Indictment ſets forth, That *Thomas Bambridge*, late of *London*, did on the 31ſt of *October*, 1727, in the firſt Year of his preſent Majeſty, with Force and Arms, in *London* aforeſaid, in the Pariſh of St. *Bridget*'s, alias St. *Bride*'s, in a felonious Manner, and with an evil Intent, ſteal and take away the Goods of *Elizabeth Berkley* in the Indictment particularly ſet forth, being in a certain Manſion-Houſe, where the ſaid *Elizabeth Berkley* and divers others did inhabit. This is laid againſt the Peace of our Sovereign Lord the King, his Crown and Dignity.

Mr. Serj. *Cheſhire.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Counſel for the King. *Thomas Bambridge*, the Priſoner at the Bar, ſtands indicted upon the Statute of the 12th of the late Queen: He is charged for feloniouſly ſtealing and taking away the Goods of *Elizabeth Berkley*, to the Value of 40*s.* and upwards, out of a Manſion-Houſe, where ſhe the ſaid *Elizabeth Berkley* and ſeveral others dwelt. The Evidence, in ſupport of the Indictment, will be this; that ſome Time before the 23d of *October*, in the Year 1727, the ſaid *Thomas Bambridge* was Deputy Warden of the *Fleet* Priſon, under Mr. *Huggins*; and at that Time the ſaid *Elizabeth Berkley* was a Priſoner, and lodged in the ſecond Gallery on the Maſter's Side; that ſome Time before the firſt Day of *Michaelmas* Term in that *October*, the ſaid *Thomas Bambridge*, and ſome other Perſons, *viz. Pindar*, *Barnes*, *King*, and *Douglas*, came in Company together, and entered the Room where the ſaid *Elizabeth Berkley* was: The Room, Gentlemen, was furniſhed with very good Goods: They did, Gentlemen, pretend to riſle the Room, and take ſome Account of ſome of the Goods; and a Perſon in Company did write down, about twelve Lines, Part of the Effects; and the Man did not proceed any further then; but *Bambridge*, and the other Perſons with him, hurried Mrs. *Berkley* away to the Common Side: There, Gentlemen, ſhe was locked up; there ſhe lay five or ſix Weeks, till he had turned her Senſes; and ſhe has continued in that melancholy Condition ever ſince.

The firſt Time, Gentlemen, that they entered the Room, he wrote ſome Lines, and did take ſome Account of the Goods; but did not then proceed any further: But as he turned the Owner out of the Place, he put a Padlock on the Door, and ſhe put her own Key in the Door, and locked the Door; and there was nothing done further at that Time.

Gentlemen, on the 23d of *October*, *Bambridge* and others, in Company with him, did come to this Place in the Gallery: He eaſily did remove the Padlock, but it was not ſo eaſy to force open the Door; and therefore, Gentlemen, he ſent for one *Greenway*, a Carpenter, to bring Tools to force the Door open. He was ſent for, Gentlemen; but they were impatient; and one of the People with the Defendant, in the mean Time with a Poker forced open the Door. When *Greenway* came, they did bid *Greenway* ſtay a little; then told him, they had no Occaſion for him. When he came into the Room, the Priſoner himſelf did direct and aſſiſt in breaking open the Trunks and Boxes; and when they were all open, there were found ſeveral Rings, and ſome Jewels; and thoſe Things that were light and portable *Bambridge* put in his Pocket: There were, Gentlemen, very good Apparel, all of them made up, Linnen and other Things of a conſiderable Value: For theſe, Gentlemen, *Bambridge* had provided a large Portmanteau, and put them up and carried them away. This, Gentlemen, was the ſecond Time of his entering the ſaid Room; and at this Time, I ſhould tell you, Gentlemen, he did go on with the twelve Lines wrote before, and perfected the ſaid Inventory, I ſuppoſe, by adding ſome more Goods: And then, upon this 23d of *October*, he was pleaſed Gentlemen to fix a Head to the Paper, and directed in what Words it ſhould be wrote, which were theſe: *An Inventory or Appraiſement of Goods, of and belonging to* Elizabeth Berkley, *diſtrained the 23d of* October, 1727, *for* 56*l. of an Arrear of Rent due to* John Huggins, *Eſq.* Gentlemen, according to my Inſtructions, it will come from our Witneſſes, that there was a Perſon who pretended to be, and was a Conſtable; and there was a Perſon there who pretended to appraiſe the Goods; but Nobody was ſworn, as by Law they ought: In this Condition he did perfect the Paper before-mentioned.

In looking over the Things, Gentlemen, *Bambridge* did obſerve there was a Bruſh and a little Chalk, ſomething uſual among Perſons that wear Jewels to clean them: He cried out, 'Look about, there are probably ſome 'Jewels; for there is ſomething to clean them with;' and they looked and found ſome Rings, as Garnets, Emeralds, and Topazes; and when he had done he carried them away: But what he did with all of them afterwards, we cannot tell. Give me leave to ſay, my Brief informs me, that he did ſell Part of them for fourteen Guineas to one *Weſt*; ſome Gold Lace, near thirty Ounces, to one Mr. *Harris*; and ſome Silver Tea-ſpoons, gilt with Gold, he ſold or preſented to *Corbett*'s Wife (who was one of his Tipſtaffs): and her Bed and Bedding, which he was pleaſed to think was very good, he cauſed to be delivered to one *Wilkins*, to deliver to *Jenkins* a Waterman, to be carried to his Lodgings at *Wandſworth*: This, Gentlemen, made a great Noiſe, and Mr. *Huggins* came to hear of it, and expoſtulated with the Priſoner, and ſaid to him, You have taken a good many Goods belonging to Mrs. *Elizabeth Berkley*, under Pretence of ſeizing for an Arrear of Rent owing to me; how could you do ſo? There is no Rent due to me. Gentlemen, in this Manner he expoſtulated, How came you to do it? There is no Rent due to me, for there is an Agreement with my Deputy, Mr. *Gibbons*, who was to have the Produce of that Time; to what Value did you take? To which the Priſoner replied, I have only taken to the Value of Ten Pounds; notwithſtanding, Gentlemen, he had ſold a Ring for fourteen Guineas, beſides thirty Ounces of Gold Lace, and ſome Tea-Spoons, and ſent the Bed and Bedding to his Houſe in the Country; this was indeed very extraordinary.

It is plain, Gentlemen, through his whole Conduct, he never intended to uſe this as a Diſtreſs; for when he ſold the Cloaths of Mrs *Berkley*, he did not ſell them as Goods taken by Diſtreſs, but to conceal from whence he had them; he ſaid, Theſe are my Wife's Goods.

It is very remarkable, and worthy your Obſervation, that though all the Cloaths were made into Garments or Apparel, he ordered and directed the Perſon who took the Inventory, to put down only ſo many Yards, ſufficient to make a Gown or Petticoat; there was, Gentlemen, a Dimity Gown, which he particularly ordered to be put down, Dimity ſufficient to make a Wrapper; which, Gentlemen, you will eaſily gueſs, was only to conceal its being wearing Apparel, that it might not be followed; or otherwiſe, why were they not entered into the Inventory in the Form they were, as made into Apparel? It is very extraordinary, that he ſhould ſay ſo much of ſuch and ſuch a thing, only ſufficient to make a Gown, or whatever it was; this, I hope, he will give a good Account of; this, Gentlemen, he ought to explain to you: After he had got the other Part of the Goods into his Poſſeſſion, as he had ſaid the former were his Wife's, theſe he ſaid, were left in his Hands to make Money of; not ſaying any of them were Mrs. *Berkley*'s, taken by Diſtreſs; but he ſold Part of them as his Wife's Apparel, and Part as left with him by a Friend, to make Money of. We are far from thinking, where a Man takes a Diſtreſs for Rent, where Rent is due, tho' he does not let a Conſtable, or an Appraiſer attend, and demean as they ought, that this is Felony; though this is a great Offence, and an enormous Abuſe, and the Law will puniſh it civilly and criminally, but not capitally. If Landlords ſend Servants to make a Diſtreſs, and they miſconduct themſelves, and do not behave themſelves rightly, it would be very hard to have that turned into Felony: We, Gentlemen, aim at no ſuch thing; but that is to be taken into your Conſideration, with my Lord's Advice. When there is no Pretence of Rent due, no Authority for diſtraining; when he makes uſe of a Pretence of Diſtraining, to get Goods into his Poſſeſſion, to diſpoſe of them as his own, or as left with him to ſell; that Pretence to get them into his Hands, and diſpoſe of them as his own, or as left with him to ſell, and not ſell them as preſcribed by Law, after due Appraiſment, and returning the Surplus to the Owner, will make it Capital. Gentlemen, I need not tell you what the Law is in this Caſe; but, my Lord, I will dare to ſay, that tho' a Man comes by Goods lawfully, by Conſent of the Owner, if he diſpoſes of them to his own Uſe, it is Felony. For if I deliver Goods to a Carrier, to carry them to *Deal*, and he carries them to Sea; and he ſhould open the Packs, and ſell the Goods, this is Felony: This has been adjudged ſo by all the Judges in *England*, aſſembled for that Purpoſe.

There is a particular Caſe of an Attorney, which I ſhall take Notice of to you: It was in the 18th Year of King *Charles* the Second: He had, Gentlemen, a Mind to get Abundance of Goods, belonging to a Woman out of her Houſe, into his Power and Poſſeſſion: He did, Gentlemen, take a Proceſs againſt her, and laid the Woman in *Newgate*; upon which he gets Judgment in Ejectment, and got Poſſeſſion of her Houſe; and then, Gentlemen, he gets Judgment, and takes the Goods out of the Houſe, and takes them into his own Poſſeſſion: There was a Colour of a Proceſs of Law; but this was a Trick, to get the Goods from the Woman, and done with a felonious Intent; and the Man was hanged for it. Theſe Things are proper for your Conſideration. Without any further Obſervations, we will call our Witneſſes, and ſubmit it to your Lordſhip, and the Jury, whether the Priſoner's Conduct did not ſhew a felonious Intent, and whether the Diſtreſs was not made uſe of to get the Goods into his Poſſeſſion, for his own Uſe.

Mr. Att. Gen. I am of Counſel of the ſame Side, for the King. The Indictment againſt the Priſoner at the Bar, is founded upon an Act paſſed in the 12th Year of the Reign of the late Queen *Anne*, Chapter the 7th, for taking away, and ſeizing feloniouſly, Goods of the Value of forty Shillings, in a Dwelling-houſe. Gentlemen, this being the Statute upon which it is founded; the Queſtion before you is, upon the Fact being given in Evidence. At the Time when the Fact was committed in *October* 1727, *T. Lambridge* was Deputy Warden of the *Fleet* Priſon, under Mr. *Huggins*; an unhappy Woman, Mrs. *Berkley*, a Priſoner in his Cuſtody, being committed there for Debt, had a Room in the Priſon, where ſhe had ſeveral Things of Value; ſhe being a Priſoner, and there having Goods of Value, the Priſoner at the Bar, who was Gaoler, ought to have ſuffered and permitted her, according to Law, to have the Uſe of her own Goods brought there, and enjoy them quietly, without Diſturbance from him; but, Gentlemen, probably the Value of theſe Goods was the Temptation to the Fact afterwards committed. There were, Gentlemen, two Times that will be mentioned by the Witneſſes, that he entered the Room, both in the Month of *October*; one ſome Days before the other. I don't find that the firſt Day is particularly fixed, but the ſecond was the 23d of *October* 1727; and the firſt Time the Priſoner came, was ſome Days before the 23d of *October* 1727: the Priſoner then, with three or four other Perſons, *Pindar*, *Barnes*, and *King*, came to the Chamber of Mrs. *Berkley*, in a violent Manner, and cauſed her to be removed out of her Room; and as a preliminary Step to what was intended, cauſed her to be carried down on the Common Side, and there locked her down; after they had diſpoſed of her, they put a Padlock on the Door, and ſhe locked the Door. I don't find that the Goods at that Time were particularly taken away by the Priſoner, but they thought fit to ſecure them; but before they took away Mrs. *Berkley*, they made her put her Key into the Lock, and lock the Door, and

and they put a Padlock on it; this was the firſt Time of entering the Room; the ſecond Time, after dark, the Priſoner, with *Barnes*, *Douglas*, *Pindar*, and a Perſon to whom they thought fit to give the Title of Conſtable, but whether he had any Authority or not to act as ſuch, that don't appear to us, but it is incumbent on him to ſhew; then pulled off the Padlock; one ſhould have thought, if any Thing fair had been intended, Mrs. *Berkley* ſhould have been ſent for to have opened, or at leaſt, to have ſeen the Door opened. There was a Lock upon the Door, but the Priſoner ordered the Door to be opened; but he not having Strength enough himſelf, ordered another to break open the Door, which he accordingly did: The Door being opened by Force and Violence, without ſending for Mrs. *Berkley*, they fell to rifling the Boxes; the Priſoner with his own Hands, broke open the Locks of three Boxes, and two Trunks; Things were taken out, and ſome of thoſe of the moſt Value, the Priſoner thought fit himſelf to take, and put in his Pocket; thoſe were two Cornelian Seals, Gold Rings, in Number five, which were of ſome Value; one a Garnet, another had a ſmall Diamond in it, and another was an Amethiſt Ring of ſome Value, which the Priſoner thought fit to put in his Pocket; a Silver-handle Knife and Fork, in a Shagreen Caſe, and other Things of Value, he put into a Portmanteau, which the Priſoner ſent out of the Priſon. After this was done, the reſt of the Goods were taken away; and as Mr. *Serjeant* has mentioned to you, there was a Pretence of taking an Inventory of the Goods; if that ſhall appear only a Pretence and Colour, that will not vary the Caſe as to him. The Bed and Bedding (the Priſoner then wanted a Bed and Bedding) he thought fit to take away; and, if my Inſtructions are true, ſent it down by Water to *Wandſworth*, to his Lodgings; and Mrs. *Berkley*, ever ſince that, has been kept on the Common Side, without Bed or Bedding, or at leaſt was kept ſo for a Time: We apprehended the Witneſſes will come up to this. This being the Nature of the Caſe, the Queſtion to be ſubmitted to my Lord, is, Gentlemen, what the Deſign of the Tranſactions, and Nature of it was? We apprehend the Deſign was to get theſe Goods wrongfully and felonioufly into his own Cuſtody, and take them to his own Uſe; if that was the Caſe, the Manner of taking them will not alter the Thing; for I muſt obſerve to you, Gentlemen, if a Man deſigns to take Goods felonioufly, let him put it in what Shape he will, if that is only the Pretence and Colour, it is Felony; nay, if by Colour of the Law, any Man poſſeſſes himſelf of Goods with a felonious Intent, in that caſe it is ſo far from being an Excuſe, that it is an Aggravation of the Offence; for the Law will not admit, that under its Colour, a Man ſhould be ſtripped of his Property; that inſtead of being a Defence againſt one Man, it ſhould be an Injury to another; for if any Perſon ſhould poſſeſs himſelf by Force of another Man's Goods, it is Felony. Beſides the Caſe mentioned to you by Mr. *Serjeant*, I will take notice of one; that after Goods diſtrained, and the Goods carried away, there is got a Replevin of theſe Goods; if that Replevin was only colourably taken out, to get theſe Goods into his Poſſeſſion, that Replevin will not excuſe him from Felony. The Queſtion is, whether if a Diſtreſs is taken, if that Diſtreſs is only colourably taken, it is not Felony? Therefore, though it can't be pretended, and none will have a Thought, I hope, that it is inſiſted on, if a Man intends fairly to make a Diſtreſs, and errs in the doing it, though he errs in a great many Inſtances, that that ſhould ſubject him to Felony; God forbid: Yet if he makes uſe of a Diſtreſs only as a Colour to get Goods into his Poſſeſſion, then it is Felony, and Circumſtances will come to be material, and his not obſerving the Method which the Law directs, will further ſhew with what Intent the Beginning was, and with what Intent he took the Goods, which, we apprehend, is material. But what, I apprehend, is moſt material for your Conſideration, is to ſhew the concealed Manner of deſcribing theſe Goods, the Method of diſguiſing them, and the Manner of ſelling them. As to the firſt of theſe, it will appear, that the Wearing Apparel, inſtead of being deſcribed, as really they were, he ordered to be deſcribed, as ſo much Stuff and Silk ſufficient for to make a Gown, Petticoat, or whatever it was. We apprehend there could be no other View in that, than to diſguiſe it, that the Truth might not appear. And, Gentlemen, as to the Diſpoſal of them, it will appear plainly, we think to you, ſuch as ſhews that the Priſoner had no Intention to make uſe of this Diſtreſs; but that his original Deſign was, to convert them to his own Uſe. It is very truly ſaid, by the learned Gentleman that has ſpoke before me, that where a Man poſſeſſes himſelf of Goods, though lawfully, ſuppoſing he diſpoſes of thoſe Goods for his own Uſe it will make it Felony. There have been Inſtances given you, where Perſons came by Goods lawfully, but their Diſpoſal of them to their own Uſe, made Felony. Now in the preſent Caſe, it will appear, the Goods, Gentlemen, were many: As to the Ring mentioned, particularly that in which the Amethiſt was ſet, the Priſoner, after taking that Ring, ſent it to one *Menéz Solas* to inquire the Value, and diſpoſed of it to him; as to the Garnet, with a Brilliant in the Middle, that was ſent likewiſe to him to be diſpoſed of, to inquire the Value of that alſo: As to the Wearing Apparel, that was ſold to one *Weſt* for fourteen Guineas; the Gold Lace was ſold to one *Harris*; the gilt Tea Spoons were ſold to *Corbett*'s Wife; and as to the Bed and Bedding, he put it at firſt in another Place in the Priſon, and after ſent it to his own Houſe, with the Portmanteau, wherein other Things of Value were put. If he had any Intent to diſpoſe of theſe Goods, as taken by Diſtreſs, as a Satisfaction for any Damand, or Debt he might have, ſhould not he have given an Account to Mrs. *Berkley*? And if there was any Surplus, ought not he to have paid it over to her? It will be incumbent on the Priſoner, to ſhew that he accounted to her for the Surplus; but if there is no Colour of Right to make the Diſtreſs, no regular Method taken in the Diſpoſal upon the Diſtreſs, no Account thereof given, we apprehend that it will appear a Pretence of Diſtreſs, and that only the Pretence of Diſtreſs was made uſe of to convert the Goods to his own Uſe; if ſo, this will amount to Felony. We will beg Leave to call our Witneſſes, and then leave it to your Lordſhip's Directions.

Mr. Sol. Gen. Call *John Turner*. *(Who was ſworn.)*

Mr. *Bambridge*. My Lord, *Mr. Attorney General*, in his Declamation that he has made, was pleaſed to admit, that if there was a legal Diſtreſs made, there could be no Attempt upon my Life.

Att. Gen. My Declamation!

Mr. *Bam.* That *Mr. Attorney*, in his Declamation allowed, if it was a Diſtreſs——

Mr. Att. Gen. My Declamation! I ſaid, that it would appear as a Colour of Diſtreſs to commit a Fraud.

Mr. *Bam.* You meant *in fraudem Legis*.

Mr. Att. Gen. I ſpoke in *Engliſh*, believing it to be more intelligible to you; you may make uſe of *Latin* Words if you will.

Mr. Sol. Gen. Did you know Mrs. *Berkley*, and when?

Mr. *Turner.* Yes; I knew her in *October*, 1727.

Mr. Sol. Gen. How came you to be acquainted with her?

Mr. *Turner.* By being a Priſoner in the *Fleet* Priſon; ſhe was a Priſoner at the ſame Time, and lodged in the ſecond Gallery, within two or three Rooms of mine.

Mr. Sol. Gen. In what Part of the Gaol did you lodge?

Mr. *Turner.* I lodged on the Maſter's Side, in the ſecond Gallery.

Mr. Sol. Gen. How long?

Mr. *Turner.* I had the Misfortune to be there two Years before this Seizure was made.

Mr. Sol. Gen. You mention a Seizure, give an Account how it was made.---Mr. *Turner.* I was called in by *Pindar*.

Mr. Sol. Gen. What Day?

Mr. *Turner.* Between the 23d and 27th of *October*, 1727.

Mr. Sol. Gen. What were you called in for? What to do?

Mr. *Turner.* I was called in by *Pindar*, and he told me, that a Diſtreſs was to be made; for being an Upholder, Mr. *Bambridge* called me frequently to make Diſtreſſes.

Mr. Sol. Gen. Who was there?---Mr. *Turner. Pindar*, and I think *King*.

Mr. Sol. Gen. Was Mrs. *Berkley* there then?

Mr. *Turner.* Yes, but not *Bambridge*.

Mr. Sol. Gen. What did you do?

Mr. *Turner.* I took an Inventory of all that did appear; we did not then open any Boxes; we mentioned them in Groſs, and took every Thing that appeared in the Room, as Earthen-ware, Bed and Bedding, and ſuch like Things. In about fourteen Days afterwards, Mr. *Bambridge* came again, and I was called in.

Mr. Sol. Gen. Was there any Thing more done then?

Mr. *Turner.* Nothing more than taking an Inventory.

Mr. Sol. Gen. Was there any Conſtable there?

Mr. *Turner.* There was a Perſon there, who ſaid he was a Conſtable.

Mr. Sol. Gen. Who was there the ſecond Time, about fourteen Days after the firſt? Was Mr. *Bambridge* there?

Mr. *Turner.* Yes, after they had broke the Door open, I was called in, and ſhe ſaid, they had committed Felony.

Mr. Sol. Gen. Did you hear it ſaid, whilſt Mr. *Bambridge* was there?

Mr. *Turner.* Yes.

Mr. Sol. Gen. What did Mr. *Bambridge* ſay?

Mr. *Turner.* Mr. *Bambridge* wondered the Trunks were not opened before, and aſked Mrs. *Berkley* for the Keys, and when ſhe would not give him the Keys, Mr. *Bambridge* himſelf broke open the Trunks, and rifled them.

Juryman. Was it in the Preſence of Mrs. *Berkley*.---Mr. *Turner.* Yes.

Juryman. Was ſhe there all the Time?

Mr. *Turner.* She was there all the Time.

Mr. Sol. Gen. What did you do then?

Mr. *Turner.* When the Boxes were opened, I made an Inventory of all that was in them; here are both Inventories.

Lord Chief Juſtice *Eyre.* Tell us who broke open the Boxes.

Mr. *Turner.* Mr. *Bambridge* himſelf.

Mr. Sol. Gen. Tell my Lord what was particularly mentioned in the Inventory, what the firſt, and what the ſecond Time.

Mr. *Turner.* The Inventory was dated the 23d of *October*, 1727, for fifty-ſix Pounds, for Rent due to *John Huggins, Eſq.*

Mr. Sol. Gen. Who wrote the Title?

Mr. *Turner.* Mr. *Bambridge* wrote it upon a looſe Piece of Paper, and ſaid, let the Title be ſo, and the Date be ſo.

Mr. Sol. Gen. When was the firſt Diſtreſs made? Diſtinguiſh the two Times.

Mr. *Turner.* I take it the former Diſtreſs was about the 27th of *October*, and the ſecond, the 3d or 4th of *November*.

L. C. J. Who made the firſt Diſtreſs? Who was there?

Mr. *Turner.* The firſt Diſtreſs was taken by *Pindar*, Mr. *Bambridge* was not there; then I took Inventory of the Boxes, and ſet down ſo many Ban Boxes.

Mr. Sol. Gen. Afterwards, you ſay, a particular Inventory was made on the 4th or 5th of *November*?

Mr. *Turner.* Yes, I believe it might be about that Time, but I can't be poſitive, not thinking it would be called in Queſtion.

Mr. Sol. Gen. In what Manner did you make the Inventory?

Mr. *Turner.* I made the Inventory as Mr. *Bambridge* directed.

L. C. J. Give an Account what you inſerted the firſt Time of taking the Inventory.

Mr. *Turner.* A Bedſtead and Sacking-bottom, with China Stuff Furniture, a Feather Bed and Bolſter, a Down Pillow, two Blankets, a Callico Quilt, two Pair of Sheets, two Pillow-biers, two Cane and two Stuff Chairs, an Eaſy Chair and Cuſhion, two Tables, a Looking Glaſs, a Fire-ſhovel, Tongs, Poker, and Wooden Fender, a Gridiron, a Pair of Bellows, a Hearth Bruſh, a Braſs Hand Candleſtick, two Tin Tinder-boxes, a Kettle and two Drinking Pots ditto, four Boxes and two Trunks, three Pair of Dimitty Window Curtains and Vallins, one Curtain-rod, two Hair-brooms, a large India Hand Tea-board, eleven printed Books, a Pewter Standiſh, two Knives, three Forks, two Tin Coffee-pots, a Sauce-pan and Skimmer ditto, a Chocolate-Mill, one hundred Veſſels of Stone and Earthen Ware; this was the firſt Inventory.

L. C. J. Was there any Valuation of the Goods in the Inventory?

Mr. *Turner.* Yes, Mr. *Bambridge* deſired me to have a particular Valuation of each Thing, which I gave to Mr. *Bambridge*.

Juryman. Have you a Copy of that Valuation?

Mr. *Turner.* No, I gave it to Mr. *Bambridge*.

L. C. J. When did you give it to Mr. *Bambridge*?

Mr.

Mr. *Turner.* When I finiſhed it; a Day or two after the Diſtreſs.

Lord Chief-Juſtice. That was after the 4th of *November.*

Mr. Sol. Gen. Give to my Lord, and the Jury, the Reaſon for giving the Inventory to Mr. *Bambridge.*

Mr. *Turn.* It was, that Mr. *Bambridge* might know how to diſpoſe of them.

Mr. Sol. Gen. Go on to the ſecond Inventory.

Mr. *Turn.* A large Silver Handle Knife and Fork, two Silver Spoons, two Tea Spoons, Strainer and Tongs, a Bowl, and Handle of a Spoon ditto, three Gilt Tea Spoons, a Strainer and Tongs ditto, twenty Ounces and a Half of Gold Lace, two Cornelian Seals ſet in Gold, and a Ring I took to be a Cryſtal.

Mr. Sol. Gen. Do you know it when you ſee it?—Mr. *Turn.* No.

Mr. At. Gen. Who directed you to ſet down a Cryſtal?

Mr. *Turn.* I do not know particularly, every Body was of Opinion it was a Cryſtal.

Mr. At. Gen. How many Rings were there?

Mr. *Turn.* I ſaw but one Ring, the others were looſe Stones.

Mr. Sol. Gen. You may go on with the Inventory.

Mr. *Turn.* One ſmall Emerald, one ſmall Garnet, a Seed Pearl, five Diaper Napkins, a ſtitched Top of a Toylet, with Lace Muſlin Falls, a two Pinner Head of Mecklin Lace, a Pair of Ruffles, a Handkerchief and Apron ditto, one Flanders Laced Cap, worked Head, and a Pair of three double Ruffles, one Head of Half-breadth Lace, and a Pair of ſingle Ruffles, ten odd Pieces of Flanders and Colberteen Lace, about four Yards of black Lace, a furbelowed Scarf and Hood, trimmed with black Lace, one Yard of blue Luſtring, two Yards of white Sarſenet, blue Sattin ſufficient for a Lining, ſtrip'd Dimitty ſufficient for a Gown and Petticoat, ſome old Perſian for a Lining to ditto.

Mr. Sol. Gen. Before you go off from this Particular, I muſt aſk you a Queſtion or two; theſe mentioned in the Inventory, ſufficient for a Gown and Petticoat, and ſufficient for a Lining; were theſe Pieces of Silk, or were they made up into Cloaths?

Mr. *Turn.* Theſe were Things that had been ſcowered and rolled up.

Mr. Sol. Gen. Was the Dimitty?

Mr. *Turn.* Yes, it was rolled up as coming from the Scowrers.

L. C. J. Was it in the Shape of a Garment?

Mr. *Turn.* Yes, it had been a Garment, but was then rolled up.

Mr. Sol. Gen. Was it in regard to the Lining the ſame.—Mr. *Turn.* Yes.

Mr. Sol. Gen. Be pleaſed to obſerve, the blue and white flowered Sattin, which is ſet down in the Inventory, to be ſufficient for a Gown and Petticoat, was that made up?---Mr. *Turn,* That was made up.

Mr. Sol. Gen. How came you to put it down ſo much, ſufficient for a Gown and Petticoat?

Mr. *Turn.* I obſerved at that very Time to Mr. *Bambridge,* and told him we uſually did not diſtrain wearing Apparel; upon which he then ſaid, Put it down ſufficient for wearing Apparel.

L. C. J. Give a direct Account of that Particular again.

Mr. *Turn.* I ſaid to Mr. *Bambridge,*—Sir, we don't uſually ſet down wearing Apparel; then Mr. *Bambridge* ſaid, Put it down ſufficient for ſuch and ſuch a Thing, particularly, Sarſenet ſufficient for the Lining of a Gown, which was made up; if it was the Body of a Gown, he bid me put it down ſufficient for a Body, and the reſt of a Lining, ſufficient for a Lining.

Mr. Sol. Gen. The Queſtion is, Whether they were actually made up, and ſet down only ſufficient?——Mr. *Turn.* Yes.

Mr. Sol. Gen. Mention them particularly.

Mr. *Turn.* There was Sarſenet ſufficient for a Wrapping-gown, that was actually made up.

Mr. Sol. Gen. You juſt now ſaid, that the Things you have mentioned you gave a Valuation of ſeparately to Mr. *Bambridge*; was there any Valuation on the Inventory you kept?

Mr. *Turn.* The total Sum agrees with the ſame as Mr. *Bambridge* had, Twenty Seven Pounds, Sixteen Shillings and Nine-pence.

Mr. Sol. Gen. Do you remember any Diſcourſe you had as to the ſetting the Value?

Mr. *Turn.* Upon a curſory View of taking the Inventory, I brought it to Thirty Pounds, and Mr. *Bambridge* ſaid, You have over-rated theſe Things; you muſt conſider there is a Charge attending this Diſtreſs, and paying you beſides, and that would leſſen the Value of the Things; and bid me conſider it again, and upon looking it over again, I brought it to Twenty Seven Pounds Sixteen Shillings and Nine-pence.

Mr. Sol. Gen. Was you upon Oath?

Mr. *Turn.* When I ſigned the Inventory, and finiſhed it, there was a Conſtable, and I did take an Oath, and I told Mr. *Bambridge* there ought to be two Perſons to make the Appraiſement; to which Mr. *Bambridge* ſaid, I might take *Pindar*; but *Pindar* refuſed, ſo only myſelf ſigned it.

Mr. Sol. Gen. Pray give an Account, if you know, what is become of the Goods in the Inventory?

Mr. *Turn.* I do not know any thing of them but by Rumour.

Mr. Sol. Gen. Did you ſee any of the Things carried away by Mr. *Bambridge?*

Mr. *Turn.* Yes, the wearing Apparel and Seals; the Seals he put into his Pockets.

L. C. J. Tell what he put into his Pocket.

Mr. *Turn.* The gilt Silver Tea Spoons and Rings.

L. C. J. What did he put in the Portmanteau?

Mr. *Turn.* The Cloaths.

L. C. J. Were theſe in the Inventory?---Mr. *Turn.* Yes.

Mr. Sol. Gen. What became of the Portmanteau?

Mr. *Turn.* It was carried out of the Room by Mr. *Bambridge*'s Servant.

Mr. Sol. Gen. Was there any Bruſh, ſuch as was uſed to clean Jewels with?

Mr. *Turn.* Yes; Mr. *Bambridge* looked very narrowly, and at laſt a Bruſh appeared; and, upon ſeeing of that, he ſaid, certainly there was ſome Diamonds: Upon which Mrs. *Berkley* was very much chagrined; and ſhe ſaid, if you find them, will you take them? And after that he ſearched, and found the Rings and other Stones.

Mr. Sol. Gen. Was there any Diſcourſe about Papers?

Mr. *Turn.* There was a large Parchment in a Caſe; ſhe ſaid it was a Decree: It was in a great round Caſe, which Mr. *Bambridge* took; upon which Mrs. *Berkley* ſaid, What, will you rummage my Papers? Yes, ſays he; and if I find any Bonds or Bills, I will make uſe of them.

Mr. Sol. Gen. What became of her after they entered the Room?

Mr. *Turn.* After the firſt Seizure, ſhe was turned out of her Room, and put on the Common Side, and kept there till the ſecond Seizure was made, and then ſhe was put into a Room without a Bed.

Mr. Sol. Gen. Was there any Furniture left?

Mr. *Turn.* There was Earthen Ware, and Stuff Curtains; but no Bed.

Mr. Sol. Gen. How has ſhe lain ſince?---Mr. *Turn.* Without a Bed.

Mr. Sol. Gen. What Condition of Mind was ſhe in?

Mr. *Turn.* Sometimes ſhe talked very well, and much to the Purpoſe; at other Times ſhe would talk wild, and would not believe that Lord *Harcourt* was dead; for ſhe ſaid, he would do her Juſtice upon them (meaning Mr. *Bambridge* and his Accomplice). I ſaid he was dead: She made Anſwer, ſhe would not believe me; for they would find him alive to their Coſts.

Mr. Sol. Gen. How did the Woman behave herſelf?

Mr. *Turn.* The Woman was much reſerved, and kept herſelf to herſelf very much. She talked much to the Purpoſe when ſhe did talk; but it was difficult to get her into it.

Mr. At. Gen. In diſpoſing of the Goods in the Manner you did, ſufficient for ſuch and ſuch a Thing, what Reaſon had you to do it?

Mr. *Turn.* It was Mr. *Bambridge*'s poſitive Directions: I ſhould not have thought on it myſelf.

L. C. J. Who made the Difficulty firſt?

Mr. *Turn.* I did, and ſaid it was not cuſtomary to put down Wearing Apparel in Inventories upon Seizures; upon which he bid me alter the Names: I ſaid it was not proper to alter the Names, and they ought not to be mentioned at all.

L. C. J. What did Mr. *Bambridge* ſay?

Mr. *Turn.* Mr. *Bambridge* ſaid, I muſt have you let them be ſet down, Stuff or Silk ſufficient to make a Gown, or whatever it was.

L. C. J. Did you ſet them down according to the beſt of your Judgment?——Mr. *Turn.* I did.

L. C. J. Was that the real Value you ſet upon them?

Mr. *Turn.* The firſt Valuation was the Price I would have given for them; and when Mr. *Bambridge* ſaid the Coſts on the Diſtreſs would come to more, I reduced them three Pounds.

Mr. Sol. Gen. Would you have given the Value firſt ſet upon them?

Mr. *Turn.* Yes.

Mr. Sel Gen. Had you any other Reaſon to alter the Value, than that Mr. *Bambridge* bid you?——Mr. *Turn.* No.

Mr. *Bambridge.* I deſire, my Lord, he may be aſked, Whether I did not inſiſt upon having every Thing particularized in the Inventory.

Mr. *Turn.* Yes, you did.

Mr. *Bam.* You ſay, I did demand the Keys of Mrs. *Berkley,* and ſhe refuſed to let me have them, and then the Boxes were opened.

Mr. *Turn.* Yes, I ſaid ſo.

L. C. J. I thought you did.

Mr. *Bam.* My Lord, *Turner* ſaid that there was ſome Gold Lace.——Whoſe was that?

Mr. *Turn.* It was the Trimming of the flowered Suit of Clothes; it was the Trimming of the Suit of Sattin Clothes; Part of the Lace was remaining on them.

Mr. *Bam.* Was there not ſeveral Things unmade?

Mr. *Turn.* I ſaid, that called a ſtriped Dimitty came from the Scowrer's.

L. C. J. As to the Dimitty, give an Account how that was ſet down.

Mr. *Turn.* That I ſet down, as it appeared to me coming from the Dyer's, as a Roll of Silk.

Mr. *Bam.* Were the Things taken away, Part mentioned in the Inventory, or the Whole?

Mr. *Turn.* All that I ſaw taken away was in the Inventory.

L. C. J. Is the Inventory the ſame you delivered to Mr. *Bambridge?*

Mr. *Turn.* He had every Article here, with the Prices annexed. It is a Wonder I had any Copy; for I did not apprehend that any Perſon would call upon me about it.

Mr. *Bam.* I deſire Mr. *Turner* may acquaint your Lordſhip, as to the Converſation that was between me, Mrs. *Berkley,* and him, at the Time of making the Diſtreſs.

Mr. *Turn.* Mr. *Bambridge* ſaid, it was a Shame ſhe ſhould live ſo long, and not to pay any Rent; for that it amounted to Fifty Pounds and upwards, and ſhe had Money enough to pay it; and ſaid, I am informed you have been abuſed, and I will enquire into your Affairs, and ſee if I can't extricate you out of your Difficulties.

L. C. J. I think there was a Demand of Fifty-ſix Pounds; was there not?

Mr. *Turn.* I did not hear of any Demand; he only talked of it.

L. C. J. What did Mrs. *Berkley* ſay?

Mr. *Turn.* She ſaid, it was the Houſe of the King's; and if ſhe was there, the King ſhould find her a Houſe.

Mr. *Bam.* I deſire he may be aſked, Whether, when I was in the Room, he did conceive what was done was with a felonious Intent.

Mr. *Turn.* I did think your Power was ſufficient to do it.

Mr. *Bam.* Have you made any other Appraiſements?

Mr. *Turn.* Yes.

Mr. *Bam.* Did you make any Alteration in them?

Mr. *Turn.* No.

Mr. *Bam.* Was the Appraiſement done in a private Manner, or did every Body know it?

Mr.

Mr. *Turner.* Every Body did know it.

Mr. *Bam.* Were Appraiſements uſually made publickly or privately?

Mr. *Turner.* *Pindar* uſed to come and ſay, there are Goods to be diſtrained; ſo I did it.

L. C. J. So it was left to you then, to appraiſe as your Diſcretion ſhould lead you?---Mr. *Turner.* Yes.

L. C. J. *Pindar* came to you now, in this Affair?---Mr. *Turner.* Yes.

Mr. *Bam.* *Pindar*, my Lord, was indicted, to take off his Evidence.

Mr. Juſtice *Reynolds.* Was there a Conſtable the firſt time of taking the Diſtreſs?---Mr. *Turner.* Yes.

Mr. At. Gen. You ſaid, there was a Man called a Conſtable: Did you know him to be a Conſtable?---Mr. *Tur.* I believe he was a Conſtable.

Mr. At. Gen. Did you believe the Man that came a ſecond time, to be a real Conſtable?---Mr. *Tur.* Yes. It has been enquired into ſince.

Mr. *Bam.* If it was a Felony, it was a Felony committed in *Oct.* 1727, and not complained of till *February* or *March* laſt.

L. C. J. You are not come upon your Defence yet.

Mr. *Bam.* Do you not know the Name of the Conſtable?

Mr. *Tur.* I think he was a Currier.

Mr. *Bam.* Was it the Conſtable that uſually attended upon Seizures?

Mr. *Tur.* Yes.

Mr. *Filmer.* You ſay, that *Pindar* was deſired by Mr. *Bambridge* to aſſiſt in the Appraiſement; what Buſineſs was *Pindar* of?

Mr. *Tur.* He was a Diſtiller.

Mr. *Fil.* Did he not undertake the appraiſing of the Goods?

Mr. *Tur.* No, he refuſed it.

Mr. *Fil.* Did not Mr. *Bambridge* preſs him to it?---Mr. *Tur.* Yes.

Mr. *Fil.* Was there a Conſtable a ſecond time?---Mr. *Tur.* Yes, both times.

Turner *was going away; but was called back at the Requeſt of Mr.* Bambridge, *he deſiring to aſk him a Queſtion or two more.*

L. C. J. Propoſe your Queſtions to the Court firſt.

Mr. *Bam.* I deſire he may acquaint your Lordſhip, whether, at the time when he appraiſed the Goods, I did not recommend it to Mrs. *Berkley* to pay the Rent; and ſaid, I would ſtay ſome time, and ſave the Goods from being diſpoſed of.

Mr. *Tur.* Mr. *Bambridge* did ſay ſhe was impoſed on; and ſaid, he would give her any Aſſiſtance, and bid her ſend to her Friends to get Money to pay the Rent.

L. C. J. He ſaid he would ſtay?---Mr. *Tur.* I did not hear him ſay it.

Mr. At. Gen. What did he ſay?

Mr. *Tur.* He ſaid he would aſſiſt her, ſhe being impoſed on; and did deſire her to ſend for Money to pay the Rent; but I did not hear him ſay any Words as to his ſtaying for the Rent.

(Thomas Wilkinſon *was ſworn.*)

Mr. *Willes.* Do you know *Elizabeth Berkley*?---Mr. *Wilkin.* Yes.

Mr. *Willes.* Did you know her in *Oct.* 1727?---Mr. *Wilkin.* Yes.

Mr. *Bam.* I deſire, my Lord, before he is further examined, he may be aſked, what Money he has received, and how long he has been kept to give Evidence againſt me?

L. C. J. That is not a Queſtion fit to be aſked.

Mr. *Bam.* It is true, I am ſure.

Mr. Juſtice *Reynolds.* You muſt prove that.

L. C. J. You cannot aſk a Man any thing that tends to accuſe himſelf.

Mr. *Bam.* I don't aſk to the Corruption; but whether he received the Money.

Mr. Juſtice *Reynolds.* It carries an Imputation with it.

Mr. *Willes.* He may prove it, if he can.

Mr. At. Gen. If Mr. *Bambridge* proves it, it will go only to the Credit of the Witneſs.

Mr. *Willes.* If he don't, it will go as to his own Credit. You knew Mrs. *Berkley* in *October*, 1727?---Mr. *Wilkin.* Yes.

Mr. *Willes.* Where did ſhe lodge?

Mr. *Wilkin.* In No. 8, near the Front of the Yard.

Mr. *Willes.* Where did you lodge?

Mr. *Wilkin.* On the Common Side.

Mr. *Willes.* Did you ſee Mrs. *Berkley* at her Door, when it was broke open?---Mr. *Wilkin.* Yes.

Mr. *Willes.* What time of the Year was it?

Mr. *Wilkin.* The latter End of *October.*

Mr. *Willes.* What time of the Day?

Mr. *Wilkin.* At ſix o'Clock at Night.

Mr. *Willes.* Was the Door locked when ſhe was there?

Mr. *Wilkin.* It was locked with two Padlocks; one *Pindar* took off.

Mr. *Willes.* Who was there?

Mr. *Wilkin.* Mr. *Bambridge*, a Conſtable, and *Barnes.*

Mr. *Willes.* Did *Pindar* take off the Padlock of his own Accord?

Mr. *Wilkin.* Mr. *Bambridge* ordered him to take it off. There was another Padlock on, and *Barnes* went to fetch a Hammer to break it off.

Mr. *Willes.* Who ordered him to fetch a Hammer?

Mr. *Wilkin.* Mr. *Bambridge.*

Mr. *Willes.* Did they attempt to break off the Padlock with that Hammer?---Mr. *Wilkinſon.* Yes.

Mr. *Willes.* Was Mr. *Bambridge* by all the time?---Mr. *Wilkin.* Yes.

Mr. *Willes.* Was the Door broke open with the Hammer?

Mr. *Wilkin.* *Barnes*, becauſe the Hammer would not do, went and fetched a Poker.

Mr. *Willes.* What did he do with the Poker?

Mr. *Wilkin.* He broke open the Door with it.

Mr. *Willes.* Who ſtood by at that time?

Mr. *Wilkin.* *Turner*, myſelf, *Barnes*, *Pindar*, and Mr. *Bambridge.*

Mr. *Willes.* What did Mr. *Bambridge* order, after the Poker was brought?---Mr. *Wilkinſon.* After the Poker was brought, he ordered him to break open the Door, and ſo he did.

Mr. *Willes.* When the Door was broke open, who went in with the Conſtable?

Mr. *Wilkin.* All went in; Mr. *Bambridge*, *Barnes*, *Pindar*, the Conſtable, and myſelf.

Mr. *Willes.* You mention a Conſtable; do you know him to be a Conſtable?---Mr. *Wilkinſon.* Only by his having a Staff.

Mr. *Willes.* Was that all the Reaſon you had to believe him to be a Conſtable?---Mr. *Wilkinſon.* Yes.

Mr. *Willes.* Have you ſeen him at any other time?

Mr. *Wilkin.* I ſaw him only then, and never ſince.

Mr. *Willes.* Was Mrs. *Berkley* there?

Mr. *Wilkin.* Yes; I went to fetch her up, and Mr. *Bambridge* inſiſted upon her opening the Door; but ſhe would not open the Door herſelf; ſo Mr. *Bambridge* ordered the Door to be broke open.

Mr. *Willes.* When he came up, and broke open the Door, and came into the Room, what did he do?

Mr. *Wilkin.* Mr. *Bambridge* deſired Mr. *Turner* to take an Inventory.

Mr. *Willes.* Of what?

Mr. *Wilkin.* Of all the Goods in the Room.

Mr. *Willes.* Was Mrs. *Berkley* come into the Room?

Mr. *Wilkin.* Yes, ſhe was there.

Mr. *Willes.* What did Mrs. *Berkley* ſay?

Mr. *Wilkin.* She ſaid, it was a Robbery, it was not Juſtice, it was Felony; and ſhe did not doubt but he would be brought to account for it in time.

L. C. J. Was ſhe by?

Mr. *Wilkin.* Yes, and ſaw the Room broke open, and Mr. *Bambridge* order Mr. *Turner* to make an Inventory.

L. C. J. What did Mr. *Bambridge* ſay then?

Mr. *Wilkin.* Set down ſuch and ſuch Things.

L. C. J. What did they take an Account of?

Mr. *Wilkin.* They took an Account of ſome Things before they opened the Boxes.

L. C. J. Were the Boxes locked?

Mr. *Wilkin.* There were two Boxes locked, and one nailed.

L. C. J. Was there any Trunk?

Mr. *Wilkin.* I don't remember that there was a Trunk.

Mr. *Willes.* Was ſhe aſked to open the Boxes?

Mr. *Wilkin.* Yes, but ſhe refuſed.

Mr. *Willes.* When ſhe refuſed, who broke them open?

Mr. *Wilkin.* Mr. *Bambridge* broke open three with a Hammer.

Mr. *Willes.* Was ſhe in or out of the Room at the time?

Mr. *Wilkin.* She was in the Room.

Mr. *Willes.* What did ſhe ſay?

Mr. *Wilkin.* She ſaid it was a Robbery.

Mr. *Willes.* When the Boxes were broke open, what was taken out?

Mr. *Wilkin.* Three Suits of Cloaths.

Mr. *Willes.* Who took them out?

Mr. *Wilkin.* Some were taken out by Mr. *Bambridge*, and ſome by Mr. *Turner.*

Mr. *Willes.* By whoſe Order?---Mr. *Wilkin.* By Mr. *Bambridge*'s.

Mr. *Willes.* What was there taken out?

Mr. *Wilkin.* China, flowered Curtains, two Gold Seals, and two Rings.

Mr. *Willes.* Had they any Stones in them?

Mr. *Wilkin.* One had a Stone, the other not.

Mr. *Willes.* Were all the Things in the Boxes carried away?

Mr. *Wilkin.* Yes.

Mr. *Willes.* By whoſe Directions?

Mr. *Wilkin.* By the Direction of Mr. *Bambridge.*

Mr. *Willes.* Were all of them, or only ſome?

Mr. *Wilkin.* Some of them; the Bed was carried away.

Mr. *Willes.* Who carried it away?

Mr. *Wilkin.* I carried it away into a Lumber Room in the Priſon.

Mr. *Willes.* What became of it afterwards?

Mr. *Wilkin.* I ſaw it carried to *Dorſet-ſtairs* after.

Mr. *Willes.* By whoſe Order?

Mr. *Wilkin.* By Mr. *Bambridge*'s: I ſtood there while it was gone; he gave Directions to carry them to the Water-ſide.

Mr. *Willes.* Did he only give Directions to carry them to the Water-ſide, or any where elſe?

Mr. *Wilkin.* He gave Directions to carry them to *Wandſworth.*

Mr. *Willes.* When did he give theſe Orders?

Mr. *Wilkin.* When he carried them out.

Mr. *Willes.* What became of the Rings?

Mr. *Wilkin.* I ſaw them put in his Pocket, and he called *Savage* and *Douglas* to bear Witneſs.

L. C. J. What was the Reaſon for calling them to witneſs?

Mr. *Wilkin.* Mr. *Bambridge* ſaid, that he put them in his Pocket for fear of their being loſt.

Mr. *Willes.* What did he order to be put in the Portmanteau?

Mr. *Wilkin.* Wearing Apparel, and ſuch like Things.

Mr. *Willes.* Where was it carried?

Mr. *Wilkin.* Into the Lumber Room above Stairs.

Mr. *Willes.* Why did he order them to be put into the Portmanteau?

Mr. *Wilkin.* Becauſe, he ſaid, the Portmanteau would hold them all.

Mr. *Willes.* The Cloaths, ſome of them, were very rich; were they not?---Mr. *Wilkinſon.* Yes.

Mr. *Willes.* Were they put in the Portmanteau?---Mr. *Wilkinſon.* Yes.

Mr. *Willes.* Was Mrs. *Berkley* by when the Rings were put in his Pocket?

Mr. *Wilkin.* Yes, and he called Mr. *Douglas* and other Perſons as Witneſſes?

Mr. *Willes.* What did Mrs. *Berkley* ſay?

Mr. *Wilkin.* It was Felony and Robbery.

Mr. *Willes.* Did he ſay any thing to Mrs. *Berkley*, when he put them in his Pocket?

Mr. *Wilkin.* Mr. *Bambridge* ſaid, he did nothing but according to Law, and he would anſwer it.

Mr. *Willes.* Was there an Emerald?

Mr. *Wilkin.* Yes, I think there was an Emerald, and a Garnet, out of a Ring: He put them in his Pocket.

L. C. J. What did he put in his Pocket?

Mr. *Wilkin.* Two Gold Seals, two Gold Rings, an Emerald, and a Garnet.

L. C. J. Were the Rings plain?

Mr. *Wilkinſon.* One of them I did not ſee perfectly.
L. C. J. What was the other?
Mr. *Wilkinſon.* A Stone Ring; but the middle Stone was wanting.
L. C. J. Were there any Things beſides?
Mr. *Wilkinſon.* There were two Silver-handled Knives and Forks.
L. C. J. I only aſk as to thoſe Things he put in his Pocket; did you ſee any other Things put in his Pocket?
Mr. *Wilkinſon.* No.
Mr. *Willes.* Did you never ſee a Stone called an Emerald afterwards?
Mr. *Wilkinſon.* No.
Mr. Att. Gen. Recollect how many Rings there were.
Mr. *Wilkinſon.* There were two Rings, and two Seals.
Mr. Att. Gen. Are you ſure there were but two?
Mr. *Wilkinſon.* Yes.
Mr. Att. Gen. Had they Stones in them?
Mr. *Wilkinſon.* One of them had a Stone out in the Middle.
Mr. Att. Gen. As to the Bed and Bedding; why did you ſay they were to go to *Wandſworth?* Do you remember the particular Hands he ſent them by, to be put into the Boat?
Mr. *Wilkinſon.* *Tom King* was one; as to the others, I did not know.
Mr. Att. Gen. What did Mr. *Bambridge* ſay in your Hearing?
Mr. *Wilkinſon.* Firſt, he ſaid, they were going to be ſold at a Sale.
Mr. *Willes.* Who directed you to go to *Dorſet-ſtairs?*
Mr. *Wilkinſon.* He ſent me down to the Stairs to the Waterman, and bid me tell him to go away, and not ſtay.
Mr. *Willes.* Who did he bid you aſk for?
Mr. *Wilkinſon.* He bid me aſk for the *Wandſworth* Waterman.
Mr. *Willes.* Where were the reſt of the Goods carried?
Mr. *Wilkinſon.* To *Will*'s Coffee-Houſe in *Bell-Savage-Yard.*
Mr. *Willes.* How came they to be carried there?
Mr. *Wilkinſon.* Mr. *Bambridge* lodged at *Will*'s Coffee-Houſe.
Mr. *Willes.* What were the Things that were carried to *Will*'s Coffee-Houſe?
Mr. *Wilkinſon.* An Eaſy Chair was carried there; I carried it myſelf.
Mr. *Willes.* How long was this after the Goods were taken from Mrs. *Berkley?*
Mr. *Wilkinſon.* Some Days: It was left with Mr. *Turner* to clean; and then it was carried to *Will*'s Coffee-Houſe.
Mr. *Willes.* By whoſe Order was it carried?
Mr. *Wilkinſon.* It was carried by Mr. *Bambridge*'s Order.
Mr. *Willes.* Who was it delivered to?
Mr. *Wilkinſon.* It was delivered to the Man's Wife at *Will*'s Coffee-Houſe by Mr. *Bambridge*'s Directions: I carried it up one Pair of Stairs.
Mr. *Bambridge.* I deſire he may acquaint your Lordſhip, if he did not fetch Mrs. *Berkley* to be preſent at the opening the Door.
Mr. *Wilkinſon.* I did.
L. C. J. He ſaid ſo, and that *Barnes* was ordered to fetch a Poker to open the Door.—I aſk you, whether he talked with Mrs. *Berkley* for the Payment of Rent, for which the Goods were diſtrained?
Mr. *Wilkinſon.* Mr. *Bambridge* did ſay ſomething to her about ſeizing for Rent, and he would ſtand by it: She ſaid, he could not ſeize Wearing Apparel for Rent, and told him it was Felony, and downright Robbery.
Mr. *Bambridge.* I muſt deſire him to acquaint you, whether it was not ſome Days before the Goods were removed, after the laſt Diſtreſs.
L. C. J. Anſwer that.
Mr. *Wilkinſon.* Five or ſix Days.
Mr. *Bambridge.* Were they carried out publickly?
Mr. *Wilkinſon.* Yes.
Mr. *Bambridge.* Were they carried out in the Day-time?
Mr. *Wilkinſon.* Yes.
Mr. *Bambridge.* Were they not carried out of the Lumber Room publickly in the Day-time?
Mr. *Wilkinſon.* Yes.
Mr. *Bambridge.* Was it a publick Room to put Lumber in?
Mr. *Wilkinſon.* Yes; but it was always locked.
Mr. *Bambridge.* I think he has acquainted the Jury, that ſhe was preſent all the time.
Mr. *Wilkinſon.* I think ſhe was.
L. C. J. Was Mrs. *Berkley* there during the time Mr. *Turner* made the Inventory?
Mr. *Wilkinſon.* I think ſhe was.
Mr. *Bambridge.* He ſaid, that I called Mr. *Savage* and Mr. *Douglas* to ſee that I put the Things in my Pocket: Mr. *Douglas*, my Lord, has the Unhappineſs to be charged in the Indictment as an Acceſſary, though he only came into the Room by chance, and ſo I am deprived of his Evidence: He was put in the Indictment to take off his Evidence.
L. C. J. He is a Principal in the Indictment.
Mr. *Bambridge.* He is a Gentleman of a very good Family; he is the younger Son of a Man of Quality. I deſire Mr. *Wilkinſon* may acquaint your Lordſhip, whether Mrs. *Berkley* was not preſent when I ſaid to Mr. *Douglas*, Pray take notice that I put the Rings in my Pocket.
L. C. J. Was ſhe?
Mr. *Wilkinſon.* I can't ſay poſitively, becauſe it was juſt at laſt: At the latter End, ſhe would not ſtay in the Room.
Mr. *Bambridge.* Was there not a Bed ordered for her to lie on?
Mr. *Wilkinſon.* There was a Bed brought out of the Lumber Room, a naſty Bed; and ſhe ſaid, that if ſhe could not lie on a Bed of her own, ſhe would not lie on that; but went away.
L. C. J. You ſay ſhe went away; you can't ſay ſhe was there then?
Mr. *Wilkinſon.* I can't.
Mr. *Bambridge.* I deſire to know, if, when he carried that Bed up, he did not bring another down.
Mr. *Wilkinſon.* Yes; I ſaid ſo before, that you did order another Bed; but I ſaid it was a naſty one.
L. C. J. Tell us, whether that was a good Bed or not?
Mr. *Wilkinſon.* I can't ſay it was, my Lord: She had Reaſon enough to complain of it; for I lay upon a better Bed myſelf, and that was not fit for her, who was a Gentlewoman.
Mr. *Bambridge.* Was it any other than what was uſual for the People in the Houſe?
Mr. *Wilkinſon.* I have known ſome lie on Sacks; but becauſe they could get no better.
Mr. *Bambridge.* Were there any better Beds there?
Mr. *Wilkinſon.* Yes; there were three, and you ſent them away with her's: Ever ſince ſhe has lain without a Bed, unleſs ſhe has had one within theſe ten Days.
Mr. *Bambridge.* I deſire to know, whether Mrs. *Berkley* was turned out of her Room, or went out of herſelf, at that time?
Mr. *Wilkinſon.* She went out of it herſelf, when her Bed was taken away.

Ambroſe Burgeſs *was ſworn.*

Mr. Att. Gen. Do you remember any Goods taken away in the *Fleet* Priſon, and from whom?
Mr *Burgeſs.* I was preſent, not at the breaking open the Door, but after.
Mr. Att. Gen. When was it?
Mr. *Burgeſs.* About fourteen Days after the 23d of *October*
Mr. Att. Gen. Go on.
Mr. *Burgeſs.* I heard, that Mr. *Bambridge* was going in to look on ſome Affairs of Mrs. *Berkley*'s, and I went into the Room a little after the Door was broke open.
Mr. Att. Gen. Who was there?
Mr *Burgeſs.* There were Mr. *Bambridge*, *Turner*, *Savage*, *Pindar*, *Barnes*, and *Wilkinſon*; and one or two more that were Strangers.
Mr. Att. Gen. What did you ſee done there?
Mr. *Burgeſs.* I ſaw the Boxes broke open.
Mr. Att. Gen. Who broke them open?
Mr. *Burgeſs.* Mr. *Turner* and Mr. *Bambridge* together.
Mr. Att. Gen. What was there in them?
Mr. *Burgeſs.* Twenty Ounces of Orrice Lace, a great many good Cloaths, and a great many good Things.
Mr. *Bambridge.* I deſire he may raiſe his Voice; I cannot hear him.
L. C. J. Raiſe your Voice.
Mr. Att. Gen. Did you ſee the Boxes broke open?
Mr. *Burgeſs.* I was there preſent, and ſaw the Boxes broke open by Mr. *Bambridge* and Mr. *Turner*; and ſaw the China put into the Window, and ſome Orrice Lace; and ſaw an Emerald, or Ruby, which he put in his Pocket.
Mr. Att. Gen. What did you ſee at that Time?
Mr. *Burgeſs.* I ſaw the Rings taken out.
Mr. Att. Gen. What did you ſee put in his Pocket?
Mr. *Burgeſs.* One was a Pearl, the other an Emerald.
Mr. Att. Gen. Were they ſet in Rings?
Mr. *Burgeſs.* They were both ſeparate.
Mr. Att. Gen. What is the Colour of an Emerald?
Mr. *Burgeſs.* It is of a greeniſh Colour.
Mr. Att. Gen. Theſe then were ſeparate Stones?
Mr. *Burgeſs.* Yes.
Mr. Att. Gen. Were there any Rings?
Mr. *Burgeſs.* I can't ſay.
Mr. Att. Gen. What did he do with theſe Stones?
Mr. *Burgeſs.* Mr. *Bambridge* put them into his Pocket, and ſaid they might be loſt if put in the Portmanteau; and afterwards, as he was drinking Punch, he took them out of his Pocket.
Mr. Att. Gen. Had ſhe any Gold Lace there?
Mr. *Burgeſs.* There was Gold Lace: Mr. *Turner* went and weighed the Lace, and brought it back again; and ſaid, it weighed twenty Ounces and an half.
Mr. Att. Gen. Who took it away?
Mr. *Burgeſs.* I don't remember.
Mr. Att. Gen. You were in Company; did you not obſerve who took it, or whether *Turner* carried it away?
Mr. *Burgeſs.* I did not, upon my Word, obſerve it.
Mr. Att. Gen. Were you preſent at the Time of breaking open the Boxes, and taking out the Goods?
Mr. *Burgeſs.* I was preſent when three Boxes were broke open.
Mr. Att. Gen. How long did Mrs. *Berkley* ſtay in the Room?
Mr. *Burgeſs.* To the beſt of my Remembrance, the whole Time.
Mr. Att. Gen. You ſay you was preſent when the Boxes were broke open; was Mrs. *Berkley* there the whole Time?
Mr. *Burgeſs.* I do not know whether ſhe went away before or not.
Mr. Att. Gen. I think you ſaid, you did not come till after the Door was opened?
Mr. *Burgeſs.* Yes.
Mr. *Bambridge.* I think you have acquainted my Lord and the Jury, that there were ſome Stones; I deſire you will inform him, and as to the Size of them, if they were ſmall.
Mr. *Burgeſs.* Yes, they were.
Mr. *Bambridge.* Was Mrs. *Berkley* there all the Time?
Mr. *Burgeſs.* I think ſhe was.
L. C. J. What did you aſk him?
Mr. *Bambridge.* What Size the Stones were of; whether they were ſmall?
Mr. *Burgeſs.* Yes, they were.

Burgeſs *was going away, and at* Bambridge's *Deſire called back again.*

Mr. *Bambridge.* Mr. *Burgeſs* declared, that he heard me declare, that I deſired them to take notice, that I put them in my Pocket: Pleaſe to tell my Lord, and the Jury, what I ſaid when I put the Stones in my Pocket.
Mr. *Burgeſs.* Mr. *Bambridge* ſhewed them in his Hand, and ſaid, for fear they ſhould be loſt, they ſhould be put in his Pocket.
L. C. J. Did he deſire *Savage* and *Douglas* to remember that he put them in his Pocket?
Mr. *Burgeſs.* I believe he ſaid ſo to all.

Savage *was ſworn.*

Mr. Sol. Gen. Was you preſent at the time when the Goods were ſeized?
Mr. *Savage.* I was going by the End of the Gallery, and, hearing a Buſtle, went up.
Mr. Sol. Gen. Mention the time.
Mr. *Savage.* At the time when the laſt Inventory was taken.
Mr. Sol. Gen. What time of the Year?
Mr. *Savage.* The latter End of *October*, 1727.

Mr.

Mr. Sol. Gen. Give an Account of what you know of this Matter.

Mr. *Savage.* I was going by the End of the Gallery, and obſerved a Number of People at Mrs. *Berkley*'s Door, and I went out of Curioſity, to ſee what was the matter, where I found *Bambridge*, Mrs. *Berkley*, *Pindar*, *Barnes*, *Douglas*, and *Wilkinſon*, and after I had been there a very little Time, *Bambridge* aſked Mrs. *Berkley* for Trunks and Boxes; I went into the Room to them, and *Bambridge* aſked her for the Keys of her Trunks and Boxes; ſhe ſaid, I will give you none; to which he made Anſwer, If you won't, I have ſufficient Authority of my own to open them, and I will do it; and ordered the Trunks and Boxes, upon her Refuſal to deliver the Keys, to be broke open; and *Bambridge* broke open ſome of them himſelf.

Mr. Sol. Gen. What was there found there?

Mr. *Savage.* On Examination of the Trunks and Boxes, there were found Wearing Apparel, Gold Seals, Thread, and Gold Lace, Cloaths very good of the kind, fit for any Gentlewoman to wear.

Mr. Sol. Gen. Were there any other Things?

Mr. *Savage.* Yes, there were; for *Bambridge* found, in a Drawer of a Table, a Box, where there were Rings and Seals, and looſe Stones.

Mr. Sol. Gen. How many Rings were there?

Mr. *Savage.* I think there were four; one was red, it was either a Garnet or a Ruby; one of them was whitiſh, with a caſt of yellow, they called it a Cryſtal, I took it to be a Topaz.

Mr. Sol. Gen. Were there any other Stones?

Mr. *Savage.* Yes, I think there were; one was a blue or green, another was a Ring, where the Middle Stone was out, and two Diamonds on the Side, two Seals ſet in Gold, which I took to be Cornelian, one white and the other red; there was alſo a looſe Stone, and a Pearl.

Mr. Sol. Gen. What was the looſe Stone?

Mr. *Savage.* I can't ſay whether a Garnet or not.

Mr. Sol. Gen. What did he do with them?

Mr. *Savage.* After he had ſhewn them, he put them in his Pocket.

Mr. Sol. Gen. Were there any other Things?

Mr. *Savage.* There was a Silver Spoon, Knife, and Fork.

Mr. Sol. Gen. What did he do with that?

Mr. *Savage.* That was put in his Pocket, to the beſt of my Remembrance.

Lord Chief Juſtice. What became of the Seals and Rings?

Mr. *Savage.* He put them into his Pocket.

L. C. J. Did he bid you at that Time take Notice that he put them in his Pocket?---Mr. *Savage.* I do not remember that he ſaid ſo.

Mr. Sol. Gen. What became of them after he put them in his Pocket?

Mr. *Savage.* I do not know.

Mr. Sol. Gen. Did he take them out of his Pocket there?

Mr. *Savage.* No, but he did in the Coffee-Room afterwards.

Mr. Sol. Gen. What became of the other Goods?

Mr. *Savage.* The moſt valuable Part of the Goods was packed up, and put into a Portmanteau Trunk.

Mr. Sol. Gen. You do not know what became of the other Goods?

Mr. *Savage.* I do not know of their being carried away, but there was ſome white China carried out of the Room.

Mr. *Willes.* Had not *Bambridge* a Houſe at *Wandſworth?*

Mr. *Savage.* He had Lodgings there.

Mr. *Willes.* Were the Goods carried there?

Mr. *Savage.* I don't know otherwiſe than by Hearſay.

Mr. Att. Gen. Was you by when Mr. *Turner* made the Inventory?

Mr. *Savage.* Yes.

Mr. Att. Gen. Do you know of Cloaths being put down ſufficient for a Gown, or whatever it was.

Mr. *Savage.* Yes, all the Cloaths were put down ſo.

Mr. Att. Gen. Do you know how they came to be put down ſo?

Mr. *Savage.* *Bambridge* ordered it.

Mr. Att. Gen. Did it ariſe from Mr. *Bambridge* or *Turner?*

Mr. *Savage.* *Turner* did object to it, and ſaid it was not uſual to put down Wearing Apparel.

L. C. J. Pray give an Account whether *Bambridge* gave any Reaſon for putting the Things in his Pocket?---Mr. *Savage.* I do not know he did.

L. C. J. Were they inventoried?

Mr. *Savage.* I was not privy to the Inventory.

Mr. *Bambridge.* How long was you in the Room?

Mr. *Savage.* I believe I was there ſoon after you.

Mr. *Bambridge.* Did you continue there all the time?

Mr. *Savage.* I believe I was there moſt of the time.

Mr. *Bambridge.* Did you ſee any of the Goods appraiſed?

Mr. *Savage.* I ſaw *Turner* write; but I do not know what he wrote.

Mr. *Bambridge.* Was it done in a clandeſtine Manner?

Mr. *Savage.* I cannot ſay.

Mr. *Bambridge.* What Converſation was there between Mrs. *Berkley* and me?---Mr. *Savage.* What paſſed was in relation to the Chamber Rent.

Mr. *Bambridge.* Did not I ſay for what I ſeized them?

Mr. *Savage.* You pretended to ſeize them for Chamber Rent.

Mr. *Bambridge.* Did I ſhew the Rings, or put them in my Pocket ſecretly?

Mr. *Savage.* They were ſhewn to every body in the Room.

Mr. *Bambridge.* Were the Rings ſhewn in the Coffee-Room?

Mr. *Savage.* Yes.

Mr. *Bambridge.* Where is the Coffee-Room?

Mr. *Savage.* In the *Fleet* Priſon.

Mr. *Bambridge.* Was it a publick Place?

Mr. *Savage.* Yes, but it was in a private Room where you ſhewed the Rings, in which was only your own Company.

Jacob Mendez Solas *was ſet up to be examined.*

Mr. *Filmer.* Mr. *Matthews*, let him be ſworn upon the Old Teſtament, he is a Jew.

Mr. *Kettleby.* I muſt object as ſuch, to his being ſworn at all.

Mr. Juſt. *Reynolds.* I remember a great Cauſe upon an Indictment, for the Stealing of Snuff from ſome Jews, and I remember they were admitted to give Evidence.

Mr. *Solas.* I am a Chriſtian.

Mr. Att. Gen. The Objection is at an End, he is a Chriſtian.

L. C. J. Are you a Jew or a Chriſtian?

Mr. *Solas.* I am by Extract a *Portugueſe* Jew, but am a Chriſtian now.

L. C. J. Have you been baptized?

Mr. *Solas.* Yes, my Lord.

Then he was ſworn.

Mr. *Filmer.* What do you know as to any Diamonds or Jewels that were brought to you?

Mr. *Solas.* One Captain *Douglas* brought a Ring to me, to have the Stone pulled out, that I might ſee how much the Gold weighed.

Mr. *Filmer.* What ſort of a Stone was it?

Mr. *Solas.* It was an Amethiſt, but *Douglas* ſaid it was a Cryſtal.

L. C. J. Who did he tell you he had it from?

Mr. *Solas.* From *Bambridge*. *Douglas*, after I told him it was an Amethiſt, and the Value of it, went and told Mr. *Bambridge* the Value; then *Bambridge* came to me.

L. C. J. What did Mr. *Bambridge* ſay?

Mr. *Solas.* He aſked, whether I was ſure it was an Amethiſt; I told him yes, I was ſure, though it was paler and appeared clumſy; and then *Bambridge* ſaid he was glad of it, and aſked me whether it was not worth while to put it in a Ring.

L. C. J. Did you tell Mr. *Bambridge* of the Value of it?

Mr. *Solas.* I cannot be certain of that.

Mr. *Filmer.* Did he ſay any thing of the Ring; whoſe Ring did he ſay it was?

Mr. *Solas.* Captain *Douglas* ſaid it was ſent from a Merchant.

Mr. *Filmer.* But did *Bambridge?*

Mr. *Solas.* Not at that Time.

Mr. *Filmer.* Did he any Time after ſay whoſe Ring it was?

Mr. *Solas.* Yes, he ſaid it was a Ring of Mrs. *Berkley*'s.

Mr. Sol. Gen. You ſay you took the Stone out?

Mr. *Solas.* Yes.

Mr. Sol. Gen. Did you ſet it in again, after you had taken it out?

Mr. *Solas.* Yes.

Mr. Sol. Gen. Should you know your own ſetting, if you ſhould ſee it?

Mr. *Solas.* Yes.

Then the Ring being produced, and ſhewn to him.

Mr. Sol. Gen. Look upon it, is that your own ſetting?

Mr. *Solas.* I am poſitive it is my ſetting.

Then another Ring was produced, and ſhewn to him.

Mr. Sol. Gen. Do you take that to be the ſame Stone you then ſet?

Mr. *Solas.* It is one I ſet for Mr. *Bambridge* in this Ring, but not the ſame Stone he then brought, or I ſuppoſe it might be new poliſhed.

Mr. Sol. Gen. How many Rings did you ſet for Mr. *Bambridge?*

Mr. *Solas.* Two.

Mr. Sol. Gen. What were the Value of them?

Mr. *Solas.* I ſet one for Mr. *Bambridge* worth fifty Shillings, and another worth twenty Shillings.

Mr. Sol. Gen. What might be the Price of that you ſet for him, he told you he had from Mrs. *Berkley?*

Mr. *Solas.* About twenty Shillings.

Mr. Sol. Gen. Had you no other Ring brought you?

Mr. *Solas.* I had one brought from Mr. *Bambridge* by Doctor *Coltheart.*

Mr. Sol. Gen. What was it?

Mr. *Solas.* It was a Garnet, with a Brilliant in the Middle.

Mr. Sol. Gen. Who did you ſay it was brought from?

Mr. *Solas.* From *Bambridge*, by Doctor *Coltheart.*

Mr. Sol. Gen. How do you know that?

Mr. *Solas.* He ſent his Service. Doctor *Coltheart* and one *Will* that keeps a Coffee-Houſe came to me, and deſired to know the Value of a Ring with a Garnet, and a Brilliant in the Middle. I ſent him Word it was worth fourteen Pounds; then *Bambridge* ſent for me to the Coffee-Room, and deſired to know the Value of it; I ſaid it was worth fourteen Pounds.

Mr. Sol. Gen. What did he ſay?

Mr. *Solas.* He ſaid, he thought I had valued it for more than it was worth.

Mr. Sol. Gen. Did he tell you who he had the Ring of?

Mr. *Solas.* No.

Mr. *Bambridge.* My Lord, I am ſo unhappy, though ſo much concerned in this Affair, as to be at ſo great a Diſtance, that I don't know one Word the Witneſs has ſaid, ſo don't know what Queſtions to aſk him.

Mr. *Solas.* If you have any Queſtions to aſk me, I am ready to anſwer.

Mr. *Kettleby.* You need not aſk any.

Mr. *Bambridge.* Do you know the Ring that was brought to you by Doctor *Coltheart*, when you ſee it?

Mr. *Solas.* Yes, I am ſure I ſhould know it; I have had it three Times in my Hand; one Time you ſhewed it me, with Mr. *Burgeſs*, and aſked me the Value.

L. C. J. You ſay that *Bambridge* had the Ring, what uſe do you make of inquiring into the Value of the Ring, as to the one of them being worth fourteen Pounds, and the other twenty Shillings?

Mr. Att. Gen. The Statute requires a particular Value; beſides, we make uſe of it to ſhew that *Bambridge* was endeavouring to ſell them by a private Sale.

Mr. Juſt. *Reynolds.* Were theſe offered on the Behalf of *Bambridge* to be ſold, or to know the Value only?

Mr. *Solas.* Only to know the Value; he ſent to know the Value, afterwards he came to me himſelf to value them, having ſent them before by *Coltheart* and *Will* at the Coffee-Houſe.

Mr. *Willes.* The Uſe that we make of this is, to ſhew that the Ring with the Brilliant in the Middle was worth fourteen Pounds, and only valued as a Cryſtal, and not mentioned in the Inventory at all.

L. C. J. I thought it was give me up the Inventory, (*Which was done*;) and looking upon the Inventory, there are two Cornelian Seals ſet in Gold, a Cryſtal Stone, a Gold Ring with one ſmall Emerald, and another with a ſmall Garnet.

Mr. Juſtice *Reynolds.* This is the Ring called a Cryſtal Ring, which *Solas* ſays, when brought to him, he thought to be a Garnet.

——Turner *being ſet up again.*

L. C. J. Was that ſmall Garnet mentioned in the Inventory as a Ring?

Mr. *Turn.* No, my Lord, it was a looſe Stone, otherwiſe, after mentioning that Cryſtal Stone Ring, if the Garnet had been a Ring, I ſhould have ſaid Ditto.

Jacob Mendez Solas *being ſet up again.*

L. C. J. This Garnet was brought to you, Mr. *Solas*, ſet in a Ring, with a Brilliant in the Middle, Was it not?

Mr. *Solas.* Yes, my Lord.

L. C. J. Was there any other Garnet with a Diamond in the Middle?

Mr. *Turn.* My Lord, I ſaw no ſuch Ring.

Mr. Howard was *ſworn.*

Mr. At. Gen. Did *Bambridge* lodge at your Houſe?

Mr. *Howard.* Yes.

Mr. At. Gen. Where do you live?

Mr. *How.* In *Bell Savage Yard.*

Mr. At. Gen. What do you call the Houſe?

Mr. *How.* *Will*'s Coffee-Houſe.

Mr. At. Gen. When did *Bambridge* lodge there?

Mr. *How.* Twelve Months ago.

Mr. At. Gen. How long before the Seizure was made?

Mr. *How.* I can't tell.

Mr. At. Gen. How long did he lodge there together?

Mr. *How.* About Twelve Months.

Mr. At. Gen. Did he lodge there in *October* 1727?---Mr. *How.* Yes.

Mr. At. Gen. Do you remember the bringing any Goods to your Houſe?

Mr. *How.* Yes.

Mr. At. Gen. What were they?——Mr. *How.* I can't tell.

Mr. At. Gen. Were they Houſhold Goods or Wearing-Apparel?

Mr. *How.* I do not know any Goods that were brought in but his own.

Mr. At. Gen. I aſk you if any Goods were brought to the Houſe?

Mr. *How.* There were.

Mr. At. Gen. Do you know what they were?

Mr. *How.* I did not ſee them, they were brought in Trunks.

Mr. At. Gen. Did you know of any Thing ſold to one Mr. *Weſt?*

Mr. *How.* Yes.

Mr. At. Gen. Recollect what they were.

Mr. *How.* There was a Gown and Petticoat.

Mr. At. Gen. Was there one or two?—Mr. *How.* I cannot tell.

Mr. At. Gen. What were they made of?---Mr. *How.* I cannot tell.

Mr. At. Gen. Did you ſee them?

Mr. *How.* I juſt looked at them.

Mr. At. Gen. Did you know what Sort of Cloaths?

Mr. *How.* I did not look at them.

Mr. At. Gen. What were they ſold for?

Mr. *How.* I heard Mr. *Weſt* ſay, Mr. *Bambridge* had a Gold Watch for them.

Mr. At. Gen. What were they ſold for?

Mr. *How.* They ſaid they were ſold for fourteen or fifteen Pounds.

Mr. At. Gen. How do you know they were ſold?

Mr. *How.* I heard *Weſt* ſay ſo.

Mr. At. Gen. Do you know nothing but what *Weſt* told you?

Mr. *How.* No.

Mr. At. Gen. I aſk you if you was preſent when Mr. *Bambridge*, or any Body for him, made any Bargain as to the ſelling any Cloaths?

Mr. *How.* I was not at the making the Bargain.

Mr. At. Gen. Was you preſent at the Time when the Goods were delivered to Mr. *Weſt?*

Mr. *How.* I know nothing further, than that I ſaw Mr. *Weſt* have them.

Mr. At. Gen. Have you heard Mr. *Bambridge* talk of ſelling the Goods, and what he had for them?

Mr. *How.* No.

Mr. At. Gen. Do you know of any Gold Lace?

Mr. *How.* I ſaw ſome Gold Lace that *Bambridge* had.

Mr. At. Gen. At what Time was this?

Mr. *How.* About *October* 1727.

Mr. At. Gen. Was it brought into your Houſe?

Mr. *How.* Yes.

Mr. At. Gen. You ſaw *Bambridge* have it?

Mr. *How.* Yes.

Mr. At. Gen. Who was that ſold to?

Mr. *How.* To one Mr. *Harris.*

Mr. At. Gen. How much was that ſold for?

Mr. *How.* I don't know.

Mr. At. Gen. How do you know it was ſold?

Mr. *How.* I know Mr. *Harris* bought it by his bringing Money, and paying it to Mr. *Bambridge.*

Mr. At. Gen. How much was it?

Mr. *How.* I don't know the Sum.

Mr. At. Gen. Whereabouts was it?

Mr. *How.* I don't know.

Mr. At. Gen. Did you ſee the Money paid?

Mr. *How.* I ſaw it lie on the Table.

Mr. At. Gen. Was it Gold or Silver?

Mr. *How.* It was both.

Mr. At. Gen. Was it ten or twenty Pounds?

Mr. *How.* I don't think it was ſo much as Ten or Twenty Pounds.

Mr. At. Gen. You ſaw the Money paid?

Mr. *How.* Yes.

Mr. At. Gen. What was the Money paid for?

Mr. *How.* It was paid for the Lace.

Mr. At. Gen. Why did you ſay for the Lace?

Mr. *How.* Becauſe *Bambridge* ſold him the Lace.

Mr. At. Gen. Do you know from whom that Lace was brought?

Mr. *How.* I don't know

Mr. At. Gen. What Time was it, was it about *October* or *November?*

Mr. *How.* Yes.

Mr. At. Gen. Did you ſee any Tea Spoons?—Mr. *How.* Yes.

Mr. At. Gen. Were they Gilt?—Mr. *How.* Yes.

Mr. At. Gen. Whoſe Poſſeſſion did you ſee them in?

Mr. *How.* *Bambridge*'s.

Mr. At. Gen. How many were they?---Mr. *How.* Three or four.

Mr. At. Gen. Were there half a Dozen?

Mr. *How.* There were not ſo many.

Mr. At. Gen. Do you remember Mrs. *Corbett*'s buying any Thing?

Mr. *How.* No.

Mrs. Howard *was ſworn.*

Mr. Sol. Gen. Are you the Wife of the laſt Witneſs?

Mrs. *Howard.* Yes.

Mr. Sol. Gen. When did Mr. *Bambridge* live at your Houſe?

Mrs. *How.* I can't tell directly.

Mr. Sol. Gen. Was it in *October* 1727?

Mrs. *How.* It was thereabouts.

Mr. Sol. Gen. Do you remember any Women's Cloaths that were brought to your Houſe?

Mrs. *How.* Yes.

Mr. Sol. Gen. Do you know whoſe they were?

Mrs. *How.* No.

Mr. Sol. Gen. Who brought them into your Houſe?

Mrs. *How.* I don't know.

Mr. Sol. Gen. By whoſe Order were they brought?

Mrs. *How.* I don't know.

L. C. J. Who brought the Cloaths in, to whoſe Uſe were they delivered?——Mrs. *How.* To *Bambridge*'s.

L. C. J. Who were they ſold to?

Mrs. *How.* They were ſold to one *Thomas Weſt*, by Mr. *Bambridge.*

Mr. Sol. Gen. What was paid for them?

Mrs. *How.* I can't tell exactly the Sum, but a Gold Watch was given for them, which Mr. *Bambridge* had.

Mr. Sol. Gen. Do you know the Goods, can you deſcribe them?

Mrs. *How.* Yes, one was a blue and white Sattin Gown, made up; another was a worked Gown, lined with a Cherry-coloured Lining.

Mr. Sol. Gen. What was it worked upon?

Mrs. *How.* I can't ſay whether it was Holland or Silk.

Mr. Sol. Gen. Do you remember any other Particulars?

Mrs. *How.* There were a black Hood and a Scarf, with black Lace round them; there was alſo a Tippet.

Mr. Sol. Gen. What was the Tippet?—Mrs. *How.* Sable.

Mr. Juſtice *Reynolds.* There is ſome ſtitched Embroidery, Part of a Gown, taken Notice of in the Indictment.

Mr. Sol. Gen. They were all ſold to *Weſt*, were they not?

Mrs. *How.* Yes.

L. C. J. Did you ſee them ſold?——Mrs. *How.* Yes.

L. C. J. Did *Weſt* pay for them?

Mrs. *How.* Yes, he gave a Gold Watch for them.

L. C. J. Was there any Thing elſe, had *Bambridge* any Money beſide?

Mrs. *How.* I cannot tell of any thing but the Gold Watch.

Mr. Sol. Gen. Were there no other Things?

Mrs. *How.* There were Tea Spoons.

L. C. J. Had they any Mark upon them?

Mrs. *How.* I can't tell.

Mr. Sol. Gen. Were they ſold?

Mrs. *How.* *Bambridge* offered to ſell them to me.

Mr. Sol. Gen. Do you remember any Gold Lace?

Mrs. *How.* No, but I remember ſome Silver Lace taken off the blue Sattin.

Mr. Sol. Gen. Was that ſold?——Mrs. *How.* Yes.

Mr. Sol. Gen. For how much?

Mrs. *How.* For four Pounds, ten Shillings.

Mr. Sol. Gen. Who received the Money?

Mrs. *How.* *Bambridge* received the Money of *Harris.*

Mr. Sol. Gen. At what Time were theſe Goods ſold?

Mrs. *How.* *Weſt* bought them all at one Time.

Mr. Sol. Gen. Do you know the Time?

Mrs. *How.* I cannot juſtly tell the Time.

Mr. Sol. Gen. Do you remember the Month or Year?

Mrs. *How.* I do not.

Mr. *Willes.* Did *Bambridge* tell you whoſe the Lace was?

Mrs. *How.* He ſold them as his Wife's.

Mr. Sol. Gen. We muſt ſubmit it to your Lordſhip here.

L. C. J. The King's Counſel have now done, what have you to ſay?

Mr. *Bam.* I did not hear what the laſt Witneſs ſaid.

L. C. J. She ſays, you ſold a Gown of blue Sattin, flowered, to one *Weſt*, as your Wife's; ſhe ſays, that one *Harris* bought the Silver Lace; that the Tea Spoons were offered to be ſold, but ſhe does not know whoſe they were. Now they have done, what have you to ſay?

Mr. *Bam.* As to my Defence, I ſhall give your Lordſhip but little Trouble. After the general Accuſation brought againſt me, and the Clamour it has made in the World, I don't find that there is any Thing anſwerable to it, or any Thing brought to the Point; the Gentlemen have not proved any felonious Act againſt me, any Thing fraudulent, or any Miſbehaviour whatſoever. If there was any Thing neceſſary to juſtify myſelf in, by giving an Account of my Conduct in my Office, I might do it fully, I have the proper Officer here ready to do it; but as I ſee no Neceſſiy for it, I will not Trouble your Lordſhip, but ſubmit it to your Lordſhip and the Jury.

L. C. J. Then you will reſt it here.—Gentlemen of the Jury,—

Mr. *Bam.* I muſt deſire one Favour of your Lordſhip, that if any Matter of Law ſhould ariſe, you will let that be reſerved.

L. C. J.

L. C. J. What the King's Counsel say is very right, whether it was a fair Distress, or whether it was only the Colour of a Distress, with any felonious Intent: The Attorney-General has stated that very clearly, that a Man may do a lawful Act feloniously. If this was done with a felonious Intent, then this will be Felony; yet if it was not done with a felonious Intent, this will not be Felony. This was the grand Point laid down by the Gentlemen, that the Jury are to judge with what Design these Things were taken away.

Gentlemen, the first Witness for the King, who was *John Turner*, says, that the Time of taking those Goods was whilst *Bambridge* was Warden, and that *Pindar* was Chamberlain; and that *Bambridge* ordered this *Pindar* to distrain the Goods of Mrs. *Berkley*; and that the Time of distraining these Goods was between the 23d and 27th of *October*, 1727. He says, Gentlemen, that *Bambridge* was not then there present; and that she, Mrs. *Berkley*, was put out of her Room. After this, *Bambridge* came to enquire into this Affair, to see what was done, Mrs. *Berkley* being then on the Common Side; and he sent down Somebody to call her up, she having locked the Door. The Goods, Gentlemen, were as much under her Key as *Bambridge*'s: *Bambridge*, I must tell you, put on one Padlock, and she locked the Door, and put on another; and when she refused to open the Door, he caused it to be broke open, and entered the Room. There was, Gentlemen, an Inventory made by one *Turner*, who had formerly inventoried Goods, and was usually sent to for such Purposes: He says, Gentlemen, he had no Orders to undervalue the Goods: *Turner* was sent for by *Pindar*: He valued all the Goods, as the Bed, Bedding, &c. and as to the Boxes, they were not then opened: He did not see what there were in them; but put them in gross in the Inventory. *Bambridge*, Gentlemen, coming to look after this Affair, on the 3d or 4th of *November*, sent for Mrs. *Berkley* to come up; and Mrs. *Berkley* came up accordingly; and he desired to have the use of her Key, which she refused, and said, I think you are going to rob me. Upon that, *Bambridge*, before her, sent *Barnes* for the Hammer, to have it to open the Door; but it would not do; and then he sent down for the Poker, and *Barnes* forced open the Door, and in they went, Mrs. *Berkley* along with them. *Bambridge* asked her for the Keys of her Boxes: She said, he should have no Keys; and asked him, by what Authority he did it: He said, by Authority of Warden; and *Bambridge* then ordered the Boxes to be broke open. When he had opened the Boxes, *Turner* was sent for; he was to perfect the Inventory, that was in part before made. It was opened by the Counsel for the King, that it was a fraudulent Inventory; and they, to make this appear clearly to be fraudulent, told you the Goods were set down otherwise than they really were. There was put down, they said, Dimity or Silk sufficient for a Gown, or what it was: They said, there was a flowered blue and white Sattin, that was actually made up, put down only as sufficient: As to the Dimity and Silk, that had been dyed, and *Turner* said, that it was rolled up; for these had been at the Dyer's, and were not put down as a Gown; but that he had set them down properly, as he thought: But when he came to the flowered Gown, which was made up, he made some Difficulty in putting that in the Inventory, and said, that it was not usual to put them in Distresses; for this was Wearing Apparel. And it was proved, Gentlemen, by one of the Witnesses, that Mrs. *Berkley* said, it was Felony: This, Gentlemen, might caution *Turner*; he said it was not usual to put such Things into an Inventory for a Distress. Then *Bambridge* said, if he would not put it in so, he must put it down so many Yards of flowered Silk, sufficient to make a Gown and Petticoat. The *Difficulty arose from himself*, and not *from the Defendant*. He should not have mentioned it Silk sufficient for a Gown; he was asked two or three Times, and Mr. *Bambridge* said, it must all be in the Inventory; so accordingly it was put in, in this Manner. This is offered to you as Evidence of the Affair: You will consider whether it is so or not. Then these Things were all looked over; and *Turner* says, they were all put into the Inventory, and the greatest Part put into a Portmanteau; but there were some few Things, as Tea-Spoons, Seals, and Rings, that were put into *Bambridge*'s Pocket; but though he put them into his Pocket, they were in the Inventory; and this Inventory, in the Whole, came to 30*l.* and at last were brought down to 27*l.* He says, Gentlemen, that there was a Brush that was discovered; and *Bambridge*, upon seeing it, said, Surely there must be some Diamonds; and so he searched for them, and, in making such Search, he found a Piece of Paper: The Witness says, Gentlemen, it was some Decree, which *Bambridge* took in his Hand. She said to *Bambridge*, You won't take the Papers too? Yes, said he, I will; and if I find any Bonds or Bills, I will make bold with them. He says, Gentlemen, that *Bambridge* took the Bed and Bedding away, and offered her another Bed; but she said, she would not lie on it; then she went down to the Common Side. He says, that she talked very much; that she was disordered in her Mind, and talked of Lord *Harcourt*. This is the Account given of her. He says, Gentlemen, that *Bambridge* sent for her when the Inventory was taken; and he says, that she was there during all the Time: Though he took these little Things, yet she could not be defrauded in that Manner, because they were put in that Inventory. I must give you an Account of the Evidence of the People, as they are examined. *Turner*, Gentlemen, says, that *Bambridge* expostulated with her about the Chamber Rent that was due, which was 56*l.* and said, Why do you not pay it? I am informed that you are very capable: The Woman said, the House was the King's, and the King should find her a House; and *Bambridge* said, he would do her what Service he could. Gentlemen, it was said by *Turner*, that he did appraise these Goods; that he did appraise them fairly; and that he was employed by *Pindar*, who was used to employ him. He said, Gentlemen, that the first Time a real Constable was there; and the second Time the Constable was a real Constable, and he swore him: Now there was, indeed, *Pindar* pressed by *Bambridge* to assist in the Appraisement, who did not at all understand it: He was a Distiller, of a quite different Trade. He says, Gentlemen, that *Bambridge* did desire Mrs. *Berkley* to send to her Friends to pay the Rent. This, Gentlemen, is the Evidence given by this Man. Another Witness, Gentlemen, is one *Wilkinson*: He gives an Account that he knew Mrs. *Berkley*, and where she lodged, and that he was a Prisoner there himself: He spoke of *Pindar* and *Barnes*, who were there the last Time of his coming. He says, that the Door was broke open, and that the Padlock was forced off by *Bambridge*'s Order: He says, that *Pindar* fetched the Poker, and *Bambridge* ordered *Barnes* to break open the Door. He says, Gentlemen, he was sent to call Mrs. *Berkley* from the Common Side before this was done: When she came up, she was asked to part with her Keys; but she refused; and then the Door was broken open. He says, Gentlemen, there were two Boxes locked, and one nailed; and *Bambridge* asked her for the Keys of her Boxes; but she refused to deliver them to him; upon which *Bambridge* broke them open; and that Mrs. *Berkley* was all the Time there, and called it a Robbery. He says, that the Things were taken away by *Bambridge*'s Directions; and that she, Mrs. *Berkley*, said, that the taking away her Wearing Apparel was Felony. He says, Gentlemen, he was ordered to take the Bed and Bedding, and carry it into the Lumber-Room; that afterwards it was taken from thence, and carried to the Water-side, to be sent to *Wandsworth*. There were several small Things, as an Emerald and Garnet, and some other Rings, one of them a Stone Ring; all these Mr. *Bambridge* put in his Pocket, he said for fear of losing them; and at the same Time he called to *Savage* and *Douglas*, to see that he put them into his Pocket, for fear they should be lost. Now, Gentlemen, he says further, the Wearing Apparel (which was rich), and such Things, the Prisoner put into the Portmanteau, and ordered it to be carried into the Lumber-Room; and other Things were carried to *Will*'s Coffee-House; and the Prisoner said, he seized for Rent, and would stand by it. What he says farther, in relation to Mrs. *Berkley*, was, that she was there all the Time, and frequently complained it was Felony, and a Robbery; and says, that the Goods were removed, some at one time, and some at another, in the Day-time, not concealedly. This, Gentlemen, is the Substance of his Evidence: But he says something further, that her Bed being gone, she would not continue in the Room.

Burgess, he says, they had called her up: He spoke to the last Time of their being in the Room, about fourteen Days after the 23d of *October*. He says, he went up soon after the Door was broke open, and gives much the same Account as the former Witnesses have done; and that *Bambridge* put some small Stones in his Pocket: He says, that the putting these Things in his Pocket, was for fear they should be lost, and that he told *Douglas* so.

Savage says, that, hearing a Noise, he went to the Room, and found Mrs. *Berkley* there. He says, that *Bambridge* asked her for the Key; Mrs. *Berkley* said, he should have none, for that he came to rob her; upon which he broke the Boxes open: He says, that there were several good Things in them; there was a Garnet, and a little Stone Ring, two Cornelian Seals, and a loose Stone: These Things *Bambridge* put in his Pocket; but he does not remember that *Bambridge* said, he put them in his Pocket for fear of their being lost; nor did he say, that *Bambridge* bid *Douglas*, or any one else, take notice, he put them there for fear of being lost. He says, that the Bed was sent down to *Wandsworth*. He spoke to the Matter of the Fraud, as to the having the Wearing Apparel set down for so much Silk as would be sufficient for such a Purpose; and he was asked, Gentlemen, by Mr. *Bambridge*, whether any thing clandestine was done in breaking open the Boxes, and he said not. He says, that *Bambridge* pretended he seized the Goods for Rent, and that the Rings were shewn in the Coffee-House.

Solas, he said, the Rings were shewed to him, not to be sold, but to know the Value of them. He spoke as to that Ring that was brought to him by *Coltheart*, with a Diamond in the Middle of it, worth 14*l.* Gentlemen, there does not appear to be any such Ring in the Inventory, or the Lady's Boxes; but let that be as it will, it was only sent for him to value it.

The next Witnesses are *Howard* and his Wife: He says, there were several Things disposed of by Mr. *Bambridge*: It seems he lodged at their House. She says, this flowered Sattin Gown was carried to their House, and there disposed of: He swapt it for a Gold Watch. There was some Gold and Silver Lace mentioned in the Inventory, which, she says, was sold to one Mr. *Harris*, who brought the Money, which was not quite Ten Pounds. She says, that he did not say, that it was Mrs. *Berkley*'s, but his Wife's. This, Gentlemen, is all the Evidence given by the Witnesses, from the one Side, or the other. If there is any thing else, that I have omitted, I hope you will put me in mind of it. Now, Gentlemen, what you have to consider is, whether *Bambridge* did feloniously steal these Goods.

This, Gentlemen, is an Indictment founded upon the Statute of the 12th of the late Queen, the Words are, If any Person shall feloniously steal any Goods worth Forty Shillings out of a Dwelling-House, he shall suffer Death, without the Benefit of his Clergy. Now the Question is, Gentlemen, whether he did steal, or take them away with a felonious Intent, to make it Felony; or whether he took them as a Distress for Rent? Whether the Distress was regular or not, is not the Matter; if the Distress was irregular, he is liable to an Action; if he took them with any View of committing any Theft or Felony, you will find him guilty of Felony; but if that was his real Intention, to levy Rent by Distress, and that he had no Intention to steal the Goods, then he is not guilty of this Felony; but if he made use of this Intent of distraining, with a View of stealing these Goods, and to make them his own, and this was only a Colour, or mere Pretence of his wicked Intention, and that he had it in his View to steal these Goods, though this is a legal Remedy, yet it will not excuse it; for if a Man make use of a legal Process with a felonious Intent, it will be Felony in him; for if a Man gets a Horse that was not his own by Replevin, it is Theft; if a Man gets another's Property into his Possession with a felonious Intent, it is Felony, but if not with a felonious Intent, it is not Felony; if he makes it only a Pretence to get Goods, and then dispose of them, and does this with a felonious Intention, and an Intention to steal them, then he will be guilty of Felony. Gentlemen, you will consider what was his Intention, and consider the Circumstances that have happened, which are fresh in your Memories. If these Goods were taken with a felonious Intent, then you will find him Guilty; but if he only took them as a Distress for Rent, and with no felonious Intent, then you will Acquit him.

Mr. *Matthews*. (*Speaking to the Officer.*) Will the Jury withdraw?

Mr. *Kettleby*. What have you to do with their withdrawing? Let them give their Verdict in Court, if they will.

Mr. *Matthews.* They are at a Diſtance now, they muſt either withdraw to conſult, or conſult together in Court.

Mr. *Kettleby.* You and the Proſecution are of a Piece; you juſt now read Part of the Indictment, and left out the other Part.

Mr. *Matthews.* Officer, clear the Court.

L. C. J. If you pleaſe to withdraw, and conſider of the Verdict.

Then an Officer was ſworn to keep the Jury, and they withdrew, and returned in a very ſhort Time.

L. C. J. (*The Jury being returned.*) Call over the Jury. Anſwer to your Names. (*Which they did.*)

Mr. *Matthews.* (*After he had called them over.*) Are you all agreed in your Verdict?—*Omnes.* Yes.

Mr. *Matthews.* Who ſhall ſay for you?

Omnes. Foreman.

Mr. *Matthews. Thomas Bambridge*, hold up your Hand. (*Which he did.*) Then, ſpeaking to the Jury, Look upon the Priſoner at the Bar, how ſay you, Is he Guilty of the Felony whereof he ſtands indicted, or Not Guilty?

Foreman. Not Guilty.

It is remarkable, that though the Proſecutions againſt Mr. *Huggins*, Mr. *Bambridge*, &c. were ordered by his Majeſty, on an Addreſs from the Houſe of Commons, and conducted by ſome of the greateſt Men at the Bar, yet they got off—all being acquitted.

XX. Minutes of the Proceedings of the Committee, appointed to inquire into the State of the Gaols of this Kingdom, touching a Charge againſt Sir *Robert Eyre*, Knight, Lord Chief-Juſtice of his Majeſty's Court of Common Pleas, for perſonally viſiting *Thomas Bambridge*, late Warden of the *Fleet*, whilſt he was a Priſoner in *Newgate*, under a Commitment of the Houſe of Commons, &c. &c.

At the Speaker's Chamber at the Houſe of Commons, at the Committee appointed to inquire into the State of the Gaols of this Kingdom.

Edward Hughes, *Eſq. in the Chair.*

Sabbati, 25 die Aprilis, 1730.

THE Committee having received ſeveral Letters and Informations relating to the foregoing Charge, proceeded to examine a great Number of Witneſſes in the moſt ſolemn Manner relating thereto; when the ſeveral following Letters (except No. 5. directed to *Francis Harbin*) were ſent under Cover to *Edward Hughes*, Eſq. and being produced by him to the Committee, were read; which Letters, as they ſeem intended for an Introduction to the Charge, and as they relate to ſome of the foregoing Trials, are here inſerted. *

The ſeveral following Letters (except that directed to Francis Harbin) *were ſent under Cover to* Edward Hughes, *Eſq. and produced by him to the Committee.*

N°. I.

'SIR,

'My ſuppoſed Attachment to the Intereſt of Mr. *Bambridge*, cannot, 'am ſenſible, but have prejudiced me in the Opinion of all good Men, 'and therefore, before, Sir, I offer my Service to you, and to my Coun-'try, it may not be amiſs to ſay ſomething of the Motives that at firſt in-'duced me to fall in with his Party, and alſo of thoſe which have ſince 'determined me to quit it.

'After the Report of the late Committee, I will not preſume to ſay, I 'thought Mr. *Bambridge* innocent; but, I confeſs, I looked upon him to 'be far leſs guilty, than ſince, by examining his own Side only of the 'Queſtion, I find he is; the Atrociouſneſs of his Crimes took off to me 'much of the Probability of his committing them; and it was hard for a 'Man who had any Virtue himſelf, to believe there was another ſo per-'fectly abandoned.

'Mr. *Bambridge* took all the Opportunities he could, of gaining thoſe 'he thought might be of uſe to his Party; amongſt the reſt, he applied 'himſelf to me. I confeſs, at firſt, the Art with which he palliated his 'Offences, deceived me; I went heartily into his Concerns, and did all 'for him in my Power, as for a Man ſtruggling againſt the Current of 'the Times; but as I grew into his Confidence, the Maſk was taken off, 'and I found the Uſe he intended to make of me, was not to aſſiſt an op-'preſſed Man in his Defence, but to ſcreen a guilty Perſon from his juſt 'Puniſhment. As to the perſonal Injuries I have received, (and ſurely 'Nobody has received more) I forbear to mention them, ſince my pri-'vate Pique ſhall never add an Edge to any Informations I may hereafter 'give you. I am weary of the Part, Sir, which hitherto I have acted in 'this Affair; 'tis with Pleaſure I quit the Side of Artifice and Diſſimula-'tion, and with Joy I enter into the Service of Truth, and of my Coun-'try. I heartily beg pardon for any Faults I may already have committed, 'and aſſure you, Sir, it ſhall always be my Study for the future, to teſti-'fy by my Actions, as well as Words, how much

'*I am, Sir,*

'*Your faithful and*

Oct. 29*th*, 1729. '*Devoted Humble Servant.*

N°. II.

'SIR,

'The laſt Time I did myſelf the Honour of writing to you, I promiſed 'to give you all the Informations in my Power, that might any ways tend 'towards carrying on, with Effect, that generous Inquiry made by the 'late Committee of the Houſe of Commons. In purſuance of which Pro-'miſe, give me Leave, Sir, to lay before you certain Obſervations, which, 'though at preſent little more than Conjecture, yet are ſuch as I deſpair 'not, by Time and Application, to produce the ſtrongeſt Evidence of 'their Truth.

'The late Warden, Mr. *Bambridge*, notwithſtanding all his Vanity and 'Raſhneſs, could never have been capable of ſo much Folly, as to have 'committed ſo many notorious Offences in his Office, if he had not pre-'ſumed on the Intereſt of ſome ſuperior Power, which (at leaſt as he fan-'cied,) might be able to prevent any Inquiry into his Conduct; or if that 'by no Arts were to be evaded, would at laſt ſcreen him from Puniſhment. 'That this Preſumption of his was but too well founded, I am apt to be-'lieve is pretty apparent; the Behaviour of a certain Court, when Com-'plaints were made againſt him; the Difficulties there were in procuring 'Rules, on the plaineſt Proofs of the moſt flagrant Oppreſſions; the am-'biguous Terms in which ſuch Rules were generally drawn up; the little 'Regard he paid thoſe Orders, when ſerved upon him, and his Impuni-'ty, notwithſtanding ſuch Diſreſpect, are Arguments which amount al-'moſt to a Demonſtration of his being in Confederacy with a certain Per-'ſon, who, no doubt, took care to receive from him an adequate Satisfac-'tion for ſuch Favours.

'But as a Correſpondence of this Nature was equally criminal in the 'Receiver and Giver, it cannot but be ſuppoſed, that the utmoſt Caution 'was uſed, in order to the carrying it on with impenetrable Secrecy. But 'when the Houſe of Commons thought fit to impriſon *Bambridge*, a third 'Hand became abſolutely neceſſary towards that Purpoſe; and from 'thence ſo much Light has been let into that dark Affair, that by degrees 'I no way doubt, but that a perfect Diſcovery may be effected. I will 'only beg Leave to add one thing to this long Letter, and that is, that 'although Vice be contagious in its Nature, and that I have long con-'verſed in Intimacy with Mr. *Bambridge*, yet, if I know my own Heart, I 'will venture, Sir, to aſſure you, there is nothing I ſo much hate as Diſ-'ingenuity; and that for the future, I ſhall let ſlip no Opportunity of 'ſhewing with how much ſincerity

'*I am, Sir,*

'*Your faithful, and*

Nov. 12, 1729. '*Devoted Humble Servant.*

N°. III.

'SIR,

'Having, in my former, laid before you thoſe Reaſons which induced 'me to believe a Correſpondence between *Bambridge* and a certain great 'Man, at whom I have already pointed; I now beg Leave to add ſuch 'Facts, as have at any time come to my Knowledge, and which ſeem to 'confirm it. Firſt, Sir, give me Leave to obſerve, that *Bambridge*, in 'regard to his Expences in private Life, has, ſince his Impriſonment, 'been very much ſtraitened; but where Counſel, or any thing elſe that 'was neceſſary towards his Defence, was wanting, Money has not only 'been expended, but laviſhed. I lay the more Streſs on this, becauſe in 'ſome reſpect, it falls within the Circle of your own Obſervance. When 'Mr. *Bambridge* attended laſt at the Houſe of Commons, his Counſel was 'pleaſed to ſay for him, that the preſent Narrowneſs of his Circumſtan-'ces obliged him to appear with but one Counſel; but ſince that fruitleſs 'Negotiation, in which through his Arts I was ſo unlucky to become an 'Agent, we have ſeen a very different Turn. The Courts of *Chancery*, '*King's Bench*, *Common Pleas*, and *Old Bailey*, have all in their Turns 'been crowded with Orators in his Favour.

'The Lowneſs of his Fortune at the Time of his coming to his Office 'at the *Fleet*, is notorious to the World; and though I believe, as to get-'ting of Money, he can by no means be charged with being idle; yet, '(if even the moſt extravagant Calculation ſhould be admitted) the Short-'neſs of his Stay there could not but prevent his acquiring half that Sum 'of Money, which has been already expended in defence of theſe Proſe-'cutions; add to this, that his own Creatures have Imprudence enough 'to mention this, as the ſtrongeſt Part of what they call a formidable In-'tereſt, and that I myſelf have ſeen his Clerk deliver a Letter to that great 'Man, in *Weſtminſter-Hall*; to which his Lordſhip ſaid, I thank you, 'Sir, I am obliged to you, Sir, or Words to that purpoſe.

'But that which has given me the ſtrongeſt Aſſurances, and ſuch as, 'I hope, will one Day terminate in the cleareſt Evidence, is the Con-'verſation I have had with one Mr. *B.* who is himſelf perfectly intimate 'with *Bambridge*, and whoſe Wife has given very extraordinary Inſtan-'ces of her Attachment to his Intereſt. This Gentleman, though he 'ſtill owns the greateſt Friendſhip to him, yet has confeſſed to me, that 'to his own Knowledge, *Bambridge* had it in his Power to —— that great 'Man, (that was his Expreſſion,) not only in reſpect to things done as to 'the Office of the *Fleet*, but in other Reſpects alſo; and that he was ſorry '*Bambridge* was not to be perſuaded to give him up to Juſtice, which might 'be a means, not only of ſaving himſelf, but would alſo make ſome 'Atonement for his Faults. He promiſed me alſo to make ſo ſtrict an In-'quiry into this Affair, as to furniſh me with a Clue, by which might be 'unravelled this whole Work of Darkneſs. For this purpoſe I was to 'have met on *Friday*, but ſomething having intervened, he has put it off till '*Tueſday* next, till when I ſhould have delayed this Letter, but that I

* Theſe Letters, &c. are taken from the Proceedings, &c. in this Affair, as drawn up by Mr. *Luke Kenn*, to be laid before the Houſe of Commons. The whole Proceedings are long, being about 142 Folio Pages, wrote cloſe, in a ſmall Round Hand; ſo we have taken only ſo much, as may give ſome Light into the Charge relating to the foregoing Trial, &c.

'was impatient of giving you some further Proof of that Sincerity with 'which

'*I am, Sir,*

'*Your faithful and*

Nov. 13, 1729. '*Devoted Humble Servant.*

N°. IV.

'SIR,

'Mr. *Harbin* having acquainted me, that he intended to make you a 'Visit, I was unwilling he should go without carrying with him this, as 'a Mark of my Duty and Respect, especially so remarkable an Event '(I speak with regard to the Prosecution) as the Acquittal of Mr. *Bam-*'*bridge* having happened since your going down into the Country. I do 'not pretend, Sir, to give you an exact Detail of that extraordinary Af-'fair, the public Prints having doubtless, and probably a Manuscript 'Copy of his Trial, may long ere now have reached your Hands; all I 'shall endeavour, will be by a short Observation or two upon it, to give 'you some Light into the Means by which that unexpected Event was 'brought about.

'It is agreed, on all hands, that a legal Distress for Rent is a very in-'nocent as well as a lawful Action; but if, under colour of such Distress, 'a Person comes, and, with a felonious Intent, steals and carries away 'Goods, the Pretence of a Distress will be so far from extenuating, that 'it will heighten the Offence, since it is done *in fraudem legis*; and the 'Law, which is intended to preserve and to protect the Property of the 'Subject, is thereby made a Means to destroy it.

'A felonious Intent is only to be proved from the Actions of him who 'commits the Fact; and that such an Intention actuated Mr. *Bambridge* 'in this extraordinary Seizure, is pretty apparent, from the two follow-'ing Circumstances which attend it.

'*Turner*, the Person employed by Mr. *Bambridge* as an Appraiser (though 'a Prisoner and a Creature of his own), yet thought fit humbly to repre-'sent to him, that he had never seen necessary Wearing Apparel distrained 'before (as indeed by Law it cannot); upon which Mr. *Bambridge* or-'dered him, in taking the Inventory, instead of setting down a Gown and 'Petticoat, as the Thing really was, to set down Silk sufficient for a Gown 'and Petticoat; and made use, in several Instances, of the same Artifice: 'A thing in itself so plain and flagrant, that even Mr. *Bambridge* could 'not find out an Evasion; but in that he was kindly helped out by the 'Bench; from whence, in summing up the Evidence, it was declared, 'that the Appraiser's was only an idle Objection, to which Mr. *Bambridge* 'gave way, merely because he would have nothing left out of the In-'ventory.

'The other was this: It was fully proved, that Mr. *Bambridge* carried 'away four Rings in his Pocket, though but one is mentioned in the In-'ventory, and that too is called a Crystal, tho' it was indeed an Amethyst. 'To us, who were Spectators, this appeared to have a very great Weight; 'but it seems it appeared in a very different Light to the Gentleman who 'tried him, since it escaped both his Memory and his Notes.

'Having twice mentioned that Gentleman, I cannot help doing him 'Justice, on this Occasion, by observing, that (however in other Re-'spects his Enemies may asperse his Character) there is one Part of the '*Judge*, in which I believe no Man ever came up to him; I mean, in 'being Counsel for the Prisoner. I am afraid I have been already too 'prolix, and will therefore lengthen this Letter no further, than to as-'sure you, Sir, of my being,

'*With the utmost Deference and Respect,*

'*Your Obedient and Devoted*

Dec. 20, 1729. '*Humble Servant.*'

N°. V.

'Dear *Frank*,

'I find that Mr. *Bambridge*, however unlikely he is in succeeding, will 'undoubtedly move the Court of *King's-Bench* for Judgment and Damages 'upon the Writ of Appeal; and hopes great Advantages from the Favour 'of the Gentleman who tried him, on the first Indictment, for the Mur-'der. I do not find, from *Codnor*, that he has any Affidavits to support 'this Motion; or, at least, if he has any, he has not trusted him with 'them: However, am to see *Codnor* this Evening; and if any Thing 'material should occur, shall leave a Line, so that you may have it very 'early in the Morning. I find he and all his Party are very alert at pre-'sent; and are so far from being apprehensive, from the present Temper 'of the House of Commons, that they, on all Occasions, treat the late 'Committee with the utmost Insolence and Contempt. However, as 'there is little Likelihood that his Assurance will be able to defeat the 'united Endeavours of those Gentlemen for the Relief of the Unhappy, 'I please myself with hoping that all will at last go right. I am,

Feb. 2, 1729-30. '*Yours*, &c.'

To Mr. Harbin.

N°. VI.

'SIR,

'Mr. *Harbin* having informed me, that you have been so good as to 'enquire after me, I thought it necessary for me to excuse myself for not 'attending you, by acquainting you with the Reason; which is, that my 'being seen at the Horse-Guards, as Things stand at present, might be 'some Hindrance to my entering into the Knowledge of some Things, 'about which it is at present my Duty to enquire.

'There is another Motive which induced me to give you this Trouble; 'and that is, that you would be so good as to mention it to the Chair-'man, that as my Time (the only Thing valuable that is left me in my 'Misfortunes) is almost wholly taken up in endeavouring to do Service 'to the present Enquiry; and as it has involved me in the Hatred of a 'Party of the worst of Men, who let slip no Opportunity of making me 'uneasy; I hope it may not be thought unreasonable to give some Di-'rections for my receiving a moderate Subsistence.

'I confess Mr. *Harbin* has been, in this Respect, very kind; but as I 'have been hitherto unused to ask any body for every Shilling and Six-'pence that is necessary to be laid out, I conceive it would be for both 'our Advantages to have it put into another Channel.

'Before my engaging in this Affair, I confess, I used sometimes to 'prepare some little Labours for the Press; but as these are the Employ-'ments of a Mind at ease, in my present Circumstances, it is no way in 'my Power to compose them. As this is a Subject on which I should 'never have prevailed on myself to speak, and on which I write with the 'greatest Reluctancy, I hope you will forgive this Trouble from

'*Your obliged and*

Thursday Morning. '*Obedient Servant.*'

The Committee thought it their Duty to examine strictly into an Affair of so extraordinary a Nature, when several Persons appeared before them, and endeavoured to make good their several Informations.

Which Persons, having been examined before the Committee in the most solemn manner, relating to the foregoing Charge, grosly prevaricated in their Examinations, contradicted one another in several material Circumstances, and, as to the Facts, were falsified by Persons to whom they referred for the Truth of what they had declared.

It likewise appeared to the Committee, that divers of the said Persons were Prisoners in *Newgate*, or the *Fleet*; some of them of vile and infamous Characters; others actuated by a Spirit of Resentment, on account of Causes determined against them before the said Lord Chief Justice; and *all* of them tampered with, and influenced. It further appeared to the Committee, that several of the said Persons had Meetings and Consultations amongst themselves; and had been guilty of divers evil Practices, in order to set on foot and support the said Charge against the said Lord Chief Justice, and the Matters contained in their said Informations.

After the Committee had spent several Days upon the said Enquiry, and had examined all the Witnesses that appeared before them, the principal Persons concerned in the Conspiracy having Reason to apprehend, that the Evidence given by them to support the said Charge, would not be sufficient to impose upon the Committee, and to obtain Credit to the said Informations, did consult with a Person to fix a new Charge upon the said Lord Chief Justice; not mentioned before in any of their Examinations, by giving Evidence of certain Circumstances, to induce a Belief, that about three Days before the Time appointed for the Trial of the said *Thomas Bambridge* for Felony, in the last long Vacation, the said *Thomas Bambridge* did send a Letter to the said Lord Chief Justice for Money; and that, in consequence thereof, he received one hundred Guineas.

Whereupon the Committee thought fit to re-examine the said principal Persons, who before had been examined as to the former Charge, who were not able to give the least Colour of Evidence to support the said new Charge, and were flatly contradicted by the Evidence to whom they referred; and on their Examinations, the Committee being convinced that the said new Charge was only a Continuation of the former Conspiracy, on considering the whole Matter, came to the following Resolutions.

Resolved,

That it appears to the Committee, That there hath been a wicked Conspiracy carried on by certain infamous and profligate Persons, to vilify and asperse the Character of the Right Honourable Sir *Robert Eyre*, Knight, Lord Chief Justice of his Majesty's Court of Common Pleas;

Resolved,

That it appears to this Committee, That the Informations given to this Committee against the said Lord Chief Justice *Eyre*, are false, malicious, scandalous, and utterly groundless.

Then *Resolved*, That *Roger Johnson*, and a great Number of low, ordinary People *(there named)*, were the Persons concerned in the said Conspiracy.

To which the House agreed.

Thus this great Man had Justice done him, in as honourable a Manner as possibly could be, and cleared of so scandalous and infamous a Charge.

XXI. The Trial of Mr. Richard Francklin *, for printing and publishing *A Letter from the Hague*, in the *Country-Journal*, or *Craftsman*, of *Saturday*, the 2d of *January*, 1730, at the Sittings of the Court of *King's-Bench*, *Westminster*, on *Friday*, *December* the 3d, 1731, before the Right Honourable the Lord Chief-Justice *Raymond*.

The Names of the Jurors.

Tho. Milner, Esq.	*Wm. Tilliard*, Esq.
Geo. Short, Esq.	*Tho. Moore*, Esq.
Tho. Allen, Esq.	*Philip Baker*, Esq.
Jacob Harvy, Esq.	*Joshua Jackson*, Esq.
Hen. Norris, Esq.	*William Turner*, Esq.
Samuel Tysson, Esq.	*John Wilson*, Esq.

Mr. *Parker*.

MY Lord, in this Cause, his Majesty is Plaintiff, and *Richard Francklin*, Defendant. The Information sets forth, That before the Demise of the late King, divers Differences and Controversies arose between his said late Majesty and divers Princes and foreign States, being his Allies, and the King of *Spain*, concerning the public Safety and Commerce of this Kingdom, and the Peace and Tranquillity of *Europe*; and that, pending such Differences, to wit, the 30th *September*, 1725, a certain Treaty, betwixt the said late King, *Lewis* the *French* King, and the King of *Prussia*, was concluded and made at *Hanover*; and that afterwards, to wit, the 9th of *November*, 1729, in order to compromise such Differences, and to establish Peace in *Europe*, a certain Treaty of Peace, Union, Amity, and mutual Defence, was concluded and made, betwixt his Majesty King *George* the IId. and the said *Lewis* the *French* King, and *Philip* King of *Spain*, at the City of *Seville*, in the said Kingdom of *Spain*. The Information also sets forth, That *Richard Francklin*, well knowing the Premisses, but being a malicious, seditious, and ill-disposed Person, and a perpetual and diligent Publisher and Seller of seditious and scandalous Libels, and disaffected to his present Majesty and his Government; and wickedly, maliciously, and seditiously contriving and intending to disturb and disquiet the happy State of the Public Peace and Tranquillity of this Kingdom; and to bring his present Majesty's Treaty of Peace (which, with great Affection towards his Subjects, and for the Advantage of this Kingdom, was concluded) into Contempt and Disgrace among all his liege Subjects of this Kingdom; and also to detract, scandalize, traduce, and vilify the Administration of his present Majesty's Government of this Kingdom, and his principal Officers and Ministers of State; and to represent his said Officers and Ministers of State as Persons of no Integrity and Ability, and as Enemies to the public Good of this Kingdom; and to cause it to be believed, that his said present Majesty, by the Advice of his said principal Officers and Ministers, intended to break and violate the said Treaty last mentioned; and thereby to raise and sow Differences and Discords betwixt his said present Majesty and the said *French* King, and King of *Spain*; and also to spread false News and Rumours concerning the State of the public Affairs of this Kingdom; and to bring his said present Majesty, and his Administration of the Government of this Kingdom, into Suspicion and ill Opinion of his said liege Subjects, on the 2d of *January*, in the 4th Year of his present Majesty's Reign, at the Parish of St. *Paul's*, *Covent-Garden*, in the County of *Middlesex*, a certain false, scandalous, and seditious Libel, [intitled, N°. 235, *The Country-Journal; or, the Craftsman*. By *Caleb D'Anvers*, of *Gray's-Inn*, Esq. *Saturday*, *January* 2d, 1730,] wickedly and maliciously did print and publish, and caused to be printed and published. In which Libel, of and concerning his said present Majesty King *George* the IId. now King of *Great-Britain*, &c. and his Administration of the Government of this Kingdom, and State of the public Affairs of this Kingdom; and of and concerning his said principal Officers and Ministers of State; and of and concerning the said Treaty, made betwixt his said present Majesty and the said *French* King, and the said King of *Spain*; and also of and concerning the said *French* King, the said King of *Spain*, and the most Serene Prince *Charles*, Emperor of *Germany*; are contained (among other Things) divers false, feigned, scandalous, seditious, and malicious Matters, according to the Tenor following, to wit; [*Extract of a private Letter from the Hague.*] "A Rumour hath been for some Time privately spread about, "and begins to gain Credit here, that a Misunderstanding will soon dis- "cover itself between the Allies of *Seville*;" (meaning his said present Majesty, the said *French* King, and the said King of *Spain*) "and that "certain Ministers" (meaning the said principal Officers and Ministers of his said Majesty, employed and intrusted in the difficult Affairs of State) "having at length found out, that too close an Union with *France*, and "a War upon the Foot of the Treaty of *Seville*, is quite against the "Grain of the People, are endeavouring to bring about an Accommo- "dation with the Emperor, and to undo every Thing they have been "doing for these five Years past. If this should prove true, it will cer- "tainly redound very much to the Honour of those Gentlemen, who "have so vigorously opposed the late Measures; and the Ministers, who "have not only concerted and pursued these Measures, but loaded all Op- "position to them with the foulest Imputations, will be obliged to take "a great deal of Shame to themselves; for what can be a stronger Con- "demnation of their own past Conduct, or the Conduct of those "whom they have employed to write in their Cause, than to see "them wheel about all on a sudden, and pursue Measures directly "opposite, which have been pointed out to them, for several Years to- "gether, by their Adversaries; and for which they have represented "those Gentlemen, in the most opprobrious Colours, as factious Incen- "diaries, Germanized Patriots, and Enemies to their Country? What "can be more ridiculous than to see them desert one Ally, whose good "Faith, Sincerity, and even Cordiality of Friendship, they have so of- "ten extolled, and at last run into the Arms of another, whom they have "so industriously set forth as the most dishonourable, ungrateful, and per- "fidious Prince? They must have altered their Opinion of this Prince "very much (if this Report is true), and seem to rely upon his Good- "nature, putting themselves thus absolutely in his Power; for if he should "refuse to deal with them, after the Usage he hath received, they will "be broke with all the Courts of *Europe*; and he cannot be insensible of "their Perfidy to others, at the same Time that he is treating with them. "How will they be able to justify those vast Expences which they have "already brought upon their Country, by an obstinate Perseverance in "other Measures, till the last Extremity, as well as those farther Expences "and Hazards, in which such a precipitate Alteration of Counsels, in "the present Circumstances of *Europe*, will certainly involve it? For "though the Measure, which is now said to be secretly carrying on, was "certainly the most eligible, whilst they remained unembarrassed with "Engagements of another Kind; and though it must be confessed to be "very desirable at present; yet it seems to be attended with very fatal "Consequences, and almost insuperable Difficulties. The People, of "whom I am speaking, had their Hands at Liberty five Years ago, and "might have entered into what Measures they pleased with the Emperor, "without giving Umbrage, or any just Reason of Complaint, to other "Courts; but at present they cannot do it, without an Infraction of so- "lemn Treaties, and drawing upon their Country the Resentments which "usually attend Violations of Faith. One immediate Effect of this Re- "sentment may be the Interruption of Trade, and the Seizure of that vast "Pledge, which *Spain* hath at this Time in her Hands; so that the only "pretended good Effect of their former Conduct, may be absolutely de- "feated by their present Scheme. Another necessary Effect (for so I "think I may call it) of such a Measure, at present, will be a Con- "junction of *France* and *Spain*; and a certain Court may have the Morti- "fication to see those two Crowns united against them more strongly than "ever, by their extraordinary Management, after they have spent so many "Millions to prevent it. I am far from designing to insinuate from hence, "that an Accommodation with the Emperor is a wrong Measure: On "the contrary, I wish it had been thought a right Measure long ago. My "only Intention is to shew how difficult, in my Apprehension, the Con- "duct of some Ministers hath rendered it to their Country, as well as dis- "honourable to themselves, by carrying along with it the severest Censure "of their own Conduct, and the strongest Justification of their Adver- "saries, against all the Aspersions which have been cast upon them."] In Contempt of his said present Majesty, and his Laws; and to the great Disgrace, Scandal, and Infamy of his said present Majesty, and his Administration of the Government of this Kingdom; to the Disturbance of the public Peace and Tranquillity of this Kingdom; to the evil Example of all others, offending in the like Case; and against the Peace of our said Lord the King, his Crown and Dignity.

Sir Philip York, *Attorney-General*. My Lord, and Gentlemen of the Jury, I am Counsel for the King. This is a Prosecution against the Defendant, Mr. *Francklin*, for printing and publishing a scandalous and seditious Libel; an Offence (however it hath been treated of late Days) which the Law considers as a very heinous Crime, as it tends to disturb the Peace of the Kingdom, and to bring into Contempt the King's Administration of the Government; and as it tends to create great Jealousy and Dissatisfaction in the Minds of his Majesty's Subjects against his Government; and, indeed, this is the Use you find made of it. The present Libel, for and upon which the Defendant is to be tried, will appear to be a Libel of that Nature, and attended with the most aggravating Circumstances of any ever yet published.

To explain the Nature of this Prosecution and Libel, and to shew the Connection and Tendency thereof, it is necessary to open a little to you the several Parts of it, in order to apply it to the Description of the Persons and Things spoken of. It is described to be a Libel concerning his present Majesty, and his Majesty's Government of the Kingdom, and concerning the public Affairs thereof, and concerning his Ministers; and it is expressed to relate to a Treaty concluded betwixt his present Majesty, and the *French* King, and the King of *Spain*, at *Seville*, in *November*, 1729. The Liberty that the Defendant, Mr. *Francklin*, has taken, is from Things done by the Princes in that Treaty, upon a Pretension, that it is an Extract of a private Letter from the *Hague*: He says, ["A Rumour hath been for some Time privately spread about, "and begins to gain Credit here, that a Misunderstanding will soon dis- "cover itself between the Allies of *Seville*."] Now the Allies of *Seville* are well known to be his present Majesty, the King of *France*, and the King of *Spain*. Again, the Writer goes on to say, ["That certain Mi- "nisters" (whom the Information explains to be the Ministers of his present Majesty) "having at length found out, that too close an Union with "*France*, and a War upon the Foot of the Treaty of *Seville*, is quite "against the Grain of the People, are endeavouring to bring about an "Accommodation with the Emperor, and to undo every Thing they "have been doing for these five Years past,"] which will carry the Calculation back to the 30th *Sept.* 1725, when the Treaty of *Hanover* was made. And then afterwards he says, ["If this should prove true, it "will certainly redound very much to the Honour of those Gentlemen, "who have so vigorously opposed the late Measures; and the Ministers,

* Taken down in Short-Hand, and transcribed into Long-Hand, by Mr. *J. Weston*.

" who have not only concerted and purſued theſe Meaſures, but loaded " all Oppoſition to them with the fouleſt Imputations, will be obliged " to take a great deal of Shame to themſelves."] And then he aſks the Queſtion, [" For what can be a ſtronger Condemnation of their " own paſt Conduct, than to ſee them wheel about all on a ſudden, and " purſue Meaſures directly oppoſite? And what can be more ridiculous " than to ſee them deſert one Ally, whoſe good Faith, Sincerity, " and even Cordiality of Friendſhip, they have ſo often extolled?"] Here is a plain Charge of Perfidy, or breaking of Faith. Again, the Miniſters are repreſented as running into the Arms of another Ally, whom thoſe Miniſters have ſet forth as the moſt diſhonourable, ungrateful, and perfidious Prince. Next, theſe Miniſters are repreſented as putting themſelves in the Power of that Prince; and ſays, [" If this Prince ſhould refuſe " to deal with them, after the Uſage he hath received, they will be broke " with all the Courts of *Europe*; and he cannot be inſenſible of their Per- " fidy to others," (that is to ſay, the former Allies) " at the ſame time " that he is treating with them."] Gentlemen, you may plainly obſerve here, that this is a poſitive Charge of Perfidy and Breach of Faith on theſe Miniſters. Again, the Libel, or pretended Letter, charges them with bringing on their Country vaſt Expences, not to be juſtified, and a further Expence and Hazard, which their precipitate Alteration of Counſels will certainly involve it in. And then he proceeds to repreſent, that they cannot, at preſent, treat with the Emperor, without Infraction of ſolemn Treaties, and Violation of Faith. Gentlemen, this is a direct Charge of Perfidy, in the ſtrongeſt Terms. In the next place, he repreſents the Effects of the Reſentment that they will draw on their Country by their Violation of Faith: One immediate Effect, he ſays [" may be the Interruption of Trade, and the Seizure of that vaſt " Pledge which *Spain* hath at this time in her Hands."] Another neceſſary Effect (for ſo he thinks he may call it) will be a Conjunction of *France* and *Spain*; and a certain Court (theſe are his Words) may have the Mortification to ſee thoſe two Crowns united againſt them more ſtrongly than ever, by their extraordinary Management, after they have ſpent ſo many Millions to prevent it. Gentlemen, this the Nature and Import of the Libel; and whoever it is that is charged with theſe Things, it is plain, that there cannot be a more evident Charge of Perfidiouſneſs, and purſuing Meaſures deſtructive to their Country. The Reaſon of my opening thus, is to ſhew and make way for the Application of the Libel to the Perſons and Things mentioned in it. And in order to ſhew that the Libel is applied to his preſent Majeſty and his Miniſters, and the Adminiſtration of the Government of this Kingdom, and cannot be applied to any other, it will be neceſſary for you, Gentlemen, to conſider who are the Miniſters thus charged. The Deſcription is, that a Miſunderſtanding will ſoon diſcover itſelf between the Allies of *Seville*; and that certain Miniſters having at length found out, that too cloſe an Union with *France*, and ſo on. Gentlemen, who are the Allies of *Seville*? They are the King of *Great Britain*, the *French* King, and the King of *Spain*. Now, the Miniſters here ſpoken of are charged with Perfidiouſneſs in breaking that Treaty, who, to be ſure, muſt be meant of thoſe Miniſters that were impowered to make that Treaty; for no other could be guilty of breaking it: And, indeed, the Author himſelf hath, in this very pretended *Hague* Letter, fully explained his Meaning; and that it is not *France* or *Spain*, or their Miniſters, that he thus charges with Perfidy; for he tells us, that one neceſſary Effect of ſuch Violation of Faith, will be the Conjunction of *France* and *Spain*; and that a certain Court would have the Mortification to ſee thoſe two Crowns united againſt them more ſtrongly than ever. This amounts to a Demonſtration, that neither *France* nor *Spain*, nor their Miniſters are charged with breaking this Treaty; for they are plainly excluded: If ſo, then there is but one Party left, to wit, the King of *Great Britain* and his Miniſters; and it is plain, as if the Miniſters of *Great Britain* had been in expreſs Words. I am almoſt aſhamed to explain what is ſo plain; though I thought it proper to ſet forth thus at firſt. And, Gentlemen, if more Circumſtances are wanting to confirm this further, they may be added afterwards; ſuch as theſe, to wit, the Perſons who oppoſed them were ſtiled *Germanized* Patriots: Another Expreſſion is, the Seizure of that vaſt Pledge, which *Spain* hath at this time in her Hands. Beſides, it is incumbent on them to ſhew what other Court or Miniſters theſe Things can be applied to. There is another Obſervation, which I hinted at before, which is, that theſe Miniſters are endeavouring to undo every Thing they have been doing for theſe five Years paſt; which carries it back to the Time of compleating the Treaty of *Hanover*, which was in *September*, 1725. Gentlemen, it is far from our Deſire, that a forced Conſtruction ſhould be made or drawn from this Paper; but ſuch a one only, as every underſtanding Perſon, that takes it up and reads it, would put upon it: But I would not be thought to mean, that every Reader underſtands it as a Libel, or a ſcandalous Libel, as Courts and Juries do: No, the Law is not ſo abſurd to ſuppoſe ſuch a thing. Beſides, it is very well known, that there have been ſeveral Caſes of this Nature, that have been underſtood by the Court and Jury as ſuch, I mean as a Libel, before this Time; and it is neceſſary to mention to you, that a Picture may be drawn very lively, and conſtrued ſo; and that a Libel may be written under feigned Names, and yet plainly underſtood; as in the Caſe of Mr. *Miſ*'s Journal in 1728, wherein the fictitious Names of *Eſriff* and *Sophy* of *Perſia* were inſerted; yet, notwithſtanding theſe aſſumed Names, when it came to be tried by a Jury, they underſtood it, as every honeſt Man would, to be a ſcandalous Libel. I ſhall not take up now any more Time upon this Head. The next Thing is, whether the Defendant, Mr. *Franckl.n*, is guilty or not of the Facts charged in the Information? And now, Gentlemen, we ſhall give you the ſtrongeſt and cleareſt Proof in the world: We ſhall prove, by a Witneſs who bought ſix of theſe Journals, wherein the pretended *Hague* Letter is inſerted, of the Defendant himſelf, at his Shop; and that the Defendant ordered his Servant to give him them; and it will appear to you, that the Perſon who bought them, ſold them alſo himſelf; and, if that wants further Confirmation, we can prove, that the Defendant publiſhes ſeditious Papers or Journals every Week. Theſe Things being laid before you, we expect you will do Juſtice betwixt the King and the Defendant; and that is all which is deſired of you.

Charles Talbot, Eſq. Sollicitor General. My Lord and Gentlemen, I am on the ſame Side; and as the Caſe is ſo plain, I would not take up much of your Time. The Libel is againſt his Majeſty, and his principal Officers and Miniſters of State, under the Colour of *An Extract of a private Letter from the Hague*; and though it is ſaid ſo, yet whoever conſiders it, and attends to the Frame and Stile of it, and Tendency of the Whole, will plainly be convinced, that it is of an *Engliſh* Breed: But let it be real or fictitious, it is the ſame thing, if it is a Libel, and the Subject-Matter thereof is againſt the Government; nor is it material, whether the Matters or Things publiſhed therein are either true or falſe, if the Publication thereof is detrimental to the Government, and of a malicious, injurious, and ſeditious Deſign, to create a Miſunderſtanding and Diſcord between his Majeſty and his Allies; and to raiſe Jealouſies in the Minds of his Subjects: And, indeed, for what other Purpoſes can it be ſuppoſed to have been publiſhed, but for theſe very Things, of ſowing Sedition and Jealouſy, and diſturbing the publick Peace? Again, the Libel is not only againſt his preſent Majeſty, but alſo againſt his Miniſters; that they were about to make a Treaty with the Emperor, which would be undoing every Thing that they had been doing for theſe five Years paſt, which would occaſion them to take a great deal of Shame to themſelves. The next Thing he charges the Miniſters with is the deſerting of one Ally, and, in conſequence of that, the flying into the Arms of another; and that, if he thought fit not to deal with them, then they would be broke with all the Courts of *Europe*; and that he could not be inſenſible of their Perfidy to others, at the ſame time that he was treating with them. In the next Part of the Libel, he accuſes them of having brought a vaſt Expence on their Country by their former Meaſures; and that their preſent Meaſures will certainly involve it in a further Expence and Hazard. In the next place, he points out to the People the Conſequences and Difficulties attending theſe Meaſures; the firſt of which, he ſays, in his Apprehenſion, are very fatal; and the ſecond, almoſt inſuperable: He ſays, that one of the Conſequences will be the Infraction of ſolemn Treaties, and drawing on their Country the Reſentments which uſually attend Violation of Faith: Another Conſequence, he ſays, will be the Interruption of Trade; and that another Conſequence will be the Seizure of that vaſt Pledge which *Spain* hath in her Hands; and the laſt Conſequence, which he mentions, of ſuch Meaſures, (and which he thinks he may call a neceſſary Conſequence) is the Conjunction of *France* and *Spain*; and that a certain Court (which, as hath been already mentioned, can only be applied to *Great Britain*) may have the Mortification to ſee theſe two Crowns united againſt them more ſtrongly than ever, after they have ſpent ſo many Millions to prevent it. Gentlemen, I hope it now plainly appears to you, that this pretended *Hague Letter* is a Libel, and, I may ſay, a very malicious and ſeditious one too. If any thing may be called a Libel, ſurely Miniſters of State undoing what they have been doing for five Years paſt, and deſerting Allies, perfidiouſly expoſing their Country to Hazards and vaſt Expences, ſeizing their Effects, and occaſioning other Courts to be united againſt their own Country, may well be called a Libel; eſpecially when the Libel alſo carries in it the higheſt Charge againſt his Majeſty's Government, and tending to ſow Sedition, and Jealouſy, and Diſcords, between his Majeſty and his Allies, as well as between his own Subjects, and thereby diſturbing the publick Peace. That which remains is, of whom are theſe defamatory Things ſaid, and what Court and Miniſters are meant, or to whom theſe Expreſſions are applicable? The Expreſſions are, [" certain Miniſters are endeavouring, and a certain Court may " have the Mortification to ſee," *&c.*] I think every common Reader will preſently underſtand them to be the Court and Miniſters of *Great Britain:* And I believe I may venture to ſay, that the Gentlemen on the other Side cannot point out what Court and Miniſters are meant by theſe Expreſſions, if it is not the Court and Miniſters of *Great Britain*. Gentlemen, the whole Connection of the pretended *Hague Letter*, taking it all together, plainly points out to be meant of his preſent Majeſty and his Miniſters; and there is no Part thereof that can be applied, with any Propriety, to any other Court or Perſon whatſoever. In the Beginning of the Libel, we are told, that a Miſunderſtanding will ſoon diſcover itſelf between the Allies of *Seville*; and then immediately follows the Charge on certain Miniſters, that they were undoing every Thing that they had been doing five Years paſt. Theſe Words [" Certain Miniſters,"] muſt have a Reference either to the Miniſters of *Spain*, *France*, or *Great-Britain*. With regard to *Spain*, you have been already told, that it cannot have any Reference to them, becauſe one Effect of this Alteration of Affairs or Meaſures, is, that *Spain* would ſeize that vaſt Pledge which ſhe hath at this time in her Hands: Is this a Libel on the Miniſters of *Spain*, and can this give an Occaſion to *Spain* to lay hold on their own Effects, and ſeize their own Treaſure? No, it is Nonſenſe; ſo that the Miniſters of *Spain* cannot be meant; beſides, it is notorious to every body that knows any thing of the *South-Sea* Company, that that Company always have, and will have, while it is a Company, Effects and Treaſures in their Hands liable to be laid hold on and ſeized; ſo that as the Miniſters of *Spain* are not the Miniſters here meant, ſo likewiſe it ſhews that it cannot be meant of the Miniſters of *France*; for they are plainly excluded as well as the Miniſters of *Spain:* The Words are, [" That certain Miniſters having at length found " out, that too cloſe an Union with *France*, and a War upon the foot of " the Treaty of *Seville*, is quite againſt the Grain of the People."] Is this applicable to Miniſters of *France*? No; It is not Senſe to apply it to the Miniſters of any other Court than *Great-Britain*; but applying it ſo, it is good Senſe, and very proper: So that as the Miniſters of *Spain* and *France* are both excluded, it is plain to a Demonſtration, that it muſt be meant of the Miniſters of *Great-Britain:* And ſeeing every Part of the Libel is applicable thereto, and cannot agree with any other Court than the Court of *Great-Britain*, I apprehend, it will appear plain to you to be a Libel, and that the Expreſſions are meant of his Majeſty and his Miniſters; and if ſo, then there remains only one thing, and that is, to fix it on the Defendant; and this we will make appear beyond all Contradiction, not only as being the Printer of that Weekly Paper, but as having ſold them himſelf. And, Gentlemen, when this appears plain to you, after the *Attorney General* hath done his Duty, by laying a full Proof before you, it is hoped you will do yours.

Mr. Attorney General. I do not know whether they will deny the Defendant to be the Author or Publisher of the Paper; if they do, I shall prove it.

Mr. *Fazakerley.* We do deny it.

Mr. Att. Gen. Call Mr. Jenkins.

Mr. Jenkins *appeared.*

Mr. Att. Gen. Mr. *Jenkins*, look out the Copies of his Majesty's Speech the 20th of *January*, 1725.

(*Here it was produced.*)

Mr. Att. Gen. Did you examine it?——Mr. *Jenkins.* Yes.

Mr. Att. Gen. Where?——Mr. *Jenkins.* At the Parliament Office.

(*Mr.* Jenkins *cross-examined.*)

Mr. *Fazak.* Hath it been in your Custody ever since?

Mr. *Jenkins.* No.

Mr. *Fazak.* How know you that to be the very same that you examin'd?

Mr. *Jenkins.* Because I marked it.

Mr. *Fazak.* When, before or after you first parted with it?

Mr. *Jenkins.* Before.

Mr. *Fazak.* What Mark? Did you put your Name to it?

Mr. *Jenkins.* I put the two Initial Letters of my Name, which I will shew you.

Mr. *Fazak.* Are you sure that it hath not been altered since?

Mr. *Jenkins.* Yes, I am very sure.

Here his Majesty's Speech to the House of Lords was read, beginning thus: ["My Lords and Gentlemen, I have had such frequent Experience, *&c.*"] *Also his Majesty's Speech to the House of Commons.*

Mr. Att. Gen. This Speech of the King is general; but I shall be more particular, and shall shew you a Copy of the Address of the House of Lords, when the Treaty of *Hanover* was laid before them, wherein they express their Satisfaction, and mention the King of *Spain* particularly.

Mr. *Fazak.* Though I have all the Honour imaginable for the House of Lords, yet I question whether their Addresses are to be taken as Evidence.

Mr. Att. Gen. We shall read a Copy of the Journal of the House of Lords.

Mr. *Fazak.* Originals are the best Evidence of Fact; and whatever Addresses or Proceedings might have been made in the House of Lords, I think they cannot be proper Evidence here.

Mr. Att. Gen. What I produce is a Copy of the Lords Journal concerning the Treaty of *Vienna*, that the Secretaries of State laid before them.

Mr. *Fazak.* I own it is a Journal of the House of Lords, but it is not a proper Evidence of the Facts therein mentioned.

Mr. *Bootle.* My Lord, I apprehend, that the Evidence *Mr. Attorney General* is now pursuing, in the Course of Evidence is irregular, and on that the Objection doth arise. He says, he will prove the Facts by the Journal of the House of Lords: Suppose the Secretaries of State have failed in the Copy laid before them: I offer this to your Lordship's Consideration.

Lord Chief Justice. I find, Mr. *Bootle*, that all Manner of Objections will be raised to serve your Client; but I shall not pass away the Time, because you have Redress another Way; you shall have my Opinion about it.

Mr. *Strange.* Will you produce that Copy?

Mr. Att. Gen. We will do it. Mr. *Jenkins*, produce the Orders of the House of Lords, the 10th of *February*, 1725. (*Here it was produced.*)

Mr. *Strange.* Is it a true Copy?——Mr. *Jenkins.* Yes.

Mr. *Strange.* Have you had it ever since it was given in?

Mr. *Jenkins.* Yes.

(*Here the Copy of the Journal was read; the Purport was a Copy of the Treaty of Peace made at* Vienna, *3d* April, 1725, *a Copy of the Treaty of Commerce made at* Vienna, *1st of* May, 1725, *and a Copy of the Treaty of* Hanover, *30th* September, 1725.)

Mr. Att. Gen. It is proper to see these Copies.

Mr. *Strange.* Mr. *Jenkins*, What is this?

Mr. *Jenkins.* The Treaty of Peace.

Mr. *Strange.* Where had you it?

Mr. *Jenkins.* From the Parliament Office.

Mr. *Strange.* Have you the Treaty of Commerce made at *Vienna?*

Mr. *Jenkins.* Yes, (Here the Title of it was read thus: Treaty between *Charles* Emperor of *Germany*, &c. and *Philip* the Vth, *&c.* dated 1st *May*, 1725.)

Mr. Att. Gen. Read the 2d and 3d Articles thereof. (*Here they were read.*)

Read the 36th Article. (*Here it was read.*)

Read the 47th Article. (*Here it was read.*)

The Purport of these Articles was, (as I thought) that they were of great Prejudice to his Majesty's Subjects, and consequently was an Occasion of Difference.

I beg that the Address of the House of Lords to his Majesty may be read, and his Majesty's Answer on the 17th of *February*, 1725.

Mr. *Fazak.* For what Purpose would you read them?

Mr. Att. Gen. You will understand that immediately.

[*Here the Address was first read, and then his Majesty's Answer;*] *the Purport was to shew, that there were Differences between his late Majesty and the King of* Spain, *&c.*

Mr. *Fazak.* Mr. *Jenkins*, by what did you examine these?

Mr. *Jenkins.* By the original Journal.

Mr. Att. Gen. I shall prove in the next Place, that the King of *Spain*, 13th *July*, 1725, (which was about two Months before the Treaty of *Hanover*) made an express Demand of *Gibraltar.*

Mr. *Fazak.* I do not rightly see through, or understand this Evidence; I suppose it is to make up some Defects.

Mr. Att. Gen. Call Mr. *Tilson.* Mr. *Tilson*, have you any Papers with you?——Mr. *Tilson.* Yes, a Letter.

Mr. Att. Gen. Be pleased to give my Lord and Jury an Account how you received that Letter.

Mr. *Tilson.* My Lord, this is a Letter from the Marquis of *Grameldo*, Secretary to the King of *Spain.*

Lord Chief Justice. Where received you this Letter?

Mr. *Tilson.* I received it at *Hanover.*

Lord Chief Justice. When received you it?

Mr. *Tilson.* On the 1st of *August* New Stile, 1725.

Mr. Attorney General. From whom received you it, and in what Manner?

Mr. *Tilson.* By a Messenger that came from *Sycovy* from Mr. *Stanhope:*

Mr. Att. Gen. What was the Messenger's Name?

Mr. *Tilson.* One *Walton*, the King's Messenger.

Mr. Att. Gen. How received you it?

Mr. *Tilson.* In a Packet made up with his Dispatches.

Mr. Att. Gen. Where hath the Letter been kept ever since?

Mr. *Tilson.* In the Secretary of State's Office of the Lord *Townshend.*

Mr. Att. Gen. Where took you it from?

Mr. *Tilson.* From the Book.

Mr. Att. Gen. What was you?

Mr. *Tilson.* Under-Secretary to my Lord *Townshend.*

Mr. Att. Gen. Can you interpret it immediately?

[*No Answer was given.*]

Mr. *Taylor.* I object against this Evidence, by reason it is not the best Evidence, because my Lord *Harrington* is here in *England* himself.

Mr. Att. Gen. I apprehend it is sufficient, and it is impossible to prove it otherwise; the Lord *Harrington* transmits it to his Master.

Mr. *Taylor.* If my Lord *Harrington* were here, he could give Evidence himself.

Mr. Att. Gen. My Lord, we have found an Interpreter, and he will interprept the *Spanish. Call Mr.* Bocking.

Lord Chief Justice. What read you it for?

Mr. Att. Gen. For a Proof of the Demand of *Gibraltar*, by Virtue of the Treaty at *Vienna.* [*Here Mr.* Bocking *was called.*]

Mr. Att. Gen. Mr. *Bocking*, Do you understand the *Spanish* Tongue?

Mr. *Bocking.* Yes.

Mr. Att. Gen. Have you compared it with the original Letter?

Mr. *Bocking.* Yes.

Mr. Att. Gen. Is it truly translated?——Mr. *Bocking.* Yes.

[*Here the Letter was read subscribed* Grameldo.] *The Purport of it was demanding up* Gibraltar.

Mr. Att. Gen. The next Thing is the Treaty of *Hanover*, which we have upon Record.

Mr. *Fazakerley.* I do not think this Evidence full; for the Allegation is, that there were certain Differences and Controversies between his late Majesty and divers Princes and Foreign States, being his Allies, and the King of *Spain.* I do not find that this Evidence shews any thing of it; the Difference that the Evidence shews, is only between the late King and the King of *Spain.* I apprehend they ought to make the Evidence agree with the Information; if it varies from that, it is as no Evidence at all.

Mr. Att. Gen. I apprehend this is no Objection at all.

Mr. *Fazakerley.* The Information is, that before the Demise of the late King, divers Differences and Controversies arose between his said late Majesty and divers Princes and Foreign States, being his Allies, and the King of *Spain.* Now, the Objection is, that the Evidence they have produced, shews that there were only Differences between *Spain* and *Great-Britain.*

Mr. Att. Gen. There is no Weight in that Objection; for if it were so, as they suppose, I apprehend this is not material to the Information; for it is well known, that there is a Distinction between an Action and an Indictment. Every Thing in an Action, in Case of Contradiction, ought to be proved; but if there be an Allegation in an Indictment, and that the Crime may remain without it, it is well known that that Allegation is not necessary to be proved; and it is sufficient enough to prove him guilty of the Crime that he is indicted for. But what I have proved, shews the Difference and Disputes between his late Majesty and his Allies, and the King of *Spain*, for the Stipulation relating to the *Ostend* Company; particularly, by the 36th Article, is, that all the Subjects of the Emperor shall enjoy the same Privileges as the *United Provinces*, &c. so likewise by the 47th Article, which expressly refers to *Spain* and *Great-Britain*; and that is the express Declaration made to the House of Lords, and was the Foundation of the Troubles in *Europe*, which obliged the late King, without Loss of Time, to enter into the Treaty of *Hanover*; namely, with the Consideration to the Trade and Commerce of *Vienna.* And now, all these taken together, I submit it to your Lordship, whether there is not a sufficient Proof, that there were Differences subsisting between his Majesty and his Allies, and the King of *Spain.*

Mr. Solicitor General. This Allegation is not material; for whether there were Differences or not subsisting, we shall fix it by Evidence that Mr. *Francklin* is equally guilty, and that it will not alter the Nature of the Offence: Besides, it is admitted by the Gentleman that made the Objection, that the Evidence amounted so far as to prove that there were Differences between the late King and the King of *Spain*; and we have pointed out two Things which shews there were Differences; the one relating to the *Ostend* Company, and the other to the Demand of *Gibraltar.* I agree with that Gentleman, that *Great-Britain* was concerned in it; but to say that they were alone concerned in it, and that by the Address of the House of Lords the *Dutch* were not concerned, is a plain Mistake, for they claimed a Right to Trade also; yea, they were more immediately concerned than *Great-Britain*; and therefore it is rightly stated by the House of Lords Address; though, as I said before, it is not material whether there were Differences subsisting or not.

Mr. *Fazakerley.* I thought, while the Thing was fresh in Memory, it would have been explained; but since they have gone so far, it will be better to make an End. I shall only say, that as to what they say is immaterial, if they are willing to have that Matter immaterial, I am willing it should be struck out; and if there is a Crime described in the Indictment or Information, I agree it is not necessary to prove every Allegation, if the Crime remains without it; so that, if they will wave it, I am satisfied: Let me get rid of one Thing at a Time. I say, if there be enough left, properly charged on the Defendant, then, my Lord, this ought to be dropt; for they have produced nothing that proves that Allegation: And whatever Differences there might be between the late King and *Spain*, or any Powers whatsoever, not properly described in this Information, I apprehend, they are not to be taken

as a Part of the Charge in this Information. Now the main Thing is, whether they have laid it ſo, and made out theſe Differences. They ſay, that the Differences were between the late King, and divers Princes and Foreign States, being his Allies, and the King of *Spain*. I think the Letter produced from the Marquis of *Grameldo*, or take it what Way you pleaſe, it only refers to Differences between the King of *Great Britain* and *Spain*. I own there were Grants of Commerce to the Emperor, which might be of Injury to other States; but though they think that there is a Foundation for Differences, yet, if there is none, there is no Reaſon to ſay that there was an actual Difference: They have laid it ſo, my Lord; and as for that other Part of the Evidence of the Houſe of Lords, that is not ſufficient, for it is mentioned there as an Infraction of their Treaty; but whatever Infraction it is, yet, I humbly apprehend, that is not a Reaſon that there were Differences on that Account, for if other States think otherwiſe, or acquieſce to it, then it cannot be called a Difference; beſides, that Addreſs of the Houſe of Lords was only the Sentiments of that great Body; and though a Regard ought to be had to them, yet it is not any Evidence of the Fact, unleſs tranſacted in a judicial Way. They made a Collection or Conſtruction from it; but I think, in my Opinion, it is poſſible they might make a Miſtake: We are now upon Evidence, and it ought to be eſtabliſhed by a proper legal Evidence; for that (as I ſaid before) is only an Evidence that thereby their Treaty was broken, but no Evidence that there was a Difference ariſing from it.

Mr. *Beetle*. Mr. Attorney is pleaſed to make that a criminal Information, of which a Part may be evidenced, and a Part overlooked,

Lord Chief Juſtice. Is this eſſential or not?

Mr. Attorney General. No.

Lord Chief Juſtice. Why hath there been then almoſt two Hours ſpent about it?

Mr. Att. Gen. This is not between *Great Britain* and *Spain*, but other States; and it is to ſhew, that by the Articles of the Treaty of *Vienna*, there were ſome of them inconſiſtent with thoſe relating to the foreign Powers.

Mr. *Noel*. As they cannot prove this Allegation an Offence, or Part of the Crime, it is proper to ſtrike it out.

Mr. *Beetle*. Our Objection is on what is alledged; we are not entering into the Conſideration of the Fact, or how far it is capable of being proved: No; but ſure I am they have not proved the Allegation.

Lord Chief Juſtice. This is not indeed a poſitive Proof, I think.

Mr. Att. Gen. The next Thing is the Treaty of *Hanover*, I have a Copy of it tranſlated.

Mr. *Beetle*. It is admitted that there were Differences.

Mr. Att. Gen. Call Mr. *Snow*. [*Who appears.*] What Officer are you?

Mr. *Snow*. Prothonotary of the Chancery.

Mr. Att. Gen. What have you in your Hand?

Mr. *Snow*. The Treaty of *Hanover*, dated the 30th of *September*, 1725.

Mr. Att. Gen. Read it.

Mr. *Snow*. It is in *French*.

Mr. Att. Gen. Have you a Tranſlation of it?——Mr. *Snow*. Yes.

Mr. Att. Gen. Let it be read. Mr. *Buck* [or *Bocking*] what is that Paper?

Mr. *Snow*. It is the Tranſlation of the Treaty of *Hanover*.

[*Here the Treaty was read.*] It is between the late King of *Great Britain*, the King of *France*, and the King of *Pruſſia*.

Mr. Att. Gen. The next Thing is the Treaty of *Seville*. Mr. *Snow*, What is that?

Mr. *Snow*. The Treaty of *Seville*.

Mr. Att. Gen. In what Language?

Mr. *Snow*. In the *Spaniſh*. I have a Tranſlation of it.

Mr. Att. Gen. Mr. *Buck*, Did you tranſlate it?—Mr. *Buck*. Yes.

[*Here they read a Part of it.*] It is between the preſent King of *Great Britain*, the *French* King, and the King of *Spain*, dated at *Seville*, 9th of *November*, 1729.

Mr. Att. Gen. I ſhall now go on to prove that Part of the Libel which relates to Mr. *Francklin*'s publiſhing the *Craftſman*, the 2d of *January* laſt. Call *John Smith*. (*Who appears.*) Look on that Paper, is that your Hand-writing?

[*Here was ſhewn one of the* Craftſman, *2d of* January *marked by* Smith.]

Mr. *Smith*. Yes.

Mr. Att. Gen. Where had you it?

Mr. *Smith*. In Mr. *Francklin*'s own Houſe.

Mr. Att. Gen. In what Part of it?

Mr. *Smith*. In his Shop.

Mr. Att. Gen. Do you remember the Time?

Mr. *Smith*. Yes, it was on *Saturday* the 2d of *January* laſt.

Mr. Att. Gen. How came you to have that Paper?

Mr. *Smith*. On the 9th of *January*, I went into his Shop, where Mr. *Francklin* himſelf was ſtanding by the Counter, and I aſked him for half a Dozen of his Journals of that Day, and two of the *Saturday* before; he aſked me whom they were for; I told him for myſelf; then he aſked me if I ſold them; I ſaid, Yes; then he pointed to his Man to look them out.

Mr. Att. Gen. Who delivered them to you?

Mr. *Smith*. His Man.

Mr. Att. Gen. Whom paid you for them?

Mr. *Smith*. His Man.

Mr. Att. Gen. Was he preſent himſelf then?

Mr. *Smith*. No.

Mr. Att. Gen. But did not he order his Servant to give you them?

Mr. *Smith*. Yes.

Mr. Smith *croſs-examined.*

Mr. *Fazakerley*. What aſked you for?

Mr. *Smith*. I aſked for half a Dozen of his Journals of that Day, and two of the *Saturday* before.

Mr. *Fazakerley*. Do you ſell them?-----Mr. *Smith*. Yes.

Mr. *Fazakerley*. How came you by this when you had ſold it?

Mr. *Smith*. I ſold it to a Perſon that deſired me to get it for him.

Mr. *Fazakerley*. To whom ſold you it?----Mr. *Smith*. To Mr. *Ibbot*.

Mr. *Fazakerley*. How ſoon after you bought it did you ſell it him?

Mr. *Smith*. As ſoon as I could drink two Quarts of Beer, at the *Six Can* Alehouſe in *Holbourn*.

Mr. *Fazakerley*. Are you ſure that this is one of the 2d of *January*, that you had at Mr. *Francklin*'s?

Mr. *Smith*. Yes, becauſe I mark'd it.

Mr. *Fazak*. Are you ſure that he had it not in his Cuſtody before you mark'd it?----Mr. *Smith*. He had it not.

Lord Chief Juſtice. Who gave you them?----Mr. *Smith*. His Man.

Lord Ch. J. What ſaid he to his Man?

Mr. *Smith*. Look out theſe Journals.

Lord Ch. J. You aſked for two of the *Saturday* before?

Mr. *Smith*. Yes.

Lord Ch. J. What was Mr. *Francklin* doing?

Mr. *Smith*. There was a Man with him, who was paying him ten or a dozen Guineas; while I was ſpeaking he had told Part of them: When I came and aſked for the Journals, he aſked me what I wanted; I ſaid, Six of his Journals of that Day, and two of the Week before.

Lord Ch. J. To whom paid you the Money?

Mr. *Smith*. To his Man; I gave him Half-a-Crown, and he return'd me what was over, as my Change.

[*Here the Title of it was read*, "No. 235; *The* Country Journal; *or, the* Craftſman, *by* Caleb Danvers, *of* Gray's Inn, *Eſq*; Saturday, January 2*d*, 1730;" *then the* Hague *Letter was read thus*, "*Extract of a private Letter from the* Hague: *A Rumour hath been for ſome Time privately*, &c." *as in the Information.*]

Mr. Att. Gen. I ſhall call a Witneſs or two to ſupport his Evidence, to ſhew that a great many of them came from the Defendant's Shop. Call *John Ibbot*. [John Ibbot *appears.*]

Mr. Att. Gen. Look on that Paper, where bought you that?

Mr. *Ibbot*. I bought it at Mrs. *Dodd*'s.

Mr. Att. Gen. Where lives ſhe?

Mr. *Ibbot*. At the Sign of the *Peacock*, without *Temple-bar*.

Mr. Att. Gen. When bought you it?

Mr. *Ibbot*. On the 2d of *January* laſt.

Mr. Att. Gen. Did you buy it of her, or her Servant?

Mr. *Ibbot*. Of her Servant.

Mr. Att. Gen. What is the Servant's Name?

Mr. *Ibbot*. *Mary Dewy*.

Mr. Att. Gen. Call Mrs. *Ann Dodd*. [*Who appears.*] Had you at any Time, from Mr. *Francklin*'s, the Paper called the *Craftſman*, or *Country Journal*?—Mrs. *Dodd*. I never had any myſelf.

Mr. Att. Gen. Have you ever diſpoſed of any of them?

Mrs. *Dodd*. Yes.

Mr. Att. Gen. Who had them for you?—Mrs. *Dodd*, My Man.

Mr. Att. Gen. What is his Name?

Mrs. *Dodd*. *Henry Goram* (or *Boram*).

Mr. Att. Gen. Had you any more of them in your Shop, beſide what *Henry Goram* fetched for you?

Mrs. *Dodd*. None, that I know of.

Mr. Att. Gen. Had you any of the *Craftſman* the 2d of *January* laſt?

Mrs. *Dodd*. Yes.

Mr. Att. Gen. Whom ſent you for them?

Mrs. *Dodd*. *Henry Goram*.

Mr. Att. Gen. Had you any other *Craftſman* beſides theſe?

Mrs. *Dodd*. No.

Mr. Att. Gen. Whom paid you for them?

Mrs. *Dodd*. I did not pay him myſelf; but they were paid for by another of my Servants, *Mary Dewy*.

Mr. Att. Gen. Did not you order it to be paid to Mr. *Francklin*?

Mrs. *Dodd*. Yes.

Mrs. Dodd *croſs-examined.*

Mr. *Fazak*. Can you take upon you to ſwear, that all the *Country Journals* you had came from Mr. *Francklin*'s?

Mrs. *Dodd*. No: They might fetch them from other Places.

Mr. *Fazak*. Where ſent you for them?

Mrs. *Dodd*. To *Covent-Garden*, to Mr. *Francklin*'s Houſe.

Mr. *Fazak*. Will you venture to ſay, on your Oath, that you ſent your Servant to Mr. *Francklin*'s for the *Craftſman* of the 2d of *January* laſt?

Mrs. *Dodd*. I think ſo.

Mr. *Fazak*. Can you be poſitive, or not, that you ſent for this particular Journal of *Saturday* the 2d of *January* laſt?

Mrs. *Dodd*. I cannot be poſitive as to that; but I uſed to give Orders to fetch in theſe Journals every Week.

Mr. *Fazak*. What were the Orders you gave them; were they general Orders every Week? Do not they ſometimes fetch them without Orders?

Mrs. *Dodd*. Yes.

Mr. *Fazak*. You do not know from whence they fetch thoſe without Orders?—Mrs. *Dodd*. No.

Mr. *Fazak*. Did you ever ſend for any of them to any other Place than to Mr. *Francklin*'s?

Mrs. *Dodd*. No.

Mr. Att. Gen. Call *Henry Goram*. [*Who appears.*] Whom live you with?—Mr. *Goram*. With Mrs. *Dodd*.

Mr. Att. Gen. Do you fetch News-papers for her?

Mr. *Goram*. I have lately fetched for her the *Country Journal*, or *Craftſman*.

Mr. Att. Gen. Where?

Mr. *Goram*. From *Ruſſell-ſtreet*, in *Covent-Garden*, from Mr. *Francklin*'s.

Mr. Att. Gen. How long have you continued to do it?

Mr. *Goram*. Above a Year and a half.

Mr. Att. Gen. How often in the Week?

Mr. *Goram*. Once every *Friday* Evening, when it is late.

Mr. Att. Gen. Have you gone every *Friday* Evening to fetch them, all that Time?

Mr. *Goram*. No, I cannot ſay, for I have ſometimes miſſed.

Mr. Att. Gen. Do you remember going the firſt Day of *January*, being *New Year*'s Day, for the *Craftſman*, the 2d of *January* laſt?

Mr. *Goram*. Yes.

Mr. Att. Gen. From what Place?

Mr.

Mr. *Gorant.* From Mr. *Francklin*'s in *Covent-Garden.*
Mr. At. Gen. What Day did you fetch them on?
Mr. *Gor.* I told you on the *Friday* Night before, which was New Year's Day
Mr At. Gen. To what Place did you bring them?
Mr. *Gor.* To Mrs. *Dodd*'s.
Mr. A. Gen. Were they put into her Shop?—Mr. *Gor.* Yes.
Mr. At. Gen. Did you fetch any *Country Journals* of that Day, from any other Place?---Mr. *Gor.* No.
Mr. At. Gen. What Quantity, think you, you had at Mr. *Francklin*'s?
Mr. *Gor.* About threescore Quires a Week.

[*Cross-examined.*]

Mr. *Fazakerley.* You said, you cannot say that you fetched every Week the *Craftsman* from Mr. *Francklin*'s; how comes it that you can be particular as to this *Craftsman* of the 2d of *January* last? Have you any thing particular to make you remember that Day?
Mr. *Gor.* Yes; for a Day or two after I heard that Paper had given Offence, my Mistress desired me to recollect when I had them; which I did.
Mr. *Faz.* Here your Mistress knows nothing about that of the 2d of *January*; probably it might have been something else that your Mistress desired you to recollect; Do you know of never another Paper that gave Offence, besides that? Therefore, I say, can you be positive that you fetched all the *Craftsman* of that Day on *Friday* Evening?
Mr. *Gor.* Yes.
Mr. *Faz.* Did you know of any other *Craftsman* besides Mr. *Francklin*'s? Or did you ever know that your Mistress bought any *Craftsman*, but from Mr. *Francklin?*—Mr. *Gor.* No.
Mr. *Faz.* Is *Mary Deuy* Servant to Mrs. *Dodd?* - Mr. *Gor.* Yes.
Mr. *Faz.* Did not she send her for the *Craftsman?*—Mr. *Gor.* No.
Mr. Att. Gen. Call *John Smith* (aforesaid) *who appears.* Look on that Paper. [*Here another of the* Craftsman, *of the 2d of* January, *was produced.*] Where bought you that Paper?
Mr. *Smith.* At Mrs. *Smith*'s under the Piazza's, at the *Royal Exchange.*
Mr. *At. Gen.* Do you remember when?
Mr. *Smith.* The 9th of *January*, the same Morning that I bought at Mr. *Francklin*'s.
Mr. At. Gen. Of whom bought you it?—Mr. *Smith.* Of her Servant.
Mr. At. Gen. What is her Name?—Mr. *Smith.* I know not
Mr. At. Gen. Are you sure that is the same Paper?—Mr. *Smith.* Yes.
Mr. At. Gen. Did you mark it?—Mr. *Smith.* Yes.
Mr. At. Gen. Call Mrs. *Ann Pierce.* (*Who appears.*) Did you keep a Shop formerly?
Mrs. *Pierce.* Yes, though not now.
Mr. At. Gen. How long ago is it since you kept it?
Mrs. *Pierce.* About three or four Months.
Mr. At. Gen. During the Time of your keeping a Shop, did you sell the *Country Journal?*—Mrs. *Pierce.* Yes.
Mr. At Gen. Where bought you them?
Mrs. *Pierce.* I never went myself.
Mr. At. Gen. Whom sent you?—Mrs *Pierce.* One *David Davies.*
Mr. At. Gen. To whom sent you for them?
Mrs. *Pierce.* To Mr. *Francklin.*
Mr. At. Gen. Can you remember you had any *Craftsman* of the 2d of *January* last?
Mrs. *Pierce.* To be sure I had.
Mr. At. Gen. Who went for them?—Mrs. *Pierce.* My Man.
Mr. At. Gen. Did you ever send any body else?
Mrs. *Pierce.* I cannot tell.
Mr. At. Gen. I would desire you to recollect who fetched those of the 2d of *January*.—Mrs. *Pierce.* He always fetched them.
Mr. At. Gen. What Number had you the 2d of *January?*
Mrs. *Pierce.* I cannot tell exactly the Number; but I have generally about 7*l.* a Week to pay for the *Craftsman.*
Mr. At. Gen. Did you pay for them of the 2d of *January?*
Mrs. *Pierce.* He had always about 7*l.* a Week, or upwards.
Mr. At. Gen. But do you remember that you paid for them of the 2d of *January?*
Mrs. *Pierce.* I do not remember that in particular; for it was about that Time I was married.
Mr. At. Gen. Did you pay for them yourself?
Mrs. *Pierce.* No; but my Servant, *David Davies*, did.

[*Cross-examined.*]

Mr. *Bootle.* You said, you did not always send your Man, *David Davies*, for them?
Mrs. *Pierce.* You are mistaken; for I said I did.
Mr. *Bootle.* Can you say, on your Oath, Mistress, that you paid for these *Craftsman* the second of *January* in particular?
Mrs. *Pierce* I shall not answer you.
Mr. *Bootle.* Who bid you not to answer me? You shall do it.
Mrs. *Pierce.* I don't know you. [*Here the Judge reprimanded her, and desired her to give an Answer, which she did thus.*] I believe I paid him the Money for the *Craftsman* of that Day, as well as for those of other Days.
Mr. *Bootle.* Don't these Papers pay Duty?
Mrs. *Pierce.* I do not know.
Mr. *Willes.* Call *David Davies.* (*Who appears.*) Was you employed by Mrs. *Pierce*, before *January* the 2d, to fetch in her Journals?
Mr. *Davies.* Yes.
Mr. *Willes.* Did you fetch in the *Craftsman* among the rest?
Mr. *Dav.* Yes.
Mr. *Willes.* Where did you go for these *Craftsman?*
Mr. *Dav.* To Mr. *Francklin*'s.
Mr. *Willes.* Did you go any where else for them?
Mr. *Dav.* No.
Mr. *Willes.* Can you remember that you fetched the *Craftsman* the 2d of *January* last?
Mr. *Dav.* Yes.
Mr. *Willes.* You did buy all the *Craftsman* of that Month at Mr. *Francklin*'s—I mean, all that you bought?
Mr. *Davies.* Yes.
Mr. *Willes.* When you carried the Money for them, to whom paid you it?
Mr. *Dav.* Sometimes to Mr. *Francklin*, and sometimes to his Servants.
Mr. *Willes.* Can you say, particularly for the Month of *January* last, that you paid the Money to his Servants?
Mr. *Dav.* Yes.
Mr. *Willes.* Did you continue to pay weekly, all the Month of *January* last, for what you bought of these Papers?
Mr. *Dav.* Yes.
Mr. *Willes.* Had you any of these *Craftsman* any where else that Month?
Mr. *Dav.* No.
Mr. *Willes.* Can you remember how many you bought of the 2d of *January* last?
Mr. *Dav.* No.
Mr. *Willes.* How much paid you a Week?
Mr. *Dav.* About 7*l.* a Week; because I fetched between 40 and 50 Quires weekly.

[*Cross-examined.*]

Mr. *Strange.* Can you recollect so exactly, as to tell that you fetched and paid for the *Craftsman* the 2d of *January*, and for all that Month?
Mr. *Dav.* Yes.
Mr. *Strange.* How can you be so particular as to that Month?
Mr. *Dav.* Because I did it weekly before that Time.
Mr. At. Gen. There is another Thing, which I shall name, which will likewise prove, that the Defendant published the *Craftsman* of that Day; and that is the Stamp-Duty, which is one Shilling, paid for every Advertisement; and here I shall shew to your Lordship, that he paid for the Duties of that Day, and for 38 Advertisements of the same Day, which is exactly the Number contained in that Day's *Craftsman.* Call Mr. *Lunnis.* (*Who appears.*) What Officer are you?
Mr. *Lun.* An Assistant to the Register of the Stamp-Office.
Mr. At. Gen. Do you know any Thing of the Account of the Stamp-Duties at the Office?---Mr. *Lun.* Yes.
Mr. At. Gen. Have you the Book?---Mr. *Lun.* Yes.
Mr. At. Gen. Produce it. [*Here it was produced.*] What is that Book?
Mr. *Lun.* An Account of the Advertisements in every Paper.
Mr. At. Gen. Is that the Original of the Stamp-Office Book?
Mr. *Lun.* Yes.
Mr. At. Gen. You know what Entries there are in it concerning Mr. *Francklin?*
Mr. *Lun.* Yes.
Mr. At. Gen. What are these Entries?
Mr. *Lun.* They are from about 13th of *May*, 1727, to this Time, weekly and monthly.
Mr. At. Gen. Who paid for them?
Mr. *Lun.* Sometimes Mr. *Francklin*, and sometimes his Servants.
Mr. At. Gen. Was the Payment made in his own Name always?
Mr. *Lun.* Yes, in his own Name.
Mr. At. Gen. Are there any Advertisements that relate to the 2d of *January* last?
Mr. *Lun.* Yes, 38.
Mr. At. Gen. Were they paid for?
Mr. *Lun.* Yes, in Mr. *Francklin*'s Name.
Mr. At. Gen. Read the Entry. [*Here it was read. The Purport was,* Received the 29th of *July*, for the Duty of 38 Advertisements, &c. for the 2d of *January* last.]
Mr. At. Gen. That is the exact Number in the *Craftsman* of that Day.

[*Cross-examined.*]

Mr. *Strange.* Do you receive the Money?---Mr. *Lun.* No.
Mr. *Strange.* How can you tell that he pays it then?
Mr. *Lun.* Because I make it up to his Account.
Mr. *Strange.* Do you know it yourself?
Mr. *Lun.* No.
Mr. *Strange.* Are the Papers brought to the Office, and are you the Person that receives them?
Mr. *Lun.* I am the Person that takes in and registers the Number of the Advertisements, and gives a Note, or an Account thereof, to himself, or the Person that brings the Papers.
Mr *Strange.* What Time does the Act relate to the Advertisements being paid?
Mr. *Lun.* I don't know.
Mr. *Strange.* As you make out the Warrants, and keep Account of the Advertisements, explain it; what is its Nature? Does your Warrant express the Number of the Advertisements, and the Sum to be paid for them?---Mr. *Lun.* Yes.
Mr. *Strange.* For what Purpose do you make it out?
Mr. *Lun.* After I have made it out, I give it into the Receiver's Office, and then into the Comptroller's, which is a Check on the Receiver's Office; and then Mr. *Francklin* hath a Receipt for it.
Mr. *Strange.* Who receives the Money for these Advertisements, which you make out the Warrant for?
Mr. *Lun.* They at the Receiver's Office.
Mr. At. Gen. Call Mr. *Webb.* (*Who appears.*) What Place are you in in the Stamp-Office?
Mr. *Webb.* A Clerk in the Receiver's Office.
Mr. At. Gen. Are you a sworn Clerk?
Mr. *Webb.* Yes.
Mr. At. Gen. Can you give an Account of any Receipts had of Mr. *Francklin*, on Account of his Advertisements the 2d of *January* last?
Mr. *Webb.* He had one in *July* last.
Mr. At. Gen. Do you know if the Advertisements of the 2d of *January* was included in the Money?
Mr. *Webb.* I cannot tell.
Mr. At. Gen. In whose Name received you it?
Mr. *Webb.* In the Name of Mr *Francklin.*
Mr. At. Gen. Whether or not did you receive any Money, on the Account of his Advertisements, before that Time?

Mr. *Webb*. Yes, I received ſomething on that Account.
Mr. Att. Gen. Was it a long time before *July?*
Mr. *Webb*. I cannot juſtly remember.
Mr. Att. Gen. How much was it you received the 29th *July?*
Mr. *Webb*. About 10*l.* 18*s.*
Mr. Att. Gen. Whence goes that Receipt?
Mr. *Webb*. To the Comptroller's Office.
Mr. Att. Gen. Call Mr. *Scot.* (*Who appears.*) What is your Office?
Mr. *Scot*. I am in the Comptroller's Office.
Mr. Att. Gen. Have you an Account of any Money paid on account of Advertiſements in the *Craftſman* the 2d *January* laſt?
Mr. *Scot*. I have them for the whole Month; but not the Day.
Mr. Att. Gen. What come they to?
Mr. *Scot*. Ten Pounds eighteen Shillings.
Mr. Att. Gen. In whoſe Name was it paid?
Mr. *Scot*. In the Name of Mr. *Francklin*.
Mr. Att. Gen. Were there any more Payments before?---Mr. *Scot*. Yes.
Mr. Att. Gen. Who paid them?—Mr. *Scot*. I cannot tell.
Mr. Att. Gen. On whoſe Account were they paid?
Mr. *Scot*. On Mr. *Francklin*'s.
Mr. Att. Gen. Have you got any Warrants?---Mr. *Scot*. Yes.
Mr. Att. Gen. Have you got a particular Warrant for every Month?
Mr. *Scot*. Yes.
Mr. Att. Gen. Look out the Warrant for the Month of *January*.
[*Here it was read. The Purport was*, That there was received 10*l.* 18*s.* on Mr. *Francklin*'s Account.]
L. C. J. What is the Nature of that Warrant?
Mr. *Scot*. It is a Warrant given from one Office to another, containing the Number of the Advertiſements, and Sum for the Duty.
Mr. Att. Gen. My Lord, the other Side have owned, that there were Differences between his late Majeſty and the King of *Spain*, becauſe we have fully proved it; but they ſay we have ſhewn no Evidence of any Difference between his late Majeſty and his Allies, and the King of *Spain*, which I apprehend we have; though, as I ſaid before, it is not material: But, if they pleaſe, I ſhall call other Witneſſes to prove it further; particularly Differences relating to the *Dutch*, who claimed the ſole Trade to the *Eaſt Indies*, excluſive of all the Subjects of the Emperor, *&c.* and yet, my Lord, by the 36th Article, *Spain* ſtipulates to let all the Subjects of the Emperor enjoy the ſame Privileges as the *United Provinces*; which is an Infraction of the Treaty of *Munſter*, 1648. (Call Mr. *Payſant*.)
[*Mr.* Payſant *appears.*]
Mr. Att. Gen. Mr. *Payſant*, give an Account of theſe Papers.
Mr. *Payſant*. I brought them from my Lord *Harrington*'s Office.
Mr. Att. Gen. What is their Import?
Mr. *Payſant*. They contain the Acceſſion of the States General to the Treaty of *Hanover*.
Mr. Att. Gen. Are they kept there?---Mr. *Payſant*. Yes.
Mr. Att. Gen. Is the Act of Acceſſion inrolled?
Mr. *Payſant*. Yes; but this is the original one.
Mr. *Fazakerley*. My Lord, I apprehend the Inrolment is a proper Evidence.
[*Here that Part of it was read and interpreted, (it being in* French) *which complained of the Infraction of the Treaty of* Munſter, *made in* 1648.]
Mr. Att. Gen. By this Act of Acceſſion, which was about a few Months after the Treaty, the *Dutch* inſiſt, that it is wholly their Right to enjoy the ſole Privileges of trading to the *Eaſt Indies*, excluſive of all the Subjects of the Emperor, *&c.* and accordingly they enter into, or accede to the Treaty of *Hanover*; which, I think, is a ſufficient Evidence of Differences ſubſiſting between his late Majeſty and his Allies, and the King of *Spain*. We ſhall not take up any more Time in examining other Witneſſes, for a further Proof of the Information againſt the Defendant; having, as we apprehend, ſufficiently proved it already.
Mr. *Fazakerley*. My Lord, and Gentlemen of the Jury, I am Counſel for the Defendant. As the King's Counſel have been very long, and thought nothing unneceſſary; and, indeed, I cannot help ſaying, that I think a great deal of Labour and Pains have been made uſe of, to ſhew that the Defendant is guilty of the Fact of Publication; and I believe it was only to give a reaſonable Suſpicion thereof, becauſe it was not ſufficiently proved by the firſt Witneſs, and they have ſpent about one Hour and a half ſince, to ſupport that: So, Gentlemen, I hope that you will not think that they have ſufficiently proved the Information; and that you will not reſt on what the firſt Witneſs ſays as a full Proof, who is as liable to a Proſecution as the Defendant. But I apprehend, that of a Printer is different from a Publiſher; and that a Printer's Buſineſs relates to all the Subjects of the Kingdom, and he may eaſily be impoſed upon. As to their Evidence, you will find that they intirely ſeem to rely on the firſt Witneſs, who ſays, he went to Mr. *Francklin*'s Shop, and that he was buſy, and that he interrupted him by aſking him for ſome of the Journals of that Day, and that he did not deliver them himſelf. Now, as he aſked for Journals in general, and did not tell whoſe; and that he was buſy, and did not deliver any to that Witneſs, nor receive any Money from him; and how he came by theſe Journals, it is not known; he might have ſome in his Pocket that he got elſewhere, and by Miſtake put his Mark to them: Beſides, there were only two of theſe Journals produced. As to the reſt of the Witneſſes, they are only brought in, in order to endeavour to ſupport this firſt Witneſs's Evidence, and to prove that they received Journals from the Defendant's Servants only, and paid the Money to them. As to the Stamp-Office Accounts or Books, I ſuppoſe they only ſhew what Money is raiſed to the Crown: So, Gentlemen, I believe it will depend chiefly on the Evidence of the firſt Witneſs; and the Defendant is puniſhable for none but theſe two Journals produced (if he is guilty of that); for if he had ſold a Thouſand more, it ſignifies nothing to this Information. I ſhall not trouble you with other Obſervations on it; but only take notice of the great Conveniency of publiſhing Letters of this Kind, and other News. Gentlemen, it is well known that News-Papers are allowed not only in this, but in other Nations; and, indeed, it is reaſonable that private People ſhould know theſe News as well as others: And therefore, when we are under a Caſe of this Kind, we ought not to be ſtrict in ſcanning Things that come from foreign Parts; for to do ſo, may put many under great Difficulties; and, indeed, if Men were to be puniſhed therefore, it would be a great Means to have no News at all publiſhed; for it is an eaſy thing to ſcan them amiſs: And therefore, Gentlemen, when you are in a Caſe of this Kind, conſider how many Witneſſes they have produced againſt the Defendant, and that none of them proves any thing but the firſt, on whom (as I ſaid before) they ſeem intirely to rely: I hope they are Perſons of Veracity, or elſe they would not have produced them. Next, do you think that the Defendant did it out of a criminal Deſign? And I think it is pretty hard, unleſs this ſeem extremely plain, and unleſs he was offending in his Mind, as the Counſel on the other Side have alledged, and endeavoured to make out (though, I think, they have not proved it). Next, I would have you take notice of this Information in the general: He is indicted of two Offences; the one is only to ſupport the other: The ſecond he is not guilty of, becauſe they have produced no Evidence. Again, the next Thing they have proved is only, that he is guilty of the Publication (let me get free of as much as I can), though I think he is innocent. Gentlemen, you cannot but conſider the Evidence that hath been given you; and therefore I hope you will not think that he is guilty of any thing further, I mean the Act of Publication. Next, take notice, that there are a great many Aggravations in the Information; ſo that if you find the Verdict general, then theſe Aggravations muſt be publiſhed on Record, and he puniſhed for them. For, firſt, in the Information it is laid, "That there "were ſeveral Differences and Controverſies between his late Majeſty and "divers Princes and foreign States, being his Allies, and the King of "*Spain*." I ſhall not trouble you with any thing concerning this; but only name the laſt, to wit, the Acceſſion of the *Dutch*, which leaves it where we found it; for the Time laid in the Information was, that the Differences were antecedent to the Treaty of *Hanover*, which was made the 30th of *September*, 1725. But the Evidence they have produced is about a Year after that, to wit, about *Auguſt* 1726; and probably there might have been no Difference at all then. I ſhall go on to make a few Obſervations on the reſt of the Matter charged; to wit, "That he in-"tended to diſturb and diſquiet the happy State of the publick Peace and "Tranquility of this Kingdom, and likewiſe to traduce and vilify the "Adminiſtration, and his preſent Majeſty's principal Officers and Mini-"ſters of State; and to repreſent them as Perſons of no Integrity and Abi-"lity, and as Enemies to the publick Good of this Kingdom; and like-"wiſe to reflect on the King:" Far be it from me to think that his Majeſty ought, in any wiſe, to be reflected on; and I think my Client is of the ſame Opinion, and that he would abhor any thing to the contrary; and therefore I apprehend, that there is nothing in this Paper (take it in the ſtrongeſt Senſe) that ſhews any Deſign of reflecting on his Majeſty; and ſuppoſe it does on his Miniſters, yet not one of his Miniſters have been yet mentioned, on whom the Reflection is ſaid to be made. Sometimes it is ſaid, that a Reflection againſt the Miniſters is one againſt the King: But, with Submiſſion, I think it is not; for Princes may ſometimes have the Misfortune of bad Miniſters, as well as private Perſons have the Misfortune of bad Servants; but I believe that Nobody can imagine, that his Majeſty hath any ſuch Miniſters. And then obſerve, What have the King's Counſel opened, with reſpect to the preſent Miniſters of his Majeſty? What Evidence have they given of the Defendant's reflecting on theſe Miniſters in the *Hague* Letter? I apprehend, there hath none at all been given, but what intirely depends upon the Conſtruction of that Paper itſelf; and therefore, in Caſes of this Kind, the Queſtion is, How you are to conſtrue that Paper, eſpecially when there is an Information thereon againſt any Perſon ſuppoſed to be the Publiſher thereof? The Gentlemen of the other Side have told you, that you are to underſtand it in the ſame Senſe as any other Perſon does; but I apprehend you are not to judge ſo, becauſe here is a Proſecution againſt a Perſon, wherein Facts are undertaken to be proved, which, if done, will ſubject the Perſon to Puniſhment; and that you are to find a Verdict according to the Evidence laid before you; for there is a great Difference between one Perſon's reading, underſtanding, and judging of it, for his own Information, and another's doing it, on a Proſecution, in order to convict or acquit the Perſon charged: So that the Queſtion here is, Whether you think that the Defendant is guilty of reflecting upon the preſent Miniſters of *Great Britain*, or not, upon the Conſtruction of that Paper, and upon due Conſideration of what follows? though I think he is not: For you have heard mentioned to you, from the ſeveral Treaties opened, as well as from the *Hague* Letter itſelf, that there are ſeveral Courts mentioned as well as *Great Britain*; to wit, *Pruſſia*, *France*, *Spain*, and *Germany*; and that the Words [certain Miniſters] may have a Reference to the Miniſters of one of thoſe Courts, and not to the Court of *Great Britain*: And I hope you have a better Opinion of his Majeſty's preſent Miniſters of State, than to think that the Expreſſions are applicable to them; and, indeed, when you are to make a Conſtruction on that Paper, you muſt conſider, and judge for yourſelves, Whether theſe Miniſters deſerve ſuch Things to be ſaid of them, or not? And I hope you will be of the ſame Opinion as I am of; which is, that they deſerve them not. In the Beginning of that *Hague* Letter the Words are, ["A Rumour hath been for ſome time "privately ſpread about, that a Miſunderſtanding will ſoon diſcover itſelf "between the Allies of *Seville*; and that certain Miniſters are endea-"vouring, *&c.*"] The Gentlemen on the other Side are pleaſed to ſay, that theſe Words [certain Miniſters] muſt be underſtood of the Miniſters either of *Great Britain*, or *France*, or *Spain*; but I beg Leave to ſay, that no ſuch Inference can be naturally drawn, or that no other Miniſters of any other Court can be intended but one of theſe three. Then the Letter goes on, and ſays, ["that certain Miniſters having at "length found out, that too cloſe an Union with *France*, and a War "upon the Foot of the Treaty of *Seville*, is quite againſt the Grain of "the People, are endeavouring to bring about an Accommodation with "the Emperor."] The Gentlemen ſay, that this muſt be applied to the Miniſters of *Great Britain* only. Gentlemen, I believe any Miniſter of any Court whatſoever muſt be of that Opinion, and that it is not fitting that there ſhould be a War on the Foot of any Treaty; and I hope that

that all the Miniſters of theſe three Courts are of the ſame Opinion; though the Gentlemen would fix it only upon the Miniſters of *Great-Britain*: Nor can I ſee how it can be ſaid or applied to our Miniſters, when the following Words are mentioned, to wit, ["that certain Miniſters having at length "found out, that too cloſe an Union with *France*."] Why ſhould this be mentioned as a Reaſon of its being applicable to the Miniſters of *Great-Britain*? Have not we had all this time an Alliance, a cloſe Alliance, with *France*? And can it be ſtrengthened by a further or cloſer Alliance? So that, I think, it is more applicable to the Miniſters of other Courts. Gentlemen, I will take a little Notice of what the King's Counſel ſaid, with reſpect to theſe Words [certain Miniſters]. They told you, that they could not be underſtood to refer to the Miniſters of *France*, becauſe that theſe Words ["certain Miniſters having at length found out, that too cloſe an "Union with *France*, and a War, *&c.*"] excluded the Miniſters of *France*; tho' I apprehend, as I have ſaid already, that, from thence, they are more applicable to the Miniſters of other Courts than our's. Then they told you, that theſe Words [certain Miniſters] could not refer to the Miniſters of *Spain*, becauſe of the ill Effects which, the Letter mentions, would follow, on endeavouring to bring about an Accommodation with the Emperor, one of which is called a neceſſary Effect: ["Another neceſſary Effect (for "ſo I think I may call it) of ſuch a Meaſure, at preſent, will be a Con"junction of *France* and *Spain*; and a certain Court may have the Mor"tification to ſee thoſe two Courts united againſt them more ſtrongly than "ever, by their extraordinary Management, *&c.*"] Gentlemen, how is it poſſible to apply this to the Court of *Great-Britain*, or its Miniſters, when we were, at the ſame time, in Amity and Alliance with *France*; and likewiſe when there was an Alliance or Treaty entered into between *Great-Britain*, *France*, and *Spain*? Was there any Likelihood for us to ſee ſuch a Conjunction? Again, the King's Counſel ſaid, that it would be hard for us to tell what Miniſters were meant by theſe Expreſſions: To this I muſt anſwer, that I think it will be very hard, indeed, to make a Publiſher liable to be puniſhed, becauſe he cannot explain or make out a Piece of foreign News ſent him; eſpecially when the other Side hath got all the Treaties of the publick Affairs in their own Cuſtody: For my Part, I know nothing about them, and I am ſure that my Client knows as little; and therefore I don't think that this Piece of News is any Reflection on our preſent Miniſters, eſpecially if you compare it with their Actions and Merits; and conſequently you would not, I hope, make a Perſon guilty of that, when you cannot ſay, that that Charge is the leaſt applicable to them; and I hope that you, and every Perſon here, have a better Opinion of our preſent Miniſters; and therefore hope, that you will put ſuch a Conſtruction on it, as that it is not a Reflection on them, and conſequently that you will not find the Defendant guilty of publiſhing any Libel againſt them, though he cannot explain that Piece of foreign News. The Gentlemen of the other Side ſay, that there are other Parts or Expreſſions in the Paper that give a Light to it, ſuch as *Germanized* Patriots: I don't pretend to underſtand the Meaning thereof, and I hope you will as little pretend thereto: They ſaid, they who were Enemies to the Miniſtry were called ſo; but as they have given no Evidence thereof, you are not to take notice of it. Again, they ſay, that theſe Words ["one immediate Effect "may be the Seizure of that vaſt Pledge which *Spain* hath at this time in "her Hands"] ſerve to explain and refer to the Court of *Great-Britain*, though they have given no Evidence thereof; nor do I ſee why this ſhould be applied to *Great-Britain* only, becauſe there are other Courts or States that have conſiderable Stocks and Effects, that may be applicable thereto. And then they mentioned another Thing, which they wanted to make the Expreſſion refer to *Great-Britain*, [which is, "that the Miniſters had been "undoing what they had been doing for five Years paſt;"] which they ſay carries it back to the Treaty of *Hanover*, entered into in *September*, 1725: But I think it proper to remark to you, that the Gentlemen themſelves have acquainted you, that, about that time, the *Dutch* were as much diſſatisfied as we were; and therefore I think it is hard to conjecture whoſe Miniſters are meant by that Expreſſion. Gentlemen, I ſhall not trouble you with further Obſervations on that Paper; but leave it to your own Conſideration: Only obſerve, though the King's Counſel were pleaſed to ſay, that the *Hague* Letter was of an *Engliſh* Growth, yet they have not proved it to be ſo, nor have they told you who is the Author of it; though I think, from the Import of it, it plainly appears to be of a foreign Growth, and is placed under the Article of foreign News: And we can prove, that (if we had not been deprived of the Means of doing it) the Letter came from abroad as a Piece of foreign News: for you are to conſider, that when the Defendant was ſeized upon that Account, the Perſons employed therein broke open his Scrutore, and ſearched his Pockets, and took away, in a moſt unwarrantable Manner, his Papers and Letters, and other Things, which they ſtill retain; and, amongſt the reſt, this *Hague* Letter, which has deprived him of ſome Part of his Defence, by diſabling him to produce that Letter, though he is expected to produce that original Letter ſtill, which is impoſſible to be done now; therefore we expect, when you conſider theſe Circumſtances, that you will, in point of Evidence, expect leſs from us, and more from them. I ſhall not trouble you, at preſent, any further. My Lord, I apprehend they have failed in the Deſcription of their pretended Libel: They have ſtiled it a certain falſe, ſcandalous, and ſeditious Libel, (intituled, N°. 235, *The Country Journal*; or, *the Craftſman*, by *Caleb D'Anvers*, &c.) I apprehend that this Number 235, being at the End of the Paper, cannot be the Title, or any Part of it; I believe there have been ſome Precedents to the contrary.

Lord Chief Juſtice. I don't know how you, or any other Perſon, can diſtinguiſh one Journal from another after a better Manner: I ſhall not go contrary to my own Conſcience, nor overturn the Opinion of thoſe before me: If you think otherwiſe, you know where to apply to.

Mr. *Bootle.* My Lord, and Gentlemen, I am alſo Counſel for the Defendant: And though he is the Perſon that is now more immediately ſtanding before you, and concerned in this Proſecution; yet I think it is not confined to him only, but will extend to Things of a more publick Nature, and conſequently to the Publick in general; I mean the Suppreſſion of the Liberty of the Preſs, which Liberty hath been always eſteemed as a great Privilege, and of great Advantage to this Nation: That this Proſecution is of ſuch Extent, will appear from the Paper itſelf complained of, and the Evidence relating thereto. The Caſe hath been fully opened by the Gentlemen on the other Side, with many Aggravations pretended to be attending it; and theſe Aggravations are not confined to this Paper only, but extend to all the other News-papers in general: And ſhould I have the Liberty to mention the common Opinion of Mankind, with relation to this Weekly Journal, I believe that Aſſertion of its being a falſe, ſcandalous, and ſeditious Paper, would be thought groundleſs; but that it hath tended very much to their Satisfaction, in foreign and home Affairs. But we are now confined to this Paper, which is dated the 2d of *January*, 1730. Gentlemen, this Paper contains a Paragraph of foreign News, or Intelligence; for ſuch are oftentimes of Uſe to thoſe who deal in foreign Trade: Now, this foreign Intelligence complained of, and for which the Defendant is proſecuted, is not poſitively aſſerted as a Truth, but only as a Saying; ["A Rumour hath been for ſome time ſpread a"bout privately, *&c.*] Beſides, it is added in the Concluſion thereof, ["I cannot take upon me to juſtify the Truth of this Report; but, as it "hath been pretty confidently buzzed about, I thought proper to let you "know what is ſaid upon it; and if it ſhould appear to have any Foun"dation, you may expect to hear further from me on the Subject."] Gentlemen, the Information contains two Charges, with regard to this Paper: The firſt is, for ſpreading falſe News; and the ſecond is, for publiſhing a falſe, ſcandalous, and ſeditious Libel againſt his Majeſty's Adminiſtration of the Government, and againſt his principal Officers and Miniſters of State, and alſo againſt the Treaty of *Seville*. Gentlemen, as theſe Things are only aſſerted and averred in the Information, by Innuendoes, it is incumbent on them to prove them: And, in order to this, they have produced this News-paper, which is publiſhed for the Entertainment and Uſe of the Publick, containing foreign and home News, or Affairs; among which there is a Paragraph which ſays, (as from the *Hague*) ["A Rumour "hath been for ſome time privately ſpread about, and begins to gain Cre"dit here, that a Miſunderſtanding will ſoon diſcover itſelf between the "Allies of *Seville*; and that certain Miniſters are endeavouring to bring "about an Accommodation with the Emperor."] This is all that is aſſerted; for all the reſt of the Letter are only as an Induction, or Inferences drawn from the Suppoſition that ſuch a Piece of Intelligence is true; and if ſo, then it ſays, that the Conduct of theſe certain Miniſters hath been wrong before, and hath occaſioned unneceſſary Expences to be laid out, and will occaſion further Expences to be laid out; and adds, ["I am far "from deſigning to inſinuate from hence, that an Accommodation with "the Emperor is a wrong Meaſure; on the contrary, I wiſh it had "been thought a right Meaſure long ago."] And in another Part of it he ſays, ["and though it muſt be confeſſed to be very deſirable at pre"ſent; yet it ſeems to be attended with very fatal Conſequences, and al"moſt inſuperable Difficulties."] And then he mentions the Conſequences; as the Interruption of Trade, and the Conjunction of *France* and *Spain* againſt a certain Court, in general, without naming it; and adds ſome other Effects or Conſequences; but then theſe Effects or Conſequences are all upon this Suppoſition, that theſe certain Miniſters do bring about an Accommodation with the Emperor; though he adds, at the Concluſion of the Letter (as I ſaid before) ["that I cannot take upon me to "juſtify the Truth of this Report; but as it hath been pretty confidently "buzzed about, I thought proper to let you know what is ſaid upon it; and "if it ſhould appear to have any Foundation, you may expect to hear fur"ther from me on the Subject."] Now, Gentlemen, the Queſtion is, Who is meant by theſe Words [certain Miniſters]? And by the way, though it is ſaid in the Information, that this Piece of foreign News was a high Reflection on his preſent Majeſty, yet I cannot ſee any Thing therein that hath the leaſt Tendency to ſuch a Reflection; nor is there indeed ſo much as the Word [Majeſty], or [King of *Great-Britain*], or even the Word [*Britain*] itſelf, in any Part of that Letter; nor hath there been the leaſt Evidence offered to you, that it does any ways reflect on his Majeſty; ſo that this does not fall under your Conſideration: And this being laid aſide, the next Thing to be known is, what Miniſters theſe are that are meant by theſe Words, ["and that certain Miniſters having at length found out, "that too cloſe an Union with *France*, and a War upon the Foot of the "Treaty of *Seville*, is quite againſt the Grain of the People, are endeavour"ing to bring about an Accommodation with the Emperor."]? The Information hath averred, that by theſe Words [certain Miniſters] are implied and meant the principal Officers and Miniſters employed and intruſted by his preſent Majeſty; but who are they then? To be ſure it will not be ſaid, that the Paper does in the leaſt mention them to be our preſent Miniſters; or that any of you, I hope, hath ſuch Thoughts concerning them, as to believe that they are guilty of that which is charged on them by the Information: Nor do I think that they are meant by other Parts of the Paper; becauſe you have heard already, that theſe Things may be applied to the Miniſters of other Courts and Countries, as well as *England* or *Great-Britain*. The Paper hath left the Meaning very much in the Dark, and to a Conjecture only; for it may refer to one Set of Miniſters as well as another. I ſay, Gentlemen, that the pretending to aſcertain or determine whoſe Miniſters are meant by theſe general and indefinite Words, is at the beſt only a Conjecture. And with Submiſſion to my Lord's Directions and Judgment, I muſt tell you, that with relation to Scandal or Slander, the Law lays it down as a Rule to be obſerved, that there are two Things neceſſary: The firſt is, that the Perſon, of whom the Slander is uſed or ſpoke, ought to be certain, and ought not to be left to People's Imagination or Conjecture: And the next Thing is, that the Slander ſhall be evident and plain from the Words themſelves, and not ſupported by any Innuendo; I ſay, they muſt be plain, poſitive, and direct. You have been told, that you are to underſtand this Paper, as every common Reader in a Coffee-houſe; but I beg Leave to ſay that you are not; for when you are in a Coffee-houſe, you have the Liberty to conjecture and gueſs at the Meaning of a Piece of News, as well as any other Perſon there; and Nobody can be ſubjected to any Puniſhment, if you are miſtaken therein: But when you are here, in a Court of Judicature, you muſt conſider that you are upon your Oath, and that you are not to take that Liberty to conjecture or gueſs at the Meaning of Things; becauſe, if you happen to be miſtaken in your Conjecture, you will make him guilty of the criminal Charge which he is accuſed of, and ſubject him to the Puniſhment inflicted thereon; and you are likewiſe

wiſe to conſider, as I hinted before, that, in Scandal, the Law requires that both the Perſon ſlandered, and the ſcandalous Words themſelves, ought to be certain, and not want Innuendos to make them out; and that an Innuendo ought neither to alter, enlarge, or ſupply the Senſe of the Words, when doubtful or defective, becauſe it would be unjuſt: And, indeed, whenever an Innuendo is allowed, in other Caſes, to explain a doubtful Matter, it ſhould be rather in Favour of the Perſon accuſed than againſt him, eſpecially where the Words ſpoken may be applied and referred more Ways than one: So here, in fixing a Meaning on the Words [certain Miniſters], which the Information, by an Innuendo, explains to be the principal Officers and Miniſters employed by his preſent Majeſty, you are to conſider whether theſe Words may not be applied to the Miniſters of other Courts and Countries; and likewiſe to conſider, whether theſe Words [certain Miniſters] (ſo underſtood by the Information to be his Majeſty's) are to be underſtood or meant by thoſe Officers or Miniſters employed by his Majeſty at Sea or Land? Or are they his Miniſters at Home or Abroad; or whether they are his Officers civil or military? Now, I ſay, ſuppoſe you ſhould find this Paragraph of foreign News to be a Libel, or a Scandal thrown upon his Majeſty's Officers and Miniſters (as I hope you will not), can you ſay or declare on Oath, who are the particular Perſons thus ſlandered or defamed? Have you any certain Rule, by this Paper, to guide your Judgments? Can you ſay, on your Oath, with any Certainty, whether theſe Officers or Miniſters, ſo defamed, are thoſe at Home or Abroad, or civil or military? Again, I ſuppoſe, for Argument's Sake, that though you ſhould be of Opinion, that this Piece of foreign News is a Libel or Scandal upon his Majeſty's Officers or Miniſters; yet I ſubmit it to you, whether you can ſay, on your Oaths, that that Piece of News, contained in this Journal, does amount to a falſe, ſcandalous, and ſeditious Libel, as it is aſſerted and averred, by an Innuendo, in the Information? And I ſubmit it to you, with all Deference to my Lord's Judgment and Directions, whether it is not incumbent on them to prove, that that Piece of foreign News is falſe, ſcandalous, and ſeditious, before you can find it, by your Verdict, to be ſo? And, indeed, the chief Thing in this Paper, or Letter, that the Defendant is charged with in the Information, is; [" That a Rumour hath been for ſome Time pri-" vately ſpread about, that certain Miniſters are endeavouring to bring " about an Accommodation with the Emperor."] I ſay, this is the chief Thing that is mentioned in the *Hague* Letter; though, in the Concluſion of it, it is ſaid, [" I cannot take upon me to juſtify the Truth of " this Report."] For all the reſt of that Letter (as I ſaid before) are mentioned, or ſet down, only by way of Concluſion or Inference, that ſuch and ſuch Things will be the Effect or Conſequence, if theſe [certain Miniſters] can bring about that Accommodation with the Emperor. Now, let us take it either Way; ſuppoſe that, at the Time of the Publication of this *Hague* Letter, that this Accommodation or Treaty with the Emperor had not been brought about; how can it be ſaid to be falſe, and ſo on, when the Letter does not affirm it for a Truth; but only ſays, that [" a Rumour hath been for ſome Time privately ſpread about, that " certain Miniſters are endeavouring to bring about an Accommodation " with the Emperor;"] and adds, in the Concluſion of it, [" that he " cannot take upon him to juſtify the Truth of this Report."] And then let us ſuppoſe, that they were endeavouring to bring about that Accommodation or Treaty with the Emperor; and that it was actually brought about and concluded about the Time of the Publication of that Letter, which was in the Year 1730; then, to be ſure, the Allegation was true, and therefore could not be falſe and ſcandalous, or ſeditious. As to that Accommodation or Treaty with the Emperor's being true, I hope we ſhall give you full Satisfaction, notwithſtanding the great Difficulties that the Defendant at preſent labours under: We ſhall give you the beſt Evidence that the Nature of Things will admit of, and which is always allowed to be ſufficient; for there are ſome Things which are ſelf-evident, and there are ſome Things that carry in them what every body knows.

Lord Chief-Juſtice. I don't altogether know what you aim at: I ſhould be glad to know how you would really underſtand theſe Expreſſions. And as for your ſaying, that you can prove what is charged on the Defendant to be true, it is my Opinion, that it is not material whether the Facts charged in a Libel be true or falſe, if the Proſecution is by Indictment or Information; and that Writing or Printing may be libellous, though the Scandal is not charged in direct Terms, but only ironically; or although there be only the initial Letters of the Name, or even a fictitious Name, if the Jury plainly perceives it to point at a particular Perſon; and that not only the Contriver and Procurer, but even the Publiſher of a Libel, are puniſhable; and that even a private Man's Character is not to be ſcandalized, either directly or indirectly; becauſe there are Remedies appointed by the Law, in caſe he has injured any Perſon, without maliciouſly ſcandalizing him in his Character: And much leſs is a Magiſtrate's, Miniſter of State, or other public Perſon's Character to be ſtained, either directly or indirectly; becauſe the Law hath pointed out another Remedy than publiſhing Libels, if they have injured any Perſon, either in a public or private Capacity; and the Law always puniſhes Libels, even among private Perſons, becauſe they flow from Malice, and tend to create Diſturbance, Quarrels, and Revenge between them, their Families and Kindred, and diſturb the public Peace: And the Law reckons it a greater Offence when the Libel is pointed at Perſons in a public Capacity, as it is a Reproach to the Government to have corrupt Magiſtrates, *&c.* ſubſtituted by his Majeſty, and tends to ſow Sedition, and diſturb the Peace of the Kingdom: Therefore, I ſhall not here allow of any Evidence to prove that the Matters charged in the Libel are true; for I am only abiding by what have been formerly done, in other Caſes of the like Nature. If you think it wrong, apply to the Court, and they will do you Juſtice.

Mr. *Bootle.* My Lord, then I muſt ſubmit it to your Lordſhip, whether this will not tend to the utter Suppreſſion of the Liberty of the Preſs, which hath been ſo beneficial to the Nation in general: And, my Lord, I humbly apprehend, tho' a Publiſher of News happens to be miſtaken in what he publiſhes, it cannot be called malicious nor ſeditious, eſpecially when no particular Perſon is mentioned; but only an Error, committed thro' Ignorance, or Miſrepreſentation of his Correſpondents. Again, my Lord, if the Defendant is not allowed to bring in his Evidence that ſome Parts of his News are true; then, if he is found guilty, he is found guilty of all that is charged on him in the Information, though he is only guilty of Part thereof. I think this Evidence will be allowed between particular Perſons, with relation to their private Affairs; for they will not be found guilty of the Whole, when they are only guilty of a Part; and why ſhould not the ſame be allowed with reſpect to public Affairs? As the Star-chamber is now aboliſhed, I don't know how far that Doctrine may be adhered to. I ſhould be glad to have one Inſtance or Authority of this, and of there being no need to prove News to be true; and alſo where a Publiſher of News is not allowed to ſay that this Piece of News is true, becauſe it relates to the public Affairs of the Nation. Is there no Diſtinction to be made between falſe News and true News; and cannot we now animadvert, or take notice of public Affairs, and inſert them in the Papers, as well as formerly? If this is the Caſe, it will be of dangerous and fatal Conſequence indeed, if Matters of State, or public Affairs, are not to be meddled with, or inſerted in the News-papers, notwithſtanding they are true, but at the Peril of him that does it? They may as well, at once, take away the Liberty of the Preſs; and then we ſhall all live in Darkneſs and Ignorance, which may occaſion Diſorders enough in the Nation. Therefore, I ſubmit it to your Lordſhip, whether this will not be of dangerous Conſequence, to puniſh a Perſon for publiſhing true News as well as falſe; and whether it can be juſtly ſaid in the Information, that the Defendant intended to publiſh falſe News?

Mr. *Strange.* My Lord, I beg Leave to call a Witneſs or two. It was inſinuated, by the Gentlemen on the other Side, that the Extract of the *Hague* Letter was of the Growth of our own Country; and put it upon us to prove that it came from the *Hague*, by producing the Letter itſelf. My Lord, in order to take off that Imputation, it will be neceſſary to ſhew, that they have put it out of our Power to do ſo; therefore our Evidence will be, in the firſt Place, to ſhew, that when the Defendant, Mr. *Francklin*, was taken into Cuſtody by the Meſſengers, they broke open the Defendant's Scrutoire: and, I think, they alſo ſearched his Pockets, and took away his Papers, and among which were Letters, and this amongſt the reſt. The next Part of our Evidence ſhall be to prove, as have been opened, that we have publiſhed true News, and not falſe, as is charged in the Information; and, indeed, the Information ought rather to have been for foreſtalling true News, and not for publiſhing falſe News; for the endeavouring to bring about that Accommodation with the Emperor took Effect: For, my Lord, we will ſhew, that we applied in a public Manner, that the Defendant might be at Liberty to take Copies of the Treaties of *Hanover*, *Seville*, and *Vienna*, in order to make uſe of them at his Trial; and when we had taken all proper Methods to have Copies of them, we were told, that the Treaty of *Vienna* was a ſecret one, and not yet made public, and conſequently not inrolled in any of the public Offices; and that no Copy could be given of it, to produce in Court: When we have proved this, we hope it will be ſufficient to ſhew, that we have not publiſhed falſe News, as charged in the Information; eſpecially as we have done all that can be be done, in order to produce a Copy thereof.

Call *William Ayers. (Who appears.)*

Mr. *Strange.* Do you know the Defendant, Mr. *Francklin?*

Mr. *Ayers.* Yes.

Mr. *Strange.* Was you preſent when he was taken into Cuſtody, for publiſhing the *Craftſman* the 2d of *January*, 1730?

Mr. *Ayers.* Yes.

Mr. *Strange.* Will you give an Account of what happened?

Mr. *Ayers.* The Meſſengers came to my Houſe, for I was a Conſtable, and deſired my Aſſiſtance, to go with them to Mr. *Francklin's*, which I did; and they ſearched for Papers in his Houſe and Shop, and they broke open his Scrutoire, and took away what Papers they could find; and Mr. *Francklin* deſired them to leave ſome of the Papers, becauſe they would be of Service to him, but not to them; but they would not, but took them away.

Mr. *Strange.* Did he endeavour to ſave his Papers as much as he could?

Mr. *Ayers.* He did not; but his Wife endeavoured to do it, by ſnatching at them, though to no Purpoſe.

Mr. *Strange.* Did they ſearch his Pockets?

Mr. *Ayers.* I did not obſerve them do that.

Mr. *Strange.* Did they ſuffer him to take an Account of theſe Papers, in order to know what they were?---Mr. *Ayers.* No.

Mr. *Strange.* Do you know what they did with theſe Papers?

Mr. *Ayers.* No.

Mr. *Strange.* Did you go along with them?---Mr. *Ayres.* Yes.

Mr. *Strange.* Did you know they were Meſſengers?

Mr. *Ayers.* Yes; he ſhewed me his Authority, and told me that he was the King's Meſſenger.

Mr. *Strange.* Hath Mr. *Francklin* had them again?

Mr. *Ayers.* I believe not.

Mr. *Strange.* Hath he aſked for them?---Mr. *Ayers.* I know not.

Mr. *Strange.* Were they ſealed up or not?

Mr. *Ayers.* I cannot remember that.

Mr. *Strange.* Was Mr. *Francklin* deſired to ſet his Seal to them?

Mr. *Ayers.* I cannot be ſure; but I believe he was not deſired to do ſo.

Mr. *Strange* Where were theſe Papers found?

Mr. *Ayers.* I think they were in the one End of the Shop; they were wrapped up in a Bundle.

Mr. *Strange.* Was the Inſide of them printed?---Mr. *Ayers.* I know not.

Mr. *Strange.* Call *Thomas Rawlins. (Who appears.)*

Mr. Att. Gen. My Lord, I find that they are to call this Witneſs to prove that they deſired Copies of the Treaties; which is to no Purpoſe, and cannot be allowed.

Lord Chief Juſtice. I am very well ſatisfied, that I cannot admit it.

Mr. *Strange.* My Lord, it is only to ſhew, that the *Hague* Letter was not a Piece of falſe News.

Mr. Attorney General. My Lord, did ever any Man think it neceſſary to prove every Part of the Libel, when it is not material whether the Matter, or ſcandalous Words, or News in the Libel, be true or falſe, or charged in direct Terms or not; or whether the Perſons be named, or only pointed at, as have been already hinted; though Mr. *Bootle* has called on me to ſhew ſome Authority or Precedent for ſome of theſe

Things? I do say, that on the Cases mentioned in the 5th of *Coke's Report*, *p.* 125. and also in *Hobart's Reports*, *p.* 215. and 5th of *Modern Reports*, *p.* 167. and 9th of *Coke's Reports*, *p.* 59. The first says, That every Libel is made either against a private Man, or against a Magistrate or publick Person: If it be made against a private Person, it deserves a severe Punishment; and if it be made against a Magistrate, or other publick Person, that is still a greater Offence, and deserves a greater Punishment; because this concerns not only the Breach of the Peace, but is a Scandal to the Government. The other *Reports* take Notice of the other Points which I have mentioned: And I must say, that it would be the most absurd Thing in the World to imagine, that the Law had taken a better Care of the Character of a private Person, than of a Magistrate, or publick Person, employed and intrusted by his Majesty in the Affairs of State. Therefore, I submit it to your Lordship, whether such an Evidence, to prove that the News published is true, ought to be admitted.

Lord Chief Justice. I have given Mr. *Beetle* my Opinion already about it; and if it is not according to their Liking, they know where to apply to have it rectified.

Mr. *Beetle.* My Lord, in effect, it hath been called an Absurdity to think, that speaking the Truth of any Magistrate, or other publick Person, in the News, can go unpunished; because if that Magistrate or publick Person have done any Injury, then it was said, that there is a Remedy provided another Way than by publickly exposing him, and defaming his Character; as well as there is a Remedy provided for having Satisfaction of a private Person, for any Injury done by him, without scandalizing him, directly or indirectly, in any publick Paper. But I should be glad to know how it must be gone about: For Example, here is a principal Minister of State, that hath injured a Person that is a Publisher of a Paper; where can he have Redress, supposing the Parliament not sitting?

Lord Chief Justice. I am of the same Opinion as before.

Mr. Solicitor General. I thought, that really such a Thing as that would not have been taken Notice of; because it is plain to every Person, that we have a Remedy against a Minister of State, as well as against any other Man, without defaming him publickly; and likewise any Author, Printer, or Publisher, or other Person, may apply to a proper Place for a Remedy against him, if they think that any Court, or Jury, have not done them Justice.

Mr. *Noel.* My Lord, I beg Leave to say a few Words on the Defendant's Behalf. It is well known, that the Design of this Paper of the *Craftsman*, which is published weekly, is to entertain and benefit the Publick, and I believe it has answered these Ends: And I hope the Jury will consider the Intention thereof, with the Circumstances and Inconveniencies that the Printer or Publisher of News-papers lie under; and I hope you will consider the Defendant only as a Collector of News from all Parts of the Country, and likewise from foreign Parts, for the Advantage of those People here that trade to and from those Parts; and that it is possible for the Defendant's Correspondents, after all the Care they have taken, sometimes to be a little mistaken in their Intelligence, or not so correct in wording them as they ought or might be, without any Intention or malicious Design of Injury to any Person; and therefore, if such Things were to be always punctually and precisely scanned, and the Printers and Publishers thereof prosecuted, and subjected to Punishment, it will be of very dangerous Consequence; because we should not have any Intelligence or News-papers at all, and consequently be ignorant of what happens daily at home or abroad, and thereby occasion an Interruption in Trade, so beneficial to this Nation. Besides, it is hoped that you will consider, that this Piece of News, in the *Hague* Letter, is not laid down as a Truth to be depended upon, but only as a Rumour that had been spread about in that Place: And the Writer of the Letter adds, in the Conclusion thereof, that he does not take upon him to justify this Report; and that if it should appear to have any Foundation, he should hear further from him. Again you will consider, as have been already mentioned to you, that the Parts of the same are applicable to other Courts, and that it cannot be applicable to *Great-Britain*, or its Ministers, without Innuendos, which are not to be used in Prosecutions for Slander or scandalous Words. Also consider, that they could not draw an Innuendo in the Information to include his present Majesty; nor have his Counsel pretended to shew any Evidence, that the *Hague* Letter had any Tendency to reflect that Way; and, indeed, the Innuendo to include his Ministers is very far fetched, and very much forced. Besides, the Writer of that Letter does seem to approve of these certain Ministers Measures of endeavouring to bring about an Accommodation with the Emperor, by saying, ["That "it must be confessed, that these Measures are very desirable at present."] So that, upon the whole, I cannot see that the Letter is applicable to our Ministers, or that it contains a Libel upon them, or that it any ways answers their Character; and I hope, Gentlemen, that you will be of the same Opinion in your Verdict.

Mr. *Taylor.* My Lord, I hope your Lordship will likewise indulge me with a very few Words on the Behalf of the Defendant: As the Government is concerned in this Cause, so the Liberty of the Subject is also greatly concerned therein. The Facts which you, Gentlemen, are to try, are, whether the Defendant, Mr. *Franeklin*, printed and published this Paper; and whether you can, upon your Oath, say, that it is a false, scandalous, and seditious Libel; and, for that End, it will be necessary that you take the Paper into your serious Consideration, not as it is inserted in the Information, with a great Number of Innuendos, but as it was originally; and see if it contains any scandalous Reflections on our present Ministers particularly. Gentlemen, it is not sufficient to say, that the Information is a Libel; but you are to judge of its being one by the Words themselves, and as they stand in the Paper abstracted from the Innuendos; and I do say, that it will be impossible to find it a Libel on our present Ministers, if you judge of it so; for there are no such Words therein as the Ministers of *Great-Britain*; I believe there are no less than thirty-seven Innuendos in this Information, and you cannot find it a Libel when stuffed with these Innuendos. Gentlemen, in the former Part of it, you will be pleased to observe, that they say, that the Defendant is a constant Publisher of these Libels; and yet they have not proved that so much as one of them was ever sold by the Defendant himself. And, Gentlemen, with respect to the Innuendos, it is to be observed, that there was a famous Cause in in King *Charles* the Second's Time. In the 14th *May*, 1669, there was a Writ of Error, and the Judgment or Sentence reversed; and their Lordships declared, that Innuendos ought not to be allowed. Nor are you to understand it here, on Oath, as you may do in a Coffee-house by Conjectures; therefore I hope, upon Consideration of these Things, that you will not find this Piece of News a Libel.

Mr. Attorney General. My Lord, I beg Leave to make a short Reply, not for what they have said, nor for our want of Proof; but I think some Things very strange which they have insisted on. One of them is, that there is not sufficient Proof of the Publication of this Paper. As to that, I beg Leave to say, that I never saw the Publication of a Paper more clearly proved; and I believe they never saw it themselves in any Instance whatsoever; for your Lordship may remember, that Mr. *Smith*, the first Witness, swears, that he applied to the Defendant, Mr. *Francklin* himself, when he was in his Shop, and asked for six Journals of that Day, the 9th of *January*, 1730, and two of the *Saturday* before; and that the Defendant ordered his Servant, then in the Shop, to deliver them to Mr. *Smith*, which he did; and the Servant received the Money for them; and therefore his ordering his Servant to deliver them, is the same as if he had delivered them himself; there cannot be a clearer Proof. They make a Scruple, because he did not ask particularly by Name for such a Journal, though I think he asked to the same Effect, by asking for six of his Journals of that Day; for the Word [his] may take in the Words [*Country Journal*, or *Craftsman*] because that is the Journal which he prints and sells; besides, have they done any thing on their Part to prove that other Persons sold other Journals of that Name or otherwise? or have they offered any thing to contradict or weaken his Evidence? Therefore I think that our Witness is the strongest for the King that can be. It was said that great Inconveniences and Dangers might happen to Publishers, if News were so scanned or sifted. As to that, I think every Publisher ought to be careful of what he publishes; for it is no Part of the Printer or Publisher's Trade to scandalize whom they please, for that would be turning Printing and Book-selling into libelling; nor is the Liberty of the Press, which they so much cry up, and say is in Danger of being utterly suppressed, to be turned into a licentious and disorderly Abuse of the Press. Again, it hath appeared before your Lordship, with respect to the Proof of the Defendant's being the Publisher, that there is not only this Witness's Evidence thereof, (against the Credit of which no Evidence hath been offered) but there are other Witnesses who confirm his Evidence, such as Mrs. *Dodd* and her Servants, and Mrs. *Pierce* and her's, who had great Numbers at his Shop weekly, and paid for them; and that Mrs. *Pierce* used to have about 7 *l.* worth weekly; it is likewise confirmed by the Collectors and Servants at the *Stamp-Office*. After all this, can it be doubted that the Defendant is guilty of the Publication of this Paper, especially when the Defendant's Counsel have not contradicted them, or offered any thing to invalidate or weaken their Evidence? I take the Publication to be undeniably proved; and it would be but mispending of Time to say any more on that Head. The next Thing is, whether we have sufficiently proved that the pretended *Hague* Letter inserted in that Paper, is a Libel as charged in the Information; as to that, I may say that there hath not been so much as one single Objection offered against the Construction we put upon it, I mean of its being all applicable to his present Majesty, and his principal Officers and Ministers of State; I mean not one of any Weight, or which has the least Colour of being applicable to any other Court, Country, or Person whatsoever. The Words are [certain Ministers.] These are the Persons that the pretended *Hague* Letter charges with *Perfidy*, *ruining* their Country, *&c.* and want to have a Meaning put upon them; that is to say, to what Court or Country are they applicable. Now, consider what is said of these certain Ministers: The Letter says, ["A Rumour hath been for some time spread abroad, "that a Misunderstanding will soon discover itself between the Allies of "*Seville*; and that certain Ministers having at Length found out, that "too close an Union with *France*, and a War upon the Foot of the Trea"ty of *Seville*, is quite against the Grain of the People, are endeavour"ing to bring about an Accommodation with the Emperor."] Now, Gentlemen, you know that the Allies of *Seville* are the King of *Great-Britain* and the *French* King, and the King of *Spain*. And then consider, that these certain Ministers are charged with Perfidy in breaking that Treaty, who, to be sure, must be one of these three Courts, *Great-Britain*, *France*, or *Spain*, who were empowered to make it; for no other could be guilty of breaking it, but one of these three who made it: Now the Letter-writer tells us plainly, that it is neither the Ministers of *France*, nor the Ministers of *Spain*, that he thus charged with Perfidy in breaking that Treaty; for he tells us, that one necessary Effect of such Perfidy will be the Conjunction of *France* and *Spain*; and that a certain Court would have the Mortification to see these two Crowns united against them more strongly than ever: This, as I said before, amounts to a Demonstration, that neither the Ministers of *France* nor *Spain* are charged with that Perfidy, in breaking that Treaty: If so, then there is but the Ministers of one Party left, to wit, of *Great-Britain*; and I must say, that it is as plain as if the Ministers of *Great Britain* had been in express Words. Gentlemen, this is no forced nor strained Innuendo; but an Innuendo that naturally and necessarily flows of itself, and which you all cannot but presently draw. Gentlemen, there are other Parts of the Letter, which serve to support and confirm this Construction, which I mentioned in the Opening; such as these, to wit, that another Effect of that Perfidy would be the Seizure of that vast Pledge, which *Spain* hath at this Time in her Hands; and that these Ministers were undoing every Thing they had been doing for five Years past; which carries it back to *September*, 1725, when the Treaty of *Hanover* was concluded. It was said, that you must not understand it as you would do in a Coffee-house, because of its dangerous Consequences. To which I answer, That there is no more Danger in understanding Things here than there, if they are plain (as this is), and do but exercise their Sense and Reason in both Places. Gentlemen, if you acquit the Defendant, you must say on your Oath, that the *Letter-Writer* did not mean the Ministers of *Great-Britain*; and can you say that he did not, and that it is not applicable to them? I told you in the Opening, to this or the like Effect: That Writing or Printing may be a Libel, though the Persons are not particularly named therein; and that it is no hard Matter to scandalize any Person by

by Circumlocution, fictitious Names, *&c.* as plainly to be underſtood as if their Names were particularly mentioned; and that the Law conſtrues them accordingly, by Innuendos, becauſe they cannot be otherwiſe conſtrued; and this hath been the Practice of the Law for ſome Hundreds of Years; and therefore the Defendant's Counſel telling you that it is doing People Harm to bring Things in by Innuendos, is only amuſing you with Words; for it is a plain and a juſt Law, and the Law would be defective, if it were otherwiſe, and People would be always defaming one another by the like Methods. I told you of the Caſe of Mr. *Miſt*'s Journal, in 1728: it was a ſcandalous Libel, under the fictitious Names of *Eſreff* and *Sophi*; which the Jury underſtood plainly to be ſo, and brought in their Verdict accordingly againſt the Printer and Publiſher thereof *. I ſhall mention another Caſe, of Mr. *Matthews* the Printer, for High-Treaſon: This was a very notorious and publick Caſe, relating to a certain Perſon called the *Chevalier de St. George:* There are a thouſand Chevaliers in the World, and yet the Meaning was plainly underſtood to be the Pretender; no leſs a Crime than High Treaſon. There were eleven Judges, I think, that ſat on the Bench, and the preſent Lord Chancellor *(King)* preſided; and they underſtood the Queries publiſhed as every common Reader would; and the Jury, being convinced in their own Conſcience, underſtood it in the ſame Manner; I mean, no leſs a Crime than High Treaſon, and he was executed for the ſame. And, indeed, any Man may write Treaſon at his Pleaſure, after that Manner, if there was not this Way of conſtruing it. Again, it is ſaid, that this cannot be a Libel, though the Words were underſtood to be applicable to the Perſons mentioned in the Information; becauſe what is affirmed in the Letter, about the Accommodation or Treaty with the Emperor, can be proved to be true: As to that, I muſt ſay, that it is no matter whether the Words be true or falſe, if it is publiſhed as a Libel, and the Proſecution be by Indictment or Information. Then it hath been ſaid, that the Defendant is a Publiſher of News, and that this Letter was ſent to him from the *Hague*, and that he inſerted it as ſuch in his Journal: As to that, I do ſay, that if this Letter had been really ſent to him from the *Hague*, it would be ſtill a Libel; becauſe it is not in his Power to publiſh what he pleaſes, or what may be conſtrued defamatory, let it come from what Quarter it will, whether from abroad or at home; for, as I ſaid before, it is no Part of his Trade to ſcandalize whom he pleaſes. But they have not even proved, that that Letter was ſent to him from the *Hague:* All that they have done it, that they have called a Conſtable, who ſays, that the Meſſengers ſearched for Papers, and took away ſome; but does not ſay that they were written Papers, or that this *Hague* Letter was among them; no, the Papers he means were only ſome criminal *Craftſman*. Beſides, if any other Thing had been ſeized, ſuch as that pretended *Hague* Letter, upon Application made to his Majeſty, or the Secretaries, he might have had them returned; but the Gentlemen do not pretend that they made any ſuch Application. Then they ſay, if this Piece of News is deemed as a Libel, it will have a bad Conſequence; for no Perſon will print any News at all, and then the People will not know how Things or Affairs go: This is very extraordinary, indeed; for the Defendant is not charged in the Information for publiſhing the Piece of pretended News, to wit, [" That a Rumour hath for ſome Time privately been ſpread " about, *&c.*"] No; but he is charged for making an Application, and ſaying, that the Miniſters are guilty of Perfidy, and ruining their Country, *&c.* Next, Gentlemen, I would have you to obſerve, that it is no Part of your Office to conſider or determine, whether this *Hague* Letter is a Libel or not (though the Defendant's Counſel inſinuated that it was a Part thereof): You are only to conſider, whether the Expreſſions therein are meant to refer to the preſent King and his Miniſters, and are properly applicable to them. But whether this amounts to a Libel or Crime, is only the Office of the Court to determine: For, ſuppoſe a Man was accuſed of Felony, the Court will determine whether it amounts to it, or not. It is ſo in High-Treaſon, and all Miſdemeanours, in which the Jury is to determine the Facts, and the Judges are to determine the Crime and Puniſhment, as being Matters of Law: And it is confounding the Office of the Court, and of the Jury, to pretend to do otherwiſe; and it is likewiſe a perverting of the Law: This I ſay, with great Submiſſion to your Lordſhip. Then it was ſaid, that there was nothing in that *Hague* Letter, that did relate to or imply any Reflection upon his preſent Majeſty: But, Gentlemen, that you may not be led into any Error by ſuch an Aſſertion, and Diſtinction between the King and his Miniſters, I would have you to conſider, that here is a Charge on the King's Miniſters for Mal-adminiſtration, and for carrying on a Treaty, which occaſions Perfidy, *&c.* Now, I would aſk you, can Treaties be carried on without his Majeſty's Direction? And therefore I ſay, that ſuch a Charge as that is a Libel on the King himſelf, as well as on his Miniſters, who are impowered and directed by him. The ſame may be ſaid with reſpect to Magiſtrates and Judges; for they are originally of his Appointment, and the Courts are the King's, and he makes them, and is at the Head of them, and without him they cannot ſubſiſt: So that I ſay, that a Reflection on the King's Miniſters, Officers, Magiſtrates, *&c.* is a high Reflection on the King himſelf. There have been ſeveral other Things mentioned, which I ſhall not touch at, becauſe I think they are not material. There was another thing mentioned, which was, that if this *Hague* Letter was conſtrued a Libel, it would tend to the utter Deſtruction of the Liberty of the Preſs. My Lord, I am really at a Loſs to know what Sort of Liberty they mean by it; I hope they don't mean a licentious and an unbounded Liberty, to libel and ſcandalize his Majeſty, or his principal Officers and Miniſters of State, or his Magiſtrates, or even any of the meaneſt of his Subjects, whenever they think fit; for that would be a dangerous Liberty indeed, and be of a very pernicious Conſequence. Gentlemen, I would have you to conſider, that even the Prerogatives of the King are founded on the Law and limited by it, and ſo are all other Things relating to his Subjects; and it cannot be ſuppoſed, that a Printer only is exempted, and at Liberty to uſe his Preſs for what Purpoſes he pleaſes; if he is, I deſire now, that the Defendant's Counſel would point out that Law: No, the Law is not ſo abſurd as to allow ſuch a Liberty of the Preſs. The Liberty meant, is to be underſtood of a legal one: He may lawfully print and publiſh what belongs to his own Trade; but he is not to publiſh any Thing reflecting on the Character, and Reputation, and Adminiſtration of his Majeſty, or his Miniſters; nor yet to ſtain the Character or Reputation of any of his Subjects; for, as I ſaid before, that to ſcandalize and libel People is no Part of his Trade, ſo I ſay, that it is only that Liberty of the Preſs, which he is to uſe, that is regulated by Law and ſubjected to it; and if he breaks that Law, or exceeds that Liberty of the Preſs, he is to be puniſhed for it, as well as for breaking other Laws or Liberties. And, Gentlemen, though it has been inſinuated to you, by the other Side, that the making of ſuch Things a Libel came from the Star-Chamber; yet I muſt tell you, that printing ſuch defamatory Expreſſions, or ſlanderous News, was deemed a Libel, and puniſhed accordingly, long before the Star-Chamber. It is a Law made in 1275, in the third of King *Edward* I. intitled, *An Act that none ſhall report ſlanderous News, whereby Diſcord may ariſe.* The Words of that Law are, " [Foraſmuch as there have been oftentimes found, in the Country, Deviſors of Tales, whereby Diſcord, or Occaſion of Diſcord, hath many " Times ariſen between the King and his People, or great Men of this " Realm; for the Damage that hath and may thereof enſue, it is commanded, that from henceforth none be ſo hardy to tell or publiſh any " falſe News or Tales, whereby Diſcord, or Occaſion of Diſcord, or " Slander, may grow between the King and his People, or the great " Men of the Realm; and he that do ſo, ſhall be taken and kept in " Priſon," *&c.*] So, Gentlemen, you ſee that this of Libels is not a new Law, or one that came from the Star-Chamber; but one that has been almoſt of 500 Years ſtanding; therefore I hope you will not ſuffer yourſelves to be amuſed by ſuch Things. That Court of the Star-Chamber puniſhed without Juries; but though Juries were taken away, yet the Law remained the ſame as to Libels and Crimes: So I hope it appears to you to be very plain, that the Liberty of the Preſs is limited and governed by Law; and that the Law ſets Limits both to the King and his Subjects. Laſtly, I think it was ſaid to this Effect, that it would be making Mr. *Francklin* a great Politician in the World, to ſuppoſe that he knew any Thing of the Meaning of that pretended *Hague* Letter which he printed and publiſhed: As to that, I think I may venture to ſay, that he could not nor cannot be ignorant of the Meaning thereof, becauſe it is plain to any common Reader, that by the Words [certain Miniſters], are and muſt be meant the Miniſters of *Great-Britain:* And I believe that the Treaties of *Hanover* and *Seville* have been heard of, and known by you all; and that you likewiſe have heard, and know, that there have been Differences between *Great-Britain* and *Spain*. So, Gentlemen, I ſubmit it to you, whether you are not convinced in your Conſciences, that Mr. *Francklin*, the Defendant, is the Publiſher of that *Craftſman*, the 2d of *January* laſt, wherein the pretended *Hague* Letter is inſerted; and ſecondly, Whether you are not likewiſe convinced, that theſe Expreſſions in that Letter, to wit, [certain Court], and [certain Miniſters], and what is ſpoken againſt them, are to be underſtood of the Court and Miniſters of *Great Britain?* Theſe are the two Things now under your Conſideration; for as to the Queſtion, Whether theſe Words amount to a Libel or not, you have nothing to do with that, it being the Office of the Court to determine whether they do, or do not. So we doubt not but you will give your

* This Letter, dated *Auguſt* 24, 1728, ſigned *Amos Dudge*, was ſuppoſed to be written by the late *Philip* Duke of *Wharton*; wherein were contained, under the Characters of *Mireweis*, *Eſreff*, and *Sophi*, many ſcandalous Reflections, and odious Compariſons between his late Majeſty King *George* II. of glorious Memory, and the Pretender. It was ſo virulent a Letter, that it was preſented by the Grand Juries of *Middleſex*, *Weſtminſter*, and the City of *Briſtol*; and the Printers, Publiſhers, Preſs-men, *&c.* concerned in printing it were all taken into Cuſtody by Meſſengers.

On *Feb.* 25, 1729, at the Sittings of the Court of King's-Bench at *Guildhall*, *John Clarke*, the Preſſman, was tried upon an Information filed againſt him by the Attorney-General, for printing and publiſhing a Libel, intitled, *Miſt's Weekly Journal*, No. 175, dated *Auguſt* 24, 1728, " containing falſe, ſcandalous, and ſeditious Reflections on his late and " preſent Majeſty, by drawing odious Parallels, and thereby maliciouſly and falſly inſinuating our Government to be tyrannical, and our Miniſtry corrupt and abominable. " To ſupport the Charge, there were called *James Ford* and *Thomas Randal*, two Boys concerned in the Printing-Office, who proved that the ſaid *Clarke* worked upon the " ſaid Journal, and aſſiſted in printing 9000 at Mr. *Wolfe*'s in *Carter-Lane*; that from thence (for fear of Meſſengers) the Forms were carried to Mr. *Burton*'s, a Printer, " where the ſaid *Clarke* aſſiſted in working off 1750 more; and that the ſaid *Clarke* ordered, that Nobody ſhould ſee or have any of them, till all were printed off, and " publiſhed together. It appeared alſo, that *Clarke* owned, in his Examination before Mr. *Delafay*, that he aſſiſted in working off the ſaid Journal. His publiſhing it was proved " by Mr. *Maſkall*, who bought half a Quire, which was delivered out to him by *Clarke* himſelf. The Counſel for the Defendant alledged, that the Characters of *Mireweis* " and *Eſreff* did not in the leaſt correſpond with his late or preſent Majeſty: Upon which the Court ſaid, the Crime was the greater in making the Parallel. The De- " fendant's Counſel further alledged, that *Clarke* being a poor ignorant Workman, he could not be ſuppoſed to underſtand the Compariſons, or to know the Characters; " nor could have any malicious Intention againſt the Government: To which the Court anſwered, it was the Facts of Printing and Publiſhing *only* that lay in Iſſue; which " the Jury conſidering, they brought him in Guilty of both.

" *Robert Knell* was alſo tried upon an Information filed againſt him, for printing and publiſhing the ſame Libel. It was proved, that he aſſiſted in compoſing it; and ſaid, " as he was about it, *Mr.* Wolfe *and I, and the reſt of us, will all be taken up for this Journal.* The Defendant's Counſel inſiſted, that compoſing was not printing; to " which the Attorney-General anſwered, that though, abſtractly conſidered, it was not the very Act, yet it was an Act preparatory to it; and Mr. *Roberts*, a Printer, " being examined, declared, it was not only Part, but the principal Part of Printing; upon which the Objection was over-ruled. Another Point was alſo objected to; that " as there were two Compoſitors, each having a ſeparate Form allotted to compoſe, one of them could not be charged with the whole Libel, as laid in the Information: To " which the Court anſwered, that when a Crime is perpetrated by more than one, and by joint Conſent, any one of them, being guilty of Part, is guilty of the Whole. " The Defendant was therefore found Guilty of printing the ſaid Libel; but not of publiſhing it.

" *Joſeph Carter* (*Wolfe*'s Apprentice) was alſo tried on the ſaid Information; and the Evidence againſt him being the ſame as before, he was found guilty of printing only.

" *May* 19 following, being the laſt Day of the Term, the following Perſons, for being concerned in printing and publiſhing *Miſt*'s *Journal* of *Auguſt* 24, received Judg- " ment as follows:

" *John Clarke*, the Preſſman, for printing and publiſhing the ſaid Libel, to ſtand thrice in the Pillory; once at the *Royal Exchange*, once at *Temple-Bar*, and once at *Charing-* " *Croſs*; to be committed to Bridewell for ſix Months, and there kept to hard Labour.

" *Robert Knell*, the Compoſitor, for printing the ſaid Libel, to ſtand twice in the Pillory, once at the *Royal Exchange*, and once at *Charing-Croſs*; and to be committed to " Bridewell for ſix Months, and there to be kept to hard Labour.

" *Joſeph Carter*, the Apprentice, for printing the ſaid Libel, to go round the four Courts in *Weſtminſter-Hall*, on the firſt Day of next Term, with a Paper fixed upon " his Head, denoting his Offence; to be ſent to Bridewell for one Month, and kept to hard Labour." *Monthly Chronicle for* 1728, 1729."

your Verdict according to your Conſcience; and do Juſtice between the King and the Defendant, which is all that is required of you. My Lord, the Importance of the Cauſe hath occaſioned me to take up much of your Time, which I hope your Lordſhip will excuſe.

Lord Chief Juſtice. Gentlemen of the Jury, This is an Information, wherein the King is Plaintiff, and Mr. *Francklin* Defendant, for printing and publiſhing the *Country Journal* or *Craftſman*, the 2d of *January* 1730, wherein is inſerted an Extract of a private Letter from the *Hague*, reflecting on his Majeſty and his principal Officers and Miniſters of State. In this Information or Libel, there are three Things to be conſidered, whereof two by you the Jury, and one by the Court. The firſt Thing under your Conſideration is, whether the Defendant, Mr. *Francklin*, is guilty of the Publication of this *Craftſman* or not? The ſecond is, Whether the Expreſſions in that Letter refer to his preſent Majeſty and his principal Officers and Miniſters of State, and are applicable to them or not? This is the chief Thing in the Information; for if you think that theſe defamatory Expreſſions are not applicable to them, then the Defendant is not guilty of what is charged upon him; but if you think that they are applicable to them, then the Defendant is guilty thereof; upon this Suppoſition, that you find him to be the Publiſher of that Paper. Theſe are the two Matters of Fact that come under your Conſideration; and of which you are proper Judges. But then there is a third Thing, to wit, Whether theſe defamatory Expreſſions amount to a Libel or not? This does not belong to the Office of the Jury, but to the Office of the Court; becauſe it is a Matter of Law, and not of Fact; and of which the Court are the only proper Judges; and there is Redreſs to be had at another Place, if either of the Parties are not ſatisfied; for we are not to invade one another's Province, as is now of late a Notion among ſome People who ought to know better; for Matters of Law and Matters of Fact are never to be confounded. As to the firſt Thing, whether the Defendant is guilty of the Publication of that *Craftſman* which is under your Conſideration. And here in this and the ſecond Head I ſhall not be long, becauſe Things have been ſo often repeated, and all Sorts of Obſervations made on both Sides that is poſſible to be made on this Occaſion; and my Endeavours ſhall be to hinder you from running away with Notions which are not right. As to the Evidence offered to prove the Defendant the Publiſher of that *Craftſman*, the Plaintiff's Counſel called one Mr. *Smith*, againſt whom the Defendant's Counſel could not ſay any Thing material. This Mr. *Smith* gives an Account, that on the 9th of *January* laſt, he went to Mr. *Francklin*'s Shop to buy ſome *Craftſman* or *Journals*; he ſaid he wanted half a Dozen of that Day, and two of the Week before; he ſays, when he came he found Mr. *Francklin* in his Shop, and aſked him for half a Dozen of his *Journals* of that Day, and two of the *Saturday* before; and that Mr. *Francklin* aſked him whom they were for; who anſwered that they were for himſelf; and that Mr. *Francklin* aſked him if he ſold them again; who anſwered, Yes; and that afterwards Mr. *Francklin* pointed to his Servant, and told him to look out theſe *Journals* for him; which he accordingly did; and that he ſold one of the *Journals* of the 2d of *January* again to another Perſon; but before he ſold it he marked it; and that Mr. *Smith* paid his Servant for theſe 8 *Journals*. I think he ſaid, that the two *Journals* were thoſe of the ſecond of *January*. This Evidence is very poſitive and full; for he bought them in the Defendant's Shop; and the Defendant's Servant delivered them to him by his Maſter's Direction, and paid the Servant for them; which is an undeniable Proof of the Defendant's being the Publiſher thereof; and unleſs Mr. *Smith* is wilfully forſworn, his Evidence alone is ſufficient. Then the King's Counſel went on, and called other Witneſſes to prove the Defendant the Publiſher, though I thought there was no Occaſion for more; but they produced other Witneſſes (I ſhall not be long, or name every one). They produced Mrs. *Dodd*, who ſays, that ſhe uſed to ſend her Servant, *Goram*, to Mr. *Francklin*'s weekly for his *Craftſman*, or *Country Journal*; and he brought them from thence; and theſe of the 2d of *January* among the reſt; and gave the Money to another Servant, in order to pay Mr. *Francklin* for them. *Goram* tells you, that he went about a Year and a half together, weekly, to Mr. *Francklin*'s, for theſe *Craftſman* or *Country Journals*, and brought them into his Miſtreſs's Shop; and that he brought ſome of the 2d of *January*, and brought no *Country Journals* of that Day from any other Place; and that he had great Quantities of theſe *Country Journals* weekly. Mrs. *Pierce* ſays, that ſhe ſent her Man, *David Davies*, to Mr. *Francklin*'s weekly, for ſome Time, for his *Country Journals*, and for that of the 2d of *January* among the reſt; and had ſuch a Quantity of them as came to about £7. weekly. *David Davies* ſays, that he was employed by Mrs. *Pierce* to fetch her *Journals*, the *Craftſman*, from Mr. *Francklin*'s; and that of the 2d of *January* among the reſt; and paid the Money for them to the Amount of about £7. weekly. Then they called an Officer of the *Stamp-Office*, who ſays, that he regiſtered thirty-eight Advertiſements that were in the *Craftſman* of the 2d of *January* laſt; and that the Account of the Advertiſements for that Month of *January* came to 10 *l.* 18 *s.* So, Gentlemen, you are to conſider whether or not you are ſatisfied with the Evidence produced to prove the Defendant to be the Publiſher of that *Craftſman* of the 2d of *January* laſt. The next Thing which you are to conſider is, whether the Expreſſions in that *Hague* Letter, refer to his preſent Majeſty and his principal Officers and Miniſters of State, and are applicable to them as in the Information or not; for when People's Names are not ſet down at length, but pointed at by Circumlocution, or Pieces of Words, or by initial Letters, *&c.* the Law always allows Innuendos in Informations, which explain and tell what the Defendant meant by them; and the Law likewiſe allows Juries to give their Verdict on Oath, whether they think that theſe dark, defamatory Speeches have the ſame Meaning as mentioned in the Information or not. The Counſel for the King have gone on and explained and applied theſe defamatory Expreſſions exactly as in the Information; and they have given their Arguments and Reaſons for ſo doing; drawn from the ſeveral Parts of that Letter, which I ſhall not trouble you with, becauſe they have been ſo often repeated in your hearing; I ſay, they have explained them as mentioned in the Information; that is to ſay, that by theſe defamatory Expreſſions, are meant his preſent Majeſty and his principal Officers and Miniſters of State; and indeed they muſt be applicable, and refer to them or to ſomebody elſe; and if they do mean them, then I muſt ſay that they are very ſcandalous and reflecting Expreſſions; becauſe they charge them with Perfidy in breaking of Treaties, ruining in a manner their Country, *&c.* as you may ſee at large in the Letter; and it is very evident that theſe Treaties could not be made without the Knowledge and Direction of his Majeſty. The Counſel for the Defendant ſaid, that theſe ſcandalous Expreſſions could not be underſtood to refer to his Majeſty or his Miniſters; but they did not tell to whom they referred; I ſhould have been glad to have heard them do ſo; ſo that you are to conſider of whom theſe defamatory Expreſſions are meant, or to whom they are applicable; and as to the Rule and Manner of underſtanding them, you are to do it, on Oath, after the ſame Manner and Way as you do privately by yourſelves, taking all the Parts of the Letter together. I ſhall not repeat the ſeveral Parts of it now which the King's Counſel did uſe, to ſhew that they were meant of his Majeſty and his Miniſters, becauſe you are to have the Letter along with you; for it is plain, that the Conſtruction of it depends on the Words themſelves and their Connection. Gentlemen, I have been very ſhort in ſumming up the Evidence; and laid aſide the Points of the Law; I mean, whether theſe defamatory Expreſſions amount to a Libel or not; becauſe the Court can only determine that: And if not ſatisfactory to either of the Parties, there is a proper Redreſs to be had at another Place, as I ſaid before. There was one Thing more mentioned by the Defendant's Counſel, which was, that there is no Room to think that Letter libellous; becauſe there could be no Malice ſuppoſed by inſerting it in the *Craftſman*, being only deſigned as a Piece of foreign News; and that the latter Part of the Letter qualifies it, by ſaying that the Letter-Writer does not take upon him to juſtify the Truth of that Report; but that will not do; for the Injury is the ſame to the Perſons ſcandalized, whether the Letter was inſerted out of Malice or not; beſides, there is no knowing or proving particular Malice, otherwiſe than from the Act itſelf; and therefore if the Act imports as much, it is ſufficient; nor is he to take the Liberty to print what he pleaſes; for the Liberty of the Preſs is only a legal Liberty, ſuch as the Law allows; and not a licentious Liberty. Gentlemen, I tell you again, that I have deſignedly ſhortened Things, becauſe it hath been ſo fully again and again laid before you. But if there is any Thing afterwards that you want to know, after you have conſidered theſe Things, I deſire you would acquaint me. So, Gentlemen, if you are ſenſible, and convinced that the Defendant publiſhed that *Craftſman* of the 2d of *January* laſt; and that the defamatory Expreſſions in the Letter * refer to the Miniſters of *Great Britain*; then you ought to find the Defendant guilty; but if you think otherwiſe, then you ought not to find him guilty.

The Jury found the Defendant guilty of publiſhing the ſaid Libel.

The Term following, Mr. *Richard Francklin* received Sentence to pay a Fine of *One Hundred Pounds*, to be impriſoned for one Year, and to find Security for his good Behaviour for ſeven Years; himſelf in *One Thouſand Pounds* Penalty, and his two Sureties in *Five Hundred Pounds* each.

* This *Hague* Letter was ſaid to be written by the late *Henry* Lord Viſcount *Bolingbroke*. *Ex Infor.* Mr. *R. Francklin.*

XXII. The Trial of Mr. John Peter Zenger, of *New-York*, Printer, for printing and publiſhing a Libel againſt the Government; before the Honourable *James de Lancey*, Eſq; Chief Juſtice of the Province of *New-York*; and the Honourable *Frederick Phillipſe*, Eſq; ſecond Judge; at *New-York*, on *Auguſt* 4th, 1735 †.

AS there was but one Printer in the Province of *New-York*, that printed a public News-Paper, I was in hopes, if I undertook to publiſh another, I might make it worth my while; and I ſoon found my Hopes were not groundleſs. My firſt Paper was printed, *Nov.* 5*th*, 1733, and I continued printing and publiſhing of them, I thought to the Satisfaction of every Body, 'till the *January* following; when the Chief Juſtice was pleaſed to animadvert upon the Doctrine of Libels, in a long Charge given in that Term to the Grand Jury; and afterwards on the third *Tueſday* of *October*, 1734, was again pleaſed to charge the Grand Jury in the following Words:

'*Gentlemen*, I ſhall conclude with reading a Paragraph or two out of 'the ſame Book, concerning Libels; they are arrived to that Height, 'that they call loudly for your Animadverſion; it is high Time to put a 'Stop to them; for at the rate Things are now carried on, when all Or-'der and Government is endeavoured to be trampled on, Reflections are 'caſt upon Perſons of all Degrees. Muſt not theſe Things end in Sedi-'tion, if not timely prevented? Lenity, you have ſeen, will not avail; 'it becomes you then to enquire after the Offenders, that we may, in a 'due Courſe of Law, be enabled to puniſh them. If you, *Gentlemen*, do 'not interpoſe, conſider whether the ill Conſequences that may ariſe

† This Trial (or rather Part of a Trial) publiſhed by Mr. *Zenger* himſelf, having made a great Noiſe in the World, is here inſerted; though the Doctrines advanced by Mr. *Hamilton* in his Speeches, are not allowed in the Courts here to be Law.——See Lord *Raymond*'s Opinion in the foregoing Trial, p. 275.——To which we have ſubjoined ſome Remarks on this Trial, publiſhed ſoon after it made its firſt Appearance.

‘ from any Diſturbances of the publick Peace, may not in part lie at your ‘ Door?’

‘ *Hawkins*, in his Chapter of Libels, conſiders three Points: *1ſt.* ‘ What ſhall be ſaid to be a Libel. *2dly.* Who are liable to be pu- ‘ niſhed for it. *3dly.* In what Manner they are to be puniſhed.’ Under the *1ſt*, he ſays, §. 7. “ Nor can there be any Doubt, but that a Wri- “ ting, which defames a private Perſon only, is as much a Libel as “ that which defames Perſons intruſted in a publick Capacity, in “ as much as it manifeſtly tends to create ill Blood, and to cauſe “ a Diſturbance of the publick Peace; however it is certain, that it “ is a very high Aggravation of a Libel, that it tends to ſcandalize the “ Government, by reflecting on thoſe who are entruſted with the Admini- “ ſtration of publick Affairs, which does not only endanger the publick “ Peace, as all other Libels do, by ſtirring up the Parties immediately “ concerned in it, to Acts of Revenge, but alſo has a direct Tendency to “ breed in the People a Diſlike of their Governors, and incline them to “ Faction and Sedition.” ‘ As to the *2d* Point he ſays, §. 10.’ “ It “ is certain, not only he who compoſes or procures another to compoſe “ it, but alſo that he who publiſhes, or procures another to publiſh it, are “ in Danger of being puniſhed for it; and it is ſaid not to be material, “ whether he who diſperſes a Libel, knew any Thing of the Contents or “ Effects of it or not; for nothing could be more eaſy than to publiſh the “ moſt virulent Papers with the greateſt Security, if the concealing the “ Purport of them from an illiterate Publiſher would make him ſafe in “ the Diſperſing them. Alſo, it has been ſaid, that if he who hath “ either read a Libel himſelf, or hath heard it read by another, do after- “ wards maliciouſly read or report any Part of it in the Preſence of others, “ or lend or ſhew it to another, he is guilty of an unlawful Publication “ of it. Alſo, it hath been holden, that the copying of a Libel ſhall be “ a concluſive Evidence of the Publication of it, unleſs the Party can “ prove, that he delivered it to a Magiſtrate to examine it, in which “ Caſe the Act *ſubſequent* is ſaid to explain the Intention *precedent*. But “ it ſeems to be the better Opinion, that he who firſt writes a Libel, “ dictated by another, is thereby guilty of making of it, and conſe- “ quently puniſhable for the bare Writing; for it was no Libel till it “ was reduced to Writing.”

‘ Theſe, Gentlemen, are ſome of the Offences which are to make Part ‘ of your Enquiries; and if any other ſhould ariſe in the Courſe of your ‘ Proceedings, in which you are at a Loſs, or conceive any Doubts, upon ‘ your Application here, We will aſſiſt and direct you.’

The Grand Jury not indicting me as was expected, the Gentlemen of the Council proceeded to take my Journals into Conſideration, and ſent the following Meſſage to the General Aſſembly.

‘ *Die Jovis*, 3 *ho.* P. M. *17th of October*, 1734.

‘ A Meſſage from the Council by *Philip Cortlandt*, in theſe Words, to wit,

‘ That Board having had ſeveral of *Zenger*’s *New-York Weekly Jour-* ‘ *nals* laid before them, and other ſcurrilous Papers, tending to alienate ‘ the Affections of the People of this Province from his Majeſty’s Go- ‘ vernment, to raiſe Seditions and Tumults among the People of this Pro- ‘ vince, and to fill their Minds with a Contempt of his Majeſty’s Go- ‘ vernment: And conſidering the pernicious Conſequences that may at- ‘ tend ſuch growing Evils, if not ſpeedily and effectually put a Stop to: ‘ And conceiving that the moſt likely Method to put a Stop to ſuch bold ‘ and ſeditious Practices, to maintain the Dignity of his Majeſty’s Go- ‘ vernment, and to preſerve the Peace thereof, would be by a Conference ‘ between a Committee of this Board, and a Committee of the Aſſembly; ‘ It is therefore ordered, That the Gentlemen of this Board, *now aſſembled*, ‘ or any ſeven of them, be a Committee, to join a Committee of the ‘ Houſe of Repreſentatives, in order to confer together, and to ex- ‘ amine and enquire into the ſaid Papers, and the Authors and Writers ‘ thereof.’

‘ Which Meſſage being read,

‘ *Ordered*, That the Members of this Houſe, or any fourteen of them, ‘ do meet a Committee of the Council, at the Time and Place therein ‘ mentioned.’

‘ *Die Veneris*, 9 *ho.* A. M. 18 *October*, 1734.

‘ Mr. *Garretſon*, from the Committee of this Houſe, reported, That ‘ they laſt Night met the Committee of the Council, on the ſubject ‘ Matter of their Meſſage of Yeſterday to this Houſe; and that after ſe- ‘ veral Preliminaries between the ſaid Committees, the Gentlemen of the ‘ Council reduced to Writing, what they requeſted of this Houſe, and de- ‘ livered the ſame to the Chairman, who delivered it in at the Table, and ‘ being read, is in the Words following:

‘ At a Committee of the Council held the *17th* of *October*, 1734.

PRESENT,

Mr. *Clarke*. Mr. *Harriſon*. Dr. *Colden*.
Mr. *Livingſton*. Mr. *Kennedy*. Mr. *Chief-Juſtice*.
Mr. *Cortlandt*. Mr. *Lane*. Mr. *Horſmanden*.

‘ *Gentlemen*,

‘ The Matters we requeſt your Concurrence in are, That *Zenger*’s ‘ Papers, N°. 7. 47, 48, 49. which were read, and which we now deliver, ‘ be burnt by the Hands of the Common Hangman, as containing in ‘ them many Things derogatory of the Dignity of his Majeſty’s Govern- ‘ ment, reflecting upon the Legiſlature, upon the moſt conſiderable Per- ‘ ſons in the moſt diſtinguiſhed Stations in the Province, and tending to ‘ raiſe Seditions and Tumults among the People thereof.

‘ That you concur with us in the addreſſing the Governor, to iſſue his ‘ Proclamation, with a Promiſe of Reward for the Diſcovery of the Au- ‘ thors or Writers of theſe ſeditious Libels.

‘ That you concur with us in an Order for proſecuting the Printer ‘ thereof.

‘ That you concur with us in an Order to the Magiſtrates, to exert ‘ themſelves in the Execution of their Offices, in order to preſerve the ‘ publick Peace of the Province.

‘ *By Order of the Committee*,
‘ FRED. MORRIS, Cl. Con.’

‘ Mr. *Garretſon* delivered likewiſe to the Houſe the ſeveral Papers re- ‘ ferred to in the ſaid Requeſt.

‘ *Ordered*, That the ſaid Papers be lodged with the Clerk of this Houſe; ‘ and that the Conſideration thereof; and the ſaid Requeſt, be referred till ‘ *Tueſday* next.

‘ *Die Martis*, 9 *ho.* A. M. 22 *October*, 1734.

‘ The Houſe according to Order proceeded to take into Conſideration ‘ the Requeſt of a Committee of Council, delivered to a Committee of ‘ this Houſe, on the 16*th* Inſtant, as likewiſe of the ſeveral Papers there- ‘ in referred to. And after ſeveral Debates upon the ſubject Matters, it ‘ was ORDERED, *That the ſaid Papers and Requeſts lie on the Table.*’

The Council finding the General Aſſembly would not do any Thing about it, they ſent the following Meſſage to the Houſe.

‘ *Die Sabbati*, 9 *ho.* A. M. 2 *November*, 1734.

‘ A Meſſage from the Council by Mr. *Livingſton*, deſiring this Houſe ‘ to return by him to that Board the ſeveral ſeditious Journals of *Zenger’s*, ‘ N°. 7. 47, 48, 49. which were delivered by a Committee of that Board ‘ to a Committee of this Houſe the 17th of *October* laſt, together with the ‘ Propoſals of the Committee of that Board, delivered therewith to a ‘ Committee of this Houſe; and then withdrew.’

On *Tueſday* the 5th of *November*, 1734, the Quarter-Seſſions for the City of *New-York* began, when the Sheriff delivered to the Court *an Or- der*, which was read in theſe Words:

“ At a Council held at Fort *George*, in *New-York*, the 2d of *Novem- ber*, 1734.

PRESENT,

His Excellency *William Coſby*, Captain General and Governor in Chief, *&c.*

Mr. *Clarke*. Mr. *Harriſon*. * Dr. *Colden*.
Mr. *Livingſton*. Mr. *Kennedy*. Mr. *Chief-Juſtice*.
Mr. *Cortlandt*. Mr. *Lane*. Mr. *Horſmanden*.

“ Whereas by an Order of this Board, of this Day, ſome of *John* “ *Peter Zenger*’s Journals, entitled, *The New-York Weekly Journal, con-* “ *taining the freſheſt Advices, foreign and domeſtic*, N°. 7. 47, 48, 49. were “ ordered to be burnt by the Hands of the Common Hangman, or Whip- “ per, near the Pillory in this City, on *Wedneſday* the 6th Inſtant, be- “ tween the Hours of Eleven and Twelve in the Forenoon, as contain- “ ing in them many Things tending to Sedition and Faction, to bring his “ Majeſty’s Government into Contempt, and to diſturb the Peace there- “ of, and containing in them likewiſe not only Reflections upon his Ex- “ cellency the Governor in particular, the Legiſlature in general, but “ alſo upon the moſt conſiderable Perſons in the moſt diſtinguiſhed Sta- “ tions in this Province: It is therefore ordered, That the Mayor and “ Magiſtrates of this City do attend at the Burning of the ſeveral Papers “ or Journals aforeſaid, numbered as above mentioned.

“ FRED. MORRIS, D. Cl. Con.”

‘ To *Robert Lurting*, Eſq. Mayor of the City of *New-York*, and the ‘ reſt of the Magiſtrates for the ſaid City and County.’

Upon reading of which Order, the Court forbad the Entering thereof in their Books at that Time; and many of them declared, that if it ſhould be entered, they would have their Proteſt entered againſt it.

On *Wedneſday* the 6th of *November*, the Sheriff of *New-York* moved the Court of Quarter-Seſſions to comply with the ſaid Order; upon which one of the Aldermen offered a Proteſt, which was read by the Clerk, and ap- proved of by all the Aldermen, either expreſly, or by not objecting to it, and is as followeth:

‘ Whereas an *Order* has been ſerved on this Court, in theſe Words.

[*The Order as above inſerted.*]

‘ And whereas this Court conceives, they are only to be commanded ‘ by the King’s mandatory Writs, authorized by Law, to which they ‘ conceive they have the Right of ſhewing Cauſe why they don’t obey ‘ them, if they believe them improper to be obeyed; or by *Orders*, which ‘ have ſome known Laws to authorize them; and whereas this Court ‘ conceives *this Order* to be no mandatory Writ warranted by Law, nor ‘ knows of no Law that authorizes the making the Order aforeſaid; ſo ‘ they think themſelves under no Obligation to obey it: Which ‘ Obedience, they think would be in them, an opening a Door for arbi- ‘ trary Commands, which, when once opened, they know not what dan- ‘ gerous Conſequences may attend it. Wherefore this Court conceives ‘ itſelf bound in Duty (for the Preſervation of the Rights of this Corpo- ‘ ration, and, as much as they can, the Liberty of the Preſs, and the Peo- ‘ ple of the Province, ſince an Aſſembly of the Province, and ſeveral ‘ Grand Juries, have refuſed to meddle with the Papers, when applied ‘ to by the Council) *to proteſt againſt the* Order *aforeſaid, and to forbid all* ‘ *the Members of this Corporation to pay any Obedience to it*, until it be ſhewn ‘ to this Court, that the ſame is authorized by ſome known Law, which ‘ they neither know, nor believe that it is.’

Upon reading of which, it was required of the Honourable *Francis Harriſon*, Recorder of this Corporation, and one of the Members of the Council, (preſent at making the ſaid Order) to ſhew by what Law or Authority the ſaid *Order* was made; upon which he ſpoke in Support of it, and cited the Caſe of Doctor *Sacheverel*’s Sermon, which was by the Houſe of Lords ordered to be burnt by the Hands of the Hangman, and that the Mayor and Aldermen of *London* ſhould attend the doing of it. To which one of the Aldermen anſwered to this Purpoſe: That he conceived the Caſe was no ways parallel, becauſe Dr. *Sacheverel* and his Sermon were impeached by the Houſe of Commons of *England*, which is the Grand Jury of the Nation, and Repreſentative of the whole People of *England*: That this their Impeachment they proſecuted before the Houſe of Lords, the greateſt Court of Juſtice of *Britain*, and which, beyond Memory of Man,

* *N. B.* Dr. *Colden* was that Day at *Eſopus*, 90 Miles from *New-York*, though mentioned as preſent in Council.

has

has had Cognizance of Things of that Nature: That there *Sacheverel* had a fair Hearing in Defence of himself and of his Sermon; and after that fair Hearing, he and his Sermon were justly, fairly, and legally condemned: That he had read the Case of Dr. *Sacheverel*, and thought he could charge his Memory, that the Judgment of the House of Lords in that Case was, That the Mayor and Sheriffs of *London* and *Middlesex* only should attend the Burning of the Sermon, and not the Aldermen; and farther he remembered, that the Order upon that Judgment was only directed to the Sheriffs of *London*, and not even to the Mayor, who did not attend the doing it: And farther said, that would *Mr. Recorder* shew, that the Governor and Council had such Authority as the House of Lords, and that the Papers ordered to be burnt were in like manner legally prosecuted and condemned, there the Case of Dr. *Sacheverel* might be to the Purpose; but without shewing that, it rather proved that a Censure ought not to be pronounced, till a fair Trial by a competent and legal Authority were first had. *Mr. Recorder* was desired to produce the Books from whence he cited his Authorities, that the Court might judge of them themselves, and was told, that if he could produce sufficient Authorities to warrant *this Order*, they would readily obey it, but otherwise not. Upon which he said, he did not carry his Books about with him. To which it was answered, he might send for them, or order a Constable to fetch them. Upon which he arose, and at the lower End of the Table he mentioned, that Bishop *Burnet*'s Pastoral Letter was ordered, by the House of Lords, to be burnt by the High Bailiff of *Westminster* *; upon which he abruptly went away, without waiting for an Answer, or promising to bring his Books, and did not return sitting the Court.

After *Mr. Recorder*'s Departure, it was moved, that the *Protest* should be entered; to which it was answered, that the *Protest* could not be entered, without entering also the *Order*, that it was not fit to take any Notice of *it*; and therefore it was proposed that no Notice should be taken in their Books of either, which was unanimously agreed to by the Court.

The Sheriff then moved, that the Court would direct their Whipper to perform the said *Order*; to which it was answered, That as he was the Officer of the Corporation, they would give no such *Order*. Soon after which the Court adjourned, and did not attend the Burning of the Papers. Afterwards about Noon, the Sheriff, after reading the Numbers of the several Papers which were ordered to be burnt, delivered them unto the Hands of his own Negroe, and ordered him to put them into the Fire, which he did; at which *Mr. Recorder*, *Jeremiah Dunbar*, Esq. and several of the Officers of the Garrison, attended.]

On the Lord's Day, the 17th of *November*, 1734, I was taken and imprisoned by virtue of a Warrant in these Words.

'At a Council held at Fort *George* in *New York*, the 2d Day of *November*, 1734.

PRESENT,

His Excellency *William Cosby*, Capt. General and Governor in Chief, &c.

Mr. *Clarke*. Mr. *Harrison*. Mr. *Livingston*.
Mr. *Kennedy*. Chief-Justice. Mr. *Cortlandt*.
Mr. *Lane*. Mr. *Horsmanden*.

'It is ordered, that the Sheriff for the City of *New York* do forthwith 'take and apprehend *John Peter Zenger*, for printing and publishing several seditious Libels, dispersed throughout his Journals or News-papers, 'intituled, *The New York Weekly Journal, containing the freshest Advices, foreign and domestick*; as having in them many Things tending to raise 'Factions and Tumults among the People of this Province, inflaming 'their Minds with Contempt of his Majesty's Government, and greatly 'disturbing the Peace thereof; and upon his taking the said *John Peter 'Zenger*, *to commit him to the Prison or common Jail of the said City and 'County.*'

FRED. MORRIS, D. Cl. Con.

And being, by virtue of that Warrant, so imprisoned in the Jail, I was for several Days denied the Use of Pen, Ink, and Paper, and the Liberty of Speech with any Persons.——Upon my Commitment, some Friends soon got a *Habeas Corpus* to bring me before the Chief-Justice, in order to my Discharge, or being bailed; on the Return whereof, on *Wednesday* the 20th of *November*, my Counsel delivered Exceptions to the Return, and the Chief-Justice ordered them to be argued publickly at the City Hall, on the *Saturday* following.

On *Saturday* the 23d of *November*, the said Exceptions came to be argued, by *James Alexander* and *William Smith*, of Counsel for me, and by *Mr. Attorney General* and Mr. *Warrel*, of Counsel against me, in Presence of some Hundreds of the Inhabitants; where my Counsel (saving the Benefit of Exception to the Illegality of the Warrant) insisted that I might be admitted to reasonable Bail. And to shew that it was my Right to be so, they offered *Magna Charta*, the *Petition of Right*, 3 Car. the *Habeas Corpus* Act of 31 *Car.* II. which directs the Sum, in which Bail is to be taken, to be, 'according to the Quality of the Prisoner, and Nature of 'the Offence.' Also 2. *Hawkins*, cap. 15. §. 5. in these Words, 'But 'Justices must take care, that, under Pretence of demanding sufficient 'Security, they do not make so excessive a Demand as, in effect, amounts 'to a Denial of Bail; for this is looked on as a great Grievance, and is 'complained of as such, by 1 *W. & M. Sess.* 2. by which it is declared, '*That excessive Bail ought not to be required.*' It was also shewn, that the seven Bishops, who, in King *James* the IId's Time, were charged with the like Crime that I stood charged with, were admitted to Bail on their own Recognizances, the Archbishop in 200 *l.* and each of the other six in 100 *l.* a-piece only. Sundry other Authorities and Arguments were produced and insisted on by my Counsel, to prove my Right to be admitted to moderate Bail, and to such Bail as was in my Power to give; and sundry Parts of History they produced, to shew how much the requiring excessive Bail had been resented by Parliament. And, in order to enable the Court to judge what Surety was in my Power to give, I made Affidavit, *That (my Debts paid) I was not worth forty Pounds, (the Tools of my Trade, and Wearing-Apparel excepted.)*

Some warm Expressions (to say no worse of them) were dropt on this Occasion, sufficiently known and resented by the Auditory, which, for my part, I desire may be buried in Oblivion: Upon the Whole, it was *ordered, that I might be admitted to Bail, myself in* 400 l. *with two Sureties, each in* 200 l. *and that I should be remanded till I gave it.* And as this was ten times more than was in my Power to counter-secure any Person in giving Bail for me, I conceived I could not ask any to become my Bail on these Terms; and therefore I returned to Jail, where I lay until *Tuesday* the 28th of *January*, 1734-5, being the last Day of that Term; and the Grand Jury having found nothing against me, I expected to have been discharged from my Imprisonment: But my Hopes proved vain; for the Attorney General then charged me, by *Information*, for printing and publishing Parts of my Journals N°. 13 and 23, as being *false, scandalous, malicious, and seditious.*

To this Information my Counsel appeared, and offered Exceptions, leaving a Blank for inserting the Judges Commissions, which the Court were of Opinion not to receive till those Blanks were filled up. In the succeeding Vacation the Judges gave Copies of their Commissions; and on *Tuesday* the 15th of *April* last, the first Day of the succeeding Term, my Counsel offered these Exceptions; which were as follow.

The Attorney General, *v.* *John Peter Zenger.* } On Information for a Misdemeanour.

'Exceptions humbly offered by *John Peter Zenger*, to the Honourable 'James de Lancey, Esq. to judge in this Cause.

'The Defendant comes and prays Hearing of the Commission, by virtue of which the Honourable *James De Lancey*, Esq. claims the Power 'and Authority to judge in this Cause, and it is read to him in these 'Words:

"*George* the Second, by the Grace of God, King of *Great Britain*, "*France* and *Ireland*, King, Defender of the Faith, &c. To our trusty "and well beloved *James De Lancey*, Esq. We, reposing special Trust "and Confidence in your Integrity, Ability and Learning, have assigned, "constituted and appointed, and We do by these Presents assign, constitute, and appoint you, the said *James De Lancey*, to be Chief-Justice "in and over our Province of *New York*, in *America*, in the room of *Lewis* "*Morris*, Esq. giving and by these Presents granting unto you full "Power and lawful Authority to hear, try, and determine all Pleas whatsoever, civil, criminal, and mixt, according to the Laws, Statutes, "and Customs of our Kingdom of *England*, and the Laws and Usages of "our said Province of *New York*, not being repugnant thereto, and Executions of all Judgments of the said Court to award, and to make such "Rules and Orders in the said Court, as may be found convenient and "useful, and, as near as may be, agreeable to the Rules and Orders of "our Courts of King's Bench, Common Pleas, and Exchequer in *England*. To have, hold, and enjoy the said Office or Place of Chief-"Justice in and over our said Province, with all and singular the Rights, "Privileges, Profits and Advantages, Salaries, Fees and Perquisites unto the said Place belonging, or in any ways appertaining, in as full and "ample Manner as any Person heretofore Chief-Justice of our said Province hath held and enjoyed, or of Right ought to have held and enjoyed the same, To you the said *James De Lancey*, Esq. for and *during* "*our Will and Pleasure.* In Testimony whereof We have caused these our "Letters to be made Patent, and the Great Seal of our Province of *New* "*York* to be hereunto affixed. Witness our trusty and well-beloved *William Cosby*, Esq. our Captain-General and Governor in Chief of our "Provinces of *New York*, *New Jersey*, and the Territories thereon depending in *America*, Vice-Admiral of the same, and Colonel in our Army, "at Fort *George* in *New York*, the twenty-first Day of *August*, in the seventh Year of our Reign, *Annoq; Domini*, 1733."

'Which being read and heard, the said *John Peter Zenger*, by Protestation not confessing nor submitting to the Power of any other Person to 'judge in this Cause, doth except to the Power of the Honourable *James* '*De Lancey*, Esq. aforesaid, to judge in this Cause, by virtue of the Commission aforesaid, for these Reasons, *viz.*

'*1st.* For that the Authority of a Judge of the King's Bench, in that 'Part of *Great Britain* called *England*, by which the Cognizance of this 'Cause is claimed, is by the said Commission granted to the Honourable '*James De Lancey*, Esq. aforesaid, only *during Pleasure*; whereas that Authority (by a Statute in that Case made and provided) ought to be granted *during good Behaviour*.

'*2d.* For that, by the said Commission, the Jurisdiction and Authority of a Justice of the Court of Common Pleas at *Westminster*, in that 'Part of *Great Britain* called *England*, is granted to the said *James De* '*Lancey*, Esq. which Jurisdiction and Authority cannot be granted to, 'and exercised by, any one of the Justices of the King's Bench.

'*3d.* For that the Form of the said Commission is not founded on, nor 'warranted by the Common Law, nor any Statute of *England*, nor of '*Great Britain*, nor any Act of Assembly of this Colony.

'*4th.* For that it appears, by the Commission aforesaid, that the same 'is granted under the Seal of this Colony by his Excellency *William Cos-*'*by*, Esq. Governor thereof; and it appears not, that the same was granted, neither was the same granted, by and with the Advice and Consent 'of his Majesty's Council of this Colony; without which Advice and 'Consent, his Excellency could not grant the same.

'Wherefore, and for many other Defects in the said Commission, this 'Defendant humbly hopes, that the Honourable *James De Lancey*, Esq. 'will not take Cognizance of this Cause, by virtue of the Commission 'aforesaid.'

Was signed, { *James Alexander.* *William Smith.*

The Exceptions to the Commission of the Honourable *Frederick Phillipse*, Esq. were the same with the oregoing, including therein his Commission, which is in these Words.

"*George* the Second, by the Grace of God, of *Great Britain*, *France* "and *Ireland*, King, Defender of the Faith, &c. To our trusty and "well-beloved *Frederick Phillipse*, Esq. Greeting: Whereas it is our Care, "that Justice be duly administered to our Subjects within our Province "of

* Bp. *Kennet* says, that this Letter seemed to be sacrificed to a poor Jest on the Author's Name [*Burnet*]. *Complete Hist. of* Eng. *Vol.* III. *P.* 587. 2 *Ed. in* Lond. 1719.

" of *New York*, and Territories thereon depending in *America*; and We, " repoſing eſpecial Confidence in your Integrity, Ability and Learning, " have aſſigned, conſtituted and appointed, and We do by theſe Preſents " aſſign, conſtitute and appoint you, the ſaid *Frederick Phillipſe*, to be " ſecond Juſtice of our Supreme Court of Judicature for our Province of " *New York*, in the room of *James De Lancey*, Eſq. giving and granting " to you, the ſaid *Frederick Phillipſe*, full Power and Authority, with our " other Juſtices of our ſaid Supreme Court, to hear, try, and determine " all Pleas whatſoever, civil, criminal, and mixed; according to the Laws, " Statutes, and Cuſtoms of our Kingdom of *England*, and the Laws " and Uſages of our ſaid Province of *New York*, not being repug- " nant thereto; and Executions of all Judgments of the ſaid Court " to award, and to act and do all Things, which any of our *Juſtices of* " *either Bench, or Barons of the Exchequer, in our ſaid Kingdom of* England, " may or ought to do; and alſo to aſſiſt in the making ſuch Rules and " Orders in our ſaid Court, as ſhall be for the Good and Benefit of our " ſaid Province; and, as near as conveniently may be, to the Rules and " Orders of our ſaid Courts in our ſaid Kingdom of *England*: To have, " hold, and enjoy the ſaid Office or Place of ſecond Juſtice of our ſaid " Province of *New York*, together with all and ſingular the Rights, Pri- " vileges, Salaries, Fees, Perquiſites, Profits and Advantages thereto, " now or at any Time heretofore belonging, or in any wiſe of Right ap- " pertaining, unto you, the ſaid *Frederick Phillipſe*, for and *during our* " *Pleaſure*. In Teſtimony whereof, We have cauſed theſe our Letters to " be made Patent, and the Great Seal of our ſaid Province of *New York* " to be hereunto affixed. Witneſs our truſty and well-beloved *William* " *Coſby*, Eſq. our Captain General and Governor in Chief of our Pro- " vinces of *New York*, *New Jerſey*, and Territories thereon depending in " *America*, Vice-Admiral of the ſame, and Colonel in our Army, *&c.* at " *Fort George* in *New York*, the twenty-firſt Day of *Auguſt*, in the ſeventh " Year of our Reign, *Annoq; Domini*, 1733.

FRED. MORRIS, D. Secry.

Tueſday the 15th of *April*, 1735.

Mr. *Alexander* offered the above Exceptions to the Court, and prayed that they might be filed. Upon this the Chief Juſtice ſaid to Mr. *Alexander* and Mr. *Smith*, That they ought well to conſider the Conſequences of what they offered. To which both anſwered, That they had well conſidered what they offered, and all the Conſequences. And Mr. *Smith* added, That he was ſo well ſatisfied of *the Right of the Subject to take an Exception to the Commiſſion of a Judge, if he thought ſuch Commiſſion illegal*,— that he durſt venture his Life upon *that Point*. As to *the Validity of the Exceptions* then offered, he ſaid, he took that to be *a ſecond Point*; but was ready to argue them both, if their Honours were pleaſed to hear him. To which the Chief Juſtice replied, That he would conſider the Exceptions in the Morning; and ordered the Clerk to bring them to him.

Wedneſday the 16th of *April*, 1735.

The Chief Juſtice delivered one of the Exceptions to the Clerk, and Juſtice *Phillipſe* the other; upon which Mr. *Smith* aroſe, and aſked the Judges, whether their Honours would hear him upon theſe two Points. *1ſt. That the Subject has a Right to take ſuch Exceptions, if they judged the Commiſſion illegal.* *2dly, That the Exceptions tendered were legal and valid.* To which the Chief Juſtice ſaid, That they would neither hear nor allow the Exceptions; *for* (ſaid he) *you thought to have gained a great deal of Applauſe and Popularity by oppoſing this Court, as you did the Court of Exchequer*; *but you have brought it to that Point, That either* we muſt go from the Bench, or you from the Bar: *Therefore we exclude you and Mr.* Alexander *from the Bar*; and delivered a Paper to the Clerk, and ordered it to be entered; which the Clerk entered accordingly, and returned the Paper to the Chief Juſtice; after which the Chief Juſtice ordered the Clerk to read publickly what he had written; an atteſted Copy whereof follows.

At a Supreme Court of Judicature held for the Province of *New York*, at the City-Hall of the City of *New York*, on *Wedneſday* the 16th Day of *April*, 1735.

PRESENT,

The Hon. *James De Lancey*, Eſq. Chief Juſtice.
The Hon. *Frederick Phillipſe*, Eſq. Second Juſtice.

" *James Alexander*, Eſq. and *William Smith*, Attornies of this Court, " having preſumed, (*notwithſtanding they were forewarned by the Court of their* " *Diſpleaſure, if they ſhould do it*) to ſign, and having actually ſigned, and " put into Court, Exceptions, in the Name of *John Peter Zenger*; there- " by denying the Legality of the Judges their Commiſſions; though in the " uſual Form, *and the Being of this Supreme Court.* It is therefore ordered, " That, for the ſaid Contempt, the ſaid *James Alexander*, and *William* " *Smith*, be excluded from any farther Practice in this Court; and that " their Names be ſtruck out of the Roll of Attornies of this Court.

per Cur'. JAMES LYNE, Cl."

After the Order of the Court was read, Mr. *Alexander* aſked, whether it was the Order of Mr. Juſtice *Phillipſe* as well as of the Chief-Juſtice? To which both anſwered, that it was their Order; upon which Mr. *Alexander* added, That it was proper to aſk that Queſtion, *that they might know how to have their Relief*: He farther obſerved to the Court, upon reading of the Order, That they were miſtaken in their wording of it, becauſe the Exceptions were *only to their Commiſſions*, and *not to the Being of the Court*, as is therein alledged; and prayed that the Order might be altered accordingly. The Chief-Juſtice ſaid, they conceived the Exceptions were againſt the Being of the Court. Both Mr. *Alexander* and Mr. *Smith* denied that they were, and prayed the Chief-Juſtice to point to the Place that contained ſuch Exceptions; and further added, That the Court might well exiſt, though the Commiſſions of all the Judges were void; which the Chief-Juſtice confeſſed to be true: And therefore they prayed again, that the Order in that Point might be altered; but it was denied.

Then Mr. *Alexander* deſired to know, whether they *over-ruled or rejected* the Exceptions? The Chief-Juſtice ſaid, He did not underſtand the Difference; to which ſaid *Alexander* replied, that if he *rejected* the Exceptions, then they could not appear upon the Proceedings, and in that Caſe the Defendant was intitled to have them made Part of the Proceedings by Bills of Exceptions: But if they *over-ruled* them, then, by ſo doing, they only declared them not ſufficient, to hinder them from proceeding by virtue of thoſe Commiſſions; and the Exceptions would remain as Records of the Court, and ought to be entered on the Record of the Cauſe, as Part of the Proceedings. The Chief-Juſtice ſaid, they muſt remain upon the File, to warrant what we have done: As to being Part of the Record of the Proceedings in that Cauſe, he ſaid, you may ſpeak to that Point To-morrow.

Friday, *April* 18th, 1735.

Mr. *Alexander* ſignified to the Court, That on *Wedneſday* laſt their Honours had ſaid, That the Counſel for Mr. *Zenger* might ſpeak to the Point, concerning the *rejecting* or *over-ruling* of Mr. *Zenger*'s Exceptions, on the Morrow: To which the Chief-Juſtice anſwered, That he ſaid, *You may get ſome Perſon to ſpeak to that Point on the Morrow, not meaning that the ſaid* Alexander *ſhould ſpeak to it, that being contrary to the Order.* Both Mr. *Alexander* and Mr. *Smith* ſaid, they underſtood it otherwiſe.

They both alſo mentioned, that it was a Doubt, whether, by the Words of the Order, they were debarred of their Practice as Counſel, as well as Attornies, whereas they practiſed in both Capacities. To which the Chief Juſtice anſwered, That the Order was plain, 'That *James* 'Alexander, Eſq. and *William Smith*, were debarred and excluded from 'their whole Practice at this Bar; and that the Order was intended to 'bar their acting both as Counſel and as Attornies, and that it could not 'be conſtrued otherwiſe.' And it being aſked Mr. *Phillipſe*, whether he underſtood the Order ſo? He anſwered, That he did.

Upon this Excluſion of my Counſel, I petitioned the Court to order Counſel for my Defence; who thereon appointed *John Chambers*, Eſq; who pleaded *Not Guilty* for me to the Information. But as to the Point, *whether my Exceptions ſhould be Part of the Record, as was moved by my former Counſel*, Mr. *Chambers* thought not proper to ſpeak to it. Mr. *Chambers* alſo moved, that a certain Day in the next Term might be appointed for my Trial, and for a *Struck Jury*; whereupon my Trial was ordered to be on *Monday* the 4th of *Auguſt*, and the Court would conſider till the firſt Day of next Term, whether I ſhould have a Struck Jury or not; and ordered, that the Sheriff ſhould, in the mean Time, at my Charge, return the Freeholders Book.

At a Supreme Court of Judicature held for the Province of *New York*, before the Honourable *James De Lancey*, Eſq. Chief-Juſtice of the ſaid Province; and the Honourable *Frederick Phillipſe*, Eſq. Second Juſtice Juſtice of the ſaid Province.

On *Tueſday* the 29th of *July*, 1735, the Court opened; and *on Motion of Mr.* Chambers *for a Struck Jury, purſuant to the Rule of the preceding Term, the Court were of Opinion, that I was intitled to have a Struck Jury*; and that Evening, at five of the Clock, ſome of my Friends attended the Clerk, for ſtriking the Jury; when, to their Surprize, the Clerk, inſtead of producing the Freeholders Book, to ſtrike the Jury out of it in their Preſence, as uſual, he produced a Liſt of 48 Perſons, who, he ſaid, he had taken out of the Freeholders Book: My Friends told him, that a great Number of theſe Perſons were not Freeholders; that others were Perſons holding Commiſſions and Offices at the Governor's Pleaſure; that others were of the late diſplaced Magiſtrates of this City, who muſt be ſuppoſed to have Reſentment againſt me, for what I had printed concerning them; that others were the Governor's Baker, Taylor, Shoe-maker, Candle-maker, Joiner, *&c.* that as to the few indifferent Men that were upon that Liſt, they had Reaſon to believe (as they had heard) that *Mr. Attorney* had a Liſt of them, to ſtrike them out; and therefore requeſted, that he would either bring the Freeholders Book, and chuſe out of it 48 unexceptionable Men in their Preſence, as uſual; or elſe, that he would hear their Objections, particularly to the Liſt he offered; and that he would put impartial Men in the Place of thoſe againſt whom they could ſhew juſt Objections. Notwithſtanding this, the Clerk refuſed to ſtrike the Jury out of the Freeholders Book, and refuſed to hear any Objections to the Perſons on his Liſt; but told my Friends, if any Objections they had to any Perſons, they might ſtrike thoſe Perſons out; to which they anſwered, There would not remain a Jury, if they ſtruck out all the exceptionable Men; and, according to the Cuſtom, they had only a Right to ſtrike out 12.

But finding no Arguments could prevail with the Clerk to hear their Objections to his Liſt, nor to ſtrike the Jury as uſual, Mr. *Chambers* told him, he muſt apply to the Court, which the next Morning he did; and the Court, upon his Motion, *ordered, That the 48 ſhould be ſtruck out of the Freeholders Book, as uſual, in the Preſence of the Parties*; *and that the Clerk ſhould hear Objections to Perſons propoſed to be of the* 48, *and allow of ſuch Exceptions as were juſt.* In purſuance of that Order, a Jury was that Evening ſtruck, to the Satisfaction of both Parties, though my Friends and Counſel inſiſted on no Objections but *want of Freeholders*; and though they did not inſiſt, that *Mr. Attorney General* (who was aſſiſted by Mr. *Bladge*) ſhould ſhew any particular Cauſe, againſt any Perſons he diſliked, but acquieſced that *any Perſon he diſliked* ſhould be out of the 48.

Before *James De Lancey*, Eſq. Chief-Juſtice of the Province of *New York*, and *Frederick Phillipſe*, ſecond Judge, came on my Trial, on the fourth Day of *Auguſt*, 1735, upon an Information for printing and publiſhing two News-papers, which were called Libels againſt our Governor and his Adminiſtration.

The Defendant *John Peter Zenger*, being called, appeared.

And the Sheriff returned his *Venire* for the Trial of this ſaid Cauſe.

Mr. *Chambers*, of Counſel for the Defendant. I humbly move your Honours, that we may have Juſtice done by the Sheriff, and that he may return the Names of the Jurors in the ſame Order as they were ſtruck.

Mr. Chief Juſtice. How is that? Are they not ſo returned?

Mr. *Chambers.* No, they are not; for ſome of the Names that were laſt ſet down in the Pannel, are now placed firſt.

Mr. Chief Juſtice. Make out that, and you ſhall be righted.

Mr. *Chambers.* I have the Copy of the Pannel in my Hand, as the Jurors were ſtruck; and if the Clerk will produce the Original, ſigned by *Mr. Attorney* and myſelf, your Honour will ſee our Complaint is juſt.

Mr. Chief-Juſtice. Clerk, is it ſo? Look upon that Copy; is it a true Copy of the Pannel as it was ſtruck?

Clerk. Yes, I believe it is.

Mr. Chief-Juſtice. How came the Names of the Jurors to be miſplaced in the Pannel annexed to the *Venire?*

Mr. Sheriff. I have returned the Jurors in the ſame Order in which the Clerk gave them to me.

Mr. Chief-Juſtice. Let the Names of the Jurors be ranged in the Order they were ſtruck, agreeable to the Copy here in Court.

Which was done accordingly. And the Jury, whoſe Names were as follow, were called and ſworn:

Hermanus Rutgers,	*Egbert Van Borſon,*
Stanley Holmes,	*Thomas Hunt,* Foreman,
Edward Man,	*Benjamin Hildreth,*
John Bell,	*Abraham Keteltas,*
Samuel Weaver,	*John Goelet,*
Andries Marſchalk,	*Hercules Wendover.*

Mr. Attorney General opened the Information, which was as follows:

Mr. Attorney General. May it pleaſe your Honours, and you Gentlemen of the Jury; the Information now before the Court, and to which the Defendant, *Zenger*, has pleaded *Not Guilty*, is an Information for printing and publiſhing *a falſe, ſcandalous, and ſeditious Libel*, in which his Excellency, the Governor of this Province, who is the King's immediate Repreſentative here, is greatly and unjuſtly ſcandalized, as a Perſon that has no Regard to Law nor Juſtice; with much more, as will appear upon reading the Informations. This of Libelling is what has always been diſcouraged, as a Thing that tends to create Differences among Men, ill Blood among the People, and oftentimes great Bloodſhed between the Party libelling and the Party libelled. There can be no doubt but you, Gentlemen of the Jury, will have the ſame ill Opinion of ſuch Practices, as the Judges have always ſhewn upon ſuch Occaſions: But I ſhall ſay no more at this Time, until you hear the Information, which is as follows.

'*New-York*, Supreme Court.

'Of the Term of *January*, in the eight Year of the Reign of our Sove-
'reign Lord King *George* the Second, *&c.*

'*New York*, *ſs.* BE it remembered, That *Richard Bradley*, Eſq. Attorney General of our Sovereign Lord the King 'for the Province of *New-York*, who for our ſaid Lord the King in this 'Part proſecutes, in his own proper Perſon comes here into the Court of 'our ſaid Lord the King, and for our ſaid Lord the King gives the Court 'here to underſtand, and be informed, That *John Peter Zenger*, late of 'the City of *New-York*, Printer, (being a ſeditious Perſon, and a frequent Printer and Publiſher of falſe News and ſeditious Libels, and 'wickedly and maliciouſly deviſing the Government of our ſaid Lord the 'King of this his Majeſty's Province of *New-York*, under the Adminiſtration of his Excellency *William Coſby*, Eſq. Captain-General and Go'vernor in Chief of the ſaid Province, to traduce, ſcandalize and vilify 'and his Excellency the ſaid Governor, and the Miniſters and Officers 'of our ſaid Lord the King, of and for the ſaid Province, to bring into 'Suſpicion, and the ill Opinion of the Subjects of our ſaid Lord the King 'reſiding within the ſaid Province) the twenty-eighth Day of *January*, 'in the ſeventh Year of the Reign of our Sovereign Lord *George* the Second, by the Grace of God, of *Great-Britain*, *France* and *Ireland*, 'King, Defender of the Faith, *&c.* at the City of *New-York*, did *falſely*, 'ſeditiouſly and *ſcandalouſly* print and ſpubliſh, and cauſe to be printed 'and publiſhed a certain *falſe, malicious, ſeditious, ſcandalous* Libel, 'intituled, *The New-York Weekly Journal, containing the freſheſt Advices, foreign and domeſtic*; in which Libel (of and concerning his 'Excellency the ſaid Governor, and the Miniſters and Officers of 'our ſaid Lord the King, of and for the ſaid Province) among other 'Things therein contained are the Words, "*Your Appearance in Print, "at laſt*, gives a Pleaſure to many, though moſt wiſh you had come "fairly into the open Field, and not appeared behind *Retrenchments* "made of the ſuppoſed Laws againſt Libelling, and of what other "Men have ſaid and done before: Theſe *Retrenchments*, Gentlemen, may "ſoon be ſhewn to you, and all Men, to be weak, and to have neither "Law nor Reaſon for their Foundation, ſo cannot long ſtand you in "ſtead: Therefore, you had much better as yet leave them, and come to "what the *People of this City and Province* [the City and Province of "*New-York* meaning] think are the Points in Queſtion; (*to wit*) *They* "[the People of the City and Province of *New-York* meaning] *think, as "Matters now ſtand, that their* Liberties *and* Properties *are precarious, and "that* Slavery *is like to be intailed on them and their Poſterity, if ſome paſt "Things be not amended; and this they collect from many paſt Proceedings.*" '[Meaning many the paſt Proceedings of his Excellency the ſaid Go'vernor, and of the Miniſters and Officers of our ſaid Lord the King, of 'and for the ſaid Province.] And the ſaid Attorney-General of our ſaid 'Lord the King, for our ſaid Lord the King, likewiſe gives the Court here 'to underſtand, and be informed, that the ſaid *John Peter Zenger* after'wards, (*to wit*) the eighth Day of *April*, in the ſeventh Year of the Reign 'of our ſaid Lord the King, at the City of *New-York* aforeſaid, did *falſely*, '*ſeditiouſly, and ſcandalouſly* print and publiſh, and cauſe to be printed and 'publiſhed, another *falſe, malicious, ſeditious, and ſcandalous* Libel, inti'tutled, *The New-York Weekly Journal, containing the freſheſt Advices foreign and domeſtic.* In which Libel, [of and concerning the Govern'ment of the ſaid Province of *New York*, and of and concerning his Ex'cellency the ſaid Governor, and the Miniſters and Officers of our ſaid 'Lord the King, of and for the ſaid Province] among other Things 'therein contained are theſe Words, "*One of our Neighbours* [one of the "Inhabitants of *New Jerſey* meaning] *being in Company, obſerving the "Strangers* [ſome of the Inhabitants of *New-York* meaning] *full of Com"plaints, endeavoured to perſuade them to remove into* Jerſey; *to which it was "replied, That would be leaping out of the Frying-pan into the Fire: for, ſays "he, we both are under the ſame Governor* [his Excellency the ſaid Governor "meaning], *and your Aſſembly have ſhewn with a Witneſs what is to be ex"pected from them; one that was then moving to* Pennſylvania, [meaning one "that was than removing from *New-York* with intent to reſide at *Penſyl"vania*] *to which Place it is reported ſeveral conſiderable Men are removing* "[from *New-York* meaning], *expreſſed in Terms very moving, much Concern "for the Circumſtances of* New-York [the bad Circumſtances of the Province "and the People of *New York* meaning], *ſeemed to think them very much "owing to the Influence that ſome Men* [whom he called *Tools*] *had in the "Adminiſtration* [meaning the Adminiſtration of Government of the ſaid "Province of *New-York*], *ſaid he was now going from them, and was not to "be hurt by any Meaſures they ſhould take, but could not help having ſome "Concern for the Welfare of his Countrymen, and ſhould be glad to hear that "the Aſſembly* [meaning the General Aſſembly of the Province of *New"York*] *would exert themſelves as became them, by ſhewing that they have the "Intereſt of their Country more at Heart, than the Gratification of any pri"vate View of any of their Members, or being at all affected by the Smiles or "Frowns of a Governor*, [His Excellency, the ſaid Governor, meaning] "*both which ought equally to be deſpiſed, when the Intereſt of their Country is "at Stake. You, ſays he, complain of the Lawyers, but I think the Law it"ſelf is at an End.* We [*the People of the Province of* New-York *meaning*] "ſee Men's Deeds deſtroyed, Judges arbitrarily diſplaced, new Courts "erected, without Conſent of the Legiſlature [*within the Province of* "New-York *meaning*], by which it ſeems to me, Trials by Juries are "taken away when a Governor pleaſes, [*His Excellency the ſaid Governor "meaning*] Men of known Eſtates denied their Votes, contrary to the "received Practice, the beſt Expoſitor of any Law: *Who is then in that "Province* [meaning the Province of *New-York*], *that call* [can call "meaning] *any Thing his own, or enjoy any Liberty*, [Liberty meaning] "*longer than thoſe in the Adminiſtration* [meaning the Adminiſtration of "Governmennt of the ſaid Province of *New-York*] *will condeſcend to let "them do it, for which Reaſon I have left it* [the Province of *New-York* "meaning] *as I believe more will*; to the great Diſturbance of the "Peace of the ſaid Province of *New-York*, to the great Scandal of our ſaid "Lord the King, of His *Excellency* the ſaid Governor, and of all others "concerned in the Adminiſtration of the Government of the ſaid Province, "and againſt the Peace of our Sovereign Lord the King his Crown and "Dignity, *&c.*" Whereupon the ſaid *Attorney-General* of our ſaid Lord 'the King, for our ſaid Lord the King, prays the Adviſement of the 'Court here, in the Premiſes, and the due Proceſs of the Law, againſt 'him the ſaid *John Peter Zenger*, in this Part to be done, to anſwer to our 'ſaid Lord the King of and in the Premiſes, *&c.*

'*R. Bradley*, Attorney-General.'

To this Information the Defendant has pleaded *Not Guilty* and we are ready to prove it.

Mr. *Chambers* has not been pleaſed to favour me with his Notes, ſo I cannot, for fear of doing him Injuſtice pretend to ſet down his Argument; but here Mr. *Chambers* ſet forth very clearly, 'the Nature of a Libel, the great Allowances that ought to be made for what Men ſpeak or write; that in all Libels there muſt be ſome particular Perſons ſo clearly pointed out that no Doubt muſt remain about who is meant; that he was in hopes Mr. *Attorney* would fail in his Proof, as to this Point; and therefore deſired that he would go on to examine his Witneſſes.'

Then Mr. *Hamilton*, who at the Requeſt of ſome of my Friends, was ſo kind as to come from *Philadelphia* to aſſiſt me on the Trial, ſpoke.

Mr. *Hamilton.* May it pleaſe your Honour: I am concerned in this Cauſe on the Part of Mr. *Zenger*, the Defendant. The Information againſt my Client was ſent me, a few Days before I left Home, with ſome Inſtructions to let me know how far I might rely upon the Truth of thoſe Parts of the Papers ſet forth in the Information, and which are ſaid to be libellous. And though I am perfectly of the Opinion with the Gentleman who has juſt now ſpoke, on the ſame Side with me, as to the common Courſe of Proceedings, I mean in putting *Mr. Attorney* upon proving, that my Client printed and publiſhed thoſe Papers mentioned in the Information; yet I cannot think it proper for me (without doing Violence to my own Principles) to deny the Publication of a Complaint, which, I think, is the Right of every free-born Subject to make, when the Matters ſo publiſhed can be ſupported with Truth; and therefore I'll ſave *Mr. Attorney* the Trouble of examining his Witneſſes to that Point; and I do (for my Client) confeſs, that he both printed and publiſhed the two News Papers ſet forth in the Information, and I hope in ſo doing he has committed no Crime.

Mr. Attorney. Then, if Your Honour pleaſes, ſince Mr. *Hamilton* has confeſſed the Fact, I think our Witneſſes may be diſcharged; we have no further Occaſion for them.

Mr. *Hamilton.* If you brought them here only to prove the printing and publiſhing of theſe News-Papers, we have acknowledged that, and ſhall abide by it.

Here my Journeyman and two Sons (with ſeveral others ſubpœna'd by Mr. Attorney, *to give Evidence againſt me) were diſcharged, and there was Silence in the Court for ſome Time.*

Mr. Chief-Juſtice. Well, *Mr. Attorney*, will you proceed?

Mr. Attorney. Indeed, Sir, as Mr. *Hamilton* has confeſſed the printing and publiſhing theſe Libels, I think the Jury muſt find a Verdict for the King; for ſuppoſing they were true, the Law ſays that they are not the leſs libellous for that; nay indeed the Law ſays, their being true is an Aggravation of the Crime.

Mr. *Hamilton.* Not ſo neither, *Mr. Attorney*, there are two Words to that Bargain: I hope it is not our bare printing and publiſhing a Paper, that will make it a Libel; You will have ſomething more to do, before you make my Client a Libeller; for the Words themſelves muſt be libellous, that is *falſe, ſcandalous, and ſeditious*, or elſe they are not guilty.

As *Mr. Attorney* has not been pleaſed to favour us with his Argument which he read, or with the Notes of it, we cannot take upon us to ſet down his Words, but only to ſhew the Book Caſes he cited, and the general Scope of his Argument, which he drew from thoſe Authorities. 'He obſerved upon the Excellency, as well as Uſe of Government, and the great Regard and Reverence which had been conſtantly paid to it, both under the Law and the Goſpel. That by Government we were protected in our

Lives

Lives, Religion and Properties; and that, for theſe Reaſons, great Care had always been taken to prevent every thing that might tend to ſcandalize Magiſtrates, and others concerned in the Adminiſtration of the Government, eſpecially the ſupreme Magiſtrate. And that there were many Inſtances of very ſevere Judgments, and of Puniſhments inflicted upon ſuch as had attempted to bring the Government into Contempt; by publiſhing falſe and ſcurrilous Libels againſt it, or by ſpeaking evil and ſcandalous Words of Men in Authority; to the great Diſturbance of the publick Peace.' And to ſupport this, he cited, 5 *Coke* 121. (I ſuppoſe it ſhould be 125.) *Wood's Inſtit.* 430. 2 *Lilly* 168. 1 *Hawkins* 73. 11. 6. From theſe Books he inſiſted, 'That a Libel was a malicious Defamation of any Perſon, expreſſed either in Printing or Writing, Signs or Pictures, to aſperſe the Reputation of one that is alive, or the Memory of one that is dead; if he is a private Man, the Libeller deſerves a ſevere Puniſhment, but if it is againſt a Magiſtrate, or other publick Perſon, it is a greater Offence; for this concerns not only the Breach of the Peace, but the Scandal of the Government; for what greater Scandal of Government can there be, than to have corrupt or wicked Magiſtrates to be appointed by the King, to govern his Subjects under him? And a greater Imputation to the State cannot be, than to ſuffer ſuch corrupt Men to ſit in the ſacred Seat of Juſtice, or to have any meddling in, or concerning the Adminiſtration of Juſtice.' And from the ſame Books *Mr. Attorney* inſiſted, that whether the Perſon defamed is a private Man or a Magiſtrate, whether living or dead, whether the Libel is true or falſe, or if the Party againſt whom it is made is of good or evil Fame, it is nevertheleſs a Libel. For in a ſettled State of Government, the Party grieved ought to complain for every Injury done him, in the ordinary Courſe of the Law. And as to its Publication, the Law had taken ſo great Care of Men's Reputations, that if one maliciouſly repeats it, or ſings it in the Preſence of another, or delivers the Libel or a Copy of it over, to ſcandalize the Party, he is to be puniſhed as a Publiſher of a Libel. He ſaid it was likewiſe evident, that Libelling was an Offence againſt the Law of God. Acts xxiii. 5. *Then, ſaid* Paul, *I wiſt not, Brethren, that he was the High-Prieſt: For it is written, Thou ſhalt not ſpeak evil of the Ruler of the People.* 2 Pet. ii. 10. *Deſpiſe Government, preſumptuous are they, ſelf-willed, they are not afraid to ſpeak evil of Dignities*, &c. He then inſiſted that it was clear, both by the Law of God and Man, that it was a very great Offence to ſpeak evil of, or to revile thoſe in Authority over us; and that Mr. *Zenger* had offended in a moſt notorious and groſs Manner, in ſcandalizing *His Excellency* our Governor, who is the King's immediate *Repreſentative*, and the ſupreme Magiſtrate of this Province: For can there be any thing more ſcandalous ſaid of a Governor than what is publiſhed in thoſe Papers? Nay, not only the Governor, but both the Council and Aſſembly are ſcandalized; for there it is plainly ſaid, That 'as Matters now ſtand, their Liberties 'and Properties are precarious, and that Slavery is like to be entailed on 'them and their Poſterity. *And then again* Mr. *Zenger ſays*, The Aſſem-'bly ought to deſpiſe the Smiles or Frowns of a Governor; that he 'thinks the Law is at an End; that we ſee Men's Deeds deſtroyed, 'Judges arbitrarily diſplaced, new Courts erected, without Conſent of 'the Legiſlature; *And*, that it ſeems Trials by juries are taken away 'when a Governor pleaſes; that none can call any thing their own, 'longer than thoſe in the Adminiſtration will condeſcend to let them do 'it. - - - - - - - - - - -' And *Mr. Attorney* added, 'That he did not know what could be ſaid in Defence of a Man, that had ſo notoriouſly ſcandalized the Governor and principal Magiſtrates and Officers of the Government, by charging them with depriving the People of their Rights and Liberties, and taking away Trials by Juries; and in ſhort, putting an End to the Law itſelf.——If this was not a Libel, he ſaid, he did not know what was one. Such Perſons as will take thoſe Liberties with Governors and Magiſtrates, he thought, ought to ſuffer for ſtirring up Sedition and Diſcontent among the People. And concluded, by ſaying, that the Government had been very much traduced and expoſed by Mr. *Zenger*, before he was taken Notice of; that at laſt it was the Opinion of the Governor and Council, that he ought not to be ſuffered to go on, to diſturb the Peace of the Government, by publiſhing ſuch Libels againſt the Governor, and the chief Perſons in the Government; and therefore they had directed this Proſecution, to put a Stop to this ſcandalous and wicked Practice, of libelling and defaming his Majeſty's Government, and diſturbing his Majeſty's Peace.'

Mr. *Chambers* then ſummed up to the Jury, obſerving with great Strength of Reaſon on *Mr. Attorney*'s Defect of Proof, that the Papers in the Information were *falſe, malicious or ſeditious*, which was incumbent on him to prove to the Jury, and without which they could not on their Oaths ſay, that they were ſo as charged.

Mr. *Hamilton*. "May it pleaſe your Honour: I agree with *Mr. Attorney*, that Government is a ſacred Thing; but I differ very widely from him, when he would inſinuate, that the juſt Complaints of a Number of Men, who ſuffer under a bad Adminiſtration, is libelling that Adminiſtration. Had I believed that to be Law, I ſhould not have given the Court the Trouble of hearing any thing that I could ſay in this Cauſe. I own, when I read the Information, I had not the Art to find out (without the Help of *Mr. Attorney*'s *Innuendos*) that the Governor was the Perſon meant in every Period of that News Paper; and I was inclined to believe, that they were wrote by ſome, who from an extraordinary Zeal for Liberty, had miſconſtrued the Conduct of ſome Perſons in Authority into Crimes; and that *Mr. Attorney*, out of his too great Zeal for Power, had exhibited this Information, to correct the Indiſcretion of my Client; and at the ſame Time, to ſhew his Superiors the great Concern he had, leſt they ſhould be treated with any undue Freedom. But from what *Mr. Attorney* has juſt now ſaid, *to wit*, That this Proſecution was directed by the Governor and Council, and from the extraordinary Appearance of People of all Conditions, which I obſerve in Court upon this Occaſion, I have Reaſon to think, that thoſe in the Adminiſtration have by this Proſecution ſomething more in View, and that the People believe they have a good deal more at Stake than I apprehended: And, therefore, as it is become my Duty, to be both plain and particular in this Cauſe, I beg Leave to beſpeak the Patience of the Court.

I was in hopes, as that terrible Court, where thoſe dreadful Judgments were given, and that Law eſtabliſhed, which *Mr. Attorney* has produced for Authorities to ſupport this Cauſe, was long ago laid aſide, as the moſt dangerous Court to the Liberties of the People of *England* that ever was known in that Kingdom; that *Mr. Attorney* knowing this, would not have attempted to ſet up a Star-Chamber here, nor to make their Judgments a Precedent to us: For it is well known, that what would have been judged Treaſon in thoſe Days for a Man to ſpeak, I think, has ſince not only been practiſed as lawful, but the contrary Doctrine has been held to be Law.

In *Brewſter*'s Caſe, for Printing, *That the Subjects might defend their Rights and Liberties by Arms, in caſe the King ſhould go about to deſtroy them*, he was told, by the Chief-Juſtice, that it was a great Mercy he was not proceeded againſt for his Life; for that to ſay the King could be reſiſted by Arms in any Caſe whatſoever, was expreſs Treaſon. And yet we ſee, ſince that Time, Dr. *Sacheverell* was ſentenced in the higheſt Court in *Great-Britain*, for ſaying, *That ſuch a Reſiſtance was not lawful*. Beſides, as Times have made very great Changes in the Laws of *England*, ſo in my Opinion, there is good Reaſon that Places ſhould do ſo too.

Is it not ſurpriſing to ſee a Subject, upon his receiving a Commiſſion from the King to be a Governor of a Colony in *America*, immediately imagining himſelf to be veſted with all the Prerogatives belonging to the ſacred Perſon of his Prince? And which is yet more aſtoniſhing, to ſee that a People can be ſo wild as to allow of and acknowledge thoſe Prerogatives and Exemptions, even to their own Deſtruction? Is it ſo hard a Matter to diſtinguiſh between the Majeſty of our Sovereign, and the Power of a Governor of the Plantations? Is not this making very free with our Prince, to apply that Regard, Obedience and Allegiance to a Subject which is due only to our Sovereign? And yet in all the Caſes which *Mr. Attorney* has cited, to ſhew the Duty and Obedience we owe to the Supreme Magiſtrate, it is the King that is there meant and underſtood, tho' *Mr. Attorney* is pleaſed to urge them as Authorities to prove the Heiniouſneſs of Mr. *Zenger*'s Offence againſt the Governor of *New-York*. The ſeveral Plantations are compared to ſo many large Corporations, and perhaps not improperly; and can any one give an inſtance, that the Mayor or Head of a Corporation ever put in a Claim to the ſacred Rights of Majeſty? Let us not (while we are pretending to pay a great Regard to our Prince and his Peace) make bold to transfer that Allegiance to a Subject, which we owe to our King only. What ſtrange Doctrine is it, to preſs every Thing for Law here, which is ſo in *England*? I believe we ſhould not think it a Favour, at preſent at leaſt, to eſtabliſh this Practice. In *England* ſo great a Regard and Reverence is had to the Judges, (*C.* 3. *Inſt.* 140.) that if any Man ſtrikes another in *Weſtminſter-Hall*, while the Judges are ſitting, he ſhall loſe his Right-Hand, and forfeit his Land and Goods for ſo doing. And though the Judges here claim all the Powers and Authorities within this Govenment, that a Court of King's-Bench has in *England*, yet I believe *Mr. Attorney* will ſcarcely ſay, that ſuch a Punithment could be legally inflicted on a Man for committing ſuch an Offence, in the Preſence of the Judges ſitting in any Court within the Province of *New-York*. The Reaſon is obvious; a Quarrel or Riot in *New-York* cannot poſſibly be attended with thoſe dangerous Conſequences that it might in *Weſtminſter-Hall*; nor (I hope) will it be alledged, that any Miſbehaviour to a Governor in the Plantations will, or ought to be judged of or puniſhed, as a like Undutifulneſs would be to our Sovereign. From all which, I hope *Mr. Attorney* will not think it proper to apply his Law-Caſes (to ſupport the Cauſe of his Governor), which have only been judged, where the King's Safety or Honour was concerned. It will not be denied but that a Freeholder, in the Province of *New-York*, has as good a Right to the ſole and ſeparate Uſe of his Lands, as a Freeholder in *England*, who has a Right to bring an Action of Treſpaſs againſt his Neighbour, for ſuffering his Horſe or Cow to come and feed upon his Lands, or eat his Corn, whether incloſed or not incloſed; and yet I believe it would be looked upon as a ſtrange Attempt for one Man here to bring an Action againſt another, whoſe Cattle and Horſes feed upon his Grounds not incloſed, or indeed for eating and treading down his Corn, if that were not incloſed. Numberleſs are the Inſtances of this Kind that might be given, to ſhew, that what is good Law at one Time, and in one Place, is not ſo at another Time, and in another Place; ſo that I think the Law ſeems to expect, that in theſe Parts of the World, Men ſhould take Care, by a good Fence, to preſerve their Property from the Injury of unruly Beaſts. And perhaps there may be as good a Reaſon why Men ſhould take the ſame Care, to make an honeſt and upright Conduct a Fence and Security againſt the Injury of unruly Tongues.

Mr. Attorney. I don't know what the Gentleman means, by comparing Caſes of Freeholders in *England* with the Freeholders here. What has this Caſe to do with Actions of Treſpaſs, or Men's fencing their Ground? The Caſe before the Court is, Whether Mr. *Zenger* is guilty of libelling his Excellency the Governor of *New-York*, and indeed the whole Adminiſtration of the Government? Mr. *Hamilton* has confeſſed the printing and publiſhing, and I think nothing is plainer, than that the Words in the Information are *ſcandalous, and tend to Sedition, and to diſquiet the Minds of the People of this Province*. And if ſuch Papers are not Libels, I think it may be ſaid, there can be no ſuch Thing as a Libel.

Mr. *Hamilton*. May it pleaſe your Honour, I cannot agree with *Mr. Attorney*; for though I freely acknowledge that there are ſuch Things as Libels, yet I muſt inſiſt at the ſame Time, that what my Client is charged with, is not a Libel; and I obſerved juſt now, that *Mr. Attorney*, in defining a Libel, made uſe of the Words, *ſcandalous, ſeditious, and tend to diſquiet the People*; but (whether with Deſign, or not, I will not ſay) he omitted the Word *falſe*.

Mr. Attorney. I think I did not omit the Word *falſe*: But it has been ſaid already, that it may be a Libel, notwithſtanding it may be true.

Mr. *Hamilton*. In this I muſt ſtill differ with *Mr. Attorney*; for I depend upon it, we are to be tried upon this Information now before the Court and Jury, and to which we have pleaded *Not Guilty*, and by it we are charged with printing and publiſhing *a certain falſe, malicious, ſeditious and ſcandalous Libel*. This Word *falſe* muſt have ſome Meaning, or elſe how came it there? I hope *Mr. Attorney* will not ſay he put it there by Chance, and I am of Opinion his Information would not be good without it. But to ſhew that it is the principal Thing, which, in my Opinion, makes a Libel, I put the Caſe, the Information had been for printing and publiſhing a certain *true* Libel, would that be the ſame Thing? Or could *Mr. Attorney* ſupport ſuch an Information by any Precedent in the

the *Engliſh* Law? No, the Falſhood makes the Scandal, and both make the Libel. And to ſhew the Court that I am in good earneſt, and to ſave the Court's Time, and *Mr. Attorney*'s Trouble, I will agree, that if he can prove the Facts charged upon us to be *falſe*, I'll own them to be *ſcandalous*, *ſeditious*, and a Libel. So the Work ſeems now to be pretty much ſhortened, and *Mr. Attorney* has now only to prove the Word *falſe*, in order to make us Guilty.

Mr. Attorney. We have nothing to prove; you have confeſſed the printing and publiſhing; but if it was neceſſary (as I inſiſt it is not), how can we prove a Negative? but I hope ſome Regard will be had to the Authorities that have been produced; and that ſuppoſing all the Words to be true, yet that will not help them; that Chief Juſtice *Holt*, in his Charge to the Jury, in the Caſe of *Tutchin*, made no Diſtinction, whether *Tutchin*'s Papers were *true* or *falſe*; and as Chief Juſtice *Holt* has made no Diſtinction in that Caſe, ſo none ought to be made here; nor can it be ſhewn in all that Caſe, there was any Queſtion made about their being *falſe* or *true*.

Mr. *Hamilton.* I did expect to hear, that a Negative cannot be proved; but every body knows there are many Exceptions to that general Rule; For if a Man is charged with killing another, or ſtealing his Neighbour's Horſe; if he is innocent in the one Caſe, he may prove the Man ſaid to be killed to be really alive; and the Horſe ſaid to be ſtolen, never to have been out of his Maſter's Stable, *&c.* and this I think is proving a Negative. But we will ſave *Mr. Attorney* the Trouble of proving a Negative, and take the *Onus Probandi* upon ourſelves, and prove thoſe very Papers that are called Libels to be *true*.

Mr. Chief Juſtice. You cannot be admitted, Mr. *Hamilton*, to give the Truth of a Libel in Evidence. A Libel is not to be juſtified; for it is nevertheleſs a Libel that it is *true*.

Mr. *Hamilton.* I am ſorry the Court has ſo ſoon reſolved upon that Piece of Law; I expected firſt to have been heard to that Point. I have not in all my Reading met with an Authority that ſays, we cannot be admitted to give the Truth in Evidence, upon an Information for a Libel.

Mr. Chief Juſtice. The Law is clear, that you cannot juſtify a Libel.

Mr. *Hamilton.* I own that, may it pleaſe your Honour, to be ſo; but with Submiſſion I underſtand the Word, *juſtified* there, to be a Juſtification by Plea, as it is in the Caſe upon an Indictment for *Murder*, or an *Aſſault and Battery*; there the Priſoner cannot juſtify, but plead *Not Guilty*: Yet it will not be denied but he may, and always is admitted to give the Truth of the Fact, or any other Matter in Evidence, which goes to his Acquittal; as in *Murder* he may prove it was in Defence of his Life, his Houſe, *&c.* and in *Aſſault and Battery*, he may give in Evidence, that the other Party ſtruck firſt, and in both Caſes he will be acquitted. And in this Senſe I underſtand the Word *juſtify*, when applied to the Caſe before the Court.

Mr. Chief Juſtice. I pray ſhew that you can give the Truth of a Libel in Evidence.

Mr. *Hamilton.* I am ready, both from what I underſtand to be the Authorities in the Caſe, and from the Reaſon of the Thing, to ſhew that we may lawfully do ſo. But here I beg leave to obſerve, That Informations for Libels is a Child, if not born, yet nurſed up, and brought to full Maturity, in the Court of the Star-Chamber.

Mr. Chief Juſtice. Mr. *Hamilton*, you'll find yourſelf miſtaken; for in *Coke*'s *Inſtitutes* you'll find Informations for Libels, long before the Court of Star-Chamber.

Mr. *Hamilton.* I thank Your Honour; that is an Authority I did propoſe to ſpeak to by and bye: But as you have mentioned it, I'll read that Authority now. I think it is in the 3 *Co. Inſt.* under Title *Libel*; it is the Caſe of *John de Northampton* for a Letter wrote to *Robert de Ferrers*, one of the King's Privy-Council, (*Coke* 3. *Inſt.* 174.) concerning Sir *William Scot*, Chief Juſtice, and his Fellows; but it does not appear to have been upon Information; and I have good Grounds to ſay it was upon Indictment, as was the Caſe of *Adam de Ravenſworth*, juſt mentioned before by Lord *Coke* under the ſame Title; and I think there cannot be a greater, at leaſt a plainer Authority for us, than the Judgment in the Caſe of *John de Northampton*, which my Lord has ſet down at large. *Et quia prædictus Johannes cognovit dictam Literam per ſe ſcriptam Roberto de Ferrers, qui eſt de Concilio Regis, quæ litera continet in ſe nullam veritatem, &c.* Now Sir, by this Judgment it appears the libellous Words were utterly falſe, and there the Falſhood was the Crime, and is the Ground of that Judgment: And is not that what we contend for? Do not we inſiſt that the Falſhood makes the Scandal, and both make the Libel? And how ſhall it be known whether the Words are libellous, *that is*, *true or falſe*, but by admitting us to prove them *true*, ſince *Mr. Attorney* will not undertake to prove them *falſe?* Beſides, is it not againſt Common Senſe, that a Man ſhould be puniſhed in the ſame Degree for a *true Libel* (if any ſuch Thing could be) as for a *falſe one?* I know it is ſaid, *That Truth makes a Libel the more provoking, and therefore the Offence is the greater, and conſequently the Judgment ſhould be the heavier.* Well, ſuppoſe it were ſo, and let us agree for once, *That Truth is a greater Sin than Falſhood:* Yet as the Offences are not equal, and as the Puniſhment is arbitrary, *that is*, according as the Judges in their Diſcretion ſhall direct to be inflicted; is it not abſolutely neceſſary that they ſhould know whether the Libel is *true* or *falſe*, that they may by that Means be able to proportion the Puniſhment? For would it not be a ſad Caſe, if the Judges, for want of a due Information, ſhould chance to give as ſevere a Judgment againſt a Man for writing or publiſhing a Lie, as for writing or publiſhing a Truth! And yet this (with Submiſſion), as monſtrous and ridiculous as it may ſeem to be, is the natural Conſequence of *Mr. Attorney*'s Doctrine, *That Truth makes a worſe Libel than Falſhood*, and muſt follow from his not proving our Papers to be *falſe*, or not ſuffering us to prove them to be *true*. But this is only reaſoning upon the Caſe, and I will now proceed to ſhew, what in my Opinion will be ſufficient to induce the Court to allow us to prove the Truth of the Words, which in the Information are called libellous. And firſt I think there cannot be a greater Authority for us, than the Judgment I juſt now mentioned in the Caſe of *John de Northampton*, and that was in early Times, and before the Star-Chamber came to its Fulneſs of Power and Wickedneſs. In that Judgment, as I obſerved, the *Falſhood* of the Letter which was wrote, is aſſigned as the very Ground of the Sentence. And agreeable to this it was urged by Sir *Robert Sawyer*, (*State Trials*, Vol. IV.) in the Trial of the Seven Biſhops, *That the Falſity, the Malice, and Seditious of the Writing, were all Facts to be proved.* But here it may be ſaid, Sir *Robert* was one of the Biſhops Counſel, and his Argument is not to be allowed for Law: But I offer it only to ſhew, that we are not the firſt who have inſiſted, that to make a Writing a Libel, it muſt be *falſe*. And if the Argument of a Counſel muſt have no Weight, I hope there will be more Regard ſhewn to the Opinion of a Judge; and therefore I mention the Words of Juſtice *Powel* in the ſame Trial, where he ſays (of the Petition of the Biſhops, which was called a Libel, and upon which they were proſecuted by Information), that, *to make it a Libel, it muſt be falſe and malicious, and tend to Sedition*; and declared, *as he ſaw no Falſhood or Malice in it, he was of Opinion, that it was no Libel.* Now, I ſhould think this Opinion alone, in the Caſe of the King, and in a Caſe which that King had ſo much at Heart, and which to this Day has never been contradicted, might be a ſufficient Authority, to intitle us to the Liberty of proving the *Truth* of the Papers, which in the Information are called *falſe*, *malicious*, *ſeditious*, *and ſcandalous*. If it be objected, *that the Opinion of the other three Judges were againſt him*, I anſwer, that the Cenſures the Judgments of theſe Men have undergone, and the Approbation Juſtice *Powel*'s Opinion, his Judgment and Conduct upon that Trial, has met with, and the Honour he gained to himſelf, for daring to ſpeak Truth at ſuch a Time, upon ſuch an Occaſion, and in the Reign of ſuch a King, is more than ſufficient, in my humble Opinion, to warrant our inſiſting on his Judgment, as a full Authority to our Purpoſe; and it will lie upon *Mr. Attorney* to ſhew, that this Opinion has, ſince that Time, been denied to be Law; or that Juſtice *Powel*, who delivered it, has ever been condemned or blamed for it, in any Law-Book extant at this Day; and this, I will venture to ſay, *Mr. Attorney* cannot do. But, to make this Point yet more clear, if any Thing can be clearer, I will, on our Part, proceed and ſhew, that in the Caſe of Sir *Samuel Barnardiſton*, his Counſel, notwithſtanding he ſtood before one of the greateſt Monſters that ever preſided in an *Engliſh* Court (Judge *Jefferies*), inſiſted on the want of Proof to the *Malice* and *ſeditious Intent* of the Author, of what was called a *Libel*. And in the Caſe of *Tutchin*, which ſeems to be *Mr. Attorney*'s chief Authority, that Caſe is againſt him; for he was, upon his Trial, put upon ſhewing the Truth of his Papers, but did not; at leaſt the Priſoner was aſked by the King's Counſel, (*State Trials*, Vol. V.) whether he would ſay they were *true?* And as he never pretended that they were true, the Chief Juſtice was not to ſay ſo. But the Point will ſtill be clearer, on our Side, from *Fuller*'s Caſe, (*State Trials*, Vol. V.) *For falſely and wickedly cauſing to be printed a falſe and ſcandalous Libel, in which (amongſt other Things) were contained theſe Words.* 'Mr. *Jones* has alſo made Oath, That he paid 5000*l.* more, by the late 'King's Order, to ſeveral Perſons in Places of Truſt, that they might 'compleat my Ruin, and invalidate me for ever. Nor is this all; for the 'ſame Mr. *Jones* will prove, by undeniable Witneſs and Demonſtration, 'that he has diſtributed more than 180,000*l.* in eight Years laſt paſt, by 'the *French* King's Order, to Perſons in publick Truſt in this Kingdom.' Here, you ſee, is a ſcandalous and infamous Charge againſt the late King; here is a Charge, no leſs than High Treaſon, againſt the *Men in publick Truſt*, for receiving Money of the *French* King, then in actual War with the Crown of *Great-Britain*; and yet the Court were far from bearing him down with that Star-chamber Doctrine, to wit, *That it was no matter, whether what he ſaid was true or falſe*; no, on the contrary, Lord Chief Juſtice *Holt* aſks *Fuller*, *Can you make it appear they are true? Have you any Witneſſes? You might have had* Subpœna's *for your Witneſſes againſt this Day. If you take upon you to write ſuch Things as you are charged with, it lies upon you to prove them true, at your Peril. If you have any Witneſſes, I will hear them. How came you to write thoſe Books which are not true? If you have any Witneſſes, produce them. If you can offer any Matter to prove what you have wrote, let us hear it.* Thus ſaid, and thus did, that great Man, Lord Chief Juſtice *Holt*, upon a Trial of the like Kind with ours; and the Rule laid down by him, in this Caſe, is, *That he who will take upon him to write Things, it lies upon him to prove them at his Peril.* Now, Sir, we have acknowledged the printing and publiſhing of thoſe Papers, ſet forth in the Information, and (with the Leave of the Court) agreeable to the Rule laid down by Chief Juſtice *Holt*, we are ready to prove them to be true, at our Peril.

Mr. Chief Juſtice. Let me ſee the Book.

[*Here the Court had the Caſe under Conſideration a conſiderable time, and every one was ſilent.*]

Mr. Chief Juſtice. *Mr. Attorney*, you have heard what Mr. *Hamilton* has ſaid, and the Caſes he has cited, for having his Witneſſes examined, to prove the Truth of ſeveral Facts contained in the Papers ſet forth in the Information. What do you ſay to it?

Mr. Attorney-General. The Law, in my Opinion, is very clear: They cannot be admitted to juſtify a Libel; for, by the Authorities I have already read to the Court, it is not the leſs a Libel becauſe it is true. I think I need not trouble the Court with reading the Caſes over again; the Thing ſeems to be very plain, and I ſubmit it to the Court.

Mr. Chief Juſtice. Mr. *Hamilton*, the Court is of Opinion, you ought not to be permitted to prove the Facts in the Papers: Theſe are the Words of the Book, 'It is far from being a Juſtification of a Libel, that the 'Contents thereof are true, or that the Perſon upon whom it is made had 'a bad Reputation, ſince the greater Appearance there is of Truth in any 'malicious Invective, ſo much the more provoking it is.'

Mr. *Hamilton.* Theſe are Star-chamber Caſes; and I was in hopes, that Practice had been dead with the Court.

Mr. Chief Juſtice. Mr. *Hamilton*, the Court have delivered their Opinion, and we expect you will uſe us with good Manners: You are not to be permitted to argue againſt the Opinion of the Court.

Mr. *Hamilton.* With Submiſſion, I have ſeen the Practice in very great Courts, and never heard it deemed unmannerly to——

Mr. Chief Juſtice. After the Court have declared their Opinion, it is not good Manners to inſiſt upon a Point in which you are over-ruled.

Mr *Hamilton.* I will ſay no more at this Time: The Court, I ſee, is againſt us in this Point; and that I hope I may be allowed to ſay.

Mr.

Mr. Chief Juſtice. Uſe the Court with Good-Manners, and you ſhall be allowed all the Liberty you can reaſonably deſire.

Mr. *Hamilton.* I thank your Honour. Then, Gentlemen of the Jury, it is to you we muſt now appeal, for Witneſſes to the Truth of the Facts we have offered, and are denied the Liberty to prove; and let it not ſeem ſtrange, that I apply myſelf to you in this manner; I am warranted ſo to do, both by Law and Reaſon. The Law ſuppoſes you to be ſummoned *out of the Neighbourhood where the Fact is alledged to be committed*; and the Reaſon of your being taken out of the Neighbourhood is, *becauſe you are ſuppoſed to have the beſt Knowledge of the Fact that is to be tried.* And were you to find a Verdict againſt my Client, you muſt take upon you to ſay, the Papers referred to in the Information, and which we acknowledge we printed and publiſhed, are *falſe, ſcandalous, and ſeditious*; but of this I can have no Apprehenſion. You are Citizens of *New York*; you are really, what the Law ſuppoſes you to be, *honeſt and lawful Men*; and, according to my Brief, the Facts which we offer to prove were not committed in a Corner; they are notoriouſly known to be true; and therefore in your Juſtice lies our Safety. And as we are denied the Liberty of giving Evidence, to prove the Truth of what we have publiſhed, I will beg Leave to lay it down as a ſtanding Rule in ſuch Caſes, *That the ſuppreſſing of Evidence ought always to be taken for the ſtrongeſt Evidence*; and I hope it will have that Weight with you. But ſince we are not admitted to examine our Witneſſes, I will endeavour to ſhorten the Diſpute with *Mr. Attorney*; and to that End, I deſire he would favour us with ſome ſtandard Definition of a Libel, by which it may be certainly known, whether a Writing be a Libel, yea or not.

Mr. Att. Gen. The Books, I think, have given a very full Definition of a Libel: They ſay (1 *Hawk. chap.* 73. §. 1. *& ſeq.*) it is, 'in a ſtrict 'Senſe, taken for a malicious Defamation, expreſſed either in Writing or 'Printing, and tending either to blacken the Memory of one who is dead, 'or the Reputation of one who is alive, and to expoſe him to publick Ha'tred, Contempt, or Ridicule. §. 2. But it is ſaid, That, in a larger Senſe, 'the Notion of a Libel may be applied to any Defamation whatſoever, ex'preſſed either by Signs or Pictures, as by fixing up a Gallows againſt a 'Man's Door, or by painting him in a ſhameful and ignominious Man'ner. §. 3. And ſince the chief Cauſe for which the Law ſo ſeverely pu'niſhes all Offences of this Nature, is the direct Tendency of them to a 'Breach of publick Peace, by provoking the Parties injured, their Friends 'and Families, to Acts of Revenge, which it would be impoſſible to re'ſtrain by the ſevereſt Laws, were there no Redreſs from publick Juſtice 'for Injuries of this Kind, which, of all others, are moſt ſenſibly felt; 'and ſince the plain Meaning of ſuch Scandal, as is expreſſed by Signs or 'Pictures, is as obvious to common Senſe, and as eaſily underſtood by 'every common Capacity, and altogether as provoking as that which is 'expreſſed by Writing or Printing, why ſhould it not be equally crimi'nal? §. 4. And from the ſame Ground it ſeemeth alſo clearly to follow, 'That ſuch Scandal, as is expreſſed in a ſcoffing and ironical Manner, 'makes a Writing as properly a Libel, as that which is expreſſed in direct 'Terms; as where a Writing, in a taunting manner reckoning up ſe'veral Acts of publick Charity done by one, ſays, *You will not play the 'Jew, nor the Hypocrite*, and ſo goes on in a Strain of Ridicule to inſinu'ate, that what he did was owing to his Vain-Glory; or where a Writ'ing, pretending to recommend to one the Characters of ſeveral great 'Men for his Imitation, inſtead of taking notice of what they are gene'rally eſteemed famous for, pitched on ſuch Qualities only which their 'Enemies charge them with the want of; as by propoſing ſuch a one to 'be imitated for his Courage, who is known to be a great Stateſman, but 'no Soldier; and another to be imitated for his Learning, who is known 'to be a great General, but no Scholar, *&c.* which Kind of Writing is as 'well underſtood to mean only to upbraid the Parties with the want of theſe 'Qualities, as if it had directly and expreſsly done ſo.'

Mr. *Hamilton.* Ay, *Mr. Attorney*; but what certain ſtandard Rule have the Books laid down, by which we can certainly know, whether the Words or the Signs are malicious? Whether they are defamatory? Whether they tend to the Breach of the Peace, and are a ſufficient Ground to provoke a Man, his Family, or Friends, to Acts of Revenge, eſpecially thoſe of the ironical Sort of Words? And what Rule have you to know when I write irronically? I think it would be hard, when I ſay, *Such a Man is a very worthy, honeſt Gentleman, and of fine Underſtanding*, that therefore I meant *he was a Knave or a Fool.*

Mr. Att. Gen. I think the Books are very full: It is ſaid in 1 *Hawk. p.* 193. juſt now read, 'That ſuch Scandal as is expreſſed in a ſcoffing 'and ironical Manner, makes a Writing as properly a Libel, as that 'which is expreſſed in direct Terms; as where a Writing, in a taunting 'manner ſays, reckoning up ſeveral Acts of Charity done by one, *You will 'not play the Jew or the Hypocrite*; and ſo goes on to inſinuate, that what he 'did was owing to his Vain-Glory, *&c.* which Kind of Writing is as 'well underſtood to mean only to upbraid the Parties with the want of 'theſe Qualities, as if it had directly and expreſsly done ſo.' I think nothing can be plainer or more full than theſe Words.

Mr. *Hamilton.* I agree the Words are very plain; and I ſhall not ſcruple to allow (when we are agreed that the Words are *falſe and ſcandalous, and were ſpoken in an ironical and ſcoffing Manner*, &c.) that they are really *libellous*; but here ſtill occurs the Uncertainty, which makes the Difficulty to know what Words are *ſcandalous*, and what not; for you ſay, they may be *ſcandalous, true* or *falſe*: Beſides, how ſhall we know whether the Words were ſpoke in a *ſcoffing and ironical Manner*, or ſeriouſly? Or how can you know, whether the Man did not think as he wrote? For, by your Rule, if he did, it is no *Irony*, and conſequently no *Libel*. But, under Favour, *Mr. Attorney*, I think the ſame Book, and the ſame Section, will ſhew us the only Rule by which all theſe Things are to be known. The Words are theſe; 'which Kind of Writing is as well *underſtood* to mean 'only to upbraid the Parties with the want of theſe Qualities, as if they 'had directly and expreſsly done ſo.' Here, it is plain, the Words are *ſcandalous, ſcoffing, and ironical*, only as they are *underſtood*; I know no Rule laid down in the Books but this; I mean, as the Words are *underſtood.*

Mr. Chief Juſtice. Mr. *Hamilton*, do you think it ſo hard to know when Words are ironical, or ſpoke in a ſcoffing Manner?

Mr. *Hamilton.* I own it may be known; but I inſiſt, the only Rule to know is, as I do or can *underſtand* them: I have no other Rule to go by, but as I *underſtand* them.

Mr. Chief Juſtice. That is certain. All Words are libellous, or not, as they are *underſtood.* Thoſe who are to judge of the Words, muſt judge whether they *are ſcandalous* or *ironical, tend to the Breach of the Peace*, or are *ſeditious*: There can be no Doubt of it.

Mr. *Hamilton.* I thank your Honour; I am glad to find the Court of this Opinion. Then it follows, that thoſe twelve Men muſt *underſtand* the Words in the Information to be *ſcandalous*, that is to ſay, *falſe*; for I think it is not pretended they are of the *ironical Sort*; and when they underſtand the Words to be ſo, they will ſay we are guilty of publiſhing a *falſe Libel*, and not otherwiſe.

Mr. Chief Juſtice. No, Mr. *Hamilton*; the Jury may find that Mr. *Zenger* printed and publiſhed thoſe Papers, and leave it to the Court to judge whether they are libellous: You know this is very common; it is in the Nature of a Special Verdict, where the Jury leave the Matter of Law to the Court.

Mr. *Hamilton.* I know, may it pleaſe your Honour, the Jury may do ſo; but I do likewiſe know they may do otherwiſe. I know they have the Right, beyond all Diſpute, to determine both the Law and the Fact; and where they do not doubt of the Law, they ought to do ſo. This of leaving it to the Judgment of the Court, *whether the Words are libellous or not*, in effect, renders Juries uſeleſs (to ſay no worſe) in many Caſes; but this I ſhall have Occaſion to ſpeak to by-and-bye: And I will, with the Court's Leave, proceed to examine the Inconveniencies that muſt inevitably ariſe from the Doctrines *Mr. Attorney* has laid down; and I obſerve, in ſupport of this Proſecution, he has frequently repeated the Words taken from the Caſe of *Libel, Famoſus*, in 5 *Co.* This is indeed the leading Caſe, and to which almoſt all the other Caſes upon the Subject of Libels do refer; and I muſt inſiſt upon ſaying, that, according as this Caſe ſeems to be underſtood by the Court and *Mr. Attorney*, it is not Law at this Day: For though I own it to be *baſe* and *unworthy* to ſcandalize any Man, yea, I think it is even *villainous* to ſcandalize a Perſon of publick Character; and I will go ſo far into *Mr. Attorney*'s Doctrine as to agree, that if the Faults, Miſtakes, nay even the Vices, of ſuch a Perſon be private and perſonal, and don't affect the Peace of the Publick, or the Liberty or Property of our Neighbour, it is *unmanly* and *unmannerly* to expoſe them, either by Word or Writing. But when a Ruler of the People brings his Perſonal Failings, but much more his Vices, into his Adminiſtration, and the People find themſelves affected by them, either in their Liberties or Properties, that will alter the Caſe mightily; and all the high Things that are ſaid in favour of Rulers, and of Dignities, and upon the Side of Power, will not be able to ſtop People's Mouths when they feel themſelves oppreſſed, I mean in a free Government. It is true, in Times paſt, it was a Crime to ſpeak Truth; and in that terrible Court of Star-Chamber, many worthy and brave Men ſuffered for ſo doing; and yet, even in that Court, and in thoſe bad Times, a great and good Man durſt ſay, what I hope will not be taken amiſs of me to ſay in this Place, to wit, 'The 'Practice of Informations for Libels is a Sword in the Hands of a wicked 'King, and an arrand Coward, to cut down and deſtroy the Innocent; 'the one cannot, becauſe of his high Station, and the other dares not, 'becauſe of his Want of Courage, revenge himſelf in another manner.'

Mr. Att. Gen. Pray, Mr. *Hamilton*, have a care what you ſay; don't go too far neither: I don't like thoſe Liberties.

Mr. *Hamilton.* Sure, *Mr. Attorney*, you won't make any Applications: All Men agree, that we are governed by the beſt of Kings; and I cannot ſee the Meaning of *Mr. Attorney*'s Caution: My well-known Principles, and the Senſe I have of the Bleſſings we enjoy under his preſent Majeſty, makes it impoſſible for me to err, and, I hope, even to be ſuſpected, in that Point of Duty to my King. May it pleaſe your Honour, I was ſaying, that notwithſtanding all the Duty and Reverence claimed by *Mr. Attorney* to Men in Authority, they are not exempt from obſerving the Rules of common Juſtice, either in their private or publick Capacities; the Laws of our Mother-Country know no Exception. It is true, Men in Power are harder to be come at, for Wrongs they do, either to a private Perſon, or to the Publick; eſpecially a Governor in the Plantations, where they inſiſt upon an Exemption from anſwering Complaints of any Kind in their own Government. We are indeed told, and it is true, they are obliged to anſwer a Suit in the King's Courts at *Weſtminſter*, for a Wrong done to any Perſon here: But do we not know how impracticable this is to moſt Men among us, to leave their Families, (who depend upon their Labour and Care for their Livelihood) and carry Evidences to *Britain*, and at a great, nay, a far greater Expence, than almoſt any of us are able to bear, only to proſecute a Governor for an Injury done here? But when the Oppreſſion is general, there is no Remedy even that Way: No, our Conſtitution has (bleſſed be God) given us an Opportunity, if not to have ſuch Wrongs redreſſed, yet, by our Prudence and Reſolution, we may in a great meaſure prevent the committing of ſuch Wrongs, by making a Governor ſenſible, that it is his Intereſt to be juſt to thoſe under his Care; for ſuch is the Senſe that Men in general (I mean Freemen) have of common Juſtice, that when they come to know that a chief Magiſtrate abuſes the Power with which he is intruſted for the Good of the People, and is attempting to turn that very Power againſt the Innocent, whether of high or low Degree, I ſay, Mankind in general ſeldom fail to interpoſe, and, as far as they can, prevent the Deſtruction of their Fellow Subjects. And has it not often been ſeen (and, I hope, it will always be ſeen) that when the Repreſentatives of a free People are, by juſt Repreſentations or Remonſtrances, made ſenſible of the Sufferings of their Fellow Subjects, by the Abuſe of Power in the Hands of a Governor, they have declared (and loudly too) that they were not obliged by any Law to ſupport a Governor who goes about to deſtroy a Province or Colony, or their Privileges, which by his Majeſty he was appointed, and by the Law he is bound, to protect and encourage. But I pray it may be conſidered, of what Uſe is this mighty Privilege, if every Man that ſuffers muſt be ſilent?

And if a Man muſt be taken up as a Libeller, for telling his Sufferings to his Neighbour, I know it may be anſwered, *Have you not a Legiſlature? Have you not a Houſe of Repreſentatives, to whom you may complain?* And to this I anſwer, We have: But what then? Is an Aſſembly to be troubled with every Injury done by a Governor? Or are they to hear of nothing but what thoſe in the Adminiſtration will pleaſe to tell them? Or what Sort of a Trial muſt a Man have? And how is he to be remedied; eſpecially if the Caſe were, as I have known it to happen in *America* in my Time, that a Governor who has Places (I will not ſay Penſions, for, I believe, they ſeldom give that to another which they can take to themſelves) to beſtow, and can or will keep the ſame Aſſembly (after he has modelled them ſo as to get a Majority of the Houſe in his Intereſt) for near *twice Seven Years* together? I pray, what Redreſs is to be expected for an honeſt Man, who makes his Complaint againſt a Governor to an Aſſembly, who may properly enough be ſaid to be made by the ſame Governor againſt whom the Complaint is made? The Thing anſwers itſelf. No, it is natural, it is a Privilege—I will go farther, it is a Right which all Freemen claim, and are intitled to, to complain when they are hurt; they have a Right publickly to remonſtrate the Abuſes of Power, in the ſtrongeſt Terms, to put their Neighbours upon their Guard, againſt the Craft or open Violence of Men in Authority, and to aſſert with Courage the Senſe they have of the Bleſſings of Liberty, the Value they put upon it, and their Reſolution at all Hazards to preſerve it, as one of the greateſt Bleſſings Heaven can beſtow. And when a Houſe of Aſſembly, compoſed of honeſt Freemen, ſees the general Bent of the People's Inclinations, that is it which muſt and will (I'm ſure it ought to) weigh with a Legiſlature, in ſpite of all the Craft, Careſſing, and Cajoling, made uſe of by a Governor, to divert them from hearkening to the Voice of their Country. As we all very well underſtand the true Reaſon, why Gentlemen take ſo much Pains, and make ſuch great Intereſt, to be appointed Governors, ſo the Deſign of their Appointment is not leſs manifeſt. We know his Majeſty's gracious Intentions to his Subjects; he deſires no more than that his People in the Plantations ſhould be kept up to their Duty and Allegiance to the Crown of *Great Britain*; that Peace may be preſerved amongſt them, and Juſtice impartially adminiſtered; that we may be governed ſo as to render us uſeful to our Mother-Country, by encouraging us to make and raiſe ſuch Commodities as may be uſeful to *Great Britain*. But will any one ſay, that all or any of theſe good-Ends are to be effected by a Governor's ſetting his People together by the Ears, and by the Aſſiſtance of one Part of the People to plague and plunder the other? The Commiſſion which Governors bear, while they execute the Powers given them, according to the Intent of the Royal Grantor, expreſſed in their Commiſſions, requires and deſerves very great Reverence and Submiſſion; but when a Governor departs from the Duty enjoined him by his Sovereign, and acts as if he was leſs accountable than the Royal Hand that gave him all that Power and Honour which he is poſſeſſed of, this ſets People upon examining and inquiring into the Power, Authority, and Duty of ſuch a Magiſtrate, and to compare thoſe with his Conduct; and juſt as far as they find he exceeds the Bounds of his Authority, or falls ſhort in doing impartial Juſtice to the People under his Adminiſtration, ſo far they very often, in return, come ſhort in their Duty to ſuch a Governor. For Power alone will not make a Man beloved; and I have heard it obſerved, that the Man who was neither good nor wiſe before his being made a Governor, never mended upon his Preferment, but has been generally obſerved to be worſe: For Men who are not endued with Wiſdom and Virtue, can only be kept in Bounds by the Law; and by how much the further they think themſelves out of the Reach of the Law, by ſo much the more wicked and cruel they are. I wiſh there were no Inſtances of the Kind at this Day. And wherever this happens to be the Caſe of a Governor, unhappy are the People under his Adminiſtration, and in the end he will find himſelf ſo too; for the People will neither love him nor ſupport him. I make no doubt but there are thoſe here, who are zealouſly concerned for the Succeſs of this Proſecution, and yet I hope they are not many; and even ſome of thoſe, I am perſuaded (when they conſider to what Lengths ſuch Proſecutions may be carried, and how deeply the Liberties of the People may be affected by ſuch Means) will not all abide by their preſent Sentiments; I ſay, *not all:* For the Man who, from an Intimacy and Acquaintance with a Governor, has conceived a perſonal Regard for him; the Man who has felt none of the Strokes of his Power; the Man who believes that a Governor has a Regard for him, and confides in him; it is natural for ſuch Men to wiſh well to the Affairs of ſuch a Governor; and as they may be Men of Honour and Generoſity, may, and no doubt will, wiſh him Succeſs, ſo far as the Rights and Privileges of their Fellow-Citizens are not affected. But as Men of Honour, I can apprehend nothing from them; they will never exceed that Point. There are others that are under ſtronger Obligations, and thoſe are ſuch as are in ſome Sort engaged in Support of a Governor's Cauſe, by their own or their Relations Dependance on his Favour for ſome Poſt or Preferment: Such Men have, what is commonly called, Duty and Gratitude to influence their Inclinations, and oblige them to go his Lengths. I know Men's Intereſts are very near to them, and they will do much, rather than forego the Favour of a Governor, and a Livelihood at the ſame Time; but I can with very juſt Grounds hope, even from thoſe Men, whom I will ſuppoſe to be Men of Honour, and Conſcience too, that when they ſee the Liberty of their Country is in Danger, either by their Concurrence, or even by their Silence, they will, like *Engliſhmen*, and like themſelves, freely make a Sacrifice of any Preferment or Favour, rather than be acceſſary to deſtroying the Liberties of their Country, and entailing Slavery upon their Poſterity. There are indeed another Set of Men, of whom I have no Hopes; I mean, ſuch who lay aſide all other Conſiderations, and are ready to join with Power in any Shape, and with many or any Sort of Men, by whoſe Means or Intereſt they may be aſſiſted to gratify their Malice and Envy, againſt thoſe whom they have been pleaſed to hate; and that for no other Reaſon, but becauſe they are Men of Abilities and Integrity, or at leaſt are poſſeſſed of ſome valuable Qualities far ſuperior to their own. But as Envy is the Sin of the Devil, and therefore very hard, if at all, to be repented of, I will believe there are but few of this deteſtable and worthleſs Sort of Men, nor will their Opinions or Inclinations have any Influence upon this Trial. But to proceed: I beg Leave to inſiſt, that the Right of complaining or remonſtrating is natural; and the Reſtraint upon this natural Right is the Law only, and that thoſe Reſtraints can only extend to what is *falſe:* For as it is Truth alone which can excuſe or juſtify any Man for complaining of a bad Adminiſtration, I as frankly agree, that nothing ought to excuſe a Man who raiſes a falſe Charge or Accuſation, even againſt a private Perſon, and that no Manner of Allowance ought to be made to him who does ſo againſt a public Magiſtrate. *Truth* ought to govern the whole Affair of Libels, and yet the Party accuſed runs Riſk enough even then; for if he fails of proving every Tittle of what he has wrote, and to the Satisfaction of the Court and Jury too, he may find to his Coſt, that when the Proſecution is ſet on foot by Men in Power, it ſeldom wants Friends to favour it. And from thence (it is ſaid) has ariſen the great Diverſity of Opinions among Judges, about what Words were or were not ſcandalous or libellous. I believe it will be granted, that there is not greater Uncertainty in any Part of the Law, than about Words of Scandal: It would be miſpending of the Court's Time to mention the Caſes; they may be ſaid to be numberleſs; and therefore the utmoſt Care ought to be taken in following Precedents; and the Times when the Judgments were given, which are quoted for Authorities in the Caſe of Libels, are much to be regarded. I think it will be agreed, that ever ſince the Time of the Star-Chamber, where the moſt arbitrary and deſtructive Judgments and Opinions were given, that ever an *Engliſhman* heard of, at leaſt in his own Country: I ſay, Proſecutions for Libels ſince the Time of that arbitrary Court, and until the glorious Revolution, have generally been ſet on foot at the Inſtance of the Crown, or its Miniſters; and it is no ſmall Reproach to the Law, that theſe Proſecutions were too often and too much countenanced by the Judges, who held their Places at Pleaſure (a diſagreeable Tenure to any Officer, but a dangerous one in the Caſe of a Judge). To ſay more to this Point may not be proper. And yet I cannot think it unwarrantable, to ſhew the unhappy Influence that a Sovereign has ſometimes had, not only upon Judges, but even upon Parliaments themſelves.

It has already been ſhewn, how the Judges differed in their Opinions about the Nature of a Libel, in the Caſe of the ſeven Biſhops. There you ſee three Judges of one Opinion, that is, of a wrong Opinion, in the Judgment of the beſt Men in *England*, and one Judge of a right Opinion. How unhappy might it have been for all of us at this Day, if that Jury had underſtood the Words in that Information as the Court did? Or if they had left it to the Court to judge, whether the Petition of the Biſhops was or was not a Libel? No! they took upon them, to their immortal Honour, to determine both *Law* and *Fact*, and to *underſtand* the Petition of the Biſhops *to be no Libel*, that is, *to contain no Falſhood nor Sedition*, and therefore found them *Not Guilty*. And remarkable is the Caſe of Sir *Samuel Barnardiſton*, who was fined 10,000 *l.* for writing a Letter, in which, it may be ſaid, none ſaw any Scandal or Falſhood but the Court and Jury; for that Judgment was afterwards looked upon as a cruel and deteſtable Judgment, and therefore was reverſed by Parliament. Many more Inſtances might be given of the Complaiſance of Court-Judges about thoſe Times, and before; but I will mention only one Caſe more, and that is the Caſe of Sir *Edward Hales*, who, though a *Roman Catholick*, was by King *James* II. preferred to be a Colonel of his Army, notwithſtanding the Statute of 25 *Cha.* II. *Chap.* 2. by which it is provided, *That every one that accepts of an Office, Civil or Military*, &c. *ſhall take the Oaths, ſubſcribe the Declaration, and take the Sacrament, within three Months*, &c. *otherwiſe he is diſabled to hold ſuch Office, and the Grant for the ſame to be null and void, and the Party to forfeit* 500 *l.* Sir *Edward Hales* did not take the Oaths or Sacrament, and was proſecuted for the 500 *l.* for exerciſing the Office of a Colonel by the Space of three Months, without conforming as in the Act is directed. Sir *Edward* pleads, *That the King, by his Letters Patent, did diſpenſe with his taking the Oaths and Sacrament, and ſubſcribing the Declaration, and had pardoned the Forfeiture of* 500 *l.* And *whether the King's Diſpenſation was good, againſt the ſaid Act of Parliament?* was the Queſtion. I ſhall mention no more of this Caſe, than to ſhew how in the Reign of an arbitrary Prince, where Judges hold their Seats at Pleaſure, their Determinations have not always been ſuch as to make Precedents of, but the contrary; and ſo it happened in this Caſe, where it was ſolemnly judged, *That, notwithſtanding this Act of Parliament, made in the ſtrongeſt Terms, for Preſervation of the Proteſtant Religion, that yet the King had, by his Royal Prerogative, a Power to diſpenſe with that Law*; and Sir *Edward Hales* was acquitted by the Judges accordingly. (*State Trials*, Vol. VII. *p.* 612.) So the King's diſpenſing Power being by the Judges ſet up above the Act of Parliament, this Law, which the People looked upon as their chief Security againſt Popery and arbitrary Power, was, by this Judgment, rendered altogether ineffectual. But this Judgment is ſufficiently expoſed by Sir *Edward Atkins*, late one of the Judges of the Court of Common Pleas, in his *Enquiry into the King's Power of diſpenſing with penal Statutes*; wherein it is ſhewn, *who it was that firſt invented Diſpenſations*; *how they came into* England; *what ill Uſe has been made of them there*; *and all this principally owing to the Countenance given them by the Judges.* He ſays of the diſpenſing Power, *The Pope was the Inventor of it*; *our Kings have borrowed it from them*; *and the Judges have, from Time to Time, nurſed and dreſſed it up, and given it Countenance*; *and it is ſtill upon the Growth, and encroaching, till it has almoſt ſubverted all Law, and made the Regal Power abſolute, if not diſſolute.* This ſeems not only to ſhew how far Judges have been influenced by Power, and how little Caſes of this Sort, where the Prerogative has been in queſtion in former Reigns, are to be relied upon for Law: But I think it plainly ſhews too, that a Man may uſe a greater Freedom with the Power of his Sovereign, and the Judges in *Great Britain*, than it ſeems he may with the Power of a Governor in the Plantations, who is but a Fellow-Subject. Are the Words with which we are charged, like theſe? Do Mr. *Zenger*'s Papers contain any ſuch Freedoms with his Governor, or his Council, as Sir *Edward Atkins* has taken with the Regal Power and the Judges in *England?* And yet I never heard of any Information brought againſt him for theſe Freedoms.

If then, upon the Whole, there is ſo great an Uncertainty among Judges (learned and great Men) in Matters of this Kind; if Power has had ſo great an Influence on Judges, how cautious ought we to be in determining by their Judgments, eſpecially in the Plantations, and in the Caſe of Libels? There is Hereſy in Law as well as in Religion, and both have

have changed very much; and we well know that it is not two Centuries ago that a Man would have been burnt as an Heretick, for owning ſuch Opinions in Matters of Religion as are publicly wrote and printed at this Day. They were fallible Men, it ſeems, and we take the Liberty not only to differ from them in religious Opinions, but to condemn them and their Opinions too; and I muſt preſume, that in taking theſe Freedoms in thinking and ſpeaking about Matters of Faith or Religion, we are in the right: For, tho' it is ſaid there are very great Liberties of this Kind taken in *New-York*, yet I have heard of no Information preferred by *Mr. Attorney* for any Offences of this Sort. From which I think it is pretty clear, that in *New-York* a Man may make very free with his God, but he muſt take ſpecial Care what he ſays of his Governor. It is agreed upon by all Men, that this is a Reign of Liberty; and while Men keep within the Bounds of Truth, I hope they may with Safety both ſpeak and write their Sentiments of the Conduct of Men in Power, I mean of that Part of their Conduct only, which affects the Liberty or Property of the People under their Adminiſtration; were this to be denied, then the next Step may make them Slaves. For what Notions can be entertained of Slavery, beyond that of ſuffering the greateſt Injuries and Oppreſſions, without the Liberty of complaining; or if they do, to be deſtroyed, Body and Eſtate, for ſo doing.

It is ſaid, and inſiſted upon by *Mr. Attorney*: *That Government is a ſacred Thing; that it is to be ſupported and reverenced; it is Government that protects our Perſons and Eſtates; that prevents Treaſons, Murders, Robberies, Riots, and all the Train of Evils that overturns Kingdoms and States, and ruins particular Perſons; and if thoſe in the Adminiſtration, eſpecially the ſupreme Magiſtrates, muſt have all their Conduct cenſured by private Men, Government cannot ſubſiſt.* This is called *a Licentiouſneſs not to be tolerated.* It is ſaid, *That it brings the Rulers of the People into Contempt, and their Authority not to be regarded, and ſo in the End the Laws cannot be put in Execution.* Theſe, I ſay, and ſuch as theſe, are the general Topics inſiſted upon by Men in Power, and their Advocates. But I wiſh it might be conſidered at the ſame Time, how often it has happened, that the Abuſe of Power has been the primary Cauſe of theſe Evils, and that it was the Injuſtice and Oppreſſion of theſe great Men, which has commonly brought them into Contempt with the People. The Craft and Art of ſuch Men is great, and who, that is the leaſt acquainted with Hiſtory or Law, can be ignorant of the ſpecious Pretences, which have often been made uſe of by Men in Power, to introduce arbitrary Rule, and deſtroy the Liberties of a free People. I will give two Inſtances, and as they are Authorities not to be denied, nor can be miſunderſtood, I preſume they will be ſufficient.

The *firſt* is the Statute of 3*d* of *Hen.* VII. *Cap.* 1. The Preamble of the Statute will prove all, and more than I have alledged. It begins: *The King Our Sovereign Lord remembereth, how by unlawful Maintenances, giving of Liveries, Signs and Tokens,* &c. *untrue Demeanings of Sheriffs in making of Pannels, and other untrue Returns, by taking of Money, by Injuries, by great Riots and unlawful Aſſemblies; the Policy and good Rule of this Realm is almoſt ſubdued; and for the not puniſhing theſe Inconveniencies, and by Occaſion of the Premiſſes, little or nothing may be found by Inquiry,* &c. *to the Increaſe of Murders,* &c. *and Unſureties of all Men living, and Loſſes of their Lands and Goods.* Here is a fine and ſpecious Pretence for introducing the Remedy, as it is called, which is provided by this Act; *that is,* inſtead of being lawfully accuſed by twenty-four good and lawful Men of the Neighbourhood, and afterwards tried by twelve like lawful Men, here is a Power given to the Lord Chancellor, Lord Treaſurer, the Keeper of the King's Privy Seal, or two of them, calling to them a Biſhop, a temporal Lord, and other great Men mentioned in the Act; (who, it is to be obſerved, were all to be Dependants on the Court) to receive Information againſt any Perſon for any of the Miſbehaviours recited in that Act, and by their Diſcretion to examine, and to puniſh them according to their Demerit.

The ſecond Statute I propoſed to mention, is the 11*th* of the ſame King, *Chap.* 3*d*, the Preamble of which Act has the like fair Pretences as the former; *for the King calling to his Remembrance the good Laws made againſt the receiving of Liveries,* &c. *unlawful Extortions, Maintenances, Embracery,* &c. *unlawful Games,* &c. *and many other Great Enormities, and Offences committed againſt many good Statutes, to the Diſpleaſure of Almighty God, which,* the Act ſays, *could not, nor yet can, be conveniently puniſhed by the due Order of the Law, except it were firſt found by* Twelve *Men,* &c. *which, for the Cauſes aforeſaid, will not find nor yet preſent the Truth.* And therefore the ſame Statute directs, *that the Juſtices of Aſſize, and Juſtices of the Peace, ſhall upon Information for the King before them made, have full Power, by their Diſcretion, to hear and determine all ſuch Offences.* Here are two Statutes that are allowed to have given the deepeſt Wound to the Liberties of the People of *England* of any that I remember to have been made, unleſs it may be ſaid that the Statute made in the Time of *Henry* VIII*th*, by which his Proclamations were to have the Effect of Laws, might in its Conſequence be worſe. And yet we ſee the plauſible Pretences found out by the great Men to procure theſe Acts. And it may juſtly be ſaid, that by thoſe Pretences the People of *England* were cheated or awed into the delivering up their antient and ſacred Right of Trials by Grand and Petit Juries. I hope to be excuſed for this Expreſſion, ſeeing my Lord *Coke* calls it (4 *Inſt.*) *unjuſt and ſtrange Act, that tended in its Execution to the great Diſpleaſure of Almighty God, and the utter Subverſion of the Common Law.*

Theſe, I think, make out what I alledged, and are flagrant Inſtances of the Influence of Men in Power, even upon the Repreſentatives of a whole Kingdom. From all which, I hope, it will be agreed, that it is a Duty which all good Men owe to their Country, to guard againſt the unhappy Influence of ill Men when intruſted with Power, and eſpecially againſt their Creatures and Dependents, who, as they are generally more neceſſitous, are ſurely more covetous and cruel. But it is worthy of Obſervation, that though the Spirit of Liberty was borne down and oppreſſed in *England* that Time, yet it was not loſt; for the Parliament laid hold of the firſt Opportunity to free the Subject from the many inſufferable Oppreſſions and Outrages committed upon their Perſons and Eſtates by Colour of theſe Acts, the laſt of which being deemed the moſt grievous, was repealed in the firſt Year of *Hen.* VIII*th.* Tho' it is to be obſerved, that *Hen.* VII*th*, and his Creatures, reaped ſuch great Advantages by the grievous Oppreſſions and Exactions, *grinding the Faces of the poor Subjects,* as my Lord *Coke* ſays, by Colour of this Statute by Information only, that a Repeal of this Act could never be obtained during the Life of that Prince. The other Statute being the favourite Law for ſupporting arbitrary Power, was continued much longer. The Execution of it was by the great Men of the Realm; and how they executed it, the Senſe of the Kingdom, expreſſed in the 7*th* of *Charles* I*ſt.* (by which the Court of Star-Chamber, the Soil where Informations grew rankeſt) will beſt declare. In that Statute *Magna Charta*, and the other Statutes made in the Time of *Edw.* III*d.* which, I think, are no leſs than five, are particularly enumerated as Acts, by which the Liberties and Privileges of the People of *England* were ſecured to them, againſt ſuch oppreſſive Courts as the Star-Chamber, and others of the like Juriſdiction. And the Reaſon aſſigned for their pulling down the Star-Chamber, is, *That the Proceedings, Cenſures and Decrees of the Court of Star Chamber, even though the great Men of the Realm, nay, and a Biſhop too* (holy Man) *were Judges, had by Experience been found to be an intolerable Burthen to the Subject, and the Means to introduce an arbitrary Power and Government.* And therefore that Court was taken away, with all the other Courts in that Statute mentioned, having like Juriſdiction.

I do not mention this Statute, as if by the taking away the Court of Star-Chamber, the Remedy for many of the Abuſes or Offences cenſured there, was likewiſe taken away; no, I only intend by it to ſhew, that the People of *England* ſaw clearly the Danger of truſting their Liberties and Properties to be tried, even by the greateſt Men in the Kingdom, without the Judgment of a Jury of their Equals. They had felt the terrible Effects of leaving it to the Judgment of theſe great Men to ſay what was *ſcandalous and ſeditious, falſe or ironical.* And if the Parliament of *England* thought this Power of judging was too great to be truſted with Men of the firſt Rank in the Kingdom, without the Aid of a Jury, how ſacred ſoever their Characters might be, and therefore reſtored to the People their original Right of Trial by Juries, I hope to be excuſed for inſiſting, that by the Judgment of a Parliament, from whence no Appeal lies, the Jury are the proper Judges of what is *falſe* at leaſt, if not of what is *ſcandalous and ſeditious.* This is an Authority not to be denied, it is as plain as it is great, and to ſay, that this Act indeed did reſtore to the People Trials by Juries, which was not the Practice of the Star-Chamber, but that it did not give the Jurors any new Authority, or any Right to try Matters of Law, I ſay this Objection will not avail; for I muſt inſiſt, that where Matter of Law is complicated with Matter of Fact, the Jury have a Right to determine both. As for Inſtance; upon Indictment for Murder, the Jury may, and almoſt conſtantly do, take upon them to judge whether the Evidence will amount to Murder or Manſlaughter, and find accordingly; and I muſt ſay, I cannot ſee, why in our Caſe the Jury have not at leaſt as good a Right to ſay, whether our News Papers are a Libel or no Libel, as another Jury has to ſay, whether killing of a Man is Murder or Manſlaughter. The Right of the Jury to find ſuch a Verdict as they in their Conſcience do think is agreeable to their Evidence, is ſupported by the Authority of *Buſhel*'s Caſe, in *Vaughan*'s *Reports, pag.* 135, beyond any doubt. For, in the Argument of that Caſe, the Chief-Juſtice who delivered the Opinion of the Court, lays it down for Law: (*Vaughan*'s *Rep. p.* 150.) *That in all General Iſſues, as upon* Non. Cul. *in* Treſpaſs, Non Tort. Nul Diſſeizin *in Aſſize,* &c. *though it is Matter of Law, whether the Defendant is a Treſpaſſer, a Diſſeizer,* &c. *in the particular Caſes in Iſſue, yet the Jury find not* (*as in a ſpecial Verdict*) *the Fact of every Caſe, leaving the Law to the Court; but find for the Plaintiff or Defendant upon the Iſſue to be tried, wherein they reſolve both Law and Fact complicately.* It appears by the ſame Caſe, that though the diſcreet and lawful Aſſiſtance of the Judge, by way of Advice to the Jury, may be uſeful, yet that Advice or Direction ought always to be *upon Suppoſition, and not poſitive and upon Coercion.* The Reaſon given in the ſame Book is, *page* 144, 147.) *becauſe the Judge* (*as Judge*) *cannot know what the Evidence is which the Jury have,* that is, *he can only know the Evidence given in Court; but the Evidence which the Jury have, may be of their own Knowledge, as they are returned of the Neighbourhood. They may alſo know from their own Knowledge, that what is ſworn in Court is not true; and they may know the Witneſſes to be ſtigmatized, to which the Court may be Strangers.* But what is to my Purpoſe, is, that ſuppoſe that the Court did really know all the Evidence which the Jury know, yet in that Caſe it is agreed, *That the Judge and Jury may differ in the Reſult of their Evidence, as well as two Judges may,* which often happens. And in *page* 148. the Judge ſubjoins the Reaſon, why it is no Crime for a Jury to differ in Opinion from the Court, where he ſays, *That a Man cannot ſee with another's Eye, nor hear by another's Ear; no more can a Man conclude or infer the Thing by another's Underſtanding or Reaſoning.* From all which (I inſiſt) it is very plain, *That the Jury are by Law at Liberty* (*without any Affront to the Judgment of the Court*) *to find both the Law and the Fact, in our Caſe,* as they did in the Caſe I am ſpeaking to, which I will beg leave juſt to mention, and it was this: Mr. *Penn* and *Mead* being Quakers, and having met in a peaceable Manner, after being ſhut out of their Meeting-Houſe, preached in *Grace-Church-Street*, in *London*, to the People of their own Perſuaſion, and for this they were indicted; and it was ſaid, *That they with other Perſons, to the Number of* 300, *unlawfully and tumultuouſly aſſembled, to the Diſturbance of the Peace,* &c. To which they pleaded, *Not Guilty.* And the Petit Jury being ſworn to try the Iſſue between the King and the Priſoners, that is, whether they were Guilty, according to the Form of the Indictment? Here there was no Diſpute but they were aſſembled together, to the Number mentioned in the Indictment; but, *whether that Meeting together was rioteuſly, tumultuouſly, and to the Diſturbance of the Peace?* was the *Queſtion.* And the Court told the Jury it was, and ordered the Jury to find it ſo; *For* (ſaid the Court) *the Meeting was the Matter of Fact, and that is confeſſed, and we tell you it is unlawful, for it is againſt the Statute; and the Meeting being unlawful, it follows of courſe that it was tumultuous, and to the Diſturbance of the Peace.* But the Jury did not think fit to take the Court's Word for it, for they could neither find *Riot, Tumult,* or any Thing tending to the *Breach of the Peace* committed at that Meeting; and they acquitted Mr. *Penn* and *Mead.* In doing of which they took upon them to judge both the *Law* and the *Fact*; at which the Court (being themſelves true Courtiers) were ſo much offended, that they fined the Jury 40 Marks a-piece, and committed them 'till paid. But Mr. *Buſhel*, who valued the Right of a Juryman and the Liberty of his Country more than his own, refuſed to pay the Fine, and was reſolved (though at

a great Expence and Trouble too) to bring, and did bring, his *Habeas Corpus*, to be relieved from his Fine and Imprisonment, and he was released accordingly; and this being the Judgment in his Case, it is established for Law, *That the Judges, how great soever they be, have no Right to fine, imprison, or punish a Jury, for not finding a Verdict according to the Direction of the Court.* And this, I hope, is sufficient to prove, that Jurymen are to see with their own Eyes, to hear with their own Ears, and to make use of their own Consciences and Understandings in judging of the Lives, Liberties, or Estates of their Fellow-Subjects. And so I have done with this Point.

This is the second Information, for libelling of a Governor, that I have known in *America*. And the first, though it may look like a Romance, yet, as it is true, I will beg Leave to mention it. Governor *Nicholson*, who happened to be offended with one of his Clergy, met him one Day upon the Road; and as it was usual with him (under the Protection of his Commission) used the poor Parson with the worst of Language, threatened to cut off his Ears, slit his Nose, and at last to shoot him through the Head. The Parson, being a reverend Man, continued all this Time uncovered in the Heat of the Sun, until he found an Opportunity to fly for it; and coming to a Neighbour's House, felt himself very ill of a Fever, and immediately writes for a Doctor; and that his Physician might the better judge of his Distemper, he acquainted him with the Usage he had received; concluding, that the Governor was certainly mad; for that no Man in his Senses would have behaved in that Manner. The Doctor unhappily shews the Parson's Letter: The Governor came to hear of it, and so an Information was preferred against the poor Man for saying, *He believed the Governor was mad*; and it was laid in the Information to be *false, scandalous, and wicked, and wrote with Intent to move Sedition among the People, and bring his Excellency into Contempt.* But by an Order from the late Queen *Anne*, there was a Stop put to the Prosecution, with sundry others set on Foot by the same Governor, against Gentlemen of the greatest Worth and Honour in that Government.

And may not I be allowed, after all this, to say, that, by a little Countenance, almost any Thing which a Man writes, may, with the Help of that useful Term of Art called an *Innuendo*, be construed to be a Libel, according to *Mr. Attorney*'s Definition of it, That *whether the Words are spoke of a Person of a publick Character, or of a private Man, whether dead or living, good or bad, true or false*, all make a Libel; for, according to *Mr. Attorney, after a Man hears a Writing read, or reads and repeats it, or laughs at it, they are all punishable.* It is true, *Mr. Attorney* is so good as to allow, *after the Party knows it to be a Libel*; but he is not so kind as to take the Man's Word for it.

Here were several Cases put to shew, that though what a Man writes of a Governor was true, proper, and necessary, yet, according to the foregoing Doctrine, it might be construed to be a Libel. But Mr. *Hamilton*, after the Trial was over, being informed, that some of the Cases he had put had really happened in this Government, he declared he had never heard of any such; and as he meant no personal Reflections, he was sorry he had mentioned them, and therefore they are omitted here.

Mr. *Hamilton*. If a Libel is understood in the large and unlimited Sense urged by *Mr. Attorney*, there is scarce a Writing I know that may not be called a Libel, or scarce any Person safe from being called to Account as a Libeller: For *Moses*, meek as he was, libelled *Cain*; and who is it that has not libelled the Devil? For, according to *Mr. Attorney*, it is no Justification to say one has a bad Name. *Echard* has libelled our good King *William*; *Burnet* has libelled, among many others, King *Charles* and King *James*; and *Rapin* has libelled them all. How must a Man speak or write, or what must he hear, read, or sing? Or when must he laugh, so as to be secure from being taken up as a Libeller? I sincerely believe, that were some Persons to go through the Streets of *New York* now-a-days, and read a Part of the Bible, if it was not known to be such, *Mr. Attorney*, with the Help of his *Innuendos*, would easily turn it into a Libel. As for Instance, *Is.* xi. 16. *The Leaders of the People cause them to err, and they that are led by them are destroyed.* But should *Mr. Attorney* go about to make this a Libel, he would read it thus: *The Leaders of the People* [*Innuendo*, the Governor and Council of *New-York*] *cause them* [*Innuendo*, the People of this Province] *to err, and they* [the Governor and Council meaning] *are destroyed* [*Innuendo*, are deceived into the Loss of their Liberty]; which is the worst Kind of Destruction. Or if some Persons should publickly repeat, in a Manner not pleasing to his Betters, the 10th and the 11th Verses of the lvith Chap. of the same Book, there *Mr. Attorney* would have a large Field to display his Skill, in the artful Application of his *Innuendos*. The Words are; *His Watchmen are blind, they are ignorant*, &c. *Yea, they are greedy Dogs, that can never have enough.* But to make them a Libel, there is, according to *Mr. Attorney*'s Doctrine, no more wanting but the Aid of his Skill, in the right adapting his *Innuendos*. As for Instance; *His Watchmen* [*Innuendo*, the Governor's Council and Assembly] *are blind, they are ignorant*, [*Innuendo*, will not see the dangerous Designs of his Excellency.] *Yea, they* [the Governor and Council meaning] *are greedy Dogs, which can never have enough* [*Innuendo*, enough of Riches and Power.] Such an Instance as this seems only fit to be laughed at; but I may appeal to *Mr. Attorney* himself, whether these are not at least equally proper to be applied to his Excellency, and his Ministers, as some of the Inferences and *Innuendos* in his Information against my Client. Then if *Mr. Attorney* is at Liberty to come into Court, and file an Information in the King's Name, without Leave, who is secure, whom he is pleased to prosecute as a Libeller? And as the Crown Law is contended for in bad Times, there is no Remedy for the greatest Oppression of this Sort, even though the Party prosecuted is acquitted with Honour. And give me Leave to say, as great Men as any in *Britain* have boldly asserted, that the Mode of prosecuting by Information (when a Grand Jury will not find *Billa vera*) is a national Grievance, and greatly inconsistent with that Freedom which the Subjects of *England* enjoy in most other Cases. But if we are so unhappy as not to be able to ward off this Stroke of Power directly, let us take care not to be cheated out of our Liberties by Forms and Appearances; let us always be sure that the Charge in the Information is made out clearly, even beyond a Doubt; for though Matters in the Information may be called *Form* upon Trial, yet they may be; and often have been found to be, *Matters of Substance* upon giving Judgment.

Gentlemen, the Danger is great, in Proportion to the Mischief that may happen through our too great Credulity. A proper Confidence in a Court is commendable; but as the Verdict (whatever it is) will be yours, you ought to refer no Part of your Duty to the Discretion of other Persons. If you should be of Opinion, that there is no Falsehood in Mr. *Zenger*'s Papers, you will, nay, (pardon me for the Expression) you ought to say so; because you don't know whether others (I mean the Court) may be of that Opinion. It is your Right to do so, and there is much depending upon your Resolution, as well as upon your Integrity.

The Loss of Liberty, to a generous Mind, is worse than Death; and yet we know there have been those in all Ages, who, for the Sake of Preferment, or some imaginary Honour, have freely lent a helping Hand to oppress, nay, to destroy their Country. This brings to my Mind that Saying of the immortal *Brutus*, when he looked upon the Creatures of *Cæsar*, who were very great Men, but by no Means good Men: "*You* "Romans, *said* Brutus, *if yet I may call you so, consider what you are doing;* "*remember that you are assisting* Cæsar *to forge those very Chains, which one* "*Day he will make yourselves wear.*" This is what every Man (that values Freedom) ought to consider: He should act by Judgment, and not by Affection or Self-interest; for where those prevail, no Ties of either Country or Kindred are regarded; as, upon the other Hand, the Man who loves his Country, prefers its Liberty to all other Considerations, well knowing that without Liberty Life is a Misery.

A famous Instance of this you will find in the History of another brave *Roman*, of the same Name; I mean *Lucius Junius Brutus*, whose Story is well known; and therefore I shall mention no more of it, than only to shew the Value he put upon the Freedom of his Country. After this great Man, with his Fellow-Citizens, whom he had engaged in the Cause, had banished *Tarquin the Proud*, the last King of *Rome*, from a Throne which he ascended by inhuman Murders, and possessed by the most dreadful Tyranny and Proscriptions, and had by this Means amassed incredible Riches, even sufficient to bribe to his Interest many of the young Nobility of *Rome*, to assist him in recovering the Crown; but the Plot being discovered, the principal Conspirators were apprehended, among whom were two of the Sons of *Junius Brutus*. It was absolutely necessary that some should be made Examples of, to deter others from attempting the restoring of *Tarquin*, and destroying the Liberty of *Rome*. And to effect this it was, that *Lucius Junius Brutus*, one of the Consuls of *Rome*, in the Presence of the *Roman* People, sat Judge, and condemned his own Sons, as Traitors to their Country: And to give the last Proof of his exalted Virtue, and his Love of Liberty, he, with a Firmness of Mind, (only becoming so great a Man) caused their Heads to be struck off in his own Presence; and when he observed that his rigid Virtue occasioned a Sort of Horror among the People, it is observed he only said, '*My Fel-*' *low-Citizens, do not think that this proceeds from any Want of natural Affec-*' *tion! No, the Death of the Sons of* Brutus *can affect* Brutus *only; but the* ' *Loss of Liberty will affect my Country.*' Thus highly was Liberty esteemed in those Days, that a Father could sacrifice his Sons to save his Country. But why do I go to Heathen *Rome*, to bring Instances of the Love of Liberty? The best Blood in *Britain* has been shed in the Cause of Liberty; and the Freedom we enjoy at this Day, may be said to be (in a great Measure) owing to the glorious Stand the famous *Hampden*, and others of our Countrymen, [in the Case of Ship-Money; see his Trial in *State Trials*, Vol. I. p. 505.] made against the arbitrary Demands, and illegal Impositions, of the Times in which they lived; who, rather than give up the Rights of *Englishmen*, and submit to pay an illegal Tax of no more, I think, than three Shillings, resolved to undergo, and, for the Liberty of their Country, did undergo the greatest Extremities in that arbitrary and terrible Court of Star-Chamber; to whose arbitrary Proceedings (it being composed of the principal Men of the Realm, and calculated to support arbitrary Government) no Bounds or Limits could be set, nor could any other Hand remove the Evil but a Parliament.

Power may justly be compared to a great River; while kept within its due Bounds, it is both beautiful and useful; but when it overflows its Banks, it is then too impetuous to be stemmed; it bears down all before it, and brings Destruction and Desolation wherever it comes. If then this is the Nature of Power, let us at least do our Duty, and like wise Men (who value Freedom) use our utmost Care to support Liberty, the only Bulwark against lawless Power, which, in all Ages, has sacrificed to its wild Lust, and boundless Ambition, the Blood of the best Men that ever lived.

I hope to be pardoned, Sir, for my Zeal upon this Occasion: It is an old and wise Caution, *That when our Neighbour's House is on Fire, we ought to take care of our own.* For though, blessed be God, I live in a Government where Liberty is well understood, and freely enjoyed; yet Experience has shewn us all (I'm sure it has to me), that a bad Precedent in one Government, is soon set up for an Authority in another; and therefore I cannot but think it mine, and every honest Man's Duty, that (while we pay all due Obedience to Men in Authority) we ought at the same time to be upon our Guard against Power, wherever we apprehend that it may affect ourselves or our Fellow-Subjects.

I am truly very unequal to such an Undertaking, on many Accounts. And you see I labour under the Weight of many Years, and am borne down with great Infirmities of Body; yet old and weak as I am, I should think it my Duty, if required, to go to the utmost Part of the Land, where my Service could be of any Use, in assisting to quench the Flame of Prosecutions upon Informations, set on Foot by the Government, to deprive a People of the Right of remonstrating, (and complaining too) of the arbitrary Attempts of Men in Power. Men who injure and oppress the People under their Administration, provoke them to cry out and complain; and then make that very Complaint the Foundation for new Oppressions and Prosecutions. I wish I could say there were no Instances of this Kind. But to conclude; the Question before the Court, and you, Gentlemen of the Jury, is not of small nor private Concern; it is not the Cause of a poor Printer, nor of *New-York* alone, which you are now trying: No! It may, in its Consequence, affect every Freeman that lives under a *British* Government on the Main of *America*. It is the best Cause; it is the Cause of Liberty; and I make no

not doubt but your upright Conduct, this Day, will not only intitle you to the Love and Eſteem of your Fellow-Citizens; but every Man, who prefers Freedom to a Life of Slavery, will bleſs and honour you, as Men who have baffled the Attempt of Tyranny; and, by an impartial and uncorrupt Verdict, have laid a noble Foundation for ſecuring to ourſelves, our Poſterity, and our Neighbours, that to which Nature and the Laws of our Country have given us a Right—the Liberty—both of expoſing and oppoſing arbitrary Power (in theſe Parts of the World, at leaſt) by ſpeaking and writing Truth.

Here *Mr. Attorney* obſerved, that Mr. *Hamilton* had gone very much out of the Way, and had made himſelf and the People very merry; but that he had been citing Caſes not at all to the Purpoſe. He ſaid, there was no ſuch Cauſe as Mr. *Buſhel*'s, or Sir *Edward Hale*'s, before the Court; and he could not find out what the Court or Jury had to do with Diſpenſations, Riots, or unlawful Aſſemblies: All that the Jury had to conſider of, was Mr. *Zenger*'s printing and publiſhing two ſcandalous Libels, which very highly reflected on his Excellency, and the principal Men concerned in the Adminiſtration of this Government, which is confeſſed; that is, the Printing and Publiſhing of the Journals ſet forth in the Information is confeſſed. And concluded, that as Mr. *Hamilton* had confeſſed the Printing, and there could be no doubt but they were ſcandalous Papers, highly reflecting upon his Excellency, and the principal Magiſtrates in the Province; and therefore he made no doubt but the Jury would find the Defendant guilty, and would refer to the Court for their Direction.

Mr. Chief Juſtice. Gentlemen of the Jury, the great Pains Mr. *Hamilton* has taken to ſhew how little Regard Juries are to pay to the Opinion of the Judges, and his inſiſting ſo much upon the Conduct of ſome Judges in Trials of this Kind, is done, no doubt, with a Deſign that you ſhould take but very little Notice of what I may ſay upon this Occaſion. I ſhall therefore only obſerve to you, that, as the Facts or Words in the Information are confeſſed, the only Thing that can come in queſtion before you is, whether the Words, as ſet forth in the Information, make a Libel; and that is a Matter of Law, no doubt, and which you may leave to the Court. But I ſhall trouble you no further with any Thing more of my own; but read to you the Words of a learned and upright Judge, in a Caſe of the like Nature. [Lord Chief Juſtice *Holt*, in *Tutchin*'s Caſe, *State Trials*, Vol. V. *p.* 542.]

'To ſay that corrupt Officers are appointed to adminiſter Affairs, is 'certainly a Reflection on the Government. If People ſhould not be call-'ed to account for poſſeſſing the People with an ill Opinion of the Go-'vernment, no Government can ſubſiſt; for it is neceſſary for all Govern-'ments that the People ſhould have a good Opinion of it; and nothing 'can be worſe to any Government, than to endeavour to procure Ani-'moſities. As to the Management of it, this has been always looked 'upon as a Crime, and no Government can be ſafe without it be pu-'niſhed.

'Now you are to conſider, whether theſe Words I have read to you do 'not tend to beget an ill Opinion of the Adminiſtration of the Government; 'to tell us, that thoſe that are employed know nothing of the Matter, 'and thoſe that do know are not employed. Men are not adapted to Offices, 'but Offices to Men, out of a particular Regard to their Intereſt, and not 'to their Fitneſs for the Places. This is the Purport of theſe Papers.'

Mr. *Hamilton.* I humbly beg your Honour's Pardon; I am very much miſapprehended, if you ſuppoſe what I ſaid was ſo deſigned.

Sir, you know I made an Apology for the Freedom I found myſelf under a Neceſſity of uſing upon this Occaſion. I ſaid, there was nothing perſonal deſigned; it aroſe from the Nature of our Defence.

The Jury withdrew, and in a ſmall time returned; and being aſked by the Clerk,

Whether they were agreed of their Verdict, and whether *John Peter Zenger* was guilty of printing and publiſhing the Libels in the Information mentioned?

They anſwered, by *Thomas Hunt*, their Foreman, *Not Guilty.*

Upon which there were three Huzzas in the Hall, which was crouded with People; and the next Day I was diſcharged from my Impriſonment.

City of *New York.* } *ſs.* AT a Common Council, held at the City-Hall of the ſaid City, on *Tueſday* the ſixteenth Day of *September*, *Anno Dom.* 1735.

PRESENT,

Paul Richards, Eſq. Mayor.
Gerardus Stuyveſant, Eſq. Deputy Mayor.
Daniel Horſemanden, Eſq. Recorder.

ALDERMEN,

William Roome, Eſq. — *Chriſtopher Fell*, Eſq.
Simon Johnſon, Eſq. — *Stephen Bayard*, Eſq.
John Walter, Eſq. — *Johannes Burger*, Eſq.

ASSISTANTS,

Mr. *Johannes Waldron*, — Mr. *John Fred*,
Mr. *Ede Myer*, — Mr. *Charles Le Roux*,
Mr. *John Moore*, — Mr. *Evert Byvank.*

Ordered, *That* Andrew Hamilton, *Eſq. of* Philadelphia, *Barriſter at Law, be preſented with the Freedom of this Corporation: And that Alderman* Bayard, *Alderman* Johnſon, *and Alderman* Fell, *be a Committee to bring in a Draught thereof.*

City of *New York.* } *ſs.* At a Common Council, held at the City-Hall of the ſaid City, on *Monday* the twenty-ninth Day of *September*, being the Feaſt-Day of St. *Michael* the Archangel, *Anno Dom.* 1735.

PRESENT,

Paul Richards, Eſq, Mayor.
Daniel Horſemanden, Eſq. Recorder.

ALDERMEN,

William Roome, Eſq. — *Chriſtopher Fell*, Eſq.
Simon Johnſon, Eſq. — *Stephen Bayard*, Eſq.
John Walter, Eſq. — *Johannes Burger*, Eſq.

ASSISTANTS,

Mr. *Johannes Waldron*, — Mr. *Evert Byvank*,
Mr. *John Fred*, — Mr. *Henry Bogert.*
Mr. *Charles Le Roux*,

Stephen Bayard, Simon Johnſon, *and* Chriſtopher Fell, *Eſqrs. Aldermen, to whom it was referred to prepare the Draught of the Freedom of this Corporation, to be preſented to* Andrew Hamilton, *Eſq. make the Report thereon in the Words following,* (to wit) *That they have prepared the Form of the Grant to the ſaid* Andrew Hamilton, *Eſq. of the Freedom of the City of* New York, *in theſe Words,* (to wit)

City of *New York.* } *ſs.* *Paul Richards*, Eſq. the Recorder, Aldermen, and Aſſiſtants of the City of *New York*, convened in Common Council, To all to whom theſe Preſents ſhall come Greeting. *WHEREAS* Honour is the juſt Reward of Virtue, and publick Benefits demand a publick Acknowledgment: We therefore, under a grateful Senſe of the remarkable Service done to the Inhabitants of this City and Colony by *Andrew Hamilton*, Eſq. of *Pennſilvania*, Barriſter at Law, by his learned and generous Defence of the Rights of Mankind, and the Liberty of the Preſs, in the Caſe of *John Peter Zenger*, lately tried on an Information exhibited in the Supreme Court of this Colony, do, by theſe Preſents, bear to the ſaid *Andrew Hamilton*, Eſq. the publick Thanks of the Freemen of this Corporation for that ſignal Service, which he chearfully undertook under great Indiſpoſition of Body, and generouſly performed, refuſing any Fee or Reward: And in Teſtimony of our great Eſteem for his Perſon, and Senſe of his Merit, do hereby preſent him with the Freedom of this Corporation. Theſe are therefore to certify and declare, that the ſaid *Andrew Hamilton*, Eſq. is hereby admitted, received, and allowed a Freeman and Citizen of the ſaid City: To have, hold, enjoy, and partake of all the Benefits, Liberties, Privileges, Freedoms and Immunities whatſoever, granted or belonging to a Freeman and Citizen of the ſame City. *In Teſtimony* whereof, the Common Council of the ſaid City, in Common Council aſſembled, have cauſed the Seal of the ſaid City to be hereunto affixed, this twenty-ninth Day of *September*, *Anno Domini One Thouſand Seven Hundred and Thirty-five.*

By Order of the Common Council,
William Sharpas, Clerk.

And we do further report, that ſundry of the Members of this Corporation, and Gentlemen of this City, have voluntarily contributed ſufficient for a Gold-Box of five Ounces and a half, for incloſing the Seal of the ſaid Freedom; upon the Lid of which, we are of Opinion, ſhould be engraved the Arms of the City of New-York. *Witneſs our Hands this twenty-ninth Day of* September, 1735.

Stephen Bayard,
Simon Johnſon,
Chriſtopher Fell.

Which Report is approved by this Court, and Ordered, *That the Freedom and Box be forthwith made, purſuant to the ſaid Report; and that Mr.* Sharpas, *the Common Clerk of this City, do affix the Seal of the ſame Freedom, and incloſe it in the ſaid Box.*

Mr. Alderman Bayard *going to* Philadelphia, *and offering to be the Bearer of the ſaid Freedom to Mr.* Hamilton; Ordered, *That Mr.* Sharpas *deliver it to Alderman* Bayard *for that Purpoſe; and that Alderman* Bayard *do deliver it to Mr* Hamilton, *with Aſſurances of the great Eſteem that this Corporation have for his Perſon and Merit.*

City of *New York.* } *ſs.* At a Common Council, held at the City-Hall of the ſaid City, on *Wedneſday* the fifteenth Day of *October*, *Anno Domini* 1735.

PRESENT,

Paul Richards, Eſq. Mayor.
Daniel Horſemanden, Eſq. Recorder.

ALDERMEN,

John Walter, Eſq. — *William Roome*, Eſq.
Simon Johnſon, Eſq. — *Johannes Burger*, Eſq.

ASSISTANTS,

Mr. *Johannes Waldron*, — Mr. *Peter Stoutenburgh*,
Mr. *Abraham De Peyſter*, — Mr. *Henry Bogert.*
Mr. *Gerardus Beekman*,

Ordered, *That the Freedom granted by this Corporation to* Andrew Hamilton, *Eſq. with the Report of the Committee for preparing a Draught of the ſame, and the Order of this Court thereon, may be printed.*

William Sharpas.

Round on the Lid of the Box, mentioned in the aboveſaid Report and Order, there is engraved not only the Arms of the City of *New York*, but alſo this Motto in a Garter;

Demerſæ Leges—timefacta Libertas—hæc tandem emergunt.

On the inner Side of the Lid of the Box, ſhewing itſelf at the ſame time with the Certificate of the Freedom, there is engraven, in a flying Garter, theſe Words;

Non nummis, Virtute paratur.

As an Incentive to publick Virtue, on the Front of the Rim of the ſaid Box, there is engraven a Part of *Tully*'s Wiſh;

Ita cuique eveniat, ut de republica meruit.

Which Freedom and Box was preſented in the manner that had been directed, and gratefully accepted by the ſaid *Andrew Hamilton*, Eſq.

XXIII. *Remarks* on the *Trial* of JOHN PETER ZENGER, Printer of the NEW-YORK Weekly Journal, who was lately tried and acquitted, for printing and publiſhing two Libels againſt the Government of that Province *.

SIR,

IT has been a common Remark among thoſe who have obſerved upon the capricious Diſpenſations of Fortune, that great Events are often produced by Inſtruments that are not ſeemingly adequate; nay, that the ſame apparent Cauſes have quite contrary Effects; and the Road that leads one Man to Wealth, Honour, and Power, ſometimes carries another to Poverty, Infamy, and Ruin. Hence comes that confuſed Diſtribution of Axes and Coronets, Halters and Ribbons, which Hiſtory diſplays by numerous ſhocking Examples; and thus it is, that Fate ſeems to play at Croſs-purpoſes with Mankind; or to ſpeak in Scripture-phraſe, in this Senſe as well as many others, *the Wiſdom of this World is Foolishneſs*.

I find myſelf drawn into theſe grave Reflections, by reading the Trial of *John Peter Zenger*, at *New-York*, upon *an Information for printing and publiſhing a Libel*. This Piece, it ſeems, has been lately printed there, and was put into my Hand t'other Day by a Friend, who has both a general Acquaintance and a Correſpondence with the Northern Colonies, as a rare Production, containing many Things new and ſurpriſing. And, in truth, I muſt ſay it affords a lively Specimen, in Miniature, of the Juſtneſs of the foregoing Remarks: I mean that Part of it which is attributed to *Andrew Hamilton*, Eſq. of *Philadelphia*, Barriſter at Law; together with the Sequel, deſcribing the munificent Behaviour of the Citizens, in Common Council aſſembled, to the learned Gentleman, for his ſingular Performance on that Occaſion.

I muſt at the ſame Time aſſure you, that if *Zenger*'s Trial had been printed by Order of the Court that tried him, or from a Copy taken by a private Hand at the Trial, or by any other Means that excluded Mr. *Hamilton*'s Approbation or Privity, I ſhould have enjoyed my own Opinion, without troubling you or any body elſe about it, and had the Charity to reſolve all the Extravagancies that occur throughout his Declamation, into a right Diſcernment of the People he talked to, and a Dexterity in captivating them, which had its Effect in the Acquittal of his Client. But when a Gentleman of the Bar takes the Pains to write over a long Diſcourſe (he being the only Lawyer, of either Side, who gave the Printer his Notes), in order to ſend it abroad through the World, as a Specimen of his Abilities, Sentiments and Principles; as a ſolemn Argument in the Law, fit to ſee the Light, and abide the Teſt in all Places; and, above all, *as a Taſk of Duty, which he thought himſelf bound to perform, even by going to the utmoſt Parts of the Land* for the Purpoſe; and all this, *without Fee or Reward, under the Weight of many Years, and great Infirmities of Body:* When a Barriſter, I ſay, thus becomes a Volunteer for Error, and preſumes to obtrude bad Law and falſe Reaſoning upon the Senſe of Mankind, becauſe the ſage Magiſtrates of *New-York* have put their Seal to it; I think myſelf at Liberty, without uſing any other Apology, to exerciſe the judging Privilege of a Reader, ſince the Gentleman himſelf has put me into the Poſſeſſion of it.

In doing this, I ſhall not in the leaſt gratify a vain Itch of Writing; for there are no extraordinary Talents neceſſary for refuting groſs Abſurdities; but I ſhall have the honeſt Merit of endeavouring to undeceive ſuch of my Fellow-Subjects in the Plantations as may, from the late uncommon Succeſs of the Doctrine, miſtake the Liberty of the Preſs for a Licence to write and publiſh infamous Things of their Superiors, and of all others, at their Pleaſure, provided they write and publiſh nothing but what is true. In the next Place, I would preſerve, as far as I am able, the Dignity of the Profeſſion of the Law in theſe remote Parts of the *Britiſh* Dominions; and prevent its learned Profeſſors in *England*, who probably will ſee the renowned Piece above mentioned (if we may judge from the Induſtry uſed in diſperſing it), from ſuſpecting that all their *American* Brethren uſe the like Arts to gain Popularity and honourable Rewards. The former, having the Advantage of going daily to the great School of Law at *Weſtminſter*, are already apt enough to think meanly of the Accompliſhments of the latter, who are far removed from Inſtruction; and their Opinion muſt be ſtrongly confirmed in this Reſpect, if ſuch a Rhapſody, as was uttered at *New-York*, ſhould not only be applauded and rewarded publickly there, but printed and ſcattered in Reams through the other Colonies, without being followed by a ſuitable Animadverſion.

Neither will it be amiſs to take ſome Notice, in this Place, of the Quackery of the Profeſſion in general, without any particular Application, as it has been practiſed with vaſt Succeſs in ſome of our Colonies. You will often ſee (if common Fame may be truſted) a ſelf-ſufficient enterpriſing Lawyer, compounded of ſomething between a Politician and a Broker, who, making the Foibles of the Inhabitants his capital Study, and withal taking Advantage of the Weakneſs of his Judges, the Ignorance of ſome of his Brethren, the Modeſty of others, and the honeſt Scruples of a third Sort (without having any of his own), becomes inſenſibly an Oracle in the Courts, and acquires by Degrees a Kind of Dominion over the Minds, as well as the Eſtates of the People; an Influence never to be obtained but by the Help of Qualities very different from Learning and Integrity. Wherever ſuch a Man is found, the Wonder is not great, if, from a long Habit of advancing what he pleaſes, and having it received for Law, he comes in Time to fancy that what he pleaſes to advance is really Law.

I have taken the Pains, during this ſhort Vacation between our monthly Courts, candidly to examine this new Syſtem of *Libels*, lately compoſed and propagated on the Continent; the Diſcovery of which coſt the good City of *New-York five Ounces and a half of Gold, a Scrip of Parchment, and three Latin Sentences*. My Intention is to conſider Things, not Perſons, having no other Knowledge of the Gentleman principally concerned, than what is derived from the Paper now before me; and being wholly a Stranger to the Merit of thoſe Diſputes that gave Riſe to the Proſecution of this *Printer*.

Much leſs ſhall I turn Advocate for any lawleſs *Power* in Governors: God forbid I ſhould be guilty of ſuch a Proſtitution, who know by Experience of what Stuff they are commonly made; the wrong Impreſſions they are apt to receive of themſelves and others; their Paſſions, Prejudices, and Purſuits; though, when all reaſonable Allowances are made for certain Circumſtances that attend their Miſſion from home, and their Situation abroad, a conſiderate Perſon may be tempted to think—it is well they are no worſe than they are.

But to come to my Remarks on Mr. *Zenger*'s Trial.

In conſidering the Defence made for the Defendant (Mr. *Zenger*) by his Counſel (Mr. *Hamilton*), upon *Not Guilty* pleaded to an *Information for printing and publiſhing a Libel*, it is not to the Purpoſe to inquire how far the Matters charged in the Information are in their Nature libellous; nor whether the *Innuendoes* are properly uſed, to apply the Matters to Perſons, Things and Places. It is only neceſſary to examine the Truth of this ſingle Propoſition, upon which the whole Defence is grounded, and to which the ſeveral Parts of it refer; namely, *That the ſeveral Matters charged in the Information are not, and cannot be libellous, becauſe they are true in fact.*

This is the cardinal Point upon which the learned Gentleman's whole Argument turns, and which he lays down, over and over, as the firſt Principle that governs the Doctrine of Libels; and accordingly he confeſſes the printing and publiſhing of the Papers laid in the Information, and puts it upon the King's Counſel to prove the Facts contained in them to be falſe; alledging, at the ſame Time, that, unleſs that were done, the Defendant could not be guilty; but if the ſame were proved to be falſe, he would own the Papers containing them to be Libels. To this, it ſeems, the Attorney General anſwered, *that a Negative is not to be proved*; and the other replied in theſe Words, which I chooſe to ſet down, that I may not be thought to do him wrong—*I did expect to hear that a Negative cannot be proved; but every body knows, there are many Exceptions to that general Rule: For if a Man is charged with killing another, or ſtealing his Neighbour's Horſe; if he is innocent in the one Caſe, he may prove the Man ſaid to be killed to be ſtill alive; and the Horſe ſaid to be ſtolen, never to have been out of his Maſter's Stable*, &c. *and this, I think, is proving a Negative.* Now, I muſt think, that it is ſtrange a Gentleman of his Sagacity, who owns he was prepared for the Objection, could not yet hit upon ſome of theſe many Exceptions which every body knows; for he does no more than give two Inſtances of one Affirmative being deſtroyed by another, that infers a Negative of the firſt; at which Rate moſt Negatives may be proved, and then the old Rule may be diſcarded. Thus, if it is ſhewn that a Man is alive, it follows clearly that he was not killed; and if a Horſe is proved to have been always in his Maſter's Stable (for this is what muſt be underſtood of his being never out of the Stable), it certainly follows that he could not be ſtolen. So that, according to this new Scheme of Proof, he who is accuſed of killing a Man, or ſtealing an Horſe, is to be put upon proving that he did not kill or ſteal, becauſe it is poſſible that ſuch Proof may be had ſometimes: And ſo, in the principal Caſe, if a Queſtion ariſes whether a certain Magiſtrate has done particular Acts of Injuſtice or not, the Method is to ſhew that he did not do ſuch Acts, not that he did them. I have touched upon this, not for its Importance, but as a Specimen of the learned Barriſter's Manner of Reaſoning, and of the Spirit with which he ſets out from the Beginning.

At length, however, he takes the *Onus probandi* upon himſelf; and, rather than the Thing ſhould go unproved, generouſly undertakes, at his Client's Peril, to prove the Matters, charged in the Information as libellous, to be true. But I would be glad to know, by the way, how this undertaking Gentleman could have proved the Truth of divers Facts contained in the Paper which the Defendant publiſhed, ſuppoſing the Court had been ſo much overſeen as to let him into a Proof of this Sort. Could he prove, for Example, that *Judges* were arbitrarily diſplaced, and new Courts erected, in the Province of *New-York*, without Conſent of the Legiſlature? For, I am credibly informed, there never was a Pretence or Surmiſe of more than *one*

* 'Theſe Remarks were written by two eminent Lawyers in one of our Colonies in *America*, immediately after the Publication of the Trial of Mr. *Zenger*, which 'it ſeems had been induſtriouſly ſpread over that Part of the World, before it reached *England*.

'As the Doctrines contained in that Trial, or rather in the Speech of Mr. *Hamilton*, are of ſo new a Caſt, and ſo abſolutely contradictory to all the Reſolutions and 'Judgments that have been ſettled and eſtabliſhed for ſo many Ages, and by Judges of the higheſt Reputation, and moſt unqueſtionable Characters, for their Integrity, 'Virtues and Abilities, it could not be imagined ſo wild and idle an Harangue could have had any Weight, or have met with any Reception here, where the Laws 'relating to Libels have been ſo often canvaſſed, and are generally ſo well underſtood; and therefore the Perſon to whom theſe *Remarks* were ſent, never thought of 'making any other Uſe of them than to ſatisfy his own Curioſity, and that of his Friends.

'But ſeeing, to his great Surprize, that this extraordinary Declamation has been mentioned with an Air of Applauſe and Triumph in ſeveral News Papers, as ſtriking 'out ſome new Lights with regard to the Doctrine of Libels; and, upon the Credit of that Recommendation, the whole Trial not only twice printed here, but retailed 'out in Scraps in the publick News-Papers, whereby many well meaning People may be deceived, and led into wrong Notions concerning the Laws of their Country in 'this Point: He has thought fit to communicate theſe Remarks to the Publick, in order to remove any Miſtakes or Errors that Perſons may fall into for want of an ade'quate Judgment in theſe Matters; and the rather, becauſe if ſuch falſe Opinions ſhould happen to influence the Conduct or Practice of any, the Conſequences may be 'very dangerous; it being an eſtabliſhed Maxim in our Law, that neither Ignorance nor Miſtake is an Excuſe to any one who has broke it, from the Penalty of it.' *Preface to the Remarks.*

Judge

Judge being diſplaced, or more than one Court erected, under Mr. *Coſby*'s Adminiſtration, both which happened upon one and the ſame Occaſion. Now I would not have this eſteemed a captious Exception, when I have to deal with a Man of Law, who muſt or ought to know, that, if ſuch a Juſtification as he offered were at all allowable, it ought to be full and expreſs, ſo as to leave no Room for a Libeller to multiply and exaggerate Facts at his Pleaſure, when he is diſpoſed to traduce Perſons in Authority; there being a manifeſt Difference between a ſingle Act of Power without or againſt Law (from which perhaps few Governments have been free), and an habitual Abuſe of Power in repeated inſtances of the ſame Species. I would further aſk, how he could prove, *that the Law itſelf was at an End, and that Trials by Juries were taken away when a Governor pleaſed*; for, if I miſtake not, he was at that Time ſpeaking to a Jury in a regular Court of Law, and in a Proſecution which the Governor had much at Heart (as the Gentleman himſelf inſinuates), and would have been highly pleaſed to convict his Client; yet would not attempt it, but in the ordinary Courſe of Trial by a Jury; and then too, could not find a Jury that would convict him. I think I am warranted in putting theſe Queſtions, even by the Authority of the Barriſter himſelf, who ſays,——*Truth ought to govern the whole Affair of Libels, and yet the Party accuſed runs Riſque enough even then; for if he fails of proving every Tittle he has wrote, and to the Satisfaction of the Court and Jury too, he may find to his Coſt*, &c.

But, for the preſent, I will ſuppoſe Mr. *Hamilton* was able to prove all theſe Things; nay, that the Jury knew them all to be true. I will go farther, and allow, that Juries in criminal Caſes may determine both Law and Fact, when they are complicated, if they will take ſuch a Deciſion upon their Conſciences (which is almoſt the only Point in which I can have the Honour of agreeing with him); yet, after all theſe Conceſſions, the main Queſtion reſts ſtill between us, viz. *Whether a Writing can be a Libel, in legal Acceptation, if the Matter contained in it be true?* He is pleaſed, indeed, to expreſs his Diſlike of infamous Papers, even when they are true, if levelled againſt private Vices and Faults; and in this Caſe he calls them *baſe, unworthy, ſcandalous, unmanly and unmannerly*. But ſurely it might be expected, when a Point of Law was in queſtion, that he would have told us, whether they were lawful or unlawful, innocent or criminal, ſince theſe laſt are the only Epithets that were relative to his Subject, though the firſt might have their Weight in a Sermon or moral Eſſay. But, it is plain, he was aware of the Conſequence of being explicit upon this Head; for had he owned ſuch Writings to be lawful, becauſe true, he would have alarmed the common Senſe of Mankind, by opening a Door for expoſing at Mercy the Frailties, Vices, Defects and Misfortunes of every Perſon, high and low, which muſt inevitably deſtroy the Peace of Families, and beget ill Blood and Diſorders. If, on the other Hand, he had acknowledged ſuch Writings to be unlawful, inaſmuch as they concerned private Miſcarriages and Tranſactions; but that every Man might write as much Truth as he pleaſed about the Adminiſtration of the Government, not only by pointing out Faults and Miſtakes, but by publiſhing his own Comment and Inferences, in order to fill the Minds of the People with all the Jealouſies and Apprehenſions his Imagination can form; it muſt have ſhocked Men of Underſtanding to be thus told, that the Law had provided againſt private Quarrels and Breaches of the Peace, occaſioned by virulent Writing; but had taken no care to prevent Sedition and publick Diſturbance ariſing from the ſame Cauſe.

His favourite Poſition, however, was to be maintained at all Events; and therefore, when the Chief-Juſtice rightly inſtructed him, that he could not be admitted to give the Truth of a Libel in Evidence, *that the Law was clear that he could not juſtify a Libel; for it is nevertheleſs a Libel, though it is true*; the diſcerning Gentleman was pleaſed to underſtand by the Word *juſtify, a Juſtification by Plea, as it is in the Caſe of an Indictment for Murder, or an Aſſault and Battery: There* (ſays he) *the Priſoner cannot juſtify, but plead Not Guilty; yet in Murder, he may prove it was in Defence of his Life, his Houſe*, &c. *and in Aſſault and Battery, he may give in Evidence, that the other Party ſtruck firſt; and in both theſe Caſes he will be acquitted.*

If the Party in either Caſe is acquitted, the Reaſon is, I preſume, becauſe the Matter given in Evidence amounts to a Juſtification in Law of the Fact charged on him, and is equivalent to a Confeſſion and Avoidance in pleading. In like manner, if Truth be a ſufficient Juſtification of a Libel, the Defendant will be acquitted upon proving the Contents of his Paper to be true. Now let it be obſerved, that the Words of the Book which the Chief-Juſtice relied on are theſe:——*It is far from being a Juſtification of a Libel, that the Contents thereof are true----ſince the greater Appearance there is of Truth in any malicious Invective, ſo much the more provoking it is.* That this is good Law, I hope I ſhall be able to ſhew fully hereafter, as I ſhall ſhew, in the mean Time, that it is an expreſs Authority againſt the well-read Barriſter, who declares, *he has not in all his reading met with an Authority that ſays, he cannot be admitted to give the Truth in Evidence*, &c.

He ſeems to take it for granted (and I ſhall not diſpute it with him now) that Matter of Juſtification cannot, in any Caſe, be pleaded ſpecially to an Indictment of *Aſſault* or *Murder*; but the Party is to take Advantage of it in Evidence upon *Not Guilty* pleaded. Let it be ſo; yet ſtill this Matter muſt be a ſufficient Juſtification, or the Party can have no Benefit from it any way. In an Action of *Aſſault* and *Battery*, where the *firſt Aſſault* muſt be pleaded ſpecially; the Matter of Juſtification is juſt the ſame, as in an Indictment for the ſame Offence, where it muſt be given in Evidence upon the general Iſſue. I aſk then, Whether the *firſt Aſſault* is a Juſtification in an Indictment of *Aſſault* and *Battery?* If the Barriſter ſhould anſwer negatively, ſuch Anſwer is againſt all Senſe, for the Party is acquitted by Virtue of the Juſtification only. If he ſhould anſwer affirmatively, he is inconſiſtent with himſelf; for he has but juſt affirmed that when the Book ſays, *Truth is no Juſtification*, it muſt be underſtood of a Juſtification by Plea, by which he muſt mean that nothing elſe is a Juſtification but what is pleaded, or he muſt mean nothing at all. For the Words of the Book are,---*it is far from being a Juſtification*, &c. it is not ſaid,---*you are far from being at Liberty to plead it in Bar.* In Truth, the Author is not there ſpeaking of the Forms and Rules of Proceedings upon Libels, (1 *Hawk. Ch.* 73. § 5, 6, 7.) but upon the Subſtance and Nature of the Crime, what ſhall and what ſhall not excuſe or juſtify it. This is manifeſt from the Reaſon ſubjoined to ſupport his Aſſertion, viz. *ſince the greater Appearance there is of Truth*, &c. which is a ſolid Reaſon grounded on the Wiſdom of the Law, which puniſhes Libels even againſt private Perſons, as publick Offences, becauſe they provoke Men to Acts of Revenge and Breaches of the Peace. I hope it will not be ſaid that a Libel is leſs provoking, becauſe the Truth of it is to be given in Evidence, than if it was to be pleaded in Bar.

But all this is *Star-Chamber Doctrine* with the Barriſter, and the very Mention of that Court ſerves him for an Anſwer to every Thing, for which he has no other Anſwer; becauſe the Memory of that Tribunal is juſtly deteſted on Account of many illegal and exorbitant Proceedings. No; this is the Authority of Mr. Serjeant *Hawkins* (though he uſes marginal References to ſome Star-Chamber Caſes), whoſe name is too great to receive any Addition from this Paper, and who, after a long and ſtudious Search in the Crown-Law, laid down this Propoſition for Law at the Time he wrote his Book; and I believe it will appear in the Sequel that he was not miſtaken. And now I come to join Iſſue with the Barriſter upon this Point, whether *Mr. Serjeant* or he is in the right; or, in other Words, whether Falſity in Fact be eſſential to a Libel, ſo that the Truth of the Fact may be given in Evidence to prove a Writing to be no Libel.

He maintains the Affirmative of the Queſtion, *both from what he underſtands to be the Authorities in the Caſe, and from the Reaſon of the Thing.* All which ſhall be conſidered in their Order.

The Authorities cited by Mr. *Hamilton* to ſupport the Propoſition formerly ſtated, conſiſt principally of four Caſes, which I ſhall conſider in the Order as they were produced.

The firſt is the Caſe of *John de Northampton*, 18 *Edw.* III. 3 Inſt. 174. which he obſerves does not appear to have been a Caſe upon an Information, but that *he has good Grounds to ſay it was upon an Indictment.* This is what I ſhall not conteſt with him, becauſe it is not material, or indeed eaſy to be determined, without ſeeing the Record; though I conceive there are Grounds to ſay it was not upon an Indictment, as was the Caſe of *Adam de Ravenſworth*, mentioned by Lord *Coke* in the ſame Chapter. The Caſe, however, ſtands thus: ‘ *John de Northampton*, an Attorney of ‘ the King's-Bench, wrote a Letter to one *Ferrers*, one of the King's ‘ Council, that neither Sir *William Scot*, Chief-Juſtice, nor his Fellows ‘ the King's Juſtices, nor their Clerks, any great Thing would do by the ‘ Commandment of our Lord the King, *&c.* which ſaid *John* being called, ‘ confeſſed the Letter, &c. *Et quia prædictus Johannes cognovit dictam literam per ſe ſcriptam Roberto de Ferrers, qui eſt de concilio Regis, quæ litera continet in ſe nullam veritatem: Prætextu cujus Dom. Rex erga Curiam & Juſticiarios ſuos habere poſſet indignationem, quod eſſet in ſcandalum Juſtic. & Curiæ. Ideo dictus Johannes committitur*, &c.’ Here ſays the Barriſter, *by this Judgment it appears the libellous Words were utterly falſe, and there the Falſhood was the Crime, and is the Ground of the Judgment.* For my own Part, I can neither ſee *Truth nor Falſhood* in the Words at the Time they were wrote, for they refer to a future Contingency that might, or might not be as he ſaid; and in this Reſpect, they were the ſame as if the Man had ſaid, the Roof of *Weſtminſter-Hall* would fall upon Sir *William Scot* and his Fellows. Beſides, the Words taken by themſelves have no ill Meaning; for I imagine it will be allowed that moſt of the *great Things* which Judges do, as Judges, are ſuch as ought neither to be done nor left undone by the King's Commandment. Where then was the Offence? The Record, I think, ſhews that in the following Words: *prætextu cujus Dom. Rex erga Curiam & Juſtic. ſuos habere poſſet indignationem*, &c. *Ideo dictus Johannes committitur*, &c. It is obſervable, that the Author of this Letter was an Attorney of the Court, and by the Contents thereof he preſumes to undertake for the Behaviour of the Judges in ſome great Matters that concerned their Office. The Letter was addreſſed to a Perſon who was of the King's Council, and might poſſibly communicate the Contents of ſuch a Letter to the King; the Conſequence of which might naturally be, that *Dom. Rex habere poſſet indignationem erga Curiam*, &c. for great Things were ſometimes done, in thoſe Days, by the King's Commandment; and the Judges, beſides, held their Poſts at Will and Pleaſure.

The Words, *quæ litera continet in ſe nullam veritatem*, were therefore proper for the Judges to inſert, in order to acquit themſelves to the King; but they are no more the Ground of the Judgment than theſe other Words, *qui eſt de Concilio Regis*; both being only incidental Clauſes that come in by way of Deſcription; for it is not ſaid, *Quia litera prædicta continet in ſe nullam veritatem.* After all, I would not have this Conſtruction of the Caſe, plain and natural as it is, paſs merely upon my own Credit; for I ſhall ſhew that this Caſe was ſo underſtood by one of the greateſt Lawyers of his Time, before Lord *Coke*'s 3d Inſt. appeared in the World.

21 *Jac. B. R. Tanfield* v. *Hiron.* Godbolt 405, 6.

The Plaintiff brought an Action upon the Caſe againſt the Defendant, for delivering of a ſcandalous Writing to the Prince, *&c. Noy* for the Plaintiff cited, 18 *Ed.* III. a Letter was ſent to *Ferrers*, one of the King's Council, the Effect of which was, that *Scot* Chief-Juſtice, and his Companions of the ſame Bench, would not do a vain Thing at the Command of the King; *yet becauſe he ſent ſuch a Letter to the King's Council, although he ſpake no Ill, yet becauſe it might incenſe the King againſt the Judges, he was puniſhed.* If no Ill was ſaid, will it be pretended that the Falſhood of what was ſaid could be a Reaſon for puniſhing a Man? Is it not ridiculous to ſay, that the Falſhood of innocent or inſignificant Words can be Criminal? This Book, therefore, follows the Record of *Northampton*'s Caſe, and ſays, becauſe it might incenſe the King againſt the Judges, he was puniſhed; which is almoſt a Tranſlation of *prætextu cujus*, &c. which was the Ground of the Judgment, *Ideo committitur.*

The next Caſe which the Barriſter called to his Aid, is that of *the Seven* Biſhops. *State Trials*, Vol. IV. And here he relies on a Flouriſh of one of the Counſel for the Biſhops, and a dubious Expreſſion of one of the Judges, ſeparated from the reſt of his Diſcourſe.

Sir *Robert Sawyer*, tis true, ſays, *Both the Falſity of it* (the Libel) *and that it was malicious and ſeditious, are all Matters of Fact, which they* (the King's Counſel) *have offered to the Jury no Proof of*, &c. This, I muſt confeſs, proves one Point to which the Barriſter adduced it, viz. *that he was not the firſt who inſiſted that to make a Writing a Libel, it muſt be falſe.* And when I have allowed this, I may almoſt venture to ſay, it is the only Point he does prove from the Beginning to the Ending of his long, elaborate

elaborate Speech.——Let me, however, oppoſe to this the Reply of Sir *Thomas Powis*, in theſe Words; *Whether a Libel be true or not, as to the Matter of Fact; was it ever yet permitted in any Court of Juſtice to be made a Queſtion, whether the Party be puniſhable for it? And therefore I wonder to hear theſe Gentlemen ſay, that becauſe it is not a falſe one, therefore it is not a Libel.* Fol. 382.

Mr. Juſtice *Powel* alſo does ſay, *that to make it a Libel, it muſt be falſe; it muſt be malicious; and it muſt tend to Sedition.* Upon which Words of this learned and worthy Judge, I would not preſume to offer any Comment, except that which other Words of his own afford, that plainly ſhew in what Senſe he then ſpoke. His ſubſequent Words are theſe: *They* (the Biſhops) *tell his Majeſty, it is not out of Averſeneſs to pay all due Obedience; nor want of Tenderneſs to their Diſſenting Fellow-Subjects; but becauſe they do conceive the Thing that was commanded them, was againſt the Law of the Land. They ſay, they apprehend the Declaration is illegal, becauſe it is founded on a diſpenſing Power. I do not remember in any Caſe in all our Law, that there is any ſuch Power in the King; and the Caſe muſt turn upon that. In ſhort, if there be no ſuch diſpenſing Power in the King, then that can be no Libel which they preſented to the King, which ſays that the Declaration, being founded upon ſuch a pretended Power, is illegal.* So that the Judge put the whole upon that ſingle Point, whether it be true that the King had ſuch a diſpenſing Power, or not; which is a Queſtion of Law, and not of Fact; and accordingly the Judge appeals to his own Reading in the Law, not to Witneſſes or other Teſtimony, for a Deciſion of it. In Truth, the Petition of the Biſhops is not capable of having Falſhood or Truth applied to it in any other Senſe, there being nothing elſe affirmed or denied in it, *but that they thought they could not do what was commanded them, becauſe it was againſt the Law.* This was the Behaviour, theſe were the Sentiments of that upright Judge, that gained him ſo much Honour among all good Men, as the Barriſter takes notice; not any Opinion of his, that the Contents of a Libel muſt be falſe in Fact, to make it a Libel; as he would unfairly inſinuate.

Sir *Samuel Barnardiſton's Caſe* is the third that is touch'd upon; and here too the Gentleman finds nothing that can be ſtrain'd to his Purpoſe, but the Defendant's Counſel *inſiſting on the Want of Proof to the Malice and ſeditious Intent of the Author.* He ſeems to have forgot that the ſame Gentleman inſiſted alſo to have it proved, *that the Defendant was a Perſon of a turbulent and unquiet Spirit*, becauſe theſe Words were ſet forth in the Information; and he takes no manner of Notice how all this was anſwered, which I muſt now do for him, in the Words of the Court: *Certainly the Law ſupplies the Proof, if the Thing itſelf ſpeaks Malice and Sedition. As it is in Murder; we ſay always in the Indictment, he did it by the Inſtigation of the Devil: Can the Jury, if they find the Fact, find he did it not by ſuch Inſtigation? No, that does neceſſarily attend the very Nature of ſuch an Action or Thing. So in Informations for Offences of this Nature, we ſay, he did it falſely, maliciouſly, and ſeditiouſly, which are the formal Words; but if the Nature of the Thing be ſuch as neceſſarily imports Malice, Reproach and Scandal to the Government, there needs no Proof but of the Fact done; the Law ſupplies the reſt.* How ſhall any Man prove another Perſon's Malice, which is a Thing that lies only in a Man's Mind? How ſhould any Man know that I am malicious againſt the Government, but by my Actions? Theſe Words, indeed, were pronounced by the Chief Juſtice *Jefferies*, who was then the Mouth of the Court; but tho' he was really an intemperate Judge, (or a *Monſter*, as the Barriſter, in his Bar-Language, delights to call him) yet I may ſafely refer it to all Men of Law, whether theſe Words could have diſcredited the beſt Mouth that ever ſpoke upon that Bench. *State-Trials, Vol. III.* 939.

An Inſtance of this Sort may not be impertinent, where a Chief Juſtice (who was no *Monſter*) addreſſes himſelf to a Jury, that was trying a Libel, in this Manner: *I will not repeat the Particulars to you, only ſomething to what the Defendant has ſaid, that you may not be miſled. He ſays, it does not appear that he did it maliciouſly or knowingly. There are ſome Things that you that are of the Jury are not to expect Evidence for, which it is impoſſible to know but by the Act itſelf. Malice is conceived in the Heart; no Man knows it, unleſs he declares it: As in Murder, I have Malice to a Man; no Man knows it. I meet this Man and kill him; the Law calls this Malice. If a Man ſpeak ſcandalous Words againſt a Man in his Calling or Trade, he lays his Action, Malice; though he cannot prove it but by the Words themſelves; you may ſee, there is Malice ſuppoſed to a private Perſon in that Slander, much more to the King and the State.* State-Trials, Vol. II. 537.

Tutchin's Caſe, the Barriſter does not properly cite, but endeavours to anſwer as a Caſe urged againſt him by the King's Counſel; and therefore I ſhall obſerve upon it in another Place.

But the Caſe of Caſes is ſtill behind, which he reſerved for the laſt, *to make the Point clearer on his Side*, than all the reſt put together could do. It is *Fuller's Caſe*, State-Trials, Vol. V. 441. And it deſerves Notice, that although *Fuller* was charged with writing a Libel, yet *that* was not the Giſt of the Information. He was, in Truth, proſecuted for being *a Cheat and Impoſtor*, by Order of the Houſe of Lords, as the King's Counſel declare in the Opening.

The Information accordingly ſets forth, 'That *W. F.* intending the 'late King *William* and his Subjects to deceive, and to get ſeveral great 'Sums of Money fraudulently and deceitfully from the ſaid King, con-'cerning a Correſpondency between divers Officers and Subjects of the 'ſaid late King, and *the late King James*, falſely pretended to be had; did 'write and print a Libel, intituled, *Original Letters*, &c. with the Depo-'ſition of *T. J.* and *T. F.* Eſqrs. proving the Corruption lately practiſed 'in this Nation; and the ſaid *W. F.* afterwards did publiſh, utter, and 'for Truth affirm, the ſaid ſeveral falſe and ſcandalous Libels, without 'any lawful Authority; *whereas in Truth, the ſaid T. J. did not depoſe, upon 'his Oath, as is contained in the ſaid falſe and ſcandalous Libel; but the ſaid 'ſcandalous Libels are falſe, feigned, and altogether contrary to Truth*, &c.' Here it is manifeſt he was accuſed of a Cheat, in forging the *Correſpondence and the Depoſitions* juſt mentioned, with a Deſign of getting Money by his pretended Diſcovery. And hence it comes, that the Judge very properly aſks him, *Have you any Witneſſes? If you take upon you to write ſuch Things as you are charged with, it lies upon you to prove them true, at your Peril. How come you to write thoſe Books that are not true? If you have any Witneſſes, produce them.* Thus ſaid and thus did that great Man, Lord Chief Juſtice *Holt*; but not upon a Trial of the like Kind with Mr. *Zenger's*, as his Counſel would have it thought. For, in this Caſe, the *Cheat* and the *Impoſture* was the Offence, which conſiſted wholly in the Falſity; that is, in affirming ſuch Things for *Realities*, when they were nought but *Fictions*. On the contrary, had he been able to prove thoſe *Letters* and thoſe *Depoſitions* to be authentick, the Diſcovery would have been valuable, and might intitle him perhaps to Favour and Protection, inſtead of Puniſhment, however irregular he was in taking ſuch a Method to publiſh Matters of that high Conſequence. After this, let the learned Barriſter, *in all his Reading*, ſhew an Information or Indictment for a *Libel*, where the *Falſity* is aſſigned in Form with an *ubi re vera*, as the Foundation of the Offence, which is done in *Fuller's* Caſe; and then I will acknowledge, that the Queſtions put here by Lord *Holt* would have been proper, upon the Trial of his Client.

This is the Sum of the Barriſter's Law-Caſes. And is it not high Time to aſk, whether ſuch groſs Miſrepreſentations of the Books can proceed from Ignorance or Diſingenuity? Be that as it will, it might certainly be expected, that a Propoſition, advanced with ſo much Aſſurance, *by a Man of Years and Reading*, ſhould have been ſupported by ſome one Authority in Point, rather than by a Series of low Prevarication and Quibble. Could he not find, in all the Book-Caſes and Trials at large, concerning *Libels* (which are ſufficient of themſelves to make a large Volume), one Example of Proof being received to the Truth or Falſity contained in a libellous Writing? Indeed, there is nothing like it to be found; though the Occaſions have been many, where ſuch Proof might be had, if it were proper; nay, where the Truth of the Thing was notorious to all Men, and yet no Queſtion ever moved concerning it. This ſhall fully appear in the Sequel.

If any Thing can be neceſſary further to expoſe Mr. *Hamilton's* Doctrine of *Libels*, after anſwering his own Caſes, it is only to ſubjoin ſome others, that will ſhew how much he is miſtaken in almoſt every Thing he has offered on the Subject. I ſhall therefore mention a very few, that will bear a particular Application to his crude Notions, without entering into a Multitude of others, to tire the Reader.

16 *Car.* II. the King *v. Pym*, 1 Sid. 219. B. R.

Pym was indicted at *Exeter* for a Libel, which he delivered to a Parſon to be publiſhed in Church there, and was to this Effect: 'You are de-'ſired to bewail the Sodomitry, Wickedneſs, Whoredom, Lewdneſs, that 'is of late broken out in this formerly well-governed City; that God 'would turn their Hearts from committing thoſe Wickedneſſes which go 'unpuniſhed by the Magiſtrates.' *Pym* confeſſed the Indictment, and was fined 100*l.* He afterwards brought a Writ of Error, and aſſigned for Error, that this was no Offence, becauſe though he ſays, *go unpuniſhed by the Magiſtrates*; yet he does not ſay that the Magiſtrates knew of it, and Wickedneſs unknown cannot be puniſhed. It was anſwered by the Court, that this contains Matter of great Scandal to the Government of the City; for it makes the late Government better than the preſent, &c. *Hide, Twiſden, Keelyng, Windham*, Juſt.

I have pitched upon this Caſe, becauſe the Barriſter is fond of comparing the Plantations to large Corporations; and he will find here, that even thoſe are not left to the Mercy of Libellers, *altho' they do not put in a Claim to the ſacred Rights of Majeſty:* And that a Miſbehaviour of this Kind to the Magiſtrates of a Corporation is not intirely innocent, *becauſe it is not to be judged of, or puniſhed, as a like Undutifulneſs would be to our Sovereign.*

This Caſe was adjudged about four Years after the *Reſtoration*, when the Memory of the preceding Uſurpation was freſh in every Body's Mind. It is ſtrange, therefore, Mr. *Pym* did not put himſelf on his Trial at *Exeter*; for it was evident, beyond Contradiction, to the People of that Age, from their own Knowledge, as it is now to us from Hiſtory, that the Wickedneſs ſpecified in the Libel was reſtrained by a ſtricter Hand before, than after the Reſtoration. But this notorious Truth, it ſeems, did not avail Mr. *Pym*.

22 *Car.* II. the King *v. Saunders.* Raym. 201. B. R.

Information for writing a ſcandalous Libel to *H. Rich*, who was indebted to him, and kept him out of his Money three Years by obtaining a Protection, and at length getting into the Priſon of the King's Bench. *Saunders* wrote him a Letter, wherein he tells him, *That if he had any Honeſty, Civility, Sobriety, or Humanity, he would not deal ſo by him; and that he would one Day be damned, and be in Hell for his Cheating*; and cited ſeveral Places of Scripture to make good his Allegations. The Defendant was found *Guilty*, and moved in Arreſt of Judgment, that the Subſtance of the Letter is not ſcandalous, but impertinent and inſignificant, &c. *Cur.* The Letter is provocative, and tends to the incenſing Mr. *Rich* to break the Peace. The Court adjudged the Letter ſcandalous, and fined him 40 Marks. *Keelyng, Twiſden, Rainsford, Moreton*, Juſt.

I would intreat the clear-ſighted Barriſter to look carefully into the Words of this Libel, and try if he can diſcover any Truth or Falſhood in them that was capable of Proof. And I muſt remark upon both theſe Caſes, that though they were adjudged in the Reign of K. *Charles* II. yet neither of them was upon a State-Proſecution, or at a Time when the Spirit of *Plots* and *Factions* had infected the Courts of Juſtice; but they remain unqueſtionable Authorities at this Day.

State-Trials, Vol. V. The Caſe of *Tutchin* is ſtrong againſt him; a Caſe adjudged ſince the Revolution, before that learned and upright Judge Sir *John Holt*, and plainly ſhews the Fallacy that runs throughout his whole Argument.

The Points inſiſted on by this *Chief Juſtice*, in his Charge to the Jury, were theſe: 'To ſay that corrupt Officers are appointed to adminiſter Af-'fairs, is certainly a Reflection on the Government. If People ſhould not 'be called to an Account for poſſeſſing the People with an ill Opinion of 'the Government, no Government can ſubſiſt: Now you are to con-'ſider, whether theſe Words I have read to you do not tend to beget an 'ill Opinion of the Adminiſtration of the Government; to tell us, that 'thoſe that are employed know nothing of the Matter, and thoſe that do 'know are not employed. Men are not adapted to Offices, but Offices 'to Men, out of a particular Regard to their Intereſt, and not to their 'Fitneſs for the Places. This is the Purport of theſe Papers.' If this was the Purport of the Papers, and ſo criminal as hath been juſt ſaid, it is amazing ſurely, that Mr. *Tutchin* did not offer to prove the Truth of theſe Allegations, and thereby take out their Sting! Could not he poſſibly think of as many corrupt or incompetent Officers, Eccleſiaſtical

ſiaſtical, Civil, or Military in *England*, preferred by Intereſt rather than Merit, *as there were Judges diſplaced and Courts erected in New York?* Or if he was reſtrained, by the hard-hearted Judge, from deſporting himſelf in this pleaſant and ſpacious Field, could he not apply to the private Knowledge which the Jurors (as well as the reſt of Mankind) had of theſe Matters? For I imagine it will be allowed, that if no Inſtances of this Sort could be ſhewn at the Time of *Tutchin*'s Trial, it was the only Period within the Memory of Man, or the Reach of Hiſtory, that wanted the like.

But the Misfortune was, the poor Man was not bleſſed with ſuch ſkilful Counſel as is to be had in *Philadelphia*, to think of theſe good Things for him; otherwiſe you might have heard an alert Advocate (*after returning Thanks to his Lordſhip for nothing*) addreſs himſelf to the Jury in this or the like eloquent Strain: 'Then, Gentlemen of the Jury, it is to you 'we muſt appeal for Witneſſes to the Truth of the Facts we have offered, 'and are denied the Liberty to prove: The Law ſuppoſes you to be ſum-'moned out of the Neighbourhood where the Fact is alledged to be com-'mitted; and the Reaſon of your being taken out of the Neighbourhood 'is, becauſe you are ſuppoſed to have the beſt Knowledge of the Fact that 'is to be tried. And were you to find a Verdict againſt my Client, you 'muſt take upon you to ſay, the Papers referred to in the Information, 'and which are proved to be written and publiſhed by us, are falſe, ſcan-'dalous, and ſeditious. You are Citizens of *London*, honeſt and lawful 'Men, and the Facts which we offer to prove were not committed in a 'Corner; they are notoriouſly known to be true. And as we are denied 'the Liberty of giving Evidence to prove the Truth of what we have pub-'liſhed, I will beg Leave to lay it down as a ſtanding Rule in ſuch Caſes, 'that the ſuppreſſing of Evidence ought always to be taken for the ſtrongeſt 'Evidence; and I hope it will have that Weight with *you*. Lay your 'Hands upon your Hearts, Gentlemen, and recollect: Do none of you 'know, nay, do not all of you know, certain Perſons, who ſhall be 'nameleſs, that have been lately promoted, by Favour and Intereſt, to 'Places of Truſt and Profit, both in Church and State, Army and Navy, 'whom you muſt know and believe in your Conſciences to be ill Men, 'and no way qualified for ſuch Preferment; as my ſagacious Client has 'moſt ſeaſonably remonſtrated to the Neighbours, by virtue of that Right 'which every free-born Subject hath of publiſhing his Complaints, when 'the Matters ſo publiſhed can be ſupported with Truth?' But is Lord *Holt* aſleep all this time? Can any reaſonable Man, who has but common Notions of Judicature, imagine that this great Judge would ſuffer ſuch Traſh as this to be thrown out in any Court where he ſat in Judgment? But what muſt he have ſaid, if the Libeller before him had offered to prove, *that the Law itſelf was at an end; that Trials by Juries were taken away when a Miniſter pleaſed; that no Man could call any Thing his own, or enjoy any Liberty, longer than thoſe in the Adminiſtration would condeſcend to let him do it?* Would he have ſaid, that theſe Things did not tend to poſſeſs the People with an ill Opinion of the Government; and that Governments might well ſubſiſt, though Men ſhould not be called to an Account for publiſhing the like? Or would he have ſaid, it was no matter what Opinion the People had of the Government, nor whether it ſubſiſted or not, provided theſe Aſſertions were true; and ſo have diſcharged the Man as a Publiſher of precious and uſeful Truths, *to put the Neighbours on their Guard?*

But here alſo the Barriſter lays hold of a random Queſtion, put by one of the King's Counſel to Mr. *Montague*, who was for the Defendant, and was then touching upon the Affairs of the Navy: Saith the former, *Will you ſay they are true?* Now the latter had hinted as much as that theſe Things were true; but did it with that Caution which a Man of Skill uſes, when he would ſay ſomething in ſupport of a lame Cauſe, but don't care to preſs an Impropriety too far. For that learned Gentleman was very ſenſible, that if he had preſumed to inſiſt expreſly on the Truth of the Matters contained in his Client's Papers, a ſevere Reprimand was the beſt Thing that could have befallen him. His Words are theſe: *Nobody can ſay, that we never had any Miſmanagements in the Royal Navy; and whenever that has happened, the Merchants of* England, *in all probability, have ſuffered for it.* But does the Judge, in his Charge to the Jury, vouchſafe to give this Matter any Anſwer, or ſo much as to mention it? Lord *Holt* did not uſually paſs by material Things, that were offered in Defence of Perſons tried before him; yet, in this Caſe, he makes no Queſtion or Scruple about the Truth or Falſhood of *Tutchin*'s Papers, although they contained many Things which his Lordſhip, the Jury, and all the World knew to be ****. This candid Judge, however, puts the Merits of the Whole upon the Scandal of the Government, and the evil Tendency of ſuch Writings. And therefore I muſt once more call upon the Northern Barriſter to ſhew a ſingle Inſtance, where Witneſſes have been produced by Counſel, and admitted by the Court to prove the Truth of a Libel. When he does this, it will deſerve Conſideration; but till then, he may talk by the Hour without any Meaning.

I could mention ſome Caſes of a more modern Date, that have been adjudged in *Weſtminſter-Hall*, when this wild Doctrine was not ſo much as thought of, and when it would not have been altogether uſeleſs, had it been practicable; but I have choſe to mention ſuch only as are reported, that the Books may ſpeak for themſelves, and judge between us.

But this Lawyer ſeems to be above having his Points of Law decided by the Authorities of the Law; and has ſomething in Reſerve, which may ſerve to overthrow not only what has been offered in this Paper, but even all the Books of the Law. This is what he calls *the Reaſon of the Thing*; but is truly and properly a Sketch of his own *Politicks*; which leads me to ſhew, that *the true Reaſon of the Thing* here agrees with the *Law*, and conſequently both theſe are againſt this expert Maſter of Law and Reaſon.

The Reaſon of the Thing, as well as it can be collected from a Heap of Particulars huddled together without Order and Method, may be reduced to the three following Heads:

1. The Form of an Information for a Libel, and the Neceſſity of knowing the Truth or Falſhood of its Contents, in order to direct the Judges in awarding arbitrary Puniſhment.

2. The Right every Man hath of publiſhing his Complaints, when the Matters ſo publiſhed can be ſupported with Truth.

3. The Neceſſity there is of uſing this Right, in the Plantations eſpecially, by reaſon of the Difficulty of obtaining Redreſs againſt evil Governors by any other Means.

1. It will not be improper to premiſe, under the firſt Head, that a Gentleman of the Law, who takes upon him to pronounce ſo magiſterially as the Northern Barriſter has done concerning *Libels*, ought to have conſidered well the Nature and Extent of his Subject. It might be expected, that he is not unknowing in any Part of Learning neceſſary to fix his Idea of a *Libel*; and yet the preſent Caſe would appear to be quite different. This learned Gentleman might have informed himſelf, by reading ſome of the ancient Laws before the Conqueſt, that when the *Falſity* of virulent Writings and Speeches was taken into the Deſcription of the Crime, there was a ſpecifick Penalty annexed, *viz. Cutting out the Offender's Tongue, Lamb. Sax. Laws.* But this Severity ſeems to have fallen into Diſuſe under the *Norman* Kings; and accordingly *Bracton*, who wrote in the Reign of *Henry* III. gives a Deſcription of theſe Offences, as they were underſtood in his Days, wherein *Falſity* is neither expreſſed nor implied. Theſe are his Words: *Fit autem injuria, non ſolum cum quis pugno percuſſus fuerit, verberatus, vulneratus, vel fuſtibus cæſus; verum cum ei Convitium dictum fuerit, vel de eo factum Carmen famoſum & hujuſmodi*, Fol. 155. Indeed, here is no mention of *Libels againſt the King, or the State*; the Reaſon of which ſeems plainly to be, that Offences of this Sort were conſidered as a Species of *Treaſon*, not only in that Age, but in ſeveral Ages after, notwithſtanding the Statute 25 *Ed.* III. and though they have by happy degrees dwindled into *Miſdemeanors*, yet nobody, except the Barriſter, will ſay they are come to have a greater Indulgence from the Law, than the like Offences againſt private Perſons. How far, therefore, *Bracton*'s Acceptation of a *Libel* has prevailed ever ſince, muſt be ſubmitted upon what has been offered in the preceding Part of the Remarks.

Here the Barriſter throws in a ſhrewd Queſtion, ariſing from the Form of the Information, which charges the Libel to be *falſe: This Word* falſe, *ſays he, muſt have ſome Meaning, elſe how came it there? I hope* Mr. Attorney *will not ſay he put it there by chance; and, I am of Opinion, his Information would not be good without it.* By way of Anſwer to this, I muſt take Leave to put a Queſtion or two in the ſame Strain. Suppoſe a Man brings an Action of *Treſpaſs* for violating his Wife, and he fairly ſets forth the Truth of the Caſe, *viz.* That the Defendant, *by amorous Addreſſes, Letters, Preſents*, &c. did gain the Conſent of the Plaintiff's Wife, and at length debauched her: I would aſk, whether an Action of *Treſpaſs* thus laid can be ſupported? I fancy not; and yet this is a more juſt Account of the Matter, than when *Vi et Armis*, viz. *Swords, Staves, Knives*, &c. are introduced as Inſtruments of invading this tender Part of our Neighbour's Property. Suppoſe further, a Man kills another, whom he never ſaw or heard of before, and he is accuſed of murdering him *of Malice fore-thought*, How come ſuch Words to be put into an Indictment for a Fact ſo circumſtanced? They muſt have ſome Meaning; ſurely they are not put there by Chance; and, I am of Opinion, the Indictment would not be good without them? Why, there is this ſhort Anſwer to be given to all theſe childiſh Queſtions: There are many Words uſed in Pleadings of moſt Kinds, ſometimes for Aggravation, ſometimes for Comprehenſion, often in compliance with antient Uſage, which are not traverſable, and many times are incapable of Proof. The Form of Indictments and Informations follows the Nature of the Fact, and ſets it out in its worſt Dreſs; and if the Fact is made appear to be unlawful, all the hard Names are ſupplied by Implication of Law.

This is not all, quoth the Counſellor: 'It is ſaid, that Truth makes a 'Libel the more provoking: Well, let us agree for once, that Truth is 'a greater Sin than Falſhood; yet, as the Offences are not equal, and as 'the Puniſhment is arbitrary, is it not abſolutely neceſſary that they ſhould 'know whether the Libel is true or falſe, that they may by that means 'be able to proportion the Puniſhment? For would it not be a ſad Caſe, 'if the Judges, for want of a due Information, ſhould chance to give as 'ſevere a Judgment againſt a Man for writing or publiſhing a Lye, as for 'writing or publiſhing a Truth?' Now is it not a ſad Caſe, that he ſhould want to be told, that human Laws don't ſtrictly regard the moral Pravity of Actions, but their Tendency to hurt the Community, whoſe Peace and Safety are their principal Objects; ſo that by this Standard only are Puniſhments meaſured? If this profound Sophiſter is of another Opinion, let him give a Reaſon why it ſhould be a greater Crime in our Law for a Man to counterfeit a Silver Shilling, than to cut his Father's Throat.

2. The Right of remonſtrating or publiſhing juſt Complaints, the Barriſter thinks the Right of all Freemen; and ſo think I, provided ſuch Remonſtrances and Complaints are made in a lawful Way. But when he comes to explain, it is not a Court of Juſtice, it is not a Houſe of Repreſentatives, it is not a Legiſlature that is to be troubled (as he phraſes it) with theſe Things. Who then, I pray, is to be troubled with them; for *the King*, it ſeems, is out of the Queſtion? Let the Barriſter ſpeak for himſelf: *They have a Right (ſays he) publickly to remonſtrate againſt the Abuſes of Power in the ſtrongeſt Terms, to put their Neighbours upon their Guard*, &c. and in another Place, he ſpeaks of it as a Hardſhip, *if a Man muſt be taken up as a Libeller, for telling his Sufferings to his Neighbour.* Now, though I wiſh and hope, as earneſtly as he can do, that a free People may never want the Means of uttering their juſt Complaints, and of redreſſing their Wrongs too, when their Complaints are not heard; yet I always thought theſe Things were better underſtood than expreſſed in a Court of Law; and I ſhall probably remain in that Opinion, till the learned Gentleman can produce ſomething from the *Common* or *Statute Law* to ſhew, that a *Britiſh* Subject has a Right of appealing publickly *to his Neighbours* (that is, to the Collective Body of the People), when he is injured in his Perſon, Rights, or Poſſeſſions. When I am aſſured that he can do this, I promiſe him I ſhall not grudge a Voyage to that Country, *where Liberty is ſo well underſtood, and ſo freely enjoyed*, that I may receive the important Diſcovery from his own inſtructive Mouth.

I know the Law-Books aſſert the Right of complaining to the *Magiſtrates and Courts of Juſtice*, to the *Parliament*, to the *King* himſelf; but a Right of complaining to the *Neighbours* is what has not occured to me. After all, I would not be thought to derogate, by any Thing I have ſaid, or ſhall ſay, from that noble Privilege of a free People, *the Liberty of the Preſs*. I think it the Bulwark of all other Liberty, and

the ſureſt Defence againſt Tyranny and Oppreſſion. But ſtill it is a two-edged Weapon, capable of cutting both ways, and is not therefore to be truſted in the hands of every diſcontented Fool, or deſigning Knave. Men of Senſe and Addreſs (who alone deſerve publick Attention) will ever be able to convey proper Ideas to the People, in a Time of Danger, without running counter to all Order and Decency, or crying *Fire* and *Murder* through the Streets, if they chance to awake from a frightful Dream. But I muſt again urge, that theſe Points are not fit to be diſcuſſed in a Court of Juſtice, whoſe Juriſdiction is circumſcribed by poſitive and known Laws: Beſides, they take place properly in a ſovereign State, which has no Superior on Earth; and where an injured People can expect no Relief, but from an Appeal to Heaven. This is far from being the Caſe of Colonies; and therefore I come to ſhew, under the third Head, that the Barriſter's *Reaſon of the Thing* is no other than *Reaſon inverted*, which poſſibly may help the Projects of a *Demagogue* in *America*, but can never be reconciled to the Sentiments of a Lawyer, or the Principles of a Patriot, conſidered as a Subject of *Great Britain*.

3. I have hitherto been taught to believe, that when a brave and free People have reſorted to Meaſures unauthorized by the ordinary Courſe of the Laws, ſuch Meaſures have been juſtified by the extraordinary Neceſſity of the Caſe, which excluded all other Means of Redreſs: And, as far as I underſtand the Conſtitution, and have heard Accounts of the *Britiſh* Colonies, ſuch a Caſe cannot well happen, and has never yet happened among them. But here the Barriſter is ready to aſk, how muſt we behave when we are oppreſſed by a Governor, in a Country where the Courts of Law are ſaid to have no coercive Power over his Perſon, and where the Repreſentatives of the People are, by his Intrigues, made Accomplices of his Iniquity? Certainly it can't be a new Diſcovery to tell this Lawyer, that as the Governor is a Creature of the *Crown*, ſo the moſt natural and eaſy Courſe is to look up to the Hand that made him. And I imagine it may be affirmed (without catching an Occaſion of offering Incenſe to *Majeſty*), that if one Half of the Facts contained in *Zenger*'s Papers, and vouched for true by his Counſel, had been fairly repreſented and proved at home, Mr. *Coſby* would not have continued much longer in his Government; and then the City of *New York* might have applied to itſelf the Inſcription of the Gold Box, *Demerſæ Leges, timefacta Libertas hæc tandem emergunt*, with greater Propriety and Security, than could poſſibly be derived from the impetuous Harangue of any Lawyer whatſoever. I am the more emboldened to ſay thus much, becauſe though it is my Lot to dwell in a Colony where *Liberty has not always been well underſtood, at leaſt not freely enjoyed*, yet I have known a Governor brought to Juſtice, within theſe laſt twenty Years, who was not only ſupported by a Council and Aſſembly, beſides a numerous Party here, but alſo by powerful Friends at home; all which Advantages were not able to ſcreen him from Cenſure, Diſgrace, and a Removal from the Truſt he had abuſed.

It is not always neceſſary, that particular Perſons ſhould leave their Affairs and Families in the Plantations to proſecute a Governor in *Weſtminſter-Hall*, unleſs their Fortunes are equal to the Expence; for it is ſeldom ſeen, that the Violence of a bad Governor terminates in private Injuries, inaſmuch as he can't find his Account in any Thing leſs than what is of a general and publick Nature. And when this is the Caſe, I hope none of our Colonies are, even at this Time, ſo deſtitute, but that they can find the Means of making a regular Application to their *Sovereign*, either in Perſon, or in his Courts at *Weſtminſter*, as their Caſe may require.

But the wild Inconſiſtency that ſhines through moſt Parts of this Orator's Speech, is peculiarly glaring in that Part of it now before me. The Remedy which he ſays our Conſtitution preſcribes, for curing or preventing the Diſeaſes of an evil Adminiſtration in the Colonies, I ſhall give in his own Words: 'Has it not been often ſeen (and I hope it will always 'be ſeen), that when the Repreſentatives of a free People are, by juſt Re'preſentations or Remonſtrances, made ſenſible of the Sufferings of their 'Fellow-Subjects, by the Abuſe of Power in the Hands of a Governor, 'they have declared (and loudly too), that they were not obliged by any 'Law to ſupport a Governor, who goes about to deſtroy a Province or 'Colony,' *&c.* One would imagine, at firſt ſight, that this Man had the ſame Notion, with the reſt of Mankind, of juſt Repreſentations and Remonſtrances to the Repreſentatives of a free People, which has ever been underſtood to be by way of Petition or Addreſs, directed and preſented to them in Form; in which Caſe it is hoped that they, being moved by the Complaints of the People, will ſtretch forth their Arms to help them. But, alas! we are all miſtaken; for he tells us, in the ſame Breath, that the right way is by telling our Sufferings to our Neighbours in Gazettes and News-papers; for the Repreſentatives are not to be troubled with every Injury done by a Governor; beſides, they are ſometimes in the Plot with the Governor, and the injured Party can have no Redreſs from their Hands; ſo that the firſt Complaint (inſtead of the laſt Reſort) muſt be to the *Neighbours*, and ſo come about to the Repreſentatives through that Channel.

Now I would be very glad to know, what the *Neighbours* can do towards effecting the deſired Reformation, that will be attended with ſo good Succeſs, and ſo few ill Conſequences, as a regular Application to his Majeſty would be. It would be pleaſant, doubtleſs, to hear this Politician ſpeak out and explain himſelf at large upon this Subject. I confeſs it ſurpaſſes my Comprehenſion to conceive what the *Neighbours*, inſpired with weekly Revelations from the City Journaliſt, can do with their Governor and Aſſembly, unleſs it be to reform them by thoſe perſuaſive Arguments which the *major vis* never wants good Store of. If this be the *Patriot*'s Meaning, his Words may poſſibly be underſtood; but without this Meaning they are mere *Jargon*.

In a word, I ſhall agree with the Barriſter (and ſo take my Leave of him), that *the Liberty of expoſing and oppoſing arbitrary Power* is the Right of a free People; and he ought, at the ſame time, to admit, that the Order of Things, and the Peace of Society, require that extraordinary Means ſhould not be uſed for this Purpoſe, till the ordinary have failed in the Experiment. The ſupreme Magiſtrate of an *independent Kingdom or State*, cannot always be controuled by the one, and then the other is juſtified by that Conſideration. But in *Colonies*, that are from their Creation ſubordinate to their Mother-Country, there is no Perſon who is not controulable by regular and well-known Methods of proceeding; and conſequently there can be no abſolute Neceſſity of flying to Extremities, at leaſt in the firſt Inſtance. From all which, I conceive, it follows, that *local Conſiderations*, upon which the Gentleman lays ſo great Streſs, conclude directly againſt him; and I hope the Security which the *Britiſh* Conſtitution affords to every Man's Perſon, Property, and Reputation, as well as to the publick Tranquility, is not leſſened by any Diſtance from the Fountain of Power and Juſtice; but that a *Libel* is a *Libel*, and puniſhable as ſuch in *America*, as well as in *Europe*.

I am ſenſible, there is a Freedom of Expreſſion uſed in theſe Papers, of which I ſhould diſapprove in the common Caſes of Controverſy; but I found myſelf under a Neceſſity of ſhewing no Reſpect to the Performance under Conſideration, unleſs I were to forfeit the little that might be due to the *Remarks*. For though a Lawyer is free, nay obliged by the Duty of his Profeſſion, to make the moſt of the Cauſe he eſpouſes, (his real Sentiments being ſuſpended for that Time, by reaſon of the Bias under which he acts) yet, when he draws his private Opinion into the Debate, and intereſts his Paſſions in the Succeſs of it, he then departs from his Character, and becomes a *Party*, rather than an *Advocate*. In ſhort, there is an Air of Self-ſufficiency and Confidence mixed with the whole Lump, enough to give a Diſreliſh even to good Senſe and good Law; but is nauſeous, beyond all bearing, when neither of theſe is found. Among Lawyers, I was ſure this Lawyer deſerved no Anſwer; and yet an Anſwer ſeemed indiſpenſible, not only for the Reaſons given at my ſetting out, but alſo in order to ſave many well-meaning People from reverencing a Piece of *Buffoonery*, that had been thruſt into the World with ſo much florid Conceit, and a Gold Box tagged to the End of it: A Piece, wherein the whole Common-place of popular Declamation (equally adapted to all popular Occaſions) is exhauſted, and the *Holy Scriptures* brought in to ſeaſon his Jokes. But as this laſt ſeems deſigned only for a Sally of *Wit* and *Humour*, I ſhall not offer to detract from its Merit; conſidering too, it had ſo happy an Effect as to ſet the good People a-laughing, when they heard *the Word of God* moſt ingeniouſly burleſqued in a *Chriſtian Court*: A Piece that hardly ſhews the Author to have been ſerious when he pronounced it, or his wiſe Benefactors when they rewarded him; but that his ſolemn Profeſſions of *Principle* and *Duty* compel a charitable Mind to ſuſpect his Knowledge rather than his Sincerity; and *Citizens* are ever thought to be in earneſt, when they part with their *Gold* and ſhew their *Learning*.

Sir, I ought to make an Apology to you for treſpaſſing ſo long upon your Patience, which might have been better employed; but I flatter myſelf with the Hopes of having ſome Allowance made for an honeſt, though weak Attempt to reſcue the Profeſſion of the Law, and the Intereſt of lawful Liberty, from the Diſgrace thrown upon both in one of our Siſter-Colonies. This is the Truth, and let it be my Excuſe.

I am yours, &c.

ANGLO-AMERICANUS.

LETTER II.

SIR,

IT muſt be mortifying, no doubt, to a Perſon who has received peculiar Marks of publick Approbation to be told, that the very Act which procured it was ſo far from being commendable, that it really deſerved a ſevere Cenſure; and one would the rather decline ſuch an Office, how juſt ſoever the Occaſion, becauſe it cannot be done without condemning at the ſame time the Judgment of thoſe whoſe Suffrage had been thus unworthily obtained. But when the Laws are openly perverted, and Courts of Juſtice, with an Air of Gravity, *drolled* out of their eſtabliſhed Rules, by ſuch whoſe Profeſſion ſuppoſes them Miniſters of Juſtice; and when this too ſhall be dignified with Applauſe, and made highly meritorious; I conceive neither Good-nature, nor the Solemnity of *Publick Seals*, ſhould reſtrain an honeſt Pen from exploding the Practice, in order as well to ſtop the Progreſs of its evil Effects, as to prevent the like Attempts for the future.

Virtue and Merit, it is moſt certain, ought to be encouraged, eſpecially by all in Authority; but when that which is merely counterfeit ſhall gain Eſteem, ſtand in the room of what is truly genuine, and be actually loaded with the Rewards thereof, it does not only fruſtrate the original Intention of ſuch Rewards, but likewiſe give Countenance to the Impoſtor, and furniſh him with ſtill further Means of vending his falſe Wares, in prejudice of the Publick. Now this, with all due Submiſſion, I take to be the Caſe of the *Corporation* in *North America*, with regard to the Honours they were lately pleaſed to confer on a *noted Barriſter* in thoſe Parts, for his ſuppoſed Services in the Affair of *Zenger* the Printer, whoſe *Trial* has been ſo plentifully diſperſed here, and in other Places. Aggregate Bodies, we find, may be miſtaken, and too often are, as well as private Men; and when they do err, it is of the more dangerous Conſequence, on account of the Extent of their Power and Influence. The Province in general of *New York*, or the City in particular, might, for aught I know, have ſufficient Cauſe of Complaint, in ſome Reſpects, againſt their then Commander in Chief, and his Adminiſtration; but it is to be conſidered, that as there never was one abſolutely free from Faults, ſo it is the great Privilege of the Inhabitants of every *Britiſh* Government, that a proper Channel is chalked out, in all ſuch Events, and a Way open for Relief. The Method, therefore, which the Conſtitution preſcribes ought to be ſtrictly purſued; and any illegal Deviation is not only inconſiſtent, and unjuſtifiable in itſelf, but has, beſides, a Tendency to introduce Miſchiefs more to be dreaded even than thoſe that were ſought to be redreſſed. It is the Law which muſt be the Standard of Right and Wrong; and whoever has Recourſe to any other Aid, or knowingly adviſes thereto, in the Caſe of particular Grievances, cannot act on a true Principle of Publick Spirit, but muſt be influenced by unworthy Motives, and is always more or leſs an Enemy to the Community, according to his Situation, and in proportion to the Talents he happens to poſſeſs. If Mr. *Zenger* then will avowedly publiſh ſeditious Libels againſt the Government under which he lives, and his Counſel will offer to ſupport him by Artifices unbecoming the Long Robe, and advancing Propoſitions manifeſtly contrary to Law; as the former deſerves to be puniſhed by it, ſo the latter, I humbly preſume to ſay, whatever he may claim from his Client, ought not to be paid his Wages by any Sett of Men who owe their Being to the Law, and cannot exiſt without it.

But I ſhall not ſcruple to acknowledge here, and I do it on no ſuperficial Obſervation, that there can't be a more pernicious Creature, in a diſtant Colony, than that of a Practitioner of the Law, with much Aſſurance, little Knowledge, and no Morals; a Character not unheard of in more than one of his Majeſty's Plantations, and which yet I would by no Means apply to Mr. *Hamilton*, any otherwiſe than may appear to be juſt, from the Performance he has, it ſeems, taken ſo much Pains to publiſh to the World. The judicious Remarks already made upon it by *Anglo-Americanus*, will hardly leave Room for any Thing to be added that is very material; and therefore I ſhall content myſelf with a few *Gleanings* only, and make ſome curſory Reflections thereon, whilſt they afford me an Opportunity of bearing my Teſtimony alſo againſt what I think the moſt indecent Behaviour at leaſt, if it may not be called the boldeſt Outrage, that ever was exhibited from the Bar, without a ſuitable Chaſtiſement.

Whoever has enquired into the Doctrine of *Libels*, and the Reaſon of their Puniſhment, will perceive, that they take their Degrees as they affect private Perſons, particular Magiſtrates, or are aimed againſt the Government itſelf; and I may venture to ſay, that no Lawyer of Reputation will deny but what is ſet forth in the Information againſt *John Peter Zenger* was of this laſt Kind, and *that* too conceived in the groſſeſt Terms, ſuch as will not admit of a different Conſtruction, or of any other Meaning than what is put upon them by the Proſecutor for the Crown. Now I am ſenſible, that great Allowances are, with good Reaſon, made to Counſel in the Heat of Argument, and when ſuppoſed to be animated with a laudable Zeal for their Clients. Nor has it been uſual to correct them for every harſh and haſty Expreſſion, provided they keep within Bounds, and ſtick to that which is their Duty, without running into Matters that have no Relation to the Iſſue, and cannot fairly ſerve the Side they eſpouſe. Yet, as the Lord Chancellor *Nottingham* occaſionally ſaid, *Counſel ſhould not ſpeak as if they would abet the Guilt of their Clients rather than advocate for their Innocency*. And ſince your ingenious Correſpondent has clearly evinced, that the Truth of a Libel cannot be given in Evidence, that it is no Juſtification, on the general Iſſue, and conſequently no proper Defence to a Charge of that Nature (of all which Mr. *Hamilton* could not, or ought not to have been ignorant), it is worthy of Conſideration whether he did not involve himſelf in his Client's Crime, and partake of his Guilt, by declaring in the moſt publick Manner, that the Facts publiſhed in the News-Papers, and contained in the Information, were true; and offering to prove them to be ſo before a Court, which had no Power to redreſs the Grievances complained of, 4 *Co.* 14. *Hob.* 166. 7.

Sir *Bartholomew Shower*, I remember, in his Argument in the Caſe of the *King* againſt *Berchet & al.* aſſerts, that 'in all Caſes of Contempts 'to a Court, no Preſentment is neceſſary, no not ſo much as to convict; 'for if done *in Facie Curiæ*, a Record may be made of it, and a Puniſh-'ment judicially inflicted, and that executed immediately, *Show. Rep.* 110.' And agreeable hereto, we find, that in a late Caſe of the *King* againſt *Thorogood, Trin. 9 Geor. primi*, the Defendant having made an Affidavit in *C. B.* and appearing on Summons, confeſſed that he made it, and that it was falſe; whereupon the Court recorded his Confeſſion, and ordered that he ſhould be taken into Cuſtody and ſtand in the Pillory, *&c.* which was executed accordingly the laſt Day of the Term. *Mod. Ca. in Law & Eq.* 179, 180. This is the more remarkable, becauſe it was in the Court of Common-Pleas, which has ordinarily no Juriſdiction in Criminal Caſes.—May it not from hence be inferred (I hint it with a due Saving to all the juſt Privileges of the Bar) that the Court at *New-York* might well have recorded ſome of the moſt ſeditious Expreſſions in Mr. *Hamilton*'s Rhapſody, and committed him for the ſame, *&c.?* If they had, I doubt the Blame muſt have centered in himſelf, and his own Conduct; of which therefore he might then have had Leiſure to repent, as well as of his *long Journey* to ſo ill a Purpoſe.

But it will not be amiſs, perhaps for Example Sake, to give an Inſtance of what has been done on the like Occaſion with that before us; and to this End I ſhall cite a Caſe in the Court of King's-Bench, many Years after that of the Star-Chamber was at an End, and which, in the Words of Sir *Thomas Raymond*, was as followeth: '*Memorandum, June* 18, 1680, 'Mr. *Nathaniel Reading* having been convicted (before Juſtices of Oyer 'and Terminer by vertue of a ſpecial Commiſſion) for endeavouring to 'perſuade *Bedlow*, who was a Witneſs againſt the Noblemen impriſoned 'in the Tower of *London*, to forbear his Proſecution of them; and he the 'ſaid Mr. *Reading* having had Judgment executed upon him, by being ſet 'in the Pillory, and fined 1000 *l.* and impriſoned for the ſame, but his 'Fine ſince pardoned by the King, came this Day into Court, and demanded that an Information, which he there brought in his Hand, might 'be received by Mr. *Aſtrey* againſt the Commiſſioners who condemned 'him, of which my Brother *Jones* and Brother *Dolben* were two, and that 'the Information might be filed. But the Court did declare, that he was 'in the wrong Way to exhibit any Information in this Manner, and did 'cauſe his Words, whereby he did accuſe the two Judges of Oppreſſion, 'to be recorded; and for theſe Words, and for that he was infamous by 'having been on the Pillory, the Gentlemen at the Bar did pray that his 'Gown might be pulled over his Ears, he having been formerly a Practicer at the Bar, which was ordered and executed in Court; and he was 'alſo condemned in Court to pay the King 500 *l.* and to lie in Priſon till 'he paid it, *Raym. Rep.* 376.' The Trial of this Gentleman referred to here, may be ſeen in the State Trials, Vol. II. p. 253. on which Occaſion the Lord Chief-Juſtice *North* made a Speech aggravating the Defendant's Offence *as he was a Counſel, one who ought to be a Man of Knowledge, and a Miniſter of Juſtice to aſſiſt the Court wherein he pleaded.* He ſaid, *he thought the Court ought to ſhew a more than ordinary Severity againſt ſuch an one; and that 'tis a great Credit and Benefit to the Profeſſion, that the Members of it for ſuch Offences ſhould be dealt with more ſeverely than we ſhould deal in other Caſes. Id. p.* 374, 5. Far be it from me to make any invidious Compariſon here betwixt the preſent Practicer in *Pennſilvania*, and the *quondam* one in *Weſtminſter-Hall*, though they are both celebrated, the one in the Trial of Mr. *Zenger*, and the other in his own. It may however be noted, that the latter was ſaid to be *artful and affectedly eloquent*, and to have *ſtreve to lead the Judges out of the Way*, while he was told by the Chief-Juſtice, that his *Defence was artificial, becauſe it was nothing to the Purpoſe*; and by another of the Judges, that *he diſgraced his Profeſſion by making ſo weak a Defence*. But without adverting to any particular Beauties in the *modern Performance*, this is certain, that Counſellor *Reading* loſt the Bar-Gown by his *Art*, and Counſellor *Hamilton* got a Gold-Box of five Ounces, with the Freedom of the City of *New-York*, by his. A pregnant Inſtance of the Capriciouſneſs of Fate, and of the Juſtneſs of your late Correſpondent's Obſervation at the Entrance to his excellent Remarks!

The Gentlemen at the Bar (as indeed it might well be expected from their Education, and the Nature of their Buſineſs) have been remarkable for obſerving the Regard that is due to all in Authority with the utmoſt Delicacy; and in Return have always been uſed with ſuitable Reſpect. But that the Lawyer of *Philadelphia* may ſee the Courts of Juſtice in former Ages, as well as of late Years, did not ſpare the unruly Members of the Profeſſion any more than others, for much leſs faulty Behaviour than that of the leading Counſel in *Zenger*'s Trial, I will refer him to a Caſe which happened *Mich.* 13 *Eliz. Rot.* 39. when *Henry Blaundford*, a Counſellor at Law, was committed to the Fleet, and fined, for falſely reporting the Opinion of the Lord *Leiceſter* and Secretary *Cecil* with theſe Words, *Humanum eſt errare.* And that even Noblemen met with the like Treatment on ſuch Occaſions, will appear from the Caſe of the Lord *Stourton*, who, 19 *Hen.* VIII. was committed by the Court, and fined for ſaying theſe Words, *I am ſorry to ſee Rhetorick rule where Law ſhould.*

Before I proceed, I will mention one Caſe more, purely to ſhew how dangerous it is to afford any unlawful Helps to Perſons on their Trials in Criminal Proſecutions, even though it be merely by Way of private Inſtructions, when ſuch Inſtructions are to be publickly made uſe of, and import Scandal to the Government. It is the Caſe of the *King* againſt *Aaron Smith*, *Mich.* 35 *Car.* II. in *B. R.* 'This Term *(ſays the Book* 'which has the Allowance of all the Judges) *Aaron Smith* was brought into 'Court, being formerly Convicted on a Trial at Bar, for delivering to '*Stephen College*, being upon his Trial at *Oxford* for High-Treaſon, a Pa-'per of Inſtructions, full of ſcandalous Reflections upon the King and 'Government; as, that they might as well have hanged him at *Tyburn* as 'he came by, as brought him thither, only to murder him with a little 'more Formality. For which the Court gave Judgment, that he ſhould 'pay a Fine of 500 *l.* ſtand on the Pillory twice, and be of the good Be-'haviour for a Twelve-month, *Skinner*'s *Rep.* 124.' I ſhall only obſerve this Caſe was on an Information, ſo much inveighed againſt by *Zenger*'s Counſel, and yet I never heard it cenſured at all, as was that of poor *College*, I own, with too good Reaſon.

It is now Time to take Notice, that there is, amidſt a Heap of Jargon and Abſurdities, one obvious Miſtake, which runs throughout Mr. *Hamilton*'s oſtentatious Harangue, and that is in Relation to the Court of Star-Chamber. He would ſuggeſt, that becauſe that Court was aboliſhed by Act of Parliament, on Account of ſome inſufferable Abuſes that had crept into it, all the Caſes that had been adjudged there, on Informations for Libels, were conſequently of no Authority. Whereas the Judgments given there, in Matters properly cognizable before them, which Libelling eſpecially was, are allowed to be good Law at this Day, and are conſtantly quoted as ſuch in the Court of King's-Bench. Indeed it is ſaid, that the Reaſon of diſallowing the Star-Chamber Court, was becauſe their Authority was before, and now is, in *B. R.* and conſequently that Court unneceſſary, *Comb.* 36. So the Lord Chief Juſtice *Holt* declared, that *B. R.* poſſeſt all the lawful Power the Star-Chamber had, *Id.* 142. And that the Court of Star-Chamber was taken away, becauſe the Crimes were puniſhable here, 5 *Mod.* 464. which is likewiſe intimated by the Statute itſelf. Now though I am as well ſatisfied perhaps with the taking away of the Court of Star-Chamber, conſidering the Occaſion that had been given, as our Northern Barriſter can poſſibly be, and ſhould equally rejoice, I hope, at the redreſſing any other publick Grievance; yet I cannot, with him, condemn by the Lump, and argue, that becauſe that Court did ſome things amiſs, therefore it did nothing right. At this Rate, every Court that had, or has a Being, may be in Danger of the ſame Epithets he loves to beſtow on that we are ſpeaking of; and it may as well be ſuppoſed, that becauſe a certain Sett of Citizens, not unknown to Mr. *Hamilton*, lately did a very *ſilly* Thing, they therefore never did a *wiſe* one. For which Reaſon I preſume it will not be altogether impertinent to produce the Sentiments of that Oracle of the Law, Sir *Edward Coke*, concerning the Court of Star-Chamber. 'It is *(ſays he)* the moſt honourable 'Court, our Parliament excepted, that is in the Chriſtian World, both 'in reſpect of the Judges, and of their honourable Proceedings according 'to their juſt Juriſdiction, and the ancient and juſt Orders of the Court. 'For the Judges of the ſame are, the Grandees of the Realm, the Lord 'Chancellor, the Lord Treaſurer, the Lord Preſident of the King's 'Council, the Lord Privy Seal, all the Lords Spiritual and Temporal, 'and others of the King's moſt Honourable Privy Council, and the Prin-'cipal Judges of the Realm, and ſuch other Lords of Parliament as the 'King ſhall name. And they judge upon Confeſſion, or Depoſition of 'Witneſſes. And the Court cannot ſit for hearing of Cauſes under the 'Number of eight at the leaſt. And it is truly ſaid, *Curia Cameræ Stellatæ, ſi vetuſtatem ſpectemus, eſt antiquiſſima, ſi dignitatem, honoratiſſima.* 'This Court, the right Inſtitution and ancient Orders thereof being ob-'ſerved, doth keep all *England* in Quiet.' (4th *Inſt.* p. 64.) Conformable hereto, a late learned Writer, who was advanced to the higheſt Poſts in the Law in a neighbouring Kingdom to that of our Mother Country, and wherein he died, has a Paragraph, which I believe will give us a truer Account of the Court itſelf, and the Aboliſhment of it, than what is to be learned from our Barriſter's Speech at *New-York*, and therefore I will inſert it here *. 'The Court of Star-'Chamber, whilſt kept within due Bounds, was certainly of the great-'eſt Uſe to preſerve the Peace and Security of the Kingdom; and 'perhaps was the only Court which by its *ordinary and proper* Juriſdic-'tion, could effectually prevent and puniſh Riots, Perjuries, and other

* See *A Diſcourſe concerning Treaſons and Bills of Attainder*, p. 94. Printed Anno 1716, wrote by Mr. *Weſt*, afterwards Lord Chancellor of *Ireland*, who alſo wrote an ingenious and learned Treatiſe, entitled, *An Inquiry into the Manner of creating Peers.*

'Miſdemeanours

'Misdemeanors of the highest Nature. But being made use of by the 'Court to support Proclamations and Orders of State, and to vindicate 'illegal Commissions and Monopolies, that Extension of their Power be-'came a Grievance insupportable, and the Nation was never easy 'till 'that Court was entirely suppressed by Act of Parliament. *The House of* 'Commons were so eager in their Zeal to destroy what they called *a Court* 'of Inquisition, that though the Bill was of so great Consequence, yet 'they sent it up to the Lords, with only once reading it, and without its 'being ever committed, which was a Thing, perhaps, never before heard 'of in Parliament. *Cla. V.* 1. 223.'

I need only add on this Head, that the Crime of *Libelling* is the same now as it was while the Court of the Star-Chamber subsisted, and the Nature of the Offence the same then as now; a Crime that must necessarily be punished as long as there are States and Communities established in the World. And our assuming Barrister will not find an Author that treats of the Crown Law since the Statute of 16 *Cha.* I. *Ch.* 10. any more than before, but makes use of the Cases adjudged in the Star-Chamber generally as good Law, and of equal Authority in those Matters with such as were afterwards adjudged in the King's Bench. Some indeed are justly liable to Exception in the former, as we have also known too many in the latter, particularly during the next succeeding Reign of *Ch.* II. none whereof are, however, God be praised, to be met with, or heard of since the glorious and happy Revolution in 1688, which, I trust, has for ever excluded all Partiality and Oppression from *Westminster-Hall.*

But the learned Lawyer of *Philadelphia* declares, *That he has not, in all his reading, met with an Authority that says we cannot be admitted to give the Truth in Evidence upon an Information for a Libel.* I don't know what this Gentleman's reading may be; but if he had read some of the Cases above-mentioned, which could not well escape him, it might reasonably have been expected he would have taken Warning, been a little more cautious, and not have ventured to incur the Penalties which others before him had so justly suffered. By *all his reading*, he would insinuate, I suppose, that he had *read all:* and if that was true, it might well be thought he had read to very little Purpose, who could make so ill an Use of it, or think it *a Duty on him to go to the utmost Parts of the Land*, to propagate Doctrines and Principles diametrically opposite to, and just the Reverse of what he must have read. We shall soon discover that the Barrister's Reading is not quite so extensive as he would have it imagined. But it is previously to be observed, that if there was no such Authority *in terminis* as *that* he calls for, a Man who reads with any tolerable Understanding would of course infer the same Thing, when all the Books on the Subject of Libels lay it down as a Rule, which they unanimously do, *that it is not material whether the Libel be true or false.* For if that be not material, to what End should the Truth be offered in Evidence? Or, how should it be rejected before it was offered, which undoubtedly is the Reason that there have been no late Instances of that Sort. It might suffice therefore to undertake, as often as this well-read Lawyer produced a Precedent of its being demanded from the Bar to give Evidence of the Truth of a Libel, to shew that it was as often denied by the Court. And though I admit it has been attempted before, on Trials for Libels of the less enormous Kinds, yet he is probably the only one that has done it in any Case within these hundred Years. However, if we would find an Instance of that Sort, we must necessarily have Recourse to the Proceedings of the Court where that Crime was usually punished. The *Star-Chamber Reports* then may satisfy Mr. *Hamilton*, that *Term Pasc.* 7 *Car.* I. there was the Case of *Coston*, Gent. v. *Hitcham*, *Mil. Servient. ad legem*, as follows: 'The De-'fendant, the Morning before he went to the Sessions, being a Justice of 'the Peace, received scandalous and libellous Articles against the Plain-'tiff, carried them to the Sessions in his Pocket, and, in open Court, in dis-'grace of the Plaintiff, pulled them out and said, You shall see what a lewd 'Fellow this is, and not fit to speak in this Place; and then caused the 'said libellous Articles to be read in the publick Sessions. And the Plaintiff 'then desiring a Copy of them, and to be tried upon them, the Witnes-'ses to prove them being noted in the Margin, the Defendant did not 'suffer him to have a Copy, or to be tried thereupon, nor took any 'Course that he might at the next Sessions, or at any Time after be 'questioned for them, but took the Articles again out of the Sessions and 'carried them away. And after, further to disgrace the Plaintiff in his 'Practice (being an Attorney), sent the said Articles to Mr. Justice *Har-'vey*, at the Reference of a Cause to him, which *Coston* attended; and a 'Jury having given a Verdict against the Defendant, he sent for the 'Jurors and questioned them about their Verdict, and told them they 'were a Company of Fools, and that if there had been but one wise Man 'among them, their Verdict had not been so. And for these Offences 'he was committed to the *Fleet*, and fined 200 *l.* In this Cause, the 'Defendant would have had Witnesses to prove the Matter of the said 'scandalous Articles to be true, but that was disallowed by the Court. '*Rush. Col. vol.* III. *p.* 36. *in Append.*' This, I presume, the Barrister, when he is serious, will allow to be in point, though it happened not to fall in the Way of his Reading. He cannot object, surely, that it does not appear to be on an Information preferred by the Attorney-General, since it is a much stronger Case than if it had. For if the Court would not receive such Evidence in a Cause depending on the Complaint of a petty Solicitor for being libelled, and this too preferred against a Justice of Peace, a Knight, and a Serjeant at Law; *a fortiori*, they would never admit it on an Information exhibited, by his Majesty's Attorney-General, against a private Person, for libelling the Government.

There was also, as I have learned, divers Years before, viz. *Mich.* 2 *Jac.* the Case of *Peter Brereton*, Clerk, for writing a scandalous Letter to *Loyd*, Register of the Bishop of *St. Asaph*, and sent to himself, who was therein charged with Bribery and Extortion in his Office; for which libellous Letter the Defendant was sentenc'd, though, as the Book has it, *he would have undertaken to prove the Contents of the Letter to be true.* Here then are two Precedents of what the Barrister himself had never met with in all his reading; the one in a Case for libelling a practising Attorney, and the other of the Register of a Bishop's Court; but I believe I may defy this Gentleman, if he were to read as many more Years as he has done, to produce a *third*, where the Offence under Prosecution, being of the highest Degree, and levelled at the Government, like that for which he was so zealous an Advocate, the Counsel for the Defendant dared to offer Evidence of the Truth of it. On the contrary, if he had dipt into the Lord Chief Justice *Keeling*'s Reports, fol. 23. (before he left his Chambers) he would have there found it resolved by the whole Court, that *though a Counsellor at Law may plead his Client's Cause against the King, yet, if under Colour of that he takes upon him to vent Sedition he is to be punished.*

It is no Wonder, indeed, if our Barrister should be unapprized of *Brereton*'s Case, it not being (at least to my Knowledge) in Print; and you perceive I was under no Necessity of mentioning it, being before provided with an Authority to my Purpose. But it is reported, as above, in Sir *Thomas Mallet*'s MS. Treatise of the Court of *Star-Chamber*, a Copy whereof has fallen into my Hands by the Favour of a Friend. And since I have named this Work, I shall, with his Leave, take a Paragraph out of it, which, I am persuaded, will not be deemed unsuitable to the present Debate, after hinting that the Book seems to be wrote in the Time of *James* I. when the Doctrine now revived, and so tenaciously advanced by Mr. *Hamilton*, is said to have been *long before exploded as a gross Error.* 'There are (*says Sir* Thomas) two gross Errors crept into the World 'concerning Libels; the one, that it is no Libel if the Party put his 'Hand unto it, and the other, that it is not a Libel if it be true; both 'which have been long since exploded out of this Court. For the first, 'the Cause why the Law punisheth Libels is, for that they tend to raise 'the Breach of the Peace, which may as well be done, and more easily, 'when the Hand is subscribed, than when it is not. And for the other, 'it hath been ever agreed, that it is not the Matter but the Manner which 'is punishable. For libelling against a common Strumpet is as great an 'Offence as against an honest Woman, and perhaps more dangerous to the 'Breach of the Peace; for, as the Woman said, she should never grieve 'to be told of her red Nose, if she had not one indeed. Neither is it a 'Ground to examine the Truth or Falshood of a Libel, because it is *sub 'Judice*, whether it be a Libel or not; for that takes away *Subjectum 'Quæstionis*, and determines it to be no Libel, by admitting the Defen-'dant to prove the Truth; and the Defendant in that Case ought to plead 'a Justification and Demur in Law. But if he plead Not Guilty, the 'Question is gone, whether it be a Libel or not.' Thus, according to this Author's Opinion, who, if I mistake not, was one of the Justices of the Court of King's Bench in his Time, Mr. *Hamilton*, could he really have persuaded himself that the Matters charged in the Information were not libellous, as he *insists they are not*, would have discovered more Accuracy in his Profession, as well as Candour in his Practice, by advising his Client to *demur* to it, whereby he would have admitted no more than what was avowed at the Trial on the general Issue. Then, indeed, it would have fairly come before the Court to be considered whether the Papers were libellous or not, and he, as Counsel for the Defendant, might regularly have been heard to it.

He would then have been at Liberty to exert his uncommon Talents, manifest his extraordinary reading, his superior Genius and great Skill in Language, and in explaining the true Import of Words, without so directly flying in the Face of every Authority, and opposing all the Cases that ever were adjudged concerning *Libels*, before he was born and since. But alas! that would not have answered the Intention of our eloquent Barrister. He would not then have had it in his Power to use his Arts, and play his Game with a dozen honest Men, of as good natural Understandings, perhaps, though not of equal Experience and Cunning with himself. If he had gone that Way to Work, he would have had no Chance for the Prize. Vain had been his Expedition, and lost, entirely lost, all his Labour. In a Word, if the Learning and Integrity of the Bar only were required, he might as well have staid at Home, where, if I am rightly informed, there are Instances in abundance of the blessed Effects of Mr. *Hamilton*'s *well-known Principles.*

This sagacious Gentleman *begs Leave to observe, that Informations for Libels is a Child, if not born, yet nursed up and brought to full Maturity in the Court of* Star-Chamber: But what is particularly to be inferred from this shrewd Observation, he does not at present tell us. If the *Star-Chamber* was the Court where Crimes of this Nature were generally punished, according to its ordinary and proper Jurisdiction, as it certainly was, how should it be otherwise than that Informations for Libels must be met with there? And considering the Antiquity of that Court, 'tis more than probable the Crime was first prosecuted and punished in it. But what then? Is the Legitimacy of the Child (if I may be allowed to carry on the Metaphor) therefore to be called in question; or its Education the less honourable? I might put our witty Barrister in mind, that what I have mentioned is the very Reason why the *spurious Brat* he is so fond of, which was never brought to full Maturity, nor ever will, first appeared in the *Star-Chamber*, though it has not been heard of since in any other Court, 'till very lately, at *New-York*; I mean that of making Falshood to be essential to a Libel, and claiming a Right to give Evidence of the Truth of it by way of Justification.

He must, however, intend by the foregoing Passage, to impeach the Legality of Informations *qua* such (which by some Words that drop from him many Pages after, would seem to be what he aims at), or as they relate only to *Libels*; and in either Case he will again betray the Scantiness of his Reading and Knowledge in the Law. As to Informations in general, it has been incontestibly proved, that this Method of proceeding is *no way contrarient to any fundamental Rule of Law, but agreeable to it.* That it was the *constant Usage, and had the Approbation of the Judges and Lawyers of all Ages, and in all Reigns*, Show. Rep. 106, to 125. And in the Case of the Information against Seventy poor Persons for a Riot in pulling down Fences, *&c.* 2 *W.* & *M.* (which probably may be the same) it was said by Lord Chief Justice *Holt*, that 'the Lord Chief Justice *Hales* com-'plained of the Abuse of Informations, but not that they were unlaw-'ful;——That he should not come now and impeach the Judgment of 'all his Predecessors;——That the *Star-Chamber* was not set up by the 'Statute of *Hen.* VII. but was as Common-Law, and Informations 'were accordingly brought in that Court and others. And the whole 'Court were of Opinion, that Informations lay at Common-Law, '5 *Mod.* 463, 4.' Now this I take to be as good an Authority as the extrajudicial Opinions of those anonymous *Great Men* who, Mr. *Hamilton* says, *have boldly asserted that the Mode of Prosecution*

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by Information is a national Grievance, and greatly inconſiſtent with the Freedom which the Subjects of England *enjoy in moſt other Caſes*; nor can one forbear obſerving, *en paſſant*, that he ſeems much more diſpoſed, where there is no Danger at leaſt, to follow the Example of *bold*, than of *wiſe* and *judicious Men*.

This then being a legal Courſe of proceeding in criminal Caſes, and for all publick Offences, it muſt undeniably be as proper in the Caſe of Libels as in any other. And Sir *B. Shower* in reckoning up the ſeveral Crimes that were cognizable in the Court of *Star-Chamber*, includes Libels among the reſt, for which he ſays, *There were always Informations in the Star-Chamber and King's-Bench*. Show. 119. I am the more free in borrowing what I do from that eminent Practicer, on the Subject of Informations, becauſe he had ſtudied it well, and taken more than uſual Pains therein; and as the Judgment afterwards given by the Court of King's-Bench was purſuant thereto, ſo it ſeems to have put a Period in *Weſtminſter-Hall* to all Cavils againſt that *Mode of Proſecution*.

If the Barriſter means notwithſtanding to ſuggeſt moreover, that Informations for Libels are but of modern Date, or little longer ſtanding than about the Time of the Expiration of that Court, where he ſuppoſes they had their Origin, let him be further refuted by the above-mentioned Sir *Thomas Mallet*, who wrote profeſſedly on the Court of *Star-Chamber*, and may be ſuppoſed to be pretty well acquainted with his Subject: He tells us, [*Treatiſe of the Court of Star-Chamber*, ubi ſupra] That 'in all Ages 'Libels have been ſeverely puniſhed in this Court, but moſt ſpecially 'when they began to grow frequent about 42 and 43 *Eliz.* when Sir *Edward Coke* was her Attorney General.' And, treating of the Antiquity of that Court, he makes it very probable [Id. 1 *Part*, 4th *Conſid.*] that *it was the moſt ancient of any Court of Juſtice, and the Mother-Court of the Kingdom*; wherein he does not differ from Sir *Edward* himſelf, in his 4th *Inſt.* 64, already quoted. Now it was while this conſummate Lawyer, it ſeems, was Attorney-General to the renowned Queen *Elizabeth*, that Informations for Libels began to be moſt frequent, or, in Mr. *Hamilton*'s elegant Stile, when the *Child was brought to full Maturity*: And it is readily ſubmitted to all who are verſed in our Hiſtory and Conſtitution, whether that Period will be any Diſparagement to the Offspring.

But if Informations for Libels in particular, were one of the Grievances of that Court, nay the Chief, as the Barriſter would labour to make his Hearers believe, how came they to be practiſed after the Aboliſhment of it? Or what will he ſay to the Caſe of the King againſt *Darby*, which was an Information exhibited againſt the Defendant, being an Attorney of the Common-Pleas, for *defamatory Words* only of Sir *John Kay*, a Juſtice of Peace, concerning the Exerciſe of his Office? The Words were, as they are ſet forth in *Comb.* 65. *Sir* John Kay *is a Buffle-headed Fellow*, (a pretty Thing to be proved in Court!) *underſtands not Law, and is not fit to diſcourſe it with me; he hath not done Juſtice to my Client*. There it was argued for the Defendant on a Demurrer, (and I chuſe to recite it becauſe of the Conceſſions of his Counſel againſt our Northern Advocate,) 'That an Information would not lie for ſcandalous Words ſpoken only 'of a particular Perſon, becauſe he might have an Action on the Caſe to 'recompenſe him in Damages.------'Tis true, ſuch a Proceeding might 'be warranted for Libels, or for diſperſing defamatory Letters, becauſe 'by ſuch Means the publick Peace might be diſturbed, and Diſcords fomented amongſt Neighbours, which might at laſt be a publick Injury: 'But there is no ſuch Thing alledged in this Caſe, only Words in common Diſcourſe, for which an Action on the Caſe might lie, but no Information. On the other Side it was inſiſted, That this Information 'was founded on ſufficient Matter, becauſe the Proſecution is not only 'as it reſpects the Perſon of Sir *John Kay*, but it relates to him as he is a 'publick Magiſtrate, and who is ſubordinate to the Government, and 'therefore ſuch defamatory Words are a Reproach to the ſupreme Governor, by whom Magiſtrates are intruſted, and from whom they derive their Authority; and it will not be denied, but that Words re'flecting on the publick Government are puniſhable at the Suit of the 'King by an Information.------And for this Reaſon the Court held that 'an Information would lie, and thereupon gave Judgment againſt the 'Defendant, and fined him an hundred Marks. *Carth.* 14, 15.'

Mr. *Hamilton*, who would ſeem to be more knowing than his Neighbours in many Things, affects to be more ignorant than every body, of what conſtitutes a Libel; and therefore, although he pretends *freely to acknowledge there are ſuch Things as Libels*, yet he *inſiſts, at the ſame Time, that what his Client is charged with, is not one*; and if it be not, I will as freely acknowledge there can be no ſuch Thing. He deſires the Attorney-General *to favour them with ſome ſtandard Definition of a Libel, by which it may be certainly known, whether a Writing be a Libel, yea or not*. And what is this for? Why, truly, to *ſhorten the Diſpute*. But what Diſpute does he ſpeak of? The only Point that could admit of Diſpute had been *given up* before by his confeſſing the Matters in Iſſue, and the Proſecutor's Witneſſes being thereupon diſcharged. As to what he requires, either there was ſuch a Definition to be met with in the Books, or there was not; if there was, he ought to have known it; if there was not, why ſhould he deſire *Mr. Attorney* to *favour* him with one? Yet after he had been indulged beyond Meaſure, and a Definition was produced from a good Author, who beſides refers to ſeveral others that are unqueſtionable, all which conclude againſt his Client; is this loquacious Advocate contented? No; *There are two Words to that Bargain*, as he had ſaid before. He makes it a Foundation for further Diſputes, and according to his wonted Ingenuity and Candour throughout his *Reverie*, calls the concurrent Senſe of our Books *Mr. Attorney*'s *Rule*, and *Mr. Attorney*'s *Doctrine*.

'But what certain Standard-Rule, *quoth he*, have the Books laid down, 'by which we can certainly know whether the Words are malicious? 'Whether they are defamatory? Whether they tend to a Breach of the 'Peace? and are a ſufficient Ground to provoke a Man, his Family or 'Friends to Acts of Revenge? *&c.*' Now theſe Queries methinks do not ſo well become the Mouth of an Advocate, as they might that of his Client, when abandoned to his own Defence in a deſperate Cauſe. But I anſwer, no Rules certainly can be of uſe to thoſe who are determined to act without any, or in Oppoſition to all Rules, in which Claſs our Northern Barriſter muſt be placed, if we are to frame a Judgment of him from the Share he bore in this Trial. The Rule laid down in our Books concerning Libels (I ſpeak of Libels in the ſtrict Senſe, according to the Definition of Mr. Serjeant *Hawkins*, referred to in the Trial, and which alone concerns the preſent Caſe) is founded on the Reaſon of the Thing; and is the ſame which is to be obſerved in other Matters that depend upon the Conſtruction of Words and Writings, which are Signs only, or Images of Ideas intended to be conveyed to the Underſtanding of the Reader. There may, indeed, be divers Rules applied, according to the Circumſtances of the Caſe; and this, among the reſt, that where Words are capable of two Senſes, the one faulty, the other innocent, the latter is to be taken, provided ſuch a Conſtruction may be made without Violence to their natural Import and Meaning. From whence it will follow, that the ſame Caſes may happen that are doubtful, and do not come under any ſtandard Rule, on all which Occaſions honeſt and upright Judges will incline to the favourable Side: There may be others again ſo clear and evident, that a Man muſt reſign his Reaſon, or reſolve to ſacrifice his Conſcience, that does not diſcern, or will not allow them to be libellous. But in none of theſe Caſes can it come properly to be a Queſtion before the Jury, whether a Libel or not, on the Plea of Not Guilty, tho' it might afterwards be ſo, before the Court, in Arreſt of Judgment. By what has been ſaid, there appears to be Latitude enough for a ſkilful Pen (who notwithſtanding muſt do it at his Peril) to laſh publick and private Vices, to caution the People againſt Meaſures that may be hurtful to them, or to remonſtrate againſt the evil Practices even of thoſe in Power, without being always expoſed to the Penalties of the Law. Such a Liberty of Writing and Printing, under due Reſtrictions, I own *Engliſhmen* ought not, and I hope never will, be deprived of; and where this is dexteroully done, it would be ridiculous for private Perſons to put the Cap on their own Heads, and no leſs impolitick for thoſe in high Stations to apply every Thing to their Adminiſtration. When ſuch a Work is undertaken by able Hands, and with a generous View of ſerving the Publick, it is always laudable, and often very uſeful; but to ſucceed herein, requires a Capacity and Talents not to be diſcovered in Mr. *Zenger*'s News-Papers, or his Counſel's Speech.

I perceive my Letter is unawares run to a great Length, by the Quotations that are interſperſed, and which yet I am ſenſible is the leaſt exceptionable Part of it. I ſhall therefore take Notice but of one Thing more in this matchleſs Harangue, which indeed ought not to be forgot, becauſe it is made the Baſis and Foundation of the Whole; and that is, concerning the *Right of Freemen to complain when they are hurt*. This our Lawyer often aſſerts in general Terms, with ſome Variation only of the Expreſſion. As to which, I would aſk, whether by it he means a Right to remonſtrate and complain in a legal Way, or a Right in all Caſes to appeal to the People by ſeditious and ſcandalous Libels? If the former, Nobody ever denied it, and what he ſaid was not *ad idem*; ſo that he was fighting with the Air, and quarrelling without an Adverſary: If the latter, he diſhonoured his Gown, by advancing what is notoriouſly repugnant to all Laws, human and divine. It was ruled in the Court of *B. R. Trin.* 16 *Car.* That although a Bill be preferred in the Star-Chamber againſt a Judge for Corruption, or any other for any great Miſdemeanor, yet if the Plaintiff will tell the Effect of his Bill in a Tavern, or any open Place, and by that Means ſcandalize the Defendant, the ſame is puniſhable in another Court. *March Rep.* 76, 77. So in the Caſe of *Hole* and *Mellers*, 28 *Eliz.* in *C. B.* it was ſaid by the Court, that although the Queen is the Head and Fountain of Juſtice, and therefore it is lawful for all her Subjects to reſort unto her *ad faciendam Querimoniam*; yet if a Subject, after the Bill once exhibited, will divulge the Matter therein comprehended, to the Diſgrace and Diſcredit of the Perſon intended, it is good Cauſe of Action, 3 *Leon.* 138. And to the ſame Purpoſe, in a much later Caſe, *viz.* that of *Lake* and *King*, reported in many of our Books, to which Mr. Serjeant *Hawkins* refers, it ſeems agreed, as he obſerves, that whoever delivers a Paper full of Reflections on any Perſon, in nature of a Petition to a Committee of Parliament, to any other Perſon except the Members of Parliament, may be puniſhed as the Publiſher of a Libel, in reſpect of ſuch a diſperſing thereof among thoſe who have nothing to do with it. 1 *Hawk. Chap.* 74. *Sect.* 12.

But our forward Barriſter, *aged and infirm* as he repreſents himſelf (which, compared with his Conduct, is the keeneſt Satire that could be ſuggeſted of him), ought to be further inſtructed, that even where Complaints are to the King himſelf, they muſt be made in a proper and regular Manner; a Decency is to be obſerved, and a Regard always had to the Characters and Stations of the Perſons againſt whom ſuch Complaints are made. In 13 *R.* II. *Rot. Parliament.* N°. 45, the Commons deſired they might not be troubled for any Matter that ſhould be contained in Petitions to the King; and the King anſwered, Let every Man complain, ſo it be with Law and Reaſon. *It is lawful therefore*, no Doubt, as it has been reſolved, *for any Subject to petition to the King for Redreſs, in an humble and modeſt Manner, where he finds himſelf aggrieved by a Sentence or Judgment; for Acceſs to the Sovereign muſt not be ſhut up, in caſe of the Subjects Diſtreſſes. But, on the other Side, it is not permitted, under Colour of a Petition and Refuge to the King, to rail upon the Judge or his Sentence, and to make himſelf Judge in his own Cauſe, by prejudging it before a Re-hearing*. Hob. 220. Yet Sir *Rowland Flaxing* was committed, and deeply fined, for reporting to the King, that he could have no Indifferency before the Lords of the Council. 7 *Feb.* 18 *Hen.* VIII. So likewiſe, in the Time of *Hen.* VII. Sir *Richard Terrets* was committed, fined, ſent to the Pillory, and adjudged to loſe both his Ears, for his ſlanderous Complaint exhibited to the King, in a written Book, againſt the Chief-Juſtice *Fitz-James*. Which Caſes are cited by Chief-Juſtice *Montague*, in the Caſe of *Wraynham* (who was ſeverely puniſhed for an Offence of the ſame Nature), as may be ſeen in *State Trials*, Vol. VII. *p.* 102. To theſe may be added, *Jeffe*'s Caſe in the King's-Bench, *Mich.* 5 *Car. Jeffe* was indicted for exhibiting an infamous Libel, directed to the King, againſt Sir *Edward Coke*, late Chief-Juſtice of the King's-Bench, and againſt the ſaid Court, for a Judgment given in the ſaid Court, in the Caſe of *Magdalen-College*, affirming the ſaid Judgment to be Treaſon, and calling him therein Traitor, perjured Judge, and ſcandalizing all the Profeſſors of the Law. He fixed this Libel upon the great Gate at the Entrance of *Weſtminſter-Hall*, and in divers other Places; and being hereupon arraigned, prayed that Counſel might be aſſigned him, which was granted; and he had them;

but would not be ruled to plead as they adviſed, but put in a ſcandalous Plea; and inſiſting upon it, affirmed he would not plead otherwiſe. Whereupon it was adjudged he ſhould be committed to the Marſhal, and that he ſhould ſtand upon the Pillory at *Weſtminſter* and *Cheapſide*, with a Paper mentioning the Offence, and with ſuch a Paper be brought to all the Courts of *Weſtminſter*, and be continued in Priſon until he made his Submiſſion in every Court; and that he ſhould be bound with Sureties to be of good Behaviour during his Life, and pay a thouſand Pounds Fine to the King. *Cro. Car.* 175, 6.

What now ſhall we ſay, or what muſt be thought of one, who, while he pretends to great Reading, and a thorough Knowledge of theſe Things, could yet, in the Face of a Court, and in Defiance of its Authority, and indeed of all Authority, preſume to juſtify the Publication of the moſt audacious Libels againſt that very Government under which he was breathing the Sedition! A Perſon, who, as a Counſellor at Law, boaſting at the ſame Time of *having ſeen the Practice in very great Courts*, would dare to call ſuch Publication, addreſſed to the People, *the juſt Complaints of a Number of Men who ſuffer under a bad Adminiſtration!* Some of the Words charged in the Information, and which Mr. *Hamilton* offered to prove, are, *That the Law was at an End.* I can't tell what Proof he had to give of this Fact; but ſurely if his Doctrine were to prevail, it muſt ſoon be the Caſe; and, for my own Part, I will confeſs, I have not hitherto heard of any Thing, in that Province, which looked ſo much like it, as that ſuch a Behaviour ſhould not only go unpuniſhed, but be attended with public Munificence and Applauſe. The Truth is, this Gentleman, tho' ſtiled a Barriſter at Law in the Order of the Common-Council of the City of *New-York*, and which Title, therefore, I have likewiſe given him, ſeems notwithſtanding, inſtead of maintaining that Character, in the Trial before us, to be rather poſſeſſed with a Fit of *Knight Errantry*, and to have ſallied out from *Philadelphia* to the other Province, with a full Reſolution to encounter every Thing that was Law, and to level all to the Ground that ſtood in his Way.—Let the Reader then be Judge, upon the Whole, whether he comes within the Deſcription of that *miſchievous Animal* I mentioned towards the Beginning of theſe Sheets.

After all, I flatter myſelf it will not be imagined, that I was ſtimulated to theſe haſty Animadverſions by a Principle of Envy to Mr. *Hamilton*, or any Diſreſpect to thoſe who were pleaſed to patronize his Performance, ſince they are utter Strangers to me, and probably will ever remain ſo. On the contrary, they may believe me, when I declare, that if the one had really merited what the others were of Opinion he did, I ſhould with much more Pleaſure have ſignified my Approbation of the Conduct of both, than I now take in ſhewing my Diſlike. 'Tis on this Score, Sir, that I cannot conclude, without publicly returning my Share of the Thanks that are due from the *Fraternity* to your Friend, the polite Author of the former Letter, who has done Juſtice to the *Bar* by his *Remarks*, which, in my humble Apprehenſion, are worthy of any Gentleman *at it*, either here or elſewhere.

I am your's, &c.

INDUS-BRITANNICUS.

XXIV. The Trial of JAMES ANNESLEY * and JOSEPH REDDING, at the Seſſions-Houſe, in the *Old-Bailey*, before the Right Hon. *George Heathcote*, Eſq. Lord Mayor of the City of *London*, the Hon. Mr. Juſtice *Parker*, the Hon. Mr. Juſtice *Wright*, Sir *John Strange*, Knt. Recorder, Mr. Serjeant *Urlin*, and others of his Majeſty's Juſtices of *Oyer* and *Terminer* for the City of *London*, and Juſtices of Gaol-Delivery of *Newgate*, holden for the ſaid City, and County of *Middleſex*, on *Thurſday*, the 15th of *July*, 1742, for the Murder of *Thomas Eggleſtone*.

ON *Friday*, the 4th Day of *June*, 1742, Mr. *Anneſley* (being brought up by the Keeper of *New Priſon*), and *Joſeph Redding* (having ſurrendered himſelf to take his Trial, purſuant to Notice given to the Proſecutor's Solicitor) were, upon Application to the Court, in reſpect of the Quality claimed by Mr. *Anneſley*, ſet within the Bar.

Proclamation being made for Silence,

Clerk of the Arraigns. James Anneſley, hold up your Hand. (*Which he did.*) *Joſeph Redding*, hold up your Hand. (*Which he did.*)

You ſtand indicted in the County of *Middleſex*, by the Names of *James Anneſley*, late of *Staines*, in the County of *Middleſex*, Labourer, and *Joſeph Redding*, late of the ſame, Labourer: For that you, not having God before your Eyes, but being moved and ſeduced by the Inſtigation of the Devil, on the firſt Day of *May*, in the fifteenth Year of his preſent Majeſty's Reign, with Force and Arms at the Pariſh aforeſaid, in the County aforeſaid, in and upon one *Thomas Eggleſtone*, in the Peace of God, and our ſaid Lord the King, then and there being, felonioufly, wilfully, and of your Malice aforethought, did make an Aſſault; and that you the ſaid *James Anneſley*, with a certain Gun of the Value of five Shillings, then and there, being charged with Powder and Leaden Shot, which Gun you the ſaid *James* then and there had, and held in both your Hands to and againſt the ſaid *Thomas Eggleſtone*, then and there, felonioufly, wilfully, and of your Malice aforethought, did diſcharge and ſhoot off; you the ſaid *James Anneſley*, then and there, well knowing the ſaid Gun to have been charged as aforeſaid; and you the ſaid *James Anneſley*, with the Leaden Shot aforeſaid, then and there diſcharged and ſhot out of the ſaid Gun, by Force of the Gunpowder as aforeſaid, him the ſaid *Thomas Eggleſtone*, in and upon the left Side of the Belly of the ſaid *Thomas*, then and there, felonioufly, wilfully, and of your Malice aforethought, did ſtrike and penetrate, giving to him the ſaid *Thomas Eggleſtone* then and there, with the ſaid Leaden Shot ſo as aforeſaid diſcharged and ſhot, in and upon the left Side of the Belly of the ſaid *Thomas Eggleſtone* one mortal Wound, of the Breadth of one Inch, and of the Depth of four Inches, of which ſaid mortal Wound the aforeſaid *Thomas Eggleſtone* then and there inſtantly died; and that you the ſaid *Joſeph Redding*, at the Time of committing of the Felony and Murder aforeſaid, felonioufly, wilfully, and of your Malice aforethought, was preſent, aiding, abetting, aſſiſting, comforting, and maintaining the ſaid *James Anneſley* to kill and murder the aforeſaid *Thomas Eggleſtone* in Form aforeſaid; and ſo you the ſaid *James Anneſley* and *Joſeph Redding*, him the aforeſaid *Thomas Eggleſtone* in Manner and Form aforeſaid, felonioufly, wilfully, and of your Malice aforethought, did kill and murder, againſt the Peace of our Lord the King, his Crown and Dignity.

How ſay you, *James Anneſley*, are you guilty of this Felony and Murder whereof you ſtand indicted, or Not Guilty?

Mr. *Anneſley*. My Lord, I obſerve that I am indicted by the Name of *James Anneſley*, Labourer, the loweſt Addition my Enemies could poſſibly make uſe of; but though I claim to be Earl of *Angleſea*, and a Peer of this Realm, I ſubmit to plead Not Guilty to this Indictment, and put myſelf immediately upon my Country, conſcious of my own Innocence, and impatient to be acquitted even of the Imputation of a Crime ſo unbecoming the Dignity I claim.

Clerk. How ſay you, *Joſeph Redding*, are you Guilty of this Felony and Murder whereof you ſtand indicted, or Not Guilty?

Joſeph Redding. Not Guilty.

Clerk. Culprit, how will you be tried?

Joſeph Redding. By God and my Country.

Clerk. *James Anneſley*, Hold up your Hand.

Joſeph Redding, hold up your Hand; you ſtand likewiſe charged, upon the Coroner's Inquiſition, by the Names of *James Anneſley*, late of the Pariſh of *Staines*, in the County of *Middleſex*, Gent. and *Joſeph Redding*, of the Pariſh and County aforeſaid, Yeoman; for that you on the firſt Day of *May*, in the Year aforeſaid, God not having before your Eyes, but being moved and ſeduced by the Inſtigation of the Devil, with Force and Arms, at the Pariſh aforeſaid, in the County aforeſaid, in and upon *Thomas Eggleſtone*, in the Peace of God, and our ſaid Lord the King, then and there being, felonioufly, wilfully, and of your Malice afore-thought, did make an Aſſault; and that you the ſaid *James Anneſley*, a certain Gun, of the Value of 5*s.* then and there charged with Gunpowder and ſmall Leaden Shot, at and againſt the aforeſaid *Thomas Eggleſtone*, felonioufly, wilfully, and of your Malice aforethought, did diſcharge and ſhoot off, and him the ſaid *Thomas Eggleſtone* with the ſaid ſmall Leaden Shot out of the ſaid Gun, by Force of the ſaid Gunpowder diſcharged as aforeſaid, in and upon the left Side of the Belly of him the ſaid *Thomas Eggleſtone*, near the Hip-Bone, then and there felonioufly, wilfully, and of your Malice aforethought did ſtrike, giving unto him the ſaid *Thomas Eggleſtone*, then and there, with the ſmall Shot aforeſaid, ſo as aforeſaid diſcharged, in and upon the ſaid left Side of the Belly of him the ſaid *Thomas Eggleſtone*, near the Hip-Bone, one mortal Wound of the Breadth of two Inches, and the Depth of ten Inches, of which ſaid mortal Wound he the ſaid *Thomas Eggleſtone* then and there inſtantly died; and for that you the ſaid *Joſeph Redding*, at the Time of the Felony and Murder aforeſaid, in Form aforeſaid done and committed, felonioufly, wilfully, and of your Malice aforethought, was preſent, aiding, abetting, aſſiſting, comforting, and maintaining the ſaid *James Anneſley*, him the ſaid *Thomas Eggleſtone*, in Form aforeſaid, to kill and murder; and ſo you the ſaid *James Anneſley* and *Joſeph Redding*, the ſaid *Thomas Eggleſtone*, in Manner and Form aforeſaid, felonioufly, wilfully, and of your Malice aforethought, did kill and murder, againſt the Peace of our ſaid Lord the King, his Crown and Dignity.

How ſay you, *James Anneſley*, are you Guilty of this Felony and Murder, or Not Guilty?---*James Anneſley*. Not Guilty.

Clerk. Culprit, how will you be tried?

James Anneſley. By God and my Country.

Clerk. How ſay you, *Joſeph Redding*, are you Guilty of the ſaid Felony and Murder, or Not Guilty?

Joſeph Redding. Not Guilty.

Clerk. Culprit, how will you be tried?

Joſeph Redding. By God and my Country.

Clerk. *James Anneſley*, hold up your Hand. You ſtand alſo indicted in the County of *Middleſex*, by the Name of *James Anneſley*, late of the Pariſh of *Staines*, in the County of *Middleſex*, Labourer; for that you, not regarding the Laws and Statutes of this Realm, nor the Pains and Penalties therein contained, after the firſt Day of *June*, 1723, to wit, the firſt Day of *May*, in the fifteenth Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great-Britain*, &c. with Force and Arms at the Pariſh aforeſaid, in the County aforeſaid, with a certain Gun loaded with Gunpowder and Leaden Shot, which you in both your Hands, then and there had and held, wilfully, maliciouſly, and felonioufly, did ſhoot at one *Thomas Eggleſtone*, againſt the Form of the Statute in ſuch Caſe made and provided, and againſt the Peace of our Lord the King, his Crown and Dignity.

How ſay you, *James Anneſley*, are you Guilty of this Felony whereof you ſtand indicted, or Not Guilty.---*James Anneſley*. Not Guilty.

* This is the Perſon that claimed the Title and Eſtate of the Earl of *Angleſea*; and had the Trial in *Ireland*, relating to Part of the latter, in *November*, 1743, and recovered it.

Clerk.

Clerk. Culprit, how will you be tried?

Anneſley. By God and my Country.

Clerk. God ſend you a good Deliverance.

The Defendants being thus arraigned, the Court thought the Day too far ſpent to proceed to a Trial of ſo much Expectation, and therefore ordered it to come on the next Morning; but the Counſel for the Proſecutor alledging they could not attend the next Day, and deſiring to put off the Trial to this preſent Seſſions, the Court were pleaſed to indulge them, upon their conſenting that the Defendants ſhould be admitted to Bail.

Whereupon Mr. *Anneſley* was ordered to give four Sureties in 250*l.* each, and *Joſeph Redding* four in 50*l.* each; and this being done in Court, they were both immediately ſet at Liberty.

On *Wedneſday* the 14th Day of *July*, 1742, the Proſecutor's Counſel moved, that the Trial might come on the next Day, which, by Conſent of the Defendant's Solicitor, was ordered accordingly; notwithſtanding which, the next Day, when the two Defendants had ſurrendered themſelves, and were ready with their Witneſſes, the Proſecutor moved to put the Trial off for another Day; but not alledging any ſufficient Reaſon for the Delay, the Court were pleaſed to direct the Trial to go on.

Accordingly the Defendants were again arraigned, and pleaded as at the laſt Seſſions, and there being no Challenges to the Jury,

The following Gentlemen were impannelled and ſworn.

The Names of the Jury.

Walter Lee,	*Francis Rawlins,*	*William Boucher,*
John Deſchamps,	*John Sandwich,*	*Edmund Stowell,*
John Reynolds,	*Robert Harrop,*	*Thomas Whitehead,*
William Lewis,	*William Duck,*	*Francis Tredgold.*

Cryer. If any one can inform my Lords the King's Juſtices, *&c.*

Clerk. James Anneſley, hold up your Hand.

Joſeph Redding, hold up your Hand.

You of the Jury, look upon the Priſoners, and hearken to their Charge.

They ſtand indicted by the Names of *James Anneſley*, late of *Staines*, in the County of *Middleſex*, Labourer, and *Joſeph Redding* of the ſame, Labourer; for that they, *&c.* (as in the Indictments), and upon theſe Indictments they have been arraigned, and thereunto pleaded Not Guilty, and for their Trial have put themſelves upon their Country, which Country you are: Your Charge is to enquire, *&c.*

Mr. *Brown.* My Lord, and you Gentlemen of the Jury, this is an Indictment for Murder. The Indictment ſets forth that *James Anneſley* and *Joſeph Redding* did make an Aſſault with a Gun on the Body of one *Thomas Eggleſtone*; and that the Priſoner *Anneſley* did diſcharge the ſaid Gun againſt the left Side of the ſaid *Thomas Eggleſtone*, and did make a Wound on the left Side of the Belly of the ſaid *Thomas Eggleſtone*, of which he inſtantly died; and that the ſaid *Joſeph Redding* was aiding and aſſiſting the ſaid *James Anneſley* to murder the ſaid *Thomas Eggleſtone*. Gentlemen, if we prove our Charge, I hope you will find the Priſoners guilty.

Mr. Serjeant *Gapper.* Gentlemen, the Priſoners ſtand indicted for the Murder of *Thomas Eggleſtone*; *James Anneſley* was the Perſon who killed the ſaid *Thomas Eggleſtone*, and *Joſeph Redding* he was aiding, abetting, and aſſiſting in the Murder, and ſo they are both guilty of Felony and Murder. And, Gentlemen, there is an Act of Parliament made in the ninth Year of his late Majeſty King *George* I. that if any Perſon does wilfully ſhoot at another, it is Felony without Benefit of Clergy. Gentlemen, the Caſe is thus: On *Saturday* the Firſt of *May*, *Thomas Eggleſtone*, the Deceaſed, and his Son were going to fiſh, at a Place called the *Moor*, near *Staines*; they had a Caſting Net, and there was a String which belongs to the Net, and this String was about the Deceaſed's right Arm: They were fiſhing in a Meadow belonging to one *Sylveſter*; and as they were fiſhing towards the North of the Encloſure, the Deceaſed, ſeeing the Priſoners, ſtopped, and went back again; and as they were going back again, inſtantly came up the Priſoner, *Joſeph Redding*, and ſeized the Deceaſed by the Shoulder, and demanded the Net; but the Deceaſed caſt the Net into the River, which was on his Right-hand; then came up the other Priſoner, *Anneſley*, with a Gun in his Hand, and ſwore at the Deceaſed, and ſaid, *Damn you, ſurrender, or you are a dead Man:* He pointed the Gun immediately towards his Side, before a Word of Reply, and ſhot him; the Force of the Powder drove the Shot and ſome of the Deceaſed's Coat into his Body; he clapped his Hand to his Side, and ſaid, *You Rogue, what have you done?* dropped down, and died immediately: Then *John Eggleſtone*, the Son, took a Knife out of his Pocket to cut the String of the Net; upon which the Priſoner *Anneſley* turned the Butt End of the Gun, and ſaid to him, *You Rogue, I will knock your Head off*; to avoid which young *Eggleſtone* jumped into the Water, Breaſt-high, and cut the String of the Net, and dragged it to the other Side of the Water, and cried out his Father was murdered. There were three Perſons, *Fiſher*, *Betteſworth*, and *Bowles*, who could ſee what was done; they were on the other Side of the River, about an hundred and ſixty Yards from the Place where the Accident happened; they heard a Gun fired, and the young Man cry out that his Father was killed; and when they came to the River-Side, he had dragged the Net out of the River; upon this they croſſed over, and found the Man dead, or ſo bad that he could not live, and thereupon directed the Son to go and fetch Mr. *Cole*, a Surgeon at *Staines*: He went accordingly to Mr. *Cole*, and deſired him to come along with him, for his Father was ſhot, and he believed he was dead. *Why, ſays Mr.* Cole, *if he is dead, it does not ſignify my coming; I can do him no good:* So then the young Man went to Mr. *Ruſſel*, a Conſtable at *Staines*. But I ſhould tell you, Gentlemen, that as ſoon as the Priſoners ſaw theſe three Perſons, *Fiſher*, *Betteſworth*, and *Bowles*, coming towards the River, they ran away. Afterwards *Ruſſel*, the Conſtable, and ſome other Perſons coming up, they thought proper to purſue the Murderers: Accordingly they went to a Farm-Houſe, where *Anneſley* and *Redding* uſed ſometimes to lodge, and there they found *Anneſley*, and apprehended him, and ſent him to the Round-Houſe at *Staines: Redding* could never be found; but he has ſurrendered himſelf ſince, in order to take his Trial. The Priſoner *Anneſley* was carried before a Juſtice of the Peace, I think Sir *Thomas Reynell*; he was carried to *Heunſlow*, and from thence to *Laleham*; what that Examination was, I cannot tell. They made Application to this young Man to be favourable, and not to carry on the Proſecution: Says he, *Gentlemen, I will not ſell my Father's Blood.* This, Gentlemen, is the Nature of the Caſe; and if we prove our Charge, that they have been guilty of Murder, Gentlemen, you will find them Guilty.

(John Eggleſtone *ſworn.*)

Mr. Serj. *Gapper.* Give an Account of what you know of this Matter, and ſpeak the Truth.

John Eggleſtone. An't pleaſe you, my Lord, on *Saturday* the Firſt of *May*——

Mr. Serj. *Gap.* Speak ſlow and deliberately, that the Court and the Jury may hear you.

John Eggle. An't pleaſe you, my Lord, on *Saturday* the firſt of *May* laſt, I and my Father were going up *Staines* River, to catch a Diſh of Fiſh in *Staines* Moor, in the Pariſh of *Staines*, with a Caſting-Net; we fiſhed all the Way up, till we came to this Ground.

Mr. Serj. *Gap.* In whoſe Poſſeſſion was the Ground?

John Eggle. It was one Mr. *Samuel Sylveſter*'s Meadow; we were turning back again, an't pleaſe you, my Lord, in order to go Home; my Father, he carried the Net upon his Arm, and the String was faſtened to his Arm.

Mr. Serj. *Gap.* Well, as you were coming back from fiſhing, what happened then?

John Eggle. By that Time we had got half-way in the Meadow, we ſaw *Joſeph Redding* and Mr. *Anneſley* running, and *Joſeph Redding* out-run Mr. *Anneſley*, and came up to my Father firſt.

Mr. Serj. *Gap.* When they came up, what was the firſt Thing they did?

John Eggle. Redding took my Father by the Collar, and demanded the Net, and he refuſed to deliver the Net.

Court. Did you ſee him take him by the Collar?

John Eggle. Yes, my Lord.

Mr. Serj. *Gap.* What became of the Net afterwards?

John Eggle. My Father threw it into the River.

Mr. Serj. *Gap.* How far were you from the River then?

John Eggle. I was about two Yards from the River. After the Net was thrown into the River, *Anneſley* came up with his Gun, and ſwore, *God damn your Blood, deliver your Net, or you are a dead Man*; and he fired off before he received any Anſwer from my Father.

Mr. Serj. *Gap.* In what Manner did *Anneſley* hold his Gun?

John Eggle. In this Manner. [*Pointing the Gun ſtraight forward, holding it about Breaſt-high, ſtooping a little.*]

Mr. Serj. *Gap.* How near was the Gun to your Father when he fired it?

John Eggle. It was cloſe to my Father's Side; he put the Gun between *Redding* and my Father, and ſhot directly into his left Side, here, (*holding his Hand to his Hip*) he had a Plate Button there, which was bruiſed to Pieces; then my Father ſaid, *You Rogue, what have you done? I am a dead Man*; and dropped immediately.

Mr. Serj. *Gap.* What did *Anneſley* ſay before he fired?

John Eggle. He ſwore, if he did not deliver the Net, he was a dead Man; and then fired immediately.

Mr. Serj. *Gap.* What did you do after you heard your Father ſay he was a dead Man?

John Eggle. I took a Knife out of my Pocket to cut the String of the Net; and *Anneſley* ſaid, *You Rogue, I will knock out your Brains too*; and held up the Butt End of his Gun; upon that I jumped into the Stream, and cut the String, and drew the Net over to the other Side of the River: Then ſays *Anneſley, The Rogue has got the Net, let us go on the other Side after him.*

Mr. Serj. *Gap.* Who did you ſee when you came on the other Side of the River?

John Eggle. I ſaw *John Betteſworth*, *John Fiſher*, and *John Bowles*; and when *Anneſley* and *Redding* ſaw theſe three Men, they ran away directly.

Mr. Serj. *Gap.* How near were *Betteſworth*, *Fiſher* and *Bowles* to you, the before *Anneſley* and *Redding* ran away?

John Eggle. As ſoon as I got on the other Side of the River, they ſaw theſe three Men coming, and then they ran away; and *Betteſworth*, *Fiſher*, and *Bowles*, came through the River to the Side where my Father lay dead; they came from one Side to the other.

Mr. Serj. *Gap.* What did you do then?

John Eggle. They bid me get a Surgeon; ſo I went to one *Charles Cole*, a Surgeon at *Staines.*

Mr. Serj. *Gap.* When you came to *Staines*, did you meet with *Cole?*

John Eggle. Yes; and I told him my Father was ſhot, and I believed he was dead, or dying; but he never came near my Father: Then I went to *Ruſſel* the Conſtable, and he took ſome Townſmen with him, and went to old Mr. *Redding*'s Houſe at *Yeoveney* Farm, to ſearch for the Man that killed my Father; we beſet the Houſe all round, and found *James Anneſley* hid up in a Corner.

Mr. Serj. *Gap.* How long were you there before he was found?

John Eggle. I was there about a Quarter of an Hour, or a little more.

Mr. Serj. *Gap.* Was you preſent then?

John Eggle. Yes, I was there all the Time: Then, an't pleaſe you, my Lord, they pull'd him down.

Mr. Serj. *Gap.* Where was he hid?

John Eggle. He was hid in a Place which is five or ſix Foot from the Ground, where they put old Iron, and any Sort of Lumber: 'Tis a boarded Place or Room over the Waſh-houſe; a Place where the Woman makes Medicines for ſore Eyes.

Court. Was there a Chimney in it?---*John Eggle.* I do not know.

Mr. Serj. *Gap.* Was he ſtanding up or lying down; or how was he, when he was found?

John Eggle. I do not know; for I did not ſee him till he was pulled down: He was carried in a Chair into the Yard, and ſat there about a Quarter of an Hour, and then was put into the Cart that brought up my Father, and was carried to the Round-Houſe at *Staines.*

Mr. Serj. *Gap.* This is all you know; is it not?

John Eggle. An't pleaſe you, my Lord, I can tell you a great deal more.

Mr. Serj. *Gap.* Who pulled him down?

John Eggle. I do not know.

Mr. Serj. *Gap.* Was this Wound the Occaſion of your Father's Death?

John

John Eggleſtone. Yes, it was.

Mr. Serj. *Gapper.* Go on; you ſay you have other Things to ſay.

John Eg. He lay in the Round-Houſe all Night; the next Day *Anneſley*, the Priſoner, and I went in a Cart to a Juſtice at *Hounſlow*; and there was one *Mac Kercher* there, who ſaid to me——

Court. What *Mac Kercher* ſaid is no Evidence againſt the Priſoners.

Mr. Serj. *Gapper.* We will let this alone a little.

Court. Can you prove he was any ways employed as an Agent by the Priſoner?—Mr. Serj. *Gapper.* I believe we can.

Foreman of the Jury. My Lord, pleaſe to aſk him, whether there was no Quarrel, Buſtle, or Struggling, between *Anneſley*, *Redding*, and *Eggleſtone*, before the Gun went off.

John Eg. There was no Quarrel or Joſtling; my Father never gave him an ill Word.

Court. Did your Father make no Reſiſtance?

John Eg. No, no Reſiſtance at all.

Q. Was there no Joſtling, nor any Thing elſe paſſed?

John Eg. Yes: *Redding* took my Father by the Collar, and *Anneſley* came up in the mean time.

Court. What happened between your Father and *Redding* before *Anneſley* came up?—*John Eg.* He demanded his Net.

Court. I thought you ſaid there was ſome Joſtling?

John Eg. No other Joſtling than laying his Hand upon my Father's Collar; but my Father never laid his Hand upon him.

Mr. *Brown.* How near were you when *Redding* laid his Hand upon your Father?—*John Eg.* About a Yard and an half off.

Mr. *Brown.* You ſay he ſhot off the Gun; I aſk you what you mean by ſhooting off the Gun?

John Eg. Why he fired the Gun to ſhoot my Father.

Mr. *Brown.* What do you mean by ſhooting off the Gun?

John Eg. He came up directly, as if he was going to ſhoot a Dog.

Mr. *Brown.* Did you ſee him draw the Trigger of the Gun?

John Eg. No, I did not.

Mr. *Brown.* Was the Gun cocked before he came up?

John Eg. I do not know.

Q. Did not you ſay that it was?—*John Eg.* I do not know that I did.

Mr. *Brown.* Pray, was Anybody preſent at the Time?

John Eg. There was Nobody near but *Betteſworth*, *Fiſher*, and *Bowles*; nor Nobody came up.

Mr. *Brown.* Did the Priſoner offer you any Money?

John Eg. Yes, he offered to ſettle 50 *l.* a-Year on me.

Mr. *Brown.* Where was this?

John Eg. When I was at *Laleham*, the next Day after my Father's Death.

Mr. Serj. *Gapper.* How came you there?

John Eg. We went to a Juſtice's at *Brentford*; but he not being at home, we put up at the *Red Lion* there; and while we were there, Sir *Tho. Reynell* came in, and ordered us to go to *Laleham*; accordingly we went to one Mr. *Lee*'s, into a little Room, and there was *Jack Lane*, Mrs. *Cheſter*, and the Priſoner: Young *John Lane* offered me 100 *l.* a-Year; but the Priſoner ſaid he could not ſettle 100 *l.* a-Year upon me, for he had more to do for; but he ſaid he would ſettle 50 *l.* a-Year on me. This was ſaid in the Preſence of the Priſoner.

Mr. *Brown.* Did he mention what he would give you 50 *l.* a-Year for?

John Eg. Becauſe I ſhould not come in as an Evidence againſt him.

Mr. Serj. *Gapper.* What is the Reaſon you did not comply with this Offer?

John Eg. I told them, I would not ſell my Father's Blood at any Rate.

[*The Counſel for the Proſecutor having done with this Witneſs, he was croſs-examined as follows.*]

Q. Pray, in what manner did Mr. *Anneſley*, *Redding*, and your Father ſtand, when this Accident happened?

John Eg. Redding ſtood between *Anneſley* and my Father, and had him hold by the Collar.

Q. Do you know *William Duffel*, and had not you ſome Talk with him about the Manner of your Father's Death?

John Eg. No, I never ſaw him, nor had any Talk with him.

Q. Had you any Converſation with one *John Dalton* at *Laleham*, where you ſay you was offered that Money?

John Eg. I came out of the Room to aſk him, whether I ſhould take the Money or not; for he ſaid I had better take the Money, and not hang the Man.

Q. Then you ſaid nothing at that Time about the Manner in which your Father was killed?—*John Eg.* No, Sir.

Q. You ſay you ſtood by, and ſaw Mr. *Anneſley* point the Gun to your Father: Did you ſee him cock the Gun?

John Eg. I did not ſee him cock it; the Gun was cocked when he came up to my Father.

Q. Do you know one *Giffard?*---*John Eg.* Yes.

Q. When did you come to be firſt acquainted with him; before or ſince your Father's Death?

John Eg. After my Father was killed.

Q. Did not you meet with him at *Staines?*

John Eg. Yes, I believe I did.

Q. Did you ever ſee him there before?---*John Eg.* No, never.

Q. Did you give him any Orders or Authority to proſecute upon the Account of your Father's Death?---*John Eg.* No.

Q. Do you know one *Williams?*---*John Eg.* Yes.

Q. Where does he live?

John Eg. He keeps the *White Horſe* in *Piccadilly*.

Q. How did you come acquainted with him?

John Eg. He came to *Staines*, and ſent for me.

Q. What did he want with you, when he ſent for you?

John Eg. I don't know; I went to live with him as a Servant.

Q. What Buſineſs was you of, when your Father died?

John Eg. I worked with my Father as a Carpenter.

Q. If you was brought up a Carpenter, how came *Williams* to find you out for a Servant?---*John Eg.* I can't tell.

Q. How long have you lived with him?

John Eg. Ever ſince my Father's Death, and I live with him now.

Q. Have you not ſeen my Lord *Angleſea* at *Williams*'s?——

[*Here the Court interpoſed, and ſaid the Queſtion was improper.*]

Q. You ſay you are *Williams*'s Servant; have you not dined with him at his Table?---*John Eg.* Yes.

Q. Do you dine at his Table now?---*John Eg.* No, I am his Servant.

Q. Do you know the Reaſon why you were ſent from dining at his Table to draw Beer?---*John Eg.* No, Sir.

Q. Do you know one *Paul Keating?*---*John Eg.* Yes.

Q. Do you know any Thing of a Note he drew for you at the *Oxford Arms?*---*John Eg.* He did draw ſomething of a Note, but I tore it.

Q. What made you tear the Note?

John Eg. Becauſe I did not like his Proceedings.

Q. What were the Proceedings that you did not like?

John Eg. I do not know; I did not underſtand them.

Q. Why, did not you read the Note before you tore it?

John Eg. No, I did not.

Q. How came the Note to be wrote? Did he ſay nothing to you about writing of a Note before he wrote it?

John Eg. Nothing at all; but he deſired me to copy it.

Q. What did he ſay to you when he deſired you to copy the Note?

John Eg. Nothing; it lay upon the Table, and I tore it.

Q. What did you tear it for, if you had not read it?

John Eg. Becauſe it was about Things that I did not know what they were.

Q. Did not he deſire you to copy the Note?---*John Eg.* Yes.

Q. What did he ſay then?---*John Eg.* I cannot tell what he ſaid.

Q. Was you ever at *New Priſon* to ſee Mr. *Anneſley?*

John Eg. Yes.

Q. What did you go for?---*John Eg.* I cannot tell.

Q. I aſk you what you went for?

John Eg. I went for my own Fancy.

Q. Did you not ſend up Word to him, you was ſure he would be glad to ſee you?---*John Eg.* I believe I might.

Q. What was the Reaſon for which you thought Mr. *Anneſley* would be glad to ſee you?

John Eg. I cannot tell: I was willing to ſee him.

Q. Did you never, in ſpeaking of your Father's Death, ſay that it was done accidentally?

John Eg. I do not know that I did.

Q. Did you never ſay to *Keating*, that you were to have 200 *l.* or had a Promiſe, or that you were to have Security, and from whom?

John Eg. No, Sir, I never did.

Q. Did you give the ſame Account, with reſpect to the holding of the Gun, as you do now, before the Coroner's Inqueſt, and before the Juſtice?---*John Eg.* Yes, I am ſure I did.

Q. Did not you give two Accounts before the Coroner's Inqueſt; Part at one time, and went out, and the Remainder when you came in again?

John Eg. No.

Q. Did you never ſay that the Butt End of the Gun was up to his Shoulder, and the Muzzle pointed downward?

John Eg. No, I did not.

Q. Did you never ſay any Thing to Anybody of the Manner of Mr. *Anneſley*'s drawing one of his Feet back?

John Eg. No, never.

Q. Can you tell which of his Legs he drew back?

John Eg. No, I cannot tell which he drew back.

Q. Did you never ſay which?---*John Eg.* No.

Q. To Nobody?---*John Eg.* No, never.

Mr. Serj. *Gapper.* You ſaid you went to the *Oxford Arms* with *Keating*, and there was ſomething talked of relating to a Note; was there any Offer made to you there?

John Eg. No, Sir.

Mr. Serj. *Gapper.* You talked of a Paper that was tore; do you know the Contents of it?---*John Eg.* No, Sir, I do not.

[*John Betteſworth* ſworn.]

Mr. Serj. *Gapper.* Tell us what you know of this Matter, and where you were when you heard a Gun fired on the Firſt of *May?*

Betteſworth. Thomas Eggleſtone and his Son were a-fiſhing; I was 169 Yards ſome odd Inches from the River, as near as I could meaſure.

Q. What Ground was it in?

Betteſworth. They were in the Ground called Mr. *Sylveſter*'s Rents.

Mr Serj. *Gapper.* Are there many Hedges on the Side of the River where the Deceaſed was?

Betteſworth. There were a pretty many Willows, but any Body might ſee through them.

Mr. Serj. *Gapper.* What did you ſee?

Betteſworth. I ſaw *Joſeph Redding* and Mr. *Anneſley* come over the Hedge.

Mr. Serj. *Gapper.* What Hedge?

Betteſworth. The Hedge that parted Mr. *Sylveſter*'s Ground from Mr. *Redding*'s Ground; I do not know whether one of them did not come over the Stile; then they both ran after *Eggleſtone* and his Son; young *Redding* came up firſt.

Mr. Serj. *Gapper.* Did he lay hold of *Eggleſtone?*

Betteſworth. Whether he laid his Hand upon his Collar, or what, I cannot tell; but the Boy ran away.

Q. Who was it laid hold of the Shoulder or Collar of the Deceaſed?

Betteſworth. Redding; I ſaw his Hand upon the Shoulder or Collar of the Deceaſed, but I cannot ſay poſitively whether he had him by the Shoulder or Collar.

Mr. Serj. *Gapper.* How long was it after that, that *Anneſley* came up?

Betteſworth. The Boy was gone but a little way from his Father, and when Mr. *Anneſley* came up to his Father, he came back again.

Mr. Serj. *Gapper.* How near was he to his Father when this Accident happened?

Betteſworth. I cannot ſay how near he was to his Father, I believe two or three Yards off.——*Anneſley* and *Redding* came up almoſt together, but *Anneſley* came up after him, the Gun went off after he came up: I ſaw the Smoke and heard the Fire.

Mr. Serj. *Gap.* As you were 169 Yards off, how came you to come up?

Bet. The Boy called to us, and ſaid his Father was killed.

Mr. Serj. *Gap.* Who came along with you?

Bet. John Bowles, and *John Fiſher*, we came to the River juſt againſt the Place where Mr. *Eggleſtone* lay, and we could not get over there without being up thus high; *(putting his Hand to his Middle)* but we went over in a ſhallower Place a little farther.

Mr. Serj. *Gap.* Were *Anneſley* and *Redding* there when you came over?

Bet. No, they ran away before that.

Mr. Serj. *Gap.* Was *Eggleſtone* dead or alive when you came up?

Bet. He was not dead, but he could not ſpeak. I deſired the Boy to go for a Surgeon, and he went away directly.

Mr. Serj. *Gap.* Who came firſt to the River?---*Bet.* I do not know.

Mr. Serj. *Gap.* Did you all three come away together?

Bet. Yes, I was coming rather before the Boy cried out, for I ſaw the Man drop, I could not ſee the Boy for a good while, for he was in the River, and he cut the Net from his Father's Arm, as he ſays, I did not ſee that; but I ſaw the Boy come croſs the River, and when I came up, I ſaw that the Net was brought croſs the River.

Mr. Serj. *Gap.* How did *Eggleſtone* lie?

Bet. He lay upon his Face; I lifted up his Head, he groaned pretty much, but he could not ſpeak: I ſent the Boy for a Surgeon, but no Surgeon came.

Mr. Serj. *Gap.* Was you at the apprehending of the Priſoner?

Bet. Yes, I was

Mr. Serj. *Gap.* What Place was it that the Priſoner was in when he was taken?

Bet. It was a Sort of a Waſh-houſe, a Back-houſe: He was in a Place where they throw up Hoops and Iron, and any Sort of old Lumber; I ſaw him lie upon his Face.

Mr. Serj. *Gap.* Who took him down?

Bet. I do not know.

Mr. Serj. *Gap.* What did they do with him then?

Bet. They carried him to the *Round-houſe* at *Staines.*

Court. When you came to the Place where you ſay he had hid himſelf, did he come down of his own Accord?---*Bet.* Yes, my Lord.

Mr. *Brown.* When you heard the Gun go off, whoſe Hand was it in?

Bet. Mr. *Anneſley*'s.

Mr. *Brown.* Do you know the Poſition of the Gun when it went off?

Bet. No, I do not.

Mr. *Brown.* Did you obſerve any Struggle between *Anneſley*, *Redding*, and the Deceaſed?

Bet. No other than their ſtriving to take the Net away.

Q. Do you remember any thing that paſſed in the *Round-Houſe?*——Did the Priſoner ſay any thing there?

Bet. Yes, the Priſoner ſaid he deſired to be killed out of the Way, for being acceſſary to ſuch an innocent Man's Death.

Mr. *Brown.* What did he tell you beſides?

Bet. He ſaid he would have gone Home for more Men, but *Joſeph Redding* would not let him.

Mr. *Brown.* What did he want more Men for?

Bet. To take away the Net.

Q. What Anſwer did he ſay *Redding* made him to that?

Bet. I believe it was, that he ſaid we can do it well enough.

[*The Proſecutor's Counſel having done with this Witneſs, he was croſs-examined as follows.*]

Q. Did you ſee Mr. *Anneſley* and *Redding* before they came up to the Deceaſed?---*Bet.* Yes, I did.

Q. Did you obſerve Mr. *Anneſley* making any Uſe of his Gun before he came up?---*Bet.* I ſaw him offer to ſhoot at a Crow.

Court. How long was that before this Accident happened?

Bet. I believe about half an Hour.

Q. Was the Crow flying or ſitting?---*Bet.* Flying.

Q. Did you obſerve whether he did ſhoot at the Crow?

Bet. Not then, he did not.

Q. How far was you off then?

Bet. About as far, I think, as when I ſaw the Man killed.

Q. What was the Poſition of the Gun when you ſaw him come up running?

Bet. It was in this Manner, [*holds it as if the Gun was with the Muzzle hanging a little ſlanting towards the Ground.*]

Mr. *Brown.* You ſay you ſaw *Anneſley* and *Redding* in the other Ground, before they came into that Ground which belongs to *Sylveſter*——what were they doing there; were they ſtanding, ſitting, or what?

Bet. They were ſitting or lying under the Hedge, I cannot tell which.

Q. For what Purpoſe do you imagine they were ſitting or lying there?

Bet. I cannot ſay that, I may imagine they came to take the Net away, I cannot imagine any thing elſe.

Q. Did you ſee the Boy go into the River?

Bet. Yes, and it was juſt after his Father was ſhot.

[*John Fiſher* ſworn.]

Mr. *Brown.* Do you know the Priſoners at the Bar?

Fiſher. I know Mr. *Redding.*

Q. Do you believe this to be the Perſon who was along with Mr. *Redding* at the Time that Mr. *Eggleſtone* was killed?——Look at Mr. *Anneſley*'s Face, and ſee whether that is the Man.

Fiſher. I ſee Mr. *Anneſley*, but I cannot ſay that he is the Man; I ſaw two Men lie under the Hedge a conſiderable Time, and ſaw a Piece in one of their Hands.

Mr. *Brown.* In which Ground were they?

Fiſher. I believe in Mr. *Redding*'s Ground.

Mr. *Brown.* In what Ground was *Eggleſtone?*

Fiſher. He was in *Sylveſter*'s Ground. *Betteſworth* called to me, and ſaid, There is *Redding* running after *Eggleſtone*, and *Redding* laid hold of *Eggleſtone*, the Deceaſed, and then came up the other with a Piece; I cannot ſay whether he touched him or no.

Court. In what Manner did *Redding* lay hold of him?

Fiſher. I cannot ſay, I was at ſuch a Diſtance; but I thought he laid hold of his Shoulder.

Mr. *Brown.* Did *Eggleſtone* make away from him?

Fiſher. Yes; for he knew he was out of the Bounds that he ought to have been fiſhing in; and there was a Sort of a Struggle to take away the Net; and I thought that *Redding* and the other Perſon did both ſnatch at the Net, and then the Gun went off.

Mr. *Brown.* In whoſe Hand was the Gun?

Fiſher. Not in *Redding*'s Hand, but in the Hand of the other Perſon.

Mr. *Brown.* Was not you attentive at that Time, to ſee in what Manner he carried the Gun?

Fiſher. It may be this Way, or this Way, I cannot ſay whether he had the Gun againſt his Shoulder or no.

Mr. *Brown.* How near was he to the Deceaſed?

Fiſher. Very nigh, I believe not above the Length of a Gun.

Mr. Serj. *Gapper.* Did you ſee *John Eggleſtone* by, when you firſt came up?---*Fiſher.* He was near the River.

Mr. *Brown.* Did you hear the Boy cry out?

Fiſher. Yes, he ſaid his Father was killed;——he ſaw me, and called me by my Name, and ſaid, My Father is killed, and I came directly croſs the River.

Mr. *Brown.* What then became of *Anneſley* and the other?

Fiſher. They ran away; we hallooed after them, but I did not think the Man was ſhot, tho' I ſaw the Smoak and Fire of the Gun.

Q. Who went over the River firſt?

Fiſher. We were all three together almoſt. I cannot tell who was over firſt, but I believe I was.

Q. What was ſaid to the Boy then?

Fiſher. Nothing; only to go and get a Surgeon.

Q. Who bid him go?

Fiſher. Somebody did, I did not. I believe it was *Betteſworth*, and the Boy run away directly.

Q. Was there any Surgeon brought there?---*Fiſher.* No.

Q. Who came there afterwards?

Fiſher. Mr. *Sylveſter*; he ſaw the Deceaſed lying upon the Ground, but he was not there when the Murder was committed.

Q. Was you in the Houſe when he was taken?---*Fiſher.* No.

Q. Was you with him before the Juſtice of Peace?

Fiſher. I was examined, but I was not preſent when the other Witneſſes were examined.

Mr. *Brown.* What Diſtance was there between you and the Deceaſed when the Gun went off?

Fiſher. One Hundred and Sixty-nine Yards.

Q. Do you include the Breadth of the River?---*Fiſher.* Yes, I do.

[*Croſs-examined.*]

Q. You ſay you think that both *Redding* and *Anneſley* ſnatch'd at the Net?

Fiſher. I think they did.

Q. Do you think it was poſſible for you to hear what paſſed between them?

Fiſher. I could not hear one Word.

Q. I would aſk you, whether young *Eggleſtone*, before he was examined by Sir *Thomas Reynell*, did not ſay to you he believed the Gun did go off by Accident?

Fiſher. He ſaid he believed it was not done wilfully. I was called into a Room with *Cheſter* and *Lane:* He had Money offered him, in my hearing, by *John Lane*; he offered him 100*l.* a Year.——Mr. *Anneſley* ſaid, He could not give him 100*l.* but he would give him 50*l.* for he had others to do for: Then, ſaid the Boy, I do not care to ſell my Father's Blood; but I will do as my Friends direct me; I believe he was in Liquor.

Q. What did you ſay to him?

Fiſher. I ſaid, Your Father is dead; the Money will do you good; do not ſwear any thing againſt him, if you think it was done accidentally; he ſaid, The Money will do me good if I had it; and then ſaid, I believe the Gentleman did not do it wilfully.

Q. Had you not ſome Converſation together after his Examination before the Juſtice?

Fiſher. I aſked him, after he was examined, what he had done; and how he could ſwear againſt him, when he had ſaid ſo and ſo to me; ſaid he, I did not know what I ſaid.

Q. That he did not know what he ſaid, to who?

Fiſher. I aſked him, how he could ſwear againſt him when he knew what he ſaid to me; ſaid he, I do not know any Thing of the Matter; he did not remember what he had ſaid to me.

Q. Do you know Mr. *Williams* the Clergyman?---*Fiſher.* Yes.

Q. Did not you make a Declaration of this to him?

Fiſher. Yes; and I told him what I now ſay, I mean what paſſed between us at the Time he went before the Juſtice: I ſaid to Mr. *Williams*, that *Eggleſtone* told me he really believed that the Gentleman did not do it wilfully.

Q. Repeat all that you ſaid to Mr. *Williams.*

Fiſher. That the Boy ſaid to me, Mr. *Anneſley* had offered him 50*l.* a-Year, that the Money would do him good if he had it, and that he believed the Gentleman did not do it wilfully.

Mr. *Brown.* Did not he ſay it was wilfully done, as you were going along to the Juſtice's?

Fiſher. All the Way he went, he ſaid he believed he did it wilfully, but after the Priſoner had been talking with him, he ſaid he believed it was not done wilfully.

[*Samuel Sylveſter* ſworn.]

Mr. Serj. *Gap.* Did you ſee the Deceaſed after he was dead?

Sylveſter. He lay dead on the Ground that I rent near the River Side, I think about the Middle of the Ground.

Mr. Serj. *Gap.* Do you know how he came by his Death?

Sylveſter. I was going up to look after my Ground, to ſee if there was any Cattle in it, or any thing amiſs.——I called at the Cock, and drank two Pints of Beer, and when I came within two hundred Yards, or thereabouts, of my Ground, I met three Men, who told me old *Eggleſtone* was killed; I did not believe it; they then pointed to my Ground, and ſaid, There he lies; I ſaw ſeveral People there, upon which I thought there was ſomething more than common, and ſo I went up, and ſaw *Tom Eggleſtone* lie dead in my Ground.

Mr. Serj. *Gap.* Do you know where the Priſoner *Anneſley* was taken?

Sylvester. He was taken in a back Building belonging to Mr. *Redding*'s Houſe; I was ſearching the Rooms myſelf, and heard the People ſay, Here he is; and I ſaw Mr. *Anneſley*, who is the Gentleman there, come down out of the Place.

Mr. *Brown.* What Sort of a Place was it he was found in?

Syl. It was a Place to put odd Things in:—It was not boarded up to the Top.

Q. Did he come down voluntarily, or was he pulled down?

Syl. I do not know whether they pulled him down, or helped him down.

Mr. *Brown.* Did you hear him ſay any Thing at that Time?

Syl. I did not hear him ſay any Thing; I believe he was in a Fit, for he trembled and fell down behind the Door.

Mr. *Brown.* Did you ſee him at the *Round-Houſe?*

Syl. No, I did not, for I was gone to ſearch after the other Priſoner, *Redding.*

Mr. Serj. *Gapper.* Was you at *Lalcham* before the Juſtice?

Syl. Yes, I was.

Mr. Serj. *Gap.* Had not the Boy been drinking, and did he not ſleep before he went in to the Juſtice?

Syl. I believe he did, for about three Quarters of an Hour; I do believe he had been in Liquor, but he was refreſhed afterwards.

[*Upon the Croſs-Examination.*]

Q. Have you not received Money to pay the Witneſſes for attending here on this Cauſe the laſt Seſſions, and from whom?

Syl. Yes, I paid ſome of them, I think it was by Mr. *Giffard*'s Direction, who ſubpœna'd me up; I aſked him who was to pay me; he ſaid, I ſhould be paid Half a Crown a Day for my Time, which was as much as he thought I could earn at my Buſineſs.

Q. What Buſineſs is this *Giffard* * of?

Syl. He is a Stranger to me.

Q. Do you know who he ſaid he was employed by?

Syl. He ſaid he was concerned for the King.

Q. Did you ſend Notice of this Accident to any Body as ſoon as the Man was killed?---*Syl.* No.

Q. Do you know Mr. *Williams?*

Syl. Yes, I know him, but I never was in his Company upon this Occaſion.

Q. What Buſineſs does young *Eggleſtone* follow?

Syl. I cannot ſay what Buſineſs he follows, I believe he draws Beer now.

Q. How long have you known him?

Syl. I have known him five or ſix Years.

Q. What Buſineſs was he bred to?

Syl. Sometimes he would be out at Service, and ſometimes he would be with his Father in the Buſineſs of a Carpenter.

Q. Where does he draw Beer now?

Syl. I think it is at Mr. *Williams*'s, at the *White-Horſe*, in *Piccadilly.* But this is not the *Williams* I was ſpeaking of before.

Q. Have you never been in Company with this Gentleman, and had ſome Converſation with him about this Affair?

Syl. I have been at the Gentleman's Houſe in *Piccadilly* ſince this Buſineſs has been in hand, but never before; and I have been in Company with the Gentleman there, but never had any Talk with him about this Trial.

Q. Was not this *Williams* down before the Juſtice?--*Syl.* I do not know.

Q. Did you ever ſee him at *Staines?*

Syl. I ſaw him in the Town of *Staines*, I believe, about a Week after the Accident happened.

Q. Have you ſeen the Boy, *Eggleſtone*, there ſince?

Syl. I never ſaw him at *Staines* afterwards.

Q. What, he has lived with *Williams* ever ſince?---*Syl.* I cannot tell.

Q. I aſk you whether you have not ſeen him at *Williams*'s Houſe every Time you have been there?---*Syl.* Yes, I believe I did.

Mr. Serj. *Gapper* then ſaid, they would reſt it here; and having obſerved upon the Evidence, concluded with ſaying, he hoped it had fully made out the Charge againſt the Priſoners; that the Ground where the Man was killed being the Property of *Sylveſter*, the Priſoners were Treſpaſſers by coming into it, and therefore anſwerable for the Conſequences. That as to Mr. *Annesley*, there was not only implied, but expreſs Malice proved upon him, for that after he had killed the Father, he was for beating out the Son's Brains, only becauſe they would not let him and the other Priſoner run away with their Net.

Court. Mr. *Annesley*, you are indicted in a very unhappy Caſe, what have you to ſay for yourſelf?

Mr. *Annesley.* My Lord, I am very unable to make a proper Defence, having by the Cruelty of thoſe, whoſe Duty it was to protect me, been deprived of the Advantages of an Education I was entituled to by my Birth.

All I know of the melancholy Accident in Queſtion is, that on the unfortunate Day mentioned in the Indictment, I went out with my Gun, in Company with my innocent Fellow-Priſoner, to ſhoot Sparrows, as I uſually did. As we were going along, Mr. *Redding*, who is Game-Keeper to the Lord of the Manour, ſaw ſome People a-poaching within the Royalty, upon which he propoſed to go and ſeize their Nets. I followed him, the Deceaſed threw the Net into the River, and the Boy jumped in to pull it acroſs, to prevent which I ſtooped to lay hold of one of the Ropes that trailed upon the Ground, and at the ſame Inſtant, the fatal Inſtrument I had in my other Hand, hanging by my Side, went off without my Knowledge, and to my great Grief as well as Surprize. My Behaviour, immediately after the Accident, was, I hope, inconſiſtent with a Temper that could murder a Man I had never ſeen before, without one Word of Provocation.

Whatever may be the Determination of your Lordſhip and the Jury, great as the Misfortunes of my Life have been, I ſhall always conſider this unfortunate Accident as the greateſt of them all.

Court. Mr. *Redding*, what have you to ſay for yourſelf?

Joſeph Redding. My Lord, I am Game-Keeper to Sir *John Dolben*, Lord of the Manour of *Yeoveney.* On the firſt of *May* laſt, in the Afternoon, Mr. *Annesley* and I went out a-walking; we ſaw a Crow, and Mr. *Annesley* made an Offer to ſhoot at her, but I called to him not to fire, for that ſhe was too far off: Soon after I ſaw *Eggleſtone* and his Son fiſhing with a Caſting-Net, upon which I ſaid to Mr. *Annesley*, I would go and endeavour to take their Net away, as it was my Duty to do; accordingly I went up to the Deceaſed, and demanded the Net, which he refuſed to deliver to me, and threw it into the River, one End of the String being about his Arm; I then laid hold of the String, and pulled, whilſt the Boy endeavoured to draw it croſs the River, and preſently I heard the Gun go off (my Back being towards Mr. *Annesley*), and ſaw the Man fall down.—I ſaid to Mr. *Annesley*, I hoped he had not ſhot the Man; he ſaid No, but turning up the Flap of his Coat, we ſaw he was ſhot; upon which Mr. *Annesley* cried out, What ſhall I do! and expreſſed ſo much Concern, that I am ſure it was quite an accidental Thing.

Mr. *Hume Campbell*, of Counſel for the Priſoners, ſaid, that although he knew by the Courſe of the Court at the *Old-Bailey*, he was not at Liberty to obſerve upon the Proſecutor's Evidence, yet he apprehended, that for the Eaſe of the Court, he might juſt open the Nature of the Defence, without making any Obſervations upon it.

That the Defence which the Priſoners inſiſted upon was, that the Gun went off merely by Accident; that *Redding* was Game-Keeper to Sir *John Dolben*, Lord of the Manour of *Yeoveney*, and had a proper and legal Deputation for ſeizing of Nets and other Engines, for deſtroying of Game. That the Deceaſed and his Son were poaching with a Caſting-Net within the Manour; that Mr. *Annesley* went in Aid of the Game-Keeper; and therefore the Priſoners being about a lawful Act, were not ſo much as Treſpaſſers, and the Death that was the accidental Conſequence of that Act, would, in Point of Law, make Mr. *Annesley* guilty only of Chance-Medley.

[Mr. *Thomas Staples* ſworn.]

Q. Do you know the Manour of *Yeoveney?*

Mr. *Staples.* Yes: I am Deputy to my Father, who is Steward to Sir *John Dolben*, as Lord of the Manour under the Dean and Chapter of *Weſtminſter.*

Mr. Serj. *Gap.* How do you know this to be a Manour?

Mr. *Staples.* I have the Grant of the Manour from the Dean and Chapter in my Pocket.

Mr. Serj. *Gap.* Are there any Copy-Holders?

Mr. *Staples.* Yes, I have admitted ſome Copy-Holders; I know it to be a Manour, becauſe I have held one Court there for my Father, and have ſeen him hold ſeveral.

Mr. Serj. *Gap.* Is there any Manſion-Houſe belonging to this Manour?

Mr. *Staples.* There is a Manſion-houſe belonging to it, which I think is the Houſe that Mr. *Redding* lives in.

Mr. Serj. *Gap.* What Court was it you held there?

Mr. *Staples.* A Court Baron.

[Mr. *Thomas Burlingſon* ſworn.]

Q. Mr. *Burlingſon*, look upon this Deputation. Are you a ſubſcribing Witneſs to it? If you are, did you ſee this executed, and by whom?

Mr. *Bur.* Yes, Sir, that is my Name; I ſaw Sir *John Dolben* execute it; this is his Hand and Seal.

Court. Was it executed at the Time it bears Date?

Mr. *Bur.* Yes; I believe on the very Day.

[Mr. *James Edmonds* ſworn.]

Q. Mr. *Edmonds*, look upon that Endorſement, do you know whoſe Hand that is?

Mr. *Edmonds.* My Lord, I went to the Clerk of the Peace for the County of *Middleſex*, and heard him acknowledge this to be his Hand, and that it was entered according to the Act of Parliament.

Mr. Serj. *Gap.* Did you ſee any Entry of it?

Mr. *Edmonds.* He ſaid it was entered, and acknowledged this to be his Hand, and told me that was ſufficient.

Q. My Lord, we pray the Deputation may be read; we will ſend for the Clerk of the Peace to bring the Book itſelf where it is entered.

The Clerk reads. *Signed* J. Dolben, *dated the 2d of* July, 1741.

'KNOW all Men by theſe Preſents, that I Sir *John Dolben*, of *Teingdon al. Finden* in the County of *Northampton*, Baronet and Doctor of Divinity, Lord of the Manour of *Yeoveney*, in the Pariſh of *Staines*, in the County of *Middleſex*; by Virtue of the ſeveral Acts of Parliament lately made, for the Preſervation of the Game, have made, nominated, authorized, conſtituted, and appointed, and by theſe Preſents do make, nominate, authorize, conſtitute, and appoint, *Joſeph Redding*, the Younger, of *Yeoveney* aforeſaid, in the ſaid Pariſh of *Staines* and County of *Middleſex*, Huſbandman, to be my Game-Keeper of and within my Manour of *Yeoveney* aforeſaid, of all and all Manner of Game, of what Kind or Nature ſoever, which now is, or hereafter ſhall be, upon or within the Bounds, Limits, or Precincts of the ſame, with full Power and Authority, according to the Directions of the Statute in that Caſe made and provided, to kill any Hares, Partridges, Pheaſants, Fiſh, or other Game whatſoever, upon or within my ſaid Manour, and the Bounds, Limits, and Precincts of the ſame: And alſo to take and ſeize all ſuch Guns, Grey-Hounds, Setting-Dogs, and other Dogs, Hare-pipes, Snares, Low-Bells, Ferrets, Tramels, Hays, Tunnels, or other Nets or Engines, for the taking, killing, or deſtroying of Hares, Partridges, Pheaſants, Fiſh, or other Game, within my ſaid Manour, and the Precincts thereof, that ſhall be kept or uſed by any Perſon or Perſons, not legally qualified to do the ſame: And further to act and do all and every Thing and Things which belongs to the Office of a Game-Keeper, purſuant to the Directions of the ſaid Act of Parliament. And laſtly, I do direct that the Name of the ſaid *Joſeph Redding* be entered as ſuch Game Keeper of my ſaid Manour, with the Clerk of the Peace for the ſaid County of *Middleſex*, purſuant or according to the Act or Acts of Parliament in that Caſe made and provided. In Witneſs whereof, I have hereunto ſet my Hand and Seal, the ſecond Day of *July*, in the Year of our Lord 1741. *J. DOLBEN.*'

Sealed and Delivered, being firſt duly ſtamped, in the Preſence of
JAMES AFFLICK,
THO. BURLINGSON.

Middleſex. Theſe are to certify, that the Name of the within mentioned *Joſeph Redding* is this Day entered in my Office, purſuant to the Statute in ſuch Caſe made and provided. Dated this 29th Day of *January*, 1741.

P. WALTER, *Clerk of the Peace*, Middleſex.

[*Joſeph*

* He makes a conſiderable Figure in the next Trial but one.

[*Joseph Redding* the Elder sworn.]

Q. Do you know the Place where this unhappy Case happened?

Redding. Yes.

Q. Give an Account of what you know.

Red. I was in the next Field, called *Chantry Mead.* This, where the Accident happened, is called the *Hare Mead.*

Q. What Manour is it in?

Red. It is in *Yeovney* Manour, which belongs to Sir *John Dolben.*

Q. Where were you when this happened?

Red. I was in *Chantry Mead.*

Q. How far were you off then?

Red. As near as I can guess, it is about forty Pole.

Q. What did you observe there?

Red. I saw my Son and Mr. *Annesley* coming up.—I did not know who they were till they came up.

Q. Did you see them immediately after the Accident happened?

Red. Yes, presently.

Q. How did they behave upon this Occasion?

Red. They were so trouoled they could hardly wag or speak: My Son said he was afraid the Man was killed; and he said to Mr. *Annesley*, How did you do it? Mr. *Annesley* said, I did not think of the Gun's going off.

Q. You say you saw them coming up; did you observe them when the Accident happened?

Red. Yes, I looked at them all the while.

Q. How was the Gun carried when it went off?

Red. Just as I may hold this Sword. [*Holding it in his Right Hand, hanging down near the Pocket a few Inches from his Body, almost upon a Level.*] He had it in one Hand, as I have the Sword now.

Q. Did he express himself concerned?

Red. He was so concerned, that he did not run ten Pole before he fell down, and beat himself thus upon the Belly, and said, *What have I done?*

Q. Did you ever hear of any Quarrel between him and this Man?

Red Never.

Mr. Serj. *Gapper.* [*on the Cross-Examination.*] Where did you stand when the Accident happened?---*Redding.* In *Chantry Mead.*

Q. Is there not a Hedge between *Chantry Mead* and *Hare Mead?*

Red. Yes, I believe there is.

Q. How could you see through the Hedge?

Red. It is a new Hedge not above a Yard high, and I could see any Thing that was doing there as clear as I can see you.

Q. Was *Annesley* with his Face or his Back towards you?

Red. He was Side-ways to me.

Mr. Serj. *Gapper.* Why *Chantry Mead* is North of *Hare Mead*; then his Face could not be towards you?

Red. No, I say his Side was towards me.

Mr. Serj. *Gapper.* You were speaking as to this being a Manour; how do you know it to be a Manour?

Red. Because there have been Courts kept there.

Mr. Serj. *Gapper.* By whom?---*Redding.* By Sir *John Dolben.*

Q. What is *Sylvester?*---*Redding.* He occupies this Ground: I lett the Farm to *Sanders*, and *Sanders* letts it to him.

Q. On which Side of *Hare Mead* does the River lie? Is it East, West, North, or South?---*Redding.* It is about South.

Q. Does not this River belong to another Person?---*Redding.* No.

Q. Has not Sir *John* granted the Fishery to any Body?

Red. I rent the Fishery; the Fishery belongs to me.

Q. Do you depute your Son to look after this?

Red. No, Sir *John Dolben* deputes him.

Q. How came Sir *John Dolben* to appoint your Son to be Game-keeper?

Red. Because they robbed me daily.

Q. Have you assigned that Fishery to any Body?

Red. No, I have not.

Q. Who owns the Land on the other Side?

Red. I believe my Lord *Dunmore* is the Landlord.

Q. Was you standing up when the Gun went off, or sitting?

Red. I was standing up.

[*William Duffell* sworn.]

Q. Do you know *John Eggleston*, the Son of *Thomas Eggleston?*

Duf. Yes.

Q. Have you ever had any Conversation with him about this Matter?

Duf. Yes: On this Occasion he was at my House; I desired him to tell the Truth: He said he would; and then told me, that as he and his Father were fishing, they saw the Prisoner, *Redding*, coming up; that he desired his Father to give him the Net, and he would run away with it, but his Father would not let him; that then *Redding* came up and demanded the Net; that *Thomas Eggleston* said he should not have it, and then threw the Net into the River; and in the mean time the other Gentleman came up, and shot him; that *John Eggleston* jumped into the River, and cut the Line of the Net, to pull it out on the other Side; and that when the Gun went off, and his Father dropped down, Mr. *Redding* said to the other Gentleman, *Lord, Sir, what have you done!* and then they both run home. Mr. *Abraham Eggleston*, who was present, asked him, if he saw Mr. *Annesley* pull the Trigger of the Gun; and *John Eggleston* answered, that he could not tell. I asked him, if there was any Quarrel or Words that had passed between them, and he said No.—I said it was very surprising to me, that this Gentleman should come and shoot his Father, and nothing more pass between them: I then asked him, in what manner he held the Gun; he had a Stick in his Hand, and shewed in what manner the Gun was held in his Hand, thus *(in his Right-hand, the Arm hanging down near the Pocket, some Inches from his Body, and near upon a Level; which was the same Manner that old* Redding *said the Gun was held).* I asked, if he thought he did it wilfully; he said he could not tell.

Q. How long was this Discourse after this Accident happened?

Duf. About four Hours.

Q. Did you ever see this *John Eggleston* before, for he says he knows nothing of you?

Duf. I have known him these eight Years, and he has been frequently at my House.

Q. What Character has he?---*Duffell.* I cannot say much in his Behalf; his Father could not manage him at all.

Q. What Business did he follow?

Duf. His Father was a Carpenter, and he worked with him.

Q. When did he leave *Staines?*

Duf. Soon after this Accident happened.

Q. Where has he been ever since?

Duf. I have seen him at the *White Horse* in *Piccadilly*; and I heard at *Staines* that he was sent for to *London.*

Q. Did the Man at the *White Horse* come down for him to *Staines?*

Duf. I did not see him there.

Mr. Serj. *Gapper.* You say he was at your House; who gave you Directions about advising him to speak the Truth?

Duf. Nobody: Mr. *Abraham Eggleston* advised him the same Thing.

Q. Who was there?

Duf. Nobody but Mr. *Abraham Eggleston* and myself; I was desired to go and see how the Man came to be killed, and *John Eggleston* came to me about Eight o'Clock.

Mr. Serj. *Gapper.* You say he could not say it was wilfully done; so he did not say it was accidentally done.

Duf. No, he did not say it was.

Mr. *Brown.* Do you apprehend he had hold of the Gun by the Barrel, near the Lock?

Duf. I understood by *Eggleston*'s manner of holding the Stick, that he meant that Mr. *Annesley* had hold of the Gun about the Middle of the Barrel.

[*John Dalton* sworn.]

Q. What Discourse had you with young *Eggleston?*

Dalton. On the *Sunday*, when the Prisoner at the Bar was carried to *Laleham*, to be examined, I went there: The Company dined at the *Grey Hound* at *Laleham*; I staid and drank half a Pint of Wine there, and immediately afterwards *John Eggleston* came to the Door, and called me out of the Room, and said he wanted to speak with me. When I came out, he said he wanted to ask my Advice concerning this Accident: I said, I wonder you should ask my Advice, when you have Relations to advise with; he said, I thought fit to ask you, as you are my Master. While we were talking, *Samuel Sylvester* came out, and said I was persuading the Boy to sell his Father's Blood: The Boy said, What do you mean, you Fool you? My Master is persuading me to no such Thing. I then asked him, whether he thought it was accidentally done or not; he said, he believed it was accidental, rather than any other thing. I said to him, Well, if you think so, you will be examined when you come before Sir *Thomas Reynell*, I desire you would not forswear yourself, but be very careful what you say.

Q. What Character has the Boy?

Dalton. He was very irregular, and used to lie out.

Q. How do you know that?---*Dalton.* He was my Servant.

Q. What Trade are you?---*Dalton.* I am a Butcher.

Mr. Serj. *Gapper.* You say he has a bad Character; do you think he would forswear himself?

Dalton. I can say nothing to that.

Mr. Serj. *Gapper.* When was it you had this Discourse with him?

Dalton. On the *Sunday*, at the *Grey Hound* at *Laleham.*

Mr. Serj. *Gapper.* Was there any Talk of Money then?

Dalton. Yes, the Boy said he had been offered Money.

Q. But you say, he said he would not sell his Father's Blood?

Dalton. No; I said *Samuel Sylvester* came and said I was persuading him to sell his Father's Blood; and the Boy said, My Master did not persuade me to any such Thing.

Mr. Serj. *Gapper.* Are you sure that this is true?

Dalton. Yes, I am; I think I am in my Senses.

Mr. Serj. *Gapper.* What did you say to him afterwards?

Dalton. I told him, he had lost his Father, and had no Friend to take care of him, and he knew best what he had to do.

Q. Did not you say it was better to take Money, than hang the Man?

Dalton. No; I said, I thought, by what he told me, that the Man was in no danger of being hanged; and therefore he had better take Money than endeavour to hang a Man, that he thought did not do it designedly.

(Mr. Higgs, *belonging to the Clerk of the Peace, being sworn, produced the Book wherein all the Game-keepers of all the Manours in the County of* Middlesex *are entered; (Reads)* Sir *John Dolben*, of *Northamptonshire*, Baronet, to *Joseph Redding* the Younger, dated 2 *July*, 1741. Entered 29 *January*, 1741.)

[Mr. *Richard Chester* sworn.]

Q. Give us an Account of what you know of this Matter.

Chester. I drove the Chaise from my own House to the *Red Lyon* at *Brentford*, and then to the *Grey Hound* at *Laleham*; I went up to young *Eggleston*, and asked him, how this unfortunate Thing happened; whether it was done designedly, or happened by Accident.

Q. Where was this?

Chester. This was at *Laleham:* He said he believed it was accidental; for he did not believe any Gentleman in cool Blood would do any such Thing wilfully.

Q. Do you know any Thing with respect to the Net?

Chester. I think he said Mr. *Annesley* was stooping to the Net, in order to take it, and the Gun went off.

Q. Did he say any Thing how Mr. *Annesley* held the Gun?

Chester. I had the Chaise-whip in my Hand, and desired him to shew me how Mr. *Annesley* held the Gun; he took the Whip in his Hand, and held it so, *(which was much the same Position as* Redding *and* Duffell *said he held it in)* I think it was rather nearer the Handle than the Middle of the Whip that he held it.

Mr. *Brown.* Did you see the Wound? Where was the Wound?

Chester. I understood it was somewhere about the Hip.

Mr. *Brown.* I ask you, whether you think he could have shot him in the Hip, if he had held the Gun that Way?

Chester,

Chester. I think he could not have shot him there, if he had held it any other Way.

Mr. *Brown.* Pray do you know of any Money being offered by any Person in your Presence to young *Eggleston?*——*Chester.* No.

Mr. *Broun.* Nor any Reward of any Sort?

Chester. No.—My Lord, I had forgot to mention one Thing. After this, *Eggleston* spoke to Mr. *Annesley* the Prisoner, and shook Hands with him; and *Eggleston* said, he was very sorry for what had happened; but said, he did not think he did it designedly; and then drank a Glass of Wine to him.

Court. Did they shake Hands, or drink the Wine first?

Chester. Both at the same Time, as near as could be.

Mr. Serj. *Gapper.* Did you see this?——*Chester.* I did see it.

Mr. *Brown.* I ask you, whether the Prisoner at the Bar is not married to your Daughter-in-Law?

Chester. My Lord, if your Lordship thinks I ought to answer this Question, I will.

Court. The Relation is very small; but if they insist on their Question, you must answer it.

Chester. The Prisoner is married to my Daughter-in-Law.

Q. They ask this Question in hopes of its being of Service to them in another Affair, for it cannot be of any in this; though I hope he has got a very good Wife.

(*John Paterson* sworn.)

Q. Mr. *Paterson*, I think you did attend the Coroner's Inquest upon this Occasion; please to give an Account how *Eggleston* behaved then, and what he said.

Mr. *Paterson.* My Lord, I will; but first beg Leave to make an Apology for appearing as a Witness on behalf of the unhappy Gentleman, for whom I am concerned as an Attorney: I do it because in an Affair of so great Consequence to him, I think he has a Right to my Evidence; and I do it with less Scruple, as I am his Attorney without Fee or Reward. My Lord, on the 4th of *May* I went to *Staines*, to attend the Coroner's Jury; though, as I had not Time to enquire into the Fact, and prepare for Mr. *Annesley*'s Defence, I could do him but little Service, more than by cross-examining the Witnesses for the Crown, and making Observations on their Evidence; one of the Witnesses was *John Eggleston*, who has been examined here.——

Court. As to any Thing in his Behaviour, you may give Evidence; but not of any Thing that was reduced into Writing.

Mr. *Paterson.* I can only speak as to what he said before the Coroner; and I admit the Depositions, taken at that Time, were reduced into Writing by the Coroner or his Clerk.

[*Mr.* King, *the Coroner, sworn, who produced his Minutes of the Depositions made before him.*]

Mr. Serj. *Gapper.* Were these drawn up when *Eggleston* was examined, or afterwards?

Mr. *King.* They were not drawn up afterwards; they were drawn up at the same Time.

Q. Read them as far as they relate to *John Eggleston.*

Mr. Serj. *Gapper.* Did *Eggleston* sign his Deposition?

Mr. *King.* He did not.

Mr. Serj. *Gapper.* As this Gentleman is Coroner, what he has taken down ought to be signed by the Deponent; and if it is not, I humbly apprehend it cannot be read.

Counsel for the Prisoner. The Gentlemen may chuse whether they will have the Minutes read, or whether we shall give parole Evidence, to prove what *Eggleston* said at that Time.

[*The Counsel for the Prosecutor preferring the Minutes, they were read, and are as follows:*]

May 4, 1742.

[*Depositions relating to the Death of* Thomas Eggleston, *who was shot in the Parish of* Staines, *in the County of* Middlesex.]

John Eggleston, Son of the Deceased, living at *Staines*, saith, That on *Saturday*, the 1st of *May*, he and his Father went a-fishing in one *Sylvester*'s Grounds; and says, that one *Joseph Redding* came up, and laid hold of his Father, and demanded his Net; upon which his Father said he should not have it; then the Prisoner, *James Annesley*, came up, and said, *Damn your Blood, surrender your Net, or you are a dead Man*; and, upon his Refusal, the Prisoner held up his Piece to his Shoulder, and presented his Piece to the said *Eggleston*, near to the middle Part of his Body, on his Left Side, and shot the said *Eggleston*, who died presently after. Says, the Gun was cocked before he came, and that the Piece went off before his Father's Refusal to deliver the Net. He says, the Deceased clapped his Hand to his Side, and said, *You Rogue, you have shot me, I am a dead Man.* That after the Discharge of the Piece, his Father dropped instantly. Says, that when he saw his Father shot, he took his Knife and cut the String of the Net, and jumped into the River; upon which the Prisoner said, *He has got the Net*, and went to strike at him with the Butt End of the Gun; and said, *Let us go on the other Side of the River, and fetch it.* Says, That *Redding* had hold of the Deceased by the Collar, when the Piece went off. Says, he was not offered any Money by any Body.

Counsel for the Prisoner. This is the 4th of *May*, and he now says, that on the 2d of *May* he was offered Money at *Laleham.*

Mr. Serj. *Gapper.* Are these all the Minutes that you took?

Mr. *King.* My Clerk was there; these were all that he mentioned that he took: If I may say any Thing more from my Memory, I will do it.

Q. Then we will go upon the parole Evidence.

Mr. Serj. *Gapper.* When an Officer has taken Things down in Writing, it is of dangerous Consequence to admit parole Evidence to be given of the same Things.

Q. We do not insist upon it.

(The Reverend Mr. *Eusebius Williams* sworn.)

Q. Sir, do you know *John Fisher?*——*Williams.* Yes.

Q. Had you any Talk with him about *Eggleston*'s being killed?

Williams. I happened to be at *Laleham*, and heard the Depositions that were made before Sir *Thomas Reynell: Fisher* said, if he was examined before the Justice, he would declare what *Eggleston* had said to him.

Q. What was that?

Williams. Fisher told me, that *Eggleston* said he did not believe the Gentleman killed his Father designedly; but that it was an Accident.

Q. Do you know how this young Man *Eggleston* came from *Staines* to *London*, and who has had the Keeping of him since?

Williams. I know nothing but by Hear-say.

Q. Was you never at the *White Horse* in *Piccadilly?*

Williams. I never was there since this Accident.

[Mr. *Bethune* called.]

Mr. Serj. *Gapper.* My Lord, this is another Person that is brought to contradict the Evidence of *Eggleston*, in what he said with respect to the Position of the Gun.

Prisoner's Counsel. Eggleston said the Gun was pointed downward. Now we shall shew you, from the Nature of the Wound, that it was morally impossible it should be so; for the Wound is slanting upwards.

[*James Bethune* sworn.]

Q. Sir, you are, I think, a Surgeon at *Brentford*: Did you see the Body of this *Eggleston* that was killed at *Staines?*

Mr. *Bethune.* On *Sunday*, after the Accident, my Lord, I happened to be at *Laleham*, and Sir *Thomas Reynell* gave me Leave to come in and hear the Depositions: I was afterwards sent for by Mr. *Perkins*, a Surgeon at *Staines*, to attend at the opening of the Body before the Coroner; there were several of the Coroner's Jury in the Room. I found the Wound on the Left Side, about an Inch and an Half below the Ridge of the Hip-bone: The Wound I apprehend to be about an Inch and an Half wide; I found it went into the Cavity of the Belly.

Q. Did the Wound go upwards or downwards into the Belly?

Bethune. When I found it went into the Cavity of the Belly, I remembered in what Manner *Eggleston* held the Gun when he was before Sir *Thomas Reynell*, to shew how Mr. *Annesley* held it when he fired: I remember very well he held it to his Shoulder, slanting downwards; I attempted to put my Probe into the Wound, in the same Direction as he described the Gun; but there was no Passage for it in that Position; it would not go in downwards: Then I put it in, in this Manner, cross the Belly, and it went in without Obstruction, and then upwards, and it went in with the same Ease, in this Manner. I observed several large Blisters, full of black Serum on the Right Side, opposite to the Place where the Shot went in; the Blisters, which were on the opposite Side, were three or four Inches higher than where the Wound was—the Wound was on the Left Side, and the Blisters on the Right: When I found this was so plain to me, I desired it might be as plain to the Jury, and every one there, as it was to myself, because this was a Matter of Fact, and not of Judgment; and I desired the Foreman to come and put the Probe in, and try; he did so, and found the Wound as I have described it; I was the more careful in this, because I had observed the Evidence that the Boy gave on the *Sunday*, and there was some Variation between that and the Nature of the Wound; therefore I desired them to take the more Notice of it; and said, *Gentlemen, I shall have Occasion to speak to this by and bye, and therefore I hope you would mind what I say to you.*

Q. What do you think those Blisters on the other Side were occasioned by?

Bethune. I apprehend they were occasioned by the Force of the Powder; and that if the Shot had gone through, it must have come out three or four Inches higher on the other Side than it went in.

Mr. Serj. *Gapper.* According to your Account, could he, holding the Muzzle of the Gun upwards, have made this Wound?

Bethune. He could not have made it with the Muzzle downward.

Q. Did you observe how the Wound was upon the Bone, and whether there were any Shot remaining in the Wound?

Bethune. No, Sir; but I found some Shot in the Cavity of the Belly.

Mr. *Brown.* Now the Question is, Whether the Shot, coming upon this Bone, might not be thrown upwards?

Bethune. No; for the Shot went through the Bone, so that the Gun must have been held obliquely, pointing upwards: The Shot could not have gone through in that Direction, if the Muzzle of the Gun had pointed downwards. This is not Matter of Judgment, but I have given you Demonstration of it.

Mr. Serj. *Gapper.* You say the Wound went from the Left Side to the Right, and that if the Muzzle of the Gun was downwards, the Wound would be in the same Manner?

Bethune. Certainly, Sir; if the Muzzle of the Gun is held downward, the Shot cannot go upward.

Foreman of the Jury. He makes it appear, that the Prisoner could not hold the Gun to his Shoulder, but that it was held horizontally; and that it was impossible for him to wound him in the Manner the Boy has described, if the Muzzle of the Gun had been pointed downward.

Bethune. I beg Leave to speak a few Words more to your Lordship. While I was giving in this Evidence before the Coroner and his Jury, if your Lordship remembers, I said I had shewed them how the Wound was; therefore I desired them to consider, how consistent it was with the Evidence that Mr. *Eggleston* had given: I believe I proved it to the Coroner's Jury, and others that were there, that it was impossible it could be done in that Manner, if the Gun was held, as he said, to his Shoulder; upon that he comes up again, and, says he, *The Gentleman stooped when he did it.*

Counsel for the Prisoner. This shews how he departed from what he had said; for he said first, that Mr. *Annesley* stood upright when he fired; and then that he stooped, in order to make his Evidence correspond with the Wound.

[*John Perkins*, Surgeon, sworn.]

Q. Did you see the Body of *Thomas Egglestone?*

Mr. *Perkins.* I opened the Body on the 4th of *May*, and, on Inspection, I found one Wound about an Inch and an Half Diameter; on the lower Part of the Left Side, it passed through the Spine of the *Os Ilium* about an Inch and an Half below the Ridge of the Hip-bone: I put in my Probe seven or eight Inches, by which, and likewise upon Inspection, I found it run horizontal, a little upon the ascending. I put my two Fingers into the Cavity of the Bone, and shewed the Jury how it was; and observed on the contrary Side four or five Blisters, which I think to be occasioned by the Force of the Powder from the other Side; but the Shot did not go through the Skin.

Court. I ask you, whether these Blisters were higher or lower than the Wound?

Perkins

Perkins. Four or five Inches higher, my Lord.

Mr. *Brown.* Do you think theſe Bliſters were occaſioned by the Shot?

Perkins. I apprehend they were, becauſe there were no other Bliſters on any other Part of the Body.

[Mr. *King* the Coroner called again.]

Q. Was any Application made to you, at any Time, to ſend Mr. *Annesley* a Priſoner to *Newgate?*

Mr. *King.* Yes, I think it was Mr. *Giffard*; he came along with another Gentleman, whoſe Name, I think, is *Carrington.*

Q. What, Captain *Carrington?*

King. I believe it was: I ſaid, I think the Gentleman is ſecure enough (there was a Lord mentioned, but I cannot remember that he was named: Mr. *Giffard* wiſely kept him from ſaying who it was); I thought it was too ſevere to ſend him to *Newgate*; and ſaid, that Sir *Thomas Reynell* was the Juſtice of Peace who committed him, and he had taken ſufficient Care about it.

[*Paul Keating* ſworn.]

Q. Do you know any thing of *Eggleſtone?*

Keating. Yes.

Q. Where did you come acquainted with him?

Keating. At the *White Horſe* in *Piccadilly.*

Q. What Countryman are you?

Keating I came from *Ireland* on board a Merchantman from *Waterford:* I was recommended to the Earl of *Angleſea*, to ſay what I know as a Witneſs about the Eſtate.

Q. How came you to the *White Horſe?*

Keating. There was one *Lawler*, that came over in the ſame Ship. When I came to Town, I went and inquired for him at the Earl of *Angleſea*'s, and he ſent me to the *White Horſe* in *Piccadilly* to live, and there I came acquainted with *Eggleſtone.*

Q. After your Acquaintance, do you remember any Converſation with him, about what he was to have for ſwearing in this Cauſe?

Keating. I do, my Lord, remember mighty well; a little Time after he came to the Inn, he and I got acquainted together, and went out a-walking to ſee the Town, and particularly on a *Sunday* Morning; the *Sunday* after he came to *Piccadilly.*

Q. What Month was that in?

Keating. In the Month of *May:* I believe it was the ſecond *Sunday* in *May.* As we were walking abroad, I aſked him how he came to live there; ſays he, I am here at the Expence of the Earl of *Angleſea.*

Court. This is not proper: If you can call any body to contradict *Eggleſtone* you may; but this is reflecting upon a noble Perſon's Character.

Q. Did he tell you how he came to be at that Inn?

Keating. He told me, that Mr. *Williams*, who keeps the *White Horſe*, brought him from *Staines*; and that he ſhould be very well provided for, if he would proſecute the Gentleman who is now in Cuſtody for this Murder; and he deſired I might contrive ſome way that he might get the Money ſecured, and I wrote two or three Drafts of Notes for 200 *l.* and he took Copies of them.

Q. How came he to take Copies of them?

Keating. Becauſe I did not care my Hand ſhould be known. I have a Copy of one of them in my Pocket, [*Reads.*]

I Promiſe to pay to Mr. Thomas Eggleſtone [that is his elder Brother] *or his Order, at or upon the* 10*th Day of* June *next, the Sum of* 200 *l. Sterling, for Value received from his deceaſed Father and him in Carpenters Work,* &c. *Witneſs my Hand this* 10*th Day of* May, 1742.

This was to be ſigned either by *Williams*, or my Lord *Angleſea.*

Q. Do you know of any Diſcourſe with *Patrick Lawler?*

Keating. Yes; he is my Lord *Angleſea*'s Servant.

Court. What *Lawler* ſaid is not Evidence, unleſs to contradict him, and he has not been examined.

Q. Have you ever ſeen the Earl of *Angleſea* at the *White Horſe?*

Keating. He is there often.

Q. What, has the Earl of *Angleſea* any Thing to do there?

Keating. His Coach and Horſes are kept there.

Q. How long have they ſtood there?

Keating. They ſtand there conſtantly.

Mr. Serj. *Gapper.* What was that Note for?

Keating. It is only a Copy of what I wrote for *Eggleſtone*; for, as I told the Court before, I did not care that my Hand ſhould be ſeen in any ſuch Thing as Bribery and Corruption.

Mr. Serj. *Gapper.* Where was this Note ſigned?

Keating, I cannot ſay whether it was ſigned or not; he told me it was to be ſigned.

Q. Did not you put this into *Eggleſtone*'s Head?

Keating. No, upon my Oath, I did not.

Mr. *Brown.* Did not you receive Money to go ſomewhere, and you and he went and ſpent the Money?

Keating. I received a Crown to go to *Woolwich.*

Q. How came you not to go to *Woolwich?*

Keating. I had not a mind to go.

Mr. Serj. *Gapper.* So you had a mind to make *Eggleſtone* drunk with this Crown?——*Keating.* That is a different Caſe.

Q. Did not you treat him?——*Keating.* Yes, I did.

Q. What Reaſon had you to treat him?

Keating. Becauſe he had no Money of his own.

Mr. Serj. *Gapper.* So you had a Crown to go to *Woolwich*, and did not go?——*Keating.* I did not go, indeed.

The Evidence for the Priſoners being gone through,

Court. If the Jury ſhould be of Opinion that the Gun went off by Accident, the Homicide muſt, in Point of Law, be either Manſlaughter, or Chance-Medley: I ſhould be glad, in that Caſe, to make it Chance-Medley; but, in order to that, it muſt appear, that what Mr. *Annesley* was doing was perfectly lawful, otherwiſe he will be guilty of Manſlaughter.

The other Priſoner, *Redding*, had certainly, by virtue of his Deputation, and by force of the Acts of Parliament made for the Preſervation of the Game, Authority to ſeize the Deceaſed, who was clearly acting in Violation of thoſe Laws. But it is doubtful whether the Authority of a Game-Keeper, being perſonal, the other Priſoner acted lawfully in aſſiſting him.

The Subſtance of the Arguments by the Counſel for the Priſoners (viz. *Mr.* Hume Campbell, *Mr. Serj.* Hayward, *Mr.* Clarke, *Mr.* Wyrley, *and Mr.* Smith) *was as follows.*

My Lord, although a Game-Keeper's Authority be perſonal, we ſubmit to your Lordſhip, that, as the Deceaſed was confeſſedly doing an unlawful Act, Mr. *Annesley*'s catching at the String of the Net, which the Deceaſed had thrown away, and which might be only to prevent its falling into the Water, was not ſuch a Treſpaſs in him, as will alter the Nature of the Conſequence, and make that Manſlaughter, which appears to have been, in fact, a moſt unfortunate Accident.

We humbly apprehend, My Lord, that it is not neceſſary, that the Act Mr. *Annesley* was about, when the Accident happened, ſhould be ſtrictly legal; if it was an Act of an indifferent Nature, not an unlawful one, we hope it will be ſufficient to excuſe him from the Guilt of Manſlaughter.

If a Man throws a Stone into a Place of publick Reſort, and kills another, that will be Manſlaughter, becauſe the Act itſelf was unlawful, ſuppoſing that diſmal Conſequence had not followed it.

But if a Man is playing at Bowls, and undeſignedly kills another, there, as the firſt Act was of an indifferent Nature, the Law will not impute the Accident conſequential to it as a Crime.

As to Mr. *Annesley*'s entering the Cloſe that belonged to *Sylveſter*, whatever it might be with regard to him, it was an Act of an indifferent Nature with reſpect to the Deceaſed, who claimed no Property in the Ground, and conſequently had no more Right to be there than Mr. *Annesley*, unleſs you will ſuppoſe him to have had the Owner's Conſent, which, as it was not proved, may and ought, with equal Juſtice, to be ſuppoſed in Favour of the Priſoner.

The young Man's Evidence being put out of the Caſe (and conſidering the Manner in which he contradicted himſelf, and has been contradicted by others, what he ſays, we apprehend, ought to ſtand for nothing), Mr. *Annesley*'s Act appears to be no more than ſtooping to prevent the String of the Net from falling into the River; in doing of which, ſuppoſe a Piſtol had gone off in his Pocket, would it not be the hardeſt Caſe in the World, to ſay that this Accident ſhould make him guilty of Manſlaughter?

But allowing it neceſſary that the Act Mr. *Anneſley* was doing muſt be lawful, we hope to ſhew your Lordſhip, that Mr. *Annesley*'s Interpoſition in this Caſe was ſo.

There are two Acts of Parliament relating to the Game applicable to this Caſe; the one made in the 22d and 23d Years of *Charles* II. *Chap.* 25. and the other in the 4th and 5th Years of *William* and *Mary*, Chap. 23.

The firſt recites, that divers diſorderly Perſons, laying aſide their lawful Trades, betake themſelves to the ſtealing of Conies, Hares, Pheaſants, Partridges, and other Game, with Nets and other Engines.

For Remedy whereof it enacts, That all Lords of Manours may, by Writing under their Hands and Seals, authorize one or more Game-Keeper or Game-Keepers, within their Manours; who, being ſo authorized, may ſeize ſuch Nets, or other Engines, as ſhall be uſed by any Perſon or Perſons prohibited to keep or uſe the ſame.

Then it recites, that divers idle, diſorderly, and mean People do betake themſelves to the ſtealing of Fiſh out of Ponds, and other ſeveral Waters and Rivers, to the great Damage of the Owners thereof.

Therefore it enacts, That if any Perſon or Perſons ſhall uſe a Caſting-Net in any River, *&c.* without the Conſent of the Lord or Owner of the ſaid Water; and being thereof convicted before any Juſtice of the Peace, ſhall give the Owner ſuch Satisfaction (not exceeding treble Damages) as the Juſtice ſhall appoint, or be committed to the Houſe of Correction. And that it ſhall be lawful for the Juſtice to deſtroy all ſuch Nets, or other Engines, wherewith ſuch Offenders ſhall be taken or apprehended

The other Act of Parliament recites, That divers good and neceſſary Laws had been made for Preſervation of the Game; notwithſtanding which, or for want of the due Execution thereof, the Game had been very much deſtroyed by many idle Perſons, who afterwards betake themſelves to Robberies, Burglaries, or other like Offences, and neglect their lawful Employments.

For Remedy whereof it enacts, That no Perſon or Perſons ſhall have or keep any Net or Engine for taking of Fiſh, except the Owner or Occupier of a River or Fiſhery. And that it ſhall be lawful for ſuch Owner or Occupier, and all and every other Perſon or Perſons, by him or them or that Purpoſe appointed, to ſeize, detain, and keep, to his and their own Uſe and Uſes, every Net or Engine which they ſhall find uſed, or in the Cuſtody or Poſſeſſion of any Perſon or Perſons whatſoever, fiſhing in any River without the Conſent of the Owner or Occupier.

Now the Queſtion which your Lordſhip puts upon us to argue, is, Whether a Perſon duly authorized under theſe Acts of Parliament, being reſiſted in the Execution of his Office, can legally call any other Perſon to his Aſſiſtance?

Your Lordſhip will conſider we are arguing in favour of Life, and therefore will conſtrue theſe Laws in the moſt beneficial Manner for the Priſoner, and the rather, becauſe ſuch Conſtruction will tend to put the Laws themſelves in force, which were intended for ſecuring Men in their Property from the Violation of idle and diſorderly Perſons.

Theſe Acts ſuppoſe the Offenders to be deſperate People; for it deſcribes them to be ſuch as afterwards betake themſelves to Robberies and Burglaries; and likewiſe ſuppoſes (what is alſo true in fact) that they go in Numbers to deſtroy the Game.

That Circumſtance ſeems to imply, that a Game-Keeper, or other Perſon duly appointed, may, in ſuch Caſes, call in other Perſons to his Aſſiſtance.

To conſtrue the Law otherwiſe, would render it ineffectual; for it is abſurd to ſuppoſe, that every Lord of a Manour, or Owner of a Fiſhery, ſhould appoint as many Game-Keepers as there may be Perſons inclined to invade his Property. This would entirely tend to defeat the Security intended by the Law, and therefore can never be agreeable to the Meaning of the Legiſlators.

As theſe are late Acts of Parliament, it cannot be expected that we ſhould produce Caſes directly in Point, and Reſolutions of the Judges, on the Conſtruction of thoſe Acts in this Queſtion.

But ſuppoſe, upon ſome of the Acts of Parliament made againſt Smugglers, an Officer of the Revenue, or at the Common-Law a Conſtable, being

being reſiſted in the Execution of his Office, calls in other Perſons in the Neighbourhood to his Aſſiſtance, and Miſchief or Death enſues; might not thoſe Perſons avail themſelves of the Authority veſted in the Officer or Conſtable, ſo as to be juſtified in what they do, for the manifeſt Support and Execution of the Law?

A Man has undoubtedly a Right to drive away Cattle, which he finds *Damage faiſant* in his Ground. Suppoſe then he ſhould deſire a Stranger to aſſiſt him, could the Owner of the Cattle maintain an Action againſt the Stranger for the Treſpaſs, in driving his Cattle?

Suppoſe, in the preſent Caſe, the Deceaſed had not unfortunately been killed, and had brought an Action againſt the Priſoners for an Aſſault, might not the Defendants (one of which was Game-Keeper) have pleaded ſpecially, and juſtified under the Act of Parliament? And ſurely, whatever in Pleading would have been a Juſtification in ſuch a Caſe as this, will be a ſufficient Excuſe.

But we apprehend, that, in all Caſes where the Law makes Offences puniſhable by Juſtices of the Peace, whoever ſees a Perſon committing ſuch an Offence, has a Right, without any ſpecial Authority, to take him up, and carry him, together with the Inſtrument of his Offence, before a Juſtice, in order to his Conviction; and that whatever is neceſſary for this Purpoſe is lawful.

If this was not Law, Offenders would, in moſt Caſes, eſcape with Impunity; for, obſerving themſelves to be diſcovered, they would hardly ſtay till the Obſerver could reſort to a proper Authority; and, being mean and unknown Perſons, might never afterwards be found.

Even the young Man, who was ſo very forward in giving his Evidence, admits that his Father and he were actually fiſhing, that is, committing an Offence againſt theſe Acts of Parliament; that *Redding*, who had a legal Authority, came up firſt to the Deceaſed, and demanded the Net; that the Deceaſed refuſed to deliver it; and that, whilſt they were ſtruggling for the Net, Mr. *Annesley* came up and ſnatched at it.

Upon the Whole, we hope Mr. *Annesley* was well warranted to go to *Redding*'s Aſſiſtance; and that the unhappy Accident, that fell out at that Time, ſhall not be imputed to him as a Crime, but conſtrued to be no more than Chance-Medley.

The Subſtance of the Arguments by the Counſel for the Proſecutor, viz. *Mr. Serj.* Gapper, *Mr. Serj.* Wynne, *Mr.* Brown, *and Mr.* Johnſon, *was as follows:*

My Lord, the Counſel for the Priſoners have undertaken to juſtify under two Acts of Parliament.

As to the 22d and 23d of *Charles* II. we beg Leave to obſerve, that the Clauſe impowering Lords of Manours to appoint Game-Keepers, with Authority to ſeize Nets, does not extend to Fiſheries. The Clauſe which relates to Fiſhing, only directs that the Offenders ſhall be puniſhed, upon Conviction, before a Juſtice of Peace; but does not impower any one to ſeize either them or their Nets. The regular Way, undoubtedly, is to lay a Complaint before a Juſtice of the Peace, who is to grant his Warrant for apprehending the Offender, and then, upon Conviction, he may deſtroy the Net. Beſides, it was ſworn by old *Redding*, that this was his Fiſhery; if ſo, Sir *John Dolben* had no Authority at all to appoint a Game-Keeper to take care of it, and, conſequently, even the Deputation itſelf is void.

But if it was not void, yet ſtill the Power is perſonal, and cannot be delegated to another, and therefore cannot ſerve to excuſe Mr. *Annesley*, who appears to have acted officiouſly, without being called upon by any Body.

As to the other Act of Parliament, the 4th and 5th of *William* and *Mary*, that no ways relates to Game-Keepers; but only impowers the Owners or Occupiers of Fiſheries, or Perſons by them for that Purpoſe appointed, to ſeize the Nets; ſo that this Power is confined to old *Redding* himſelf, and it does not appear he has appointed either of the Priſoners; and therefore, as they had no Authority at all, they were Treſpaſſers, and muſt anſwer for the Conſequences.

As to the liberal Conſtruction of the Acts of Parliament, which the Gentlemen contend for, we ſay, that, at the Common Law, every Man had a Right to fiſh in Rivers; and conſequently thoſe Statutes are an Abridgment of the Common Law, and therefore to be ſtrictly conſtrued. By the ſame Rule of Conſtruction, which they inſiſt upon, any Man may claim a Right to come every Day, and ſearch another's Houſe for Nets and Engines for deſtroying of Game. But what Murders, beſides other Inconveniences, muſt be the Conſequence of ſuch an unlimited Power, we leave all the World to judge.

We admit that this is a new Caſe, and therefore the Caſes put of a Conſtable, whoſe Office is as ancient as any in the Kingdom, are by no means parallel. We inſiſt, therefore, that the Priſoners, at leaſt Mr. *Annesley*, having been Wrong-doers, muſt anſwer for the Conſequence, which being the Death of one of his Majeſty's Subjects, make them guilty of Manſlaughter, ſuppoſing the Gun went off by Accident.

Then Mr. Hume Campbell *ſaid in Reply:*

My Lord, I beg Leave to trouble you with a few Words, on Behalf of the unhappy Gentleman who ſtands charged before you with a Crime which affects his Life.

If that Conſequence was the Motive for the Charge, he may rely upon the Juſtice of this Court as his Security; to your Juſtice he has ſurrendered himſelf, and equally truſts in that and his Innocence.

In arguing the Point now before the Court, I may take it for granted, that the Gun went off by Accident, without Mr. *Annesley*'s knowing it; and only conſider, whether his interpoſing to aſſiſt *Redding* was or was not lawful.

My Lord, I take it for a general Rule, that all Perſons, on Requeſt, not only may, but are bound by their Duty and Allegiance, to aſſiſt legal Officers in the Execution of their Duty.

I ſhall not repeat any of the Evidence; the Court will remember, that a Requeſt of the Game-Keeper's, or what amounts to ſuch, has been proved.

I mentioned the Caſe of a Conſtable, which the Gentlemen of the other Side endeavour to diſtinguiſh from that of a Game-Keeper, by ſaying, that his Power is great, and that his Office is very ancient. I admit both theſe Poſitions; but inſiſt, that his Power does not ariſe from the Antiquity, but from the Legality of his Office.

A Game-Keeper is a legal Officer, particularly appointed under the Acts of Parliament for the Preſervation of the Game: He is for that Purpoſe fully impowered to put the Laws, relating to the Game, in Execution; Nobody can legally reſiſt him, and conſequently the Deceaſed and his Son were doubly criminal; firſt, in breaking the Law, and then in reſiſting the legal Officer, who came to put that Law in force.

What did Mr. *Annesley* do in this Caſe? He ſtooped to take up the Net, which the Deceaſed had unlawfully thrown into the Water, to prevent the Game-Keeper from ſeizing it.

Eggleſtone had abandoned it; and will any one maintain, that when a Treſpaſſer throws away the Inſtrument of his Crime, it is unlawful in another Perſon to take it up? Nay, the Aſſiſtant of him to whom the Statute gives it?

They ſay a Man may as well go every Day into People's Houſes, under Pretence of ſearching for Nets, *&c.* No, they cannot do that by Law; every Man's Houſe is his Caſtle; and the Law has provided, that he ſhall not be moleſted there without a ſpecial Authority. Nor is there the ſame Reaſon for that, as there is for ſeizing Offenders in the actual Commiſſion of the Offence. The very Caſe they put, implies the Offender may be found and come at by the ordinary Forms; but in the other, he may not be known, and will hardly ſtay till you apply for a Warrant to apprehend him.

So that the Neceſſity of the Thing makes that reaſonable and lawful in the one Caſe, which, for Want of that Neceſſity, is not ſo in the other.

That a ſpecial Authority, my Lord, is not neceſſary in all Caſes, will hardly be diſputed; a Conſtable, if the Law is broke in his Preſence, may, by Virtue of his general Power, take Cognizance of the Offence, and arreſt the Offender.

In the preſent Caſe, the Game-Keeper, who is a legal Officer, and in Nature of a Conſtable for this particular Purpoſe, ſaw the Deceaſed a-fiſhing, and conſequently had a Right, without any ſpecial Warrant, to ſeize him, and when reſiſted, to call Mr. *Anneſley* to his Aſſiſtance.

It is ſaid, the Acts of Parliament are an Abridgment of the Common Law, and therefore ſhould be conſtrued ſtrictly. My Lord, no Man, by the Common Law, had a Right to fiſh in another's Property. It was an Offence at the Common Law; it is *Malum in ſe*; and the Statutes, that have been mentioned, only make that Offence puniſhable by a Juſtice of Peace; as they tend therefore to ſecure the Property which a Man had at the Common Law, they are an Addition to the Common Law, fixing a Puniſhment for the Breach of Law; and therefore to be ſo conſtrued, as will beſt anſwer ſo ſalutary an End.

If it is a new Caſe, as the Gentlemen ſeem to lay a Streſs upon it, let us conſider what will be the Conſequence of your Lordſhip's Determination, if it ſhould be againſt us.

The Law, my Lord, I apprehend, will become vain and idle; for if Offenders get together in any Number, it will be impoſſible for a Game-Keeper to reſtrain them.

Nay, my Lord, the Law itſelf will become a Snare to all who have not the Act of Parliament in their Pocket, to tell them they muſt not interfere; for ſuppoſe a Perſon, legally appointed under an Act of Parliament, going to do his Duty, is reſiſted, can it be imagined that his Fellow-Servant, his Neighbour, or his Friend, would not think himſelf juſtified, nay bound to aſſiſt him, when he ſees his Authority thus trampled upon?

At moſt, my Lord, it could be only an imprudent Act in Mr. *Anneſley* to interpoſe; but we hope your Lordſhip will not conſtrue it to be ſuch an unlawful Act as will make him a Treſpaſſer, and ſo guilty of Manſlaughter.

Your Lordſhip will pleaſe to obſerve, that it depends intirely on the Credit of *Eggleſtone*, whether this Gentleman did any Thing or not. Before your Lordſhip directs the Jury as to this, it is my Duty to acquaint your Lordſhip, that there is an Indictment on the Coroner's Inqueſt, and likewiſe an Indictment on the Black Act, againſt the Priſoner Mr. *Anneſley*.

Court. That is for ſhooting maliciouſly: But there is no Evidence tending that Way.

Mr. Serj. *Gap.* My Lord, we deſire to call ſome Evidence to ſupport the Character of *John Eggleſtone*.

Q. For what? We have called no Witneſs to impeach it.

Court. Have you not examined every Witneſs that has appeared to the Boy's Character? If you could have called more, it is to be ſuppoſed you would have done it.

[*John Gardner* ſworn.]

Mr. Serj. *Wynne.* Do you know this young *Eggleſtone?*---*Gard.* Yes.

Mr. Serj. *Wynne.* How long have you known him?

Gard. Seven or eight Years.

Mr. Serj. *Wynne.* What is he, as to his Honeſty and Veracity?

Gard. He is like other Boys, ſometimes good, ſometimes indifferent.

Mr. Serj. *Wynne.* I do not mean as to a little Unluckineſs: But do you think, from his general Behaviour, that he would forſwear himſelf?

Gard. No, I do not think that he would.

[*Thomas Sylveſter* ſworn.]

Mr. Serj. *Wynne.* Do you know this *Eggleſtone?*

Syl. Yes, I have known him about three Years; he lived by me at a Butcher's.

Mr. Serj. *Wynne.* What was he, as to his Character and Behaviour?

Syl. He was ſometimes idle, and given to Play.

Mr. Serj. *Wynne.* Do you think he would forſwear himſelf?

Syl. No, I do not think he would.

[*Samuel Sylveſter* called.]

Mr. Serj. *Wynne.* How long have you known this Boy?

Samuel Syl. I have known this Boy a good while.

Mr. Serj. *Wynne.* What is his general Character; do you think he would forſwear himſelf?---*Samuel Syl.* I have had no Converſation with him, ſo I do not know what he is.

[*William Palmer* ſworn.]

Mr. Serj. *Wynne.* Do you know young *Eggleſtone?*---*Palmer.* Yes.

Mr. Serj. *Wynne.* How long have you known him?

Palmer. I have known him as long as I have known any Perſon of his Age: He came of very honeſt Parents.

Mr. Serj. *Wynne.* Do you think he would forſwear himſelf?

Palmer. I do not think he would forſwear himſelf.

Q. Upon your Oath, do you not think he is much addicted to Lying?

Palmer. Why, that is not taking a falſe Oath.

[*Patrick Lawler* ſworn.]

Mr. Serj. *Wynne.* Do you know *Paul Keating?*

Lawler. I have known him ever ſince the 18th of *March* laſt.

Q. What is his general Character?

Lawler. I do not know his general Character; but I know he has behaved very bad of late.

Q. Did you never offer him any Money to keep out of the Way, and not appear at this Trial?

Lawler. No, not I; but he ſaid he would give them a Rowland for their Oliver.

Q. Do you know what he meant by that?

Lawler. No; only that he ſaid if my Lord *Angleſea* did not give him Money, he would turn Evidence on the other Side.

Q. What did you think he meant, when he ſaid, if my Lord *Angleſea* did not give him Money, he would turn Evidence on the other Side? Why ſurely my Lord is not concerned in this Proſecution! But pray, Sir, you have given a bad Account of Mr. *Keating*, how came you and he acquainted?

Lawler. This *Keating* and I came over together from *Ireland* in the ſame Ship; he told me, there were ſome Evidences on board that were coming over to ſwear away my Lord *Angleſea*'s Eſtate: Said he, there are three Women and two Men, and I have diſcovered the whole Thing, how they are bribed to come here; and if I come to *London*, ſaid he, I will give my Lord *Angleſea* an Account of it.

Q. Pray, Sir, tell us what became of *Keating* when he came to Town?

Lawler. Soon after he arrived he found me out, and ſo I told Mr. *Jans* I thought he might depend upon this Man, becauſe I had ſeen him in *Briſtol*; ſaid I, I ſpeak to you about this Man out of Charity; for he is very poor: Then ſays Mr. *Jans*, *Let him go to the* White-Horſe *in* Piccadilly; and then he wanted Cloaths and Money; and, ſays he, *If they do not give me Cloaths and Money, I will ſwear that the Earl of* Angleſea *was to give a Note to young* Eggleſtone *to ſwear upon this Trial.*

Q. What do you think he meant by his giving a Rowland for an Oliver? Whether it reſpected this Cauſe, or related to my Lord *Angleſea*'s Eſtate?

Lawler. I cannot tell what he meant.

Then the Court proceeded to ſum up the Evidence as follows:

Gentlemen of the Jury, the Priſoners at the Bar, *James Anneſley* and *Joſeph Redding*, ſtand indicted for the wilful Murder of *Thomas Eggleſtone*, by giving him one Wound on the Left-ſide of the Belly, in the Pariſh of *Staines*, of which he inſtantly died: The Indictment ſets forth, that *Anneſley* fired the Gun, and gave the Wound, and that *Redding* was aſſiſting and abetting him in the doing of it: And they ſtand a ſecond time indicted on the Coroner's Inqueſt for the ſame Murder; and there is another Indictment againſt the Priſoner *Anneſley*, for feloniouſly, wilfully, and maliciouſly ſhooting this Man, againſt the Statute of the Ninth of King *George* the Firſt. The firſt Evidence that is called by the Proſecutor is *John Eggleſtone*; he ſays his Father and he went a-fiſhing up the River, till they came to *Samuel Sylveſter*'s Ground; that they had a Net, and the String of the Net was about his Father's Arm; that when they got about the Middle of the Field, they ſaw the Priſoners coming up; that *Redding* came up firſt, and went to lay hold of the Net, and his Father threw the Net into the River, about two Yards from him; and that *Annesley* then came up and ſaid, *Damn your Blood, deliver your Net, or you are a dead Man*, and fired directly: and that he ſhot him near the Bottom of the Belly on the Left-ſide; that his Father ſaid, *You Rogue, what have you done? I am a dead Man*; that he, the Witneſs, took a Knife out of his Pocket, to cut the String of the Net from his Father's Arm, and leaped into the River, and dragged the Net to the other Side of the River; and that *Annesley* ſaid, *The Rogue has got his Net, let us go on the other Side*; that he ſaw *Betteſworth*, *Fiſher*, and *Bowles*, on the other Side of the River, and told them he believed his Father was dead; that they came over the River, and adviſed him to get a Surgeon; upon which he went to one *Charles Cole*, but he did not come: that then he went for *Ruſſel* the Conſtable, to ſearch for the Priſoners, and ſays they found the Priſoner *Annesley* in a Place about five or ſix Foot above the Floor, in an Out-houſe, upon ſome Rubbiſh; that they carried him to the Round-Houſe; that he ſtaid there all Night, and the next Day they carried him to *Hounslow:* He ſays the Gun was cocked, but he cannot tell when he cocked it: He ſays Sir *Thomas Reynell* came into *Hounslow* while they were there; and that by his Order they went to the *Grey-Hound* at *Laleham*; and that one *Lane*, *Cheſter*'s Son-in-Law, offered him 100*l.* a Year; that Mr. *Annesley* ſaid he had not 100*l.* a Year; to give him, for he had more to provide for; but he might have 50*l.* a Year, if he would not come againſt him: He ſaid he had no Converſation with one *Duffell*, but that he had with *Dalton*; he ſays, he has ſometimes dined at *Williams*'s Table; and that he did not tell *Paul Keating* he was to have 200*l.*

The next Witneſs that is produced is *John Betteſworth:* He ſays, that *Eggleſtone* and his Son were in *Sylveſter*'s Ground, on the other Side of the River, and he ſaw the Priſoners come out of *Redding*'s Ground into *Sylveſter*'s, and when they were in the Middle of the Ground they ran after them: He ſays, *Joſeph Redding* was too nimble for *Eggleſtone*'s Father; but whether he had him by the Collar, he cannot ſay: He ſays, that the Gun went off ſoon after Mr. *Anneſley* came up to old *Eggleſtone:* He ſays, he ſaw the Smoke and Fire of the Gun; and came up ſoon after *Eggleſtone*'s Father was ſhot. He ſays, he and *Fiſher*, and *Bowles*, croſſed the Water; and that *Anneſley* and *Redding* ran away; that *Eggleſtone* was not quite dead when he came over, but was not able to ſpeak; and ſays, he ſaw the Net on the other Side of the River: He ſays, there was a Place in a Waſh-houſe, about ſix Foot from the Ground, and there they found Mr. *Anneſley*; that it is a Place where they put Hoops, and other Rubbiſh: He ſays, that when Mr. *Annesley* was taken, he ſaid, he wiſhed to be killed, for being inſtrumental in the taking away an innocent Man's Life. That about half an Hour before this Accident happened, he ſaw Mr. *Annesley* offer to ſhoot at a Crow.

John Fiſher is called next; he ſays, he ſaw young *Redding* in the Ground with another Man; but cannot ſay that *Annesley* is the Man; and that he ſaw there, two Men running after *Eggleſtone* and his Son; that *Redding* laid his Hand, he thinks, on *Eggleſtone*'s Shoulder; and there was a Sort of a Scuffle between them; and he that carried the Gun carried it in a Form to ſhoot; and he that carried the Gun was very near *Eggleſtone* when the Gun went off: and he ſays, he ſaw *Joſeph Redding*, and the other Man, go away; and he ſays, he was at this Time 169 Yards off. It ſeems the Ground has been meaſured, and that is the Reaſon they are ſo particular in it: he ſays, *Eggleſtone* had Money offered him in his hearing; he would have had a Hundred a Year; but Mr. *Annesley* ſaid, he could not give him an Hundred a Year, for he had other People to do for: But he would give him Fifty; and that *Eggleſtone* afterwards ſaid, he would not ſell his Father's Blood; and he ſaid, that *Eggleſtone* afterwards told him, he believed the Gentleman did not do it wilfully; but that the Boy, being afterwards aſked how he could ſwear againſt the Gentleman, when he had ſaid he believed he did not do it wilfully; he ſaid, he did not remember any thing of what he had ſaid to him; and he ſays he has been in the ſame Story ever ſince the Accident happened, excepting that one Time.

The next Witneſs, Gentlemen, is *Samuel Sylveſter*; and he ſays, when Mr. *Annesley* came out of that Place where he was found, he trembled very much: he ſays, he rents this Land of one *Sanders*, who took it of *Redding*'s Father: he ſays, *Eggleſtone* uſed to work ſometimes with his Father in the Buſineſs of a Carpenter, but that he has lived ſome time at the *White Horſe*, in *Piccadilly*.

This is the Subſtance of the Evidence for the Proſecutor.

The Priſoner Mr. *Annesley*, in his own Defence, ſays, that he is very ſorry for the Accident that has happened; that theſe Perſons were poaching in the Manour that belongs to Sir *John Dolben*; that they did go up to them, but that you cannot ſuppoſe he had any Spite againſt a Man he never ſaw in his Life; he ſays that he had a Gun in his Hand, and that the Gun went off by Accident. The other Priſoner *Redding* ſays, he is Game-keeper to Sir *John Dolben*; that he ſaw theſe Men fiſhing, and went to take the Net; that he heard the Gun go off, and ſaw the Man fall down, and then he ſaid to Mr. *Annesley*, Lord bleſs me, I hope you have not killed the Man! and that it was done accidentally.

To prove their Caſe, they called the following Witneſſes. The firſt is, Mr. *Staples*; he ſays, this is Sir *John Dolben*'s Manour, and that he has held Courts there.

The next Witneſs, Gentlemen, was *Thomas Burlingſon*, and he proves a Deputation of the ſecond of *July* 1741, from Sir *John Dolben* to *Joſeph Redding* the younger, and thereby he is appointed his Game-keeper, to ſeize the Nets, &c. of any Perſon who ſhall deſtroy any Game, or Fiſh, in his Manour; and in the Book which is kept for the Entry of theſe Things for the County of *Middleſex*, it appears that the Entry was made the 29th of *January* 1741, which was before the committing of this Fact.

Then *Redding*, the Father of *Joſeph Redding*, is called, and he ſays, the Fiſhery belongs to Sir *John Dolben*, who is Lord of the Manour; that he lett the Ground called *Hare Mead* to *Sanders*; and that the ſame is now in the Poſſeſſion of *Sylveſter*. That he himſelf was in *Chantry Mead* (which is next to the *Hare Mead*) when this Accident happened: That when he came up to them, his Son ſaid, he was afraid the Man was killed, and aſked *Annesley* how he came to do it? To which *Annesley* anſwered, He did not think of the Gun's going off; he ſays, they ſeemed very much troubled and concerned: being aſked the Poſition of the Gun when it went off, he ſays, Mr. *Annesley* held the Gun in one Hand, and that it hung down by his Side.

The next Witneſs, Gentlemen, is *William Duffell*; and he ſays, that ſome Hours after the Accident happened, *John Eggleſtone* came into his Houſe; and the Man that brought him to his Houſe, deſired him to ſpeak the Truth; and the Account the Boy gave at that Time was, that *Redding* came up to his Father, and demanded the Net, and that his Father ſaid he ſhould not have it, and threw it into the River; that then Mr. *Annesley* came up, and the Gun went off, and his Father was ſhot. He ſays, that *Abraham Eggleſtone* particularly aſked the Boy whether he ſaw Mr. *Annesley* pull the Trigger of the Gun? and that he ſaid he could not tell; that then he aſked him if there were any Words between them? and he ſaid, No; that then this Witneſs ſaid, it was a ſtrange Thing that Mr. *Annesley* ſhould ſhoot his Father, and have no Words with him: That being aſked in what manner the Gun was held, *Eggleſtone*, with a Stick which he had in his Hand, ſhewed them in what Manner Mr. *Annesley* held the Gun: He ſays the Stick was in his Hand, hanging down by his Side. He ſays, that *Eggleſtone* then was aſked, if he thought *Annesley* did it wilfully, and that he ſaid he could not tell. Being aſked as to the Boy's Character; he ſays he has but an indifferent Character, that he cannot ſpeak in the Praiſe of him, and has heard his Father often complain of him.

The next Evidence is *John Dalton*; and he ſays, that the next Day after the Accident, he went to *Laleham*, and there *Eggleſtone* told him, he believed it was an Accident, and not done deſignedly. He ſays the Boy has but an indifferent Character, but believes he would not forſwear himſelf.

The next Witneſs is *Richard Cheſter*, and he ſays, that he aſked the Boy at *Laleham*, whether it was accidental or wilful; and that he ſaid he believed it was an Accident; for he did not believe any Gentleman, in cool Blood, would deſignedly ſhoot another; he ſays he had a Whip in his Hand, and deſired *Eggleſtone* to ſhew him how Mr. *Annesley* held the Gun; that he took the Whip in his Hand, and ſhewed him; that he held it in his Hand, hanging down by his Side; and he ſays he ſaw *Eggleſtone* ſpeak to Mr. *Annesley*; that he ſhook Hands with him, and drank a Glaſs of Wine, and ſaid he did not think he did it deſignedly.

Mr. *Paterſon* was then called to prove what the Boy ſaid before the Coroner; but his Examination being taken down in writing, I did not think proper to allow of Parole Evidence.

Then Mr. *King* the Coroner was called; and he produced the Minutes of the Depoſitions, taken the 4th of *May* at *Laleham*, before the Inqueſt. The Minutes have been read, by which it appears that *Eggleſtone* depoſed, that as his Father and he were fiſhing in *Sylveſter's* Ground, *Redding* came up, and laid hold of his Father, and demanded his Net, which his Father refuſed; that then *Annesley* came up and ſaid, "Damn your Blood, ſurrender your Net, or you are a dead Man;" that he held up his Piece againſt his Shoulder, and ſhot him directly: And his Father ſaid, "You Rogue, you have ſhot me, I am a dead Man." And, Gentlemen, his Depoſition before the Coroner likewiſe ſays, that when he ſaw his Father was ſhot, he took his Knife, and cut the String of the Net; and that

that then Mr. *Anneſley* went to ſtrike him on the Head, with the Butt End of the Gun. And he ſwears in his Depoſition, that he was not offered any Money by any Body. Then they produced Mr. *Euſebius Williams*, and he ſays, *John Fiſher* told him, that *John Eggleſtone* had ſaid he did not believe Mr. *Anneſley* killed his Father wilfully, but that it was done by Accident.

Then *James Bethune*, a Surgeon, is produced, and he ſays he ſaw the Body; that he examined and probed the Wound; and he ſays it was an Inch and an half below the Ridge of the Hip-bone, and an Inch and an half wide; and that when he put his Inſtrument downwards, it would not go in; but it would go in when the Probe was put upwards, or croſs the Belly.

The next Witneſs is *John Perkins*, a Surgeon: he ſays he opened the Body the 4th of *May*, to be inſpected by the Coroner's Inqueſt; and there was a Wound an Inch and a half Diameter. He put in his Probe ſeven or eight Inches, and found the Wound a little horizontal, about an Inch and an half below the Hip-bone; he ſays there were Bliſters on the other Side of the Body, and they were four or five Inches higher than the Wound. Mr. *King* ſays, that Mr. *Giffard*, who is the Sollicitor in this Proſecution, made Application to him to commit Mr. *Anneſley* to *Newgate*; but he thought that was too ſevere, as Sir *Thomas Reynell* was a Juſtice of the Peace, and had taken ſufficient Care of him.

Paul Keating ſays, he became acquainted with *Eggleſtone* at the *White Horſe* in *Piccadilly*, which is kept by one *Williams*; and that he, at *Eggleſtone*'s Deſire, drew a Note of 200 *l.* for him, and that the Boy, *Eggleſtone*, took a Copy of it.

Gentlemen, this is the Evidence given in Behalf of the Priſoners; and there has been Evidence given to ſupport the Character of *John Eggleſtone*.

John Gardener, he ſays he has known him ſeven or eight Years,---that he is like other Boys, ſometimes good, and ſometimes indifferent, but he does not think he would forſwear himſelf.

Sylveſter was called again, to *Eggleſtone*'s Character; he ſays he has known him about three Years, that he was ſometimes given to play, but believes he would not forſwear himſelf.

William Palmer ſays he has known him from a Child, and does not think he would forſwear himſelf.

Patrick Lawler ſays, he has known *Paul Keating* ſince the 18th of *March*; that becauſe he could not be ſupplied with Cloaths, as he expected, he was to ſwear, that the Earl of *Angleſea* was to give a Note to young *Eggleſtone*.

This is the State of the Evidence on both Sides.

Now, Gentlemen, you are to conſider, whether the Fact is Murder, Manſlaughter, or Chance-Medley: Murder, Gentlemen, in Point of Law, is, when a Perſon kills another with expreſs Malice and Deſign, or with implied Malice, as when it is without any Offence or Provocation; but if there is a ſudden Fray, and in that Fray and Heat of Blood, a Perſon is killed, that is Manſlaughter; now there are ſeveral Things in the Courſe of the Evidence proper to come under your Conſideration; you will obſerve that *Eggleſtone* ſwears Mr. *Anneſley* ſaid, "Damn your Blood, deliver your Net, or you are a dead Man," and that immediately the Gun went off, and the Man was ſhot; if he let the Gun off deſignedly, if this was the Caſe, though on a ſudden, he can be guilty of no leſs than Manſlaughter; but then you will conſider what different Things the Boy has ſaid; he has declared ſeveral Times, he did not believe he did it deſignedly; and according to what the Surgeons ſay, it is not probable to me, that this Wound could be given in the Situation he ſays Mr. *Anneſley* was in; for the Wound goes upwards; and if he held his Gun as the Boy has ſaid, the Wound could not have been as it is: Beſides that, he is expreſsly contradicted in the Fact itſelf by old *Redding*, who ſwears he ſaw the Gun go off, and that it was hanging by Mr. *Anneſley*'s Side. Gentlemen, as I ſaid before, the Queſtion you are to conſider of, is, whether this is Manſlaughter, or Chance-Medley in Mr. *Anneſley*; for as to *Redding*, he muſt certainly be acquitted; and as to Murder, I cannot think there is any Evidence to make Mr. *Anneſley* guilty of that; but as there was ſome hot Blood, there may be Reaſon to conſider, whether it is not Manſlaughter: On the other hand, if Mr. *Anneſley* was carrying his Gun by his Side, and it went off accidentally, then it will be Chance-Medley.

[*Then the Jury having conſidered of their Verdicts, without going out of Court.*]

Clerk of the Arraigns. Gentlemen of the Jury, are you agreed in your Verdicts?---*Jury.* Yes.

Clerk. Who ſhall ſay for you?---*Jury.* Our Foreman.

Clerk. James Anneſley, hold up your Hand.---*Joſeph Redding*, hold up your Hand.---Gentlemen of the Jury, look upon the Priſoners. How ſay you, is *James Anneſley* guilty of the Felony and Murder, whereof he ſtands indicted, or not guilty?

Foreman of the Jury. Not guilty of Murder, but guilty of Chance-Medley.

Clerk. How ſay you, is *Joſeph Redding* guilty of the ſame Felony and Murder, whereof he ſtands indicted, or not guilty?

Foreman of the Jury. Not guilty of the Murder, but guilty of Chance-Medley.

Clerk. How ſay you, is the ſaid *James Anneſley* guilty of the Felony and Murder, wherewith he ſtands charged upon the Coroner's Inquiſition, or not guilty?

Foreman of the Jury. Not guilty of the Murder, but guilty of Chance-Medley.

Clerk. How ſay you, is the ſaid *Joſeph Redding* guilty of the ſame Felony and Murder, wherewith he ſtands charged upon the Coroner's Inquiſition, or not guilty?

Foreman of the Jury. Not guilty of the Murder, but guilty of Chance-Medley.

Clerk. How ſay you, is the ſaid *James Anneſley* guilty of wilfully ſhooting at *Thomas Eggleſtone*, againſt the Form of the Statute, or not guilty?

Foreman of the Jury. Not guilty.

Clerk. Gentlemen of the Jury, hearken to your Verdicts, as the Court has recorded them. You ſay that *James Anneſley* is not guilty of the Felony and Murder whereof he ſtands indicted, but is guilty of Chance-Medley.

You ſay that *Joſeph Redding* is not guilty of the ſame Felony and Murder whereof he ſtands indicted, but is guilty of Chance-Medley.

You ſay the ſame upon the Coroner's Inquiſition.

You alſo ſay that the ſaid *James Anneſley* is not guilty of malicioufly ſhooting at *Thomas Eggleſtone*, againſt the Form of the Statute. And ſo you ſay All.

XXV. The Trial of the Right Honourable Richard Earl of Anglesea, Francis Annesley, Eſq. and John Jans, Gent. for an Aſſault on the Honourable James Annesley, Daniel Mac Kercher, and Hugh Kennedy, Eſquires, and William Goostry, Gent. before the Honourable *Richard Mounteney*, Eſq. ſecond Baron of his Majeſty's Court of *Exchequer*, and *St. George Caulfield*, Eſq. his Majeſty's Attorney-General, Juſtices of Aſſize for the *Leinſter* Circuit, on *Friday*, *Aug.* 3d, 1744, at *Athy*, in the County of *Kildare* in *Ireland**.

The Court being ſet at Eleven o'Clock, the Jury were called over, and anſwered to their Names; of whom the following Twelve were ſworn, to try the Iſſue joined between the Parties.

John Digby, Eſq.	Mr. *George Bradford.*	Mr. *Edward Harman.*
Henry Dickſon, Eſq.	Mr. *William Leban.*	Mr. *James Tyrrell.*
John Bagot, Eſq.	Mr. *John Berry.*	Mr. *Thomas Tyrrell.*
Mr. *Thomas Sherlock.*	Mr. *Samuel Mills.*	Mr. *Edward Ward.*

ANGUS BYRNE, one of the Perſons indicted for the Aſſault, is called into Court, and appears.

Clerk of the Crown. You ſtand indicted, for aſſaulting *William Gooſtry*, Gent. on the 16th of *September* laſt, do you ſubmit or traverſe?

Angus Byrne. I do ſubmit.

Clerk. You likewiſe ſtand indicted for aſſaulting *Hugh Kennedy*, Eſq. do you ſubmit or traverſe?---*Angus Byrne.* I ſubmit.

Clerk. You likewiſe ſtand indicted for aſſaulting *Daniel Mac Kercher*, Eſq. do you ſubmit or traverſe?---*Angus Byrne.* Submit.

Clerk. You likewiſe ſtand indicted for aſſaulting *James Anneſley*, Eſq. do you ſubmit or traverſe?---*Angus Byrne.* Submit.

Court. The Gentlemen of the Jury muſt have Pen, Ink and Paper.

Clerk of the Crown reads the Indictment, which is as follows:

County of Kildare. } THE Jurors for our Lord the King, upon their Oath ſay and preſent, that *Francis Anneſley* of *Ballyſax*, in the County of *Kildare*, Eſq. the Right Honourable *Richard* Earl of *Angleſea*, *Joſeph Lawſon*, late of the City of *Dublin*, in the County of the City of *Dublin*, Yeoman, *John Jans*, late of the ſame, in the ſaid County of the ſaid City, Gent. *Anguiſh*, otherwiſe called *Angus Byrne*, late of the ſame, in the ſaid County of the ſaid City, Yeoman, and *Michael Lacy*, late of the ſame in the ſaid County of the ſaid City, Yeoman; on the 16th Day of *September*, in the 16th Year of the Reign of our Lord *George* the ſecond by the Grace of God, of *Great-Britain*, *France* and *Ireland*, King, Defender of the Faith, and ſo forth, with Force and Arms, that is to ſay, with Swords, Sticks, and ſo forth, at the *Curraugh* in the ſaid County of *Kildare*, in and upon one *William Gooſtry*, a true and faithful Subject of our ſaid Lord the King, in the Peace of God, and of our ſaid Lord the King, then and there being, did make an Aſſault, and him then and there did beat, wound, and ill treat, ſo that his Life was greatly deſpaired of, and other Wrongs to him then and there did, contrary to the Peace of our ſaid Lord the King, his Crown and Dignity.

The like for aſſaulting the Honourable *James Anneſley*, Eſq.

The like for aſſaulting *Daniel Mac Kercher*, Eſq.

The like for aſſaulting *Hugh Kennedy*, Eſq.

Mr. *Diſney.* May it pleaſe your Lordſhip, the Right Honourable *Richard* Earl of *Angleſea*, *Francis Anneſley*, Eſq. and Mr. *John Jans*, do ſtand indicted on the 16th of *September*, 17 of *Geo.* II. for an Aſſault by them made, at the *Curraugh* of *Kildare*, in and upon the Honourable *James Anneſley*, which Indictment ſets forth, that on him then and there, they did make an Aſſault, and likewiſe on *Daniel Mac Kercher*, Eſq. *Hugh Kennedy*, Eſq. and Mr. *William Gooſtry*. I hope we ſhall be able to give ſuch Evidence, as will clearly prove the Allegations of the Indictments, and that your Lordſhip will direct the Jury to find for the Proſecutors.

Mr. *Harward.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Counſel this Day for the Proſecutors, Mr. *Anneſley*, Mr. *Mac Kercher*, Mr. *Gooſtry*, and Mr. *Kennedy*, and the Nature of this Caſe and Proſecution will appear to your Lordſhip and to the Jury, as I apprehend, in this Light; for I ſhall ſtate it from what I preſume to be true, and will appear to be ſo from the Examinations that are given in againſt

* Though this Trial was not 'till *Auguſt* 1744, after the *Trial in Ejectment*, (in *Ireland*) between Mr. *Anneſley* and the Earl of *Angleſea*, which began *November* 1743, (for Part of the *Angleſea* Eſtate) yet as THIS ASSAULT was in *September* 1743, previous to *that Trial*, we inſert it here, as proper to follow Mr. *Anneſley*'s Trial, (in *England*) for the Murder, and precede the *other Trial in Ejectment.*

the Traversers by those Gentlemen. And though this, my Lord, upon the Face of the Record, appears to be but an ordinary and common Assault, yet, if these Examinations are true, it will appear, that, had not the Hand of Providence very signally interposed in Preservation of their Lives, instead of a common and sudden Affray, it would have been a Crime of another Nature, it would have been a Crime of the deepest Dye, for which the Traversers must have stood a Trial for their Lives. I do not mean, my Lord, when I say it would be a Crime of another Nature, by that to bring it home as such to all the Traversers; no, I believe there may be one of them who had not such a wicked Intention; but as to others, it will appear to be a concerted, premeditated Assault, not to be satisfied by Bloodshed and Battery, but to pursue the Prosecutor, Mr. *Annesley*, to Death. If these Examinations are true, this is but one of the many Attempts that Lord *Anglesea*——

Mr. *Spring*. My Lord, I must submit it to your Lordship's Judgment, how proper this Gentleman is at this Time in this very elaborate and affecting Harangue. The Offence for which the Traversers are indicted is an Assault, which arose from an ordinary and common Quarrel at a public Meeting; but this Gentleman tells your Lordship that there was an Intention in the Traversers, or some of them, to commit what they are not now charged with, something of another Nature, which he makes a Crime of the deepest Dye. Pray, my Lord, how does this appear? Or, what Right has he upon the present Occasion, to assert any such Thing? There is no Indictment for such an Intention, nor any Foundation for such an Assertion; and therefore I humbly pray your Lordship will order that Gentleman, in conducting this Prosecution, to confine himself to his Duty, and direct him to open Evidence that is proper, and no more.

Mr. *Harward*. My Lord, I am very unfortunate, to be so often taken down by Gentlemen of great Experience and Knowledge, and must apply for your Interposition, else I shall not know how to proceed.

Court. Go on, Mr. *Harward*.

Mr. *Harward*. I was going on, as I apprehended I had a Right to do, and as I have observed to be the constant Practice in all Cases of this Kind, not to confine myself to the bare Assault, but to shew it in all its concomitant Circumstances, that the whole Truth of the Fact may appear to the Court; and the Reason why Experience justifies every body to do this is, because the Fine which the Court is to impose is discretionary, and will be greater or less in proportion to the Nature of the Offence; and therefore every thing is proper to be laid before the Court, that may be an Ingredient in their Consideration for the imposing that Fine. I say, then, my Lord, that this Assault, when it comes to be considered upon its Circumstances, will not appear to be the Effect of a sudden Passion, but to have proceeded from an implacable Enmity, that has pursued this unfortunate Client of mine from his Age of *nine* or *ten* Years old to this Day. I choose rather to read, as to this, the very Words of the Examinations in my Hand, than to trust to my own Representation of the former Attempts on his Life——

Mr. *Spring*. My Lord, I must call upon that Gentleman again to confine himself to the Fact and the Circumstances relative thereto, and hope, if he continues to offer any Thing so extremely improper, your Lordship will take notice of it, and direct him not to proceed.

Court. I think you go too far back, Mr. *Harward*.

Mr. *Harward*. My Lord, to be sure I am in your Lordship's Judgment, and therefore it is, when I understand it, I shall pursue it.

Court. It is extremely proper to mention the Circumstances attending this Fact, and the Nature of the Case, for the Reason you mention, that it may have a due Consideration in the Sense of the Court.

Mr. *Harward*. I desire to know, my Lord, whether I have a Right to lay any Circumstances before the Court and the Jury, to let them see whether this Assault was a premeditated Thing or not.

Court. Go on, Sir.

Mr. *Harward*. Now, my Lord, I can shew, out of these Examinations, that it was a premeditated Thing; for this Assault happened to be committed on the 16th. The first Day of the Meeting of Gentlemen on the *Curragh* of *Kildare*, to see the Diversion of the Races, was on the 14th of *September*; on the 14th and 15th there was no actual Assault committed; but there was a Behaviour, there was Language given, that was introductory, and pointed out most plainly what the Consequence would be, that in reality happened the third Day. I would be in your Lordship's Judgment, whether or no these two preceding Days are not connected with the following ones.

Court. Extremely proper.

Mr. *Harward*. Why then, I submit to your Lordship's Directions, and I shall not take the Liberty of mentioning of any of the former Attempts, or Injuries of the highest Nature, that my Client has suffered——

Mr. *Spring*. My Lord, this is for no other Purpose but to inflame the Minds of the Jury, and to captivate the Populace. There is no Injury, no Attempt of any Kind, real or pretended, but that on the 16th, that is to be considered by the Jury.

Court. The Jury will be told, by and bye, that the single Point they are to consider is the Fact of the Assault only. Go on, Mr. *Harward*.

Mr. *Harward*. I did mention that I would not enter into a Narrative of the former Attempts, but confine myself to the Passages of this Day. This Gentleman, as Son and Heir to the late Lord *Altham* (I hope the Counsel will give me the Liberty of telling who he is)——

Mr. *Spring*. There is no Occasion for that neither, at this Time.

Court. Go on, Sir, in stating the Case.

Mr. *Harward*. I say then, that Mr. *Annesley*, along with these other Gentlemen (some of them Men of Profession), came into this Kingdom in the latter End of last Summer, in order to assert and sue for that, which he apprehended to be his Right, the *Anglesea* Estate in this Kingdom: Mr. *Annesley* had brought an Ejectment for Recovery of Part of it, lying in the County of *Meath*, which was then depending; and Lord *Anglesea* had Notice of this, and knew the Errand these Gentlemen came of, to assist Mr. *Annesley* in his Affairs. He met them on the 14th at the *Curragh*; and the first Thing (for I shall mention the Facts in order of Time, as they happened, from the first to the third Day of the Races), the first Person that my Lord did the Honour to take notice of, was Mr. *MacKercher*. My Lord stood in a Circle of the Gentlemen of this Country, and of many of his own Attendants brought from another Country; and seeing this Gentleman, Mr. *MacKercher*, who came to attend Mr. *Annesley*'s Affairs, the first Thing that he was pleased to do was, to point to Mr. *MacKercher*, and say, *See yonder that Rogue, that Scoundrel, and that Villain* MacKercher: *It is not above a Month ago, though he is now dressed up like a Gentleman, since I saw those very laced Cloaths hanging in* Monmouth-street, *in* London. Mr. *MacKercher* (who is a Gentleman, and will appear in the Course of this Trial to have Resolution of another Kind) took no Sort of Notice of this publick Insult, as it was not his Business to venture the Conduct and Success of his Friend's Affairs in a rash, hot Quarrel, but very prudently passed it calmly and quietly by. That Day, my Lord, nothing more, that was remarkable, did happen: This was upon a *Wednesday*, I think the 14th. On the 16th, as these Gentlemen, for whom I am Counsel, were all in a Knot, they and their few Friends kept close together upon this *Curragh*, which is of great Extent, many Miles over; but no Place whatever could serve my Lord *Anglesea*'s Coachman, but to ride through and through them, to endeavour to trample down these Gentlemen and their Horses with his Coach-and-Six, and hunted them wherever they moved; and whenever he came near Mr. *Annesley*, this Coachman (you will guess easily by whose Directions) used to cry out, *There he is, there's the Sh e-boy, black your Ball*; and some other opprobrious Language I can't now recollect. And by this repeated Insult of driving these Gentlemen wantonly from Place to Place, and calling out to them in that opprobrious Manner, this Man was determined, with his Coach and Six, to be upon the Back of *them*, wherever they removed to avoid him. My Lord, he is indicted also, but does not appear, though he still is the Coachman of Lord *Anglesea*; his Name is *Joseph Lawson*. My Clients, my Lord, observing this Behaviour, like prudent Men, they began to be more than ordinary upon their Guard, and to fear the worst. As they were but few, and Strangers in the Kingdom, they thought that sticking together would be the only Means left in their Power to preserve them: But all Precautions were in vain. My Lord observing, that neither abusive Language, Words which must have pierced to the Heart of the meanest Vassal, nor the Coachman's driving his Coach at them, could have raised these Gentlemen's Tempers to take any Notice of it, another Expedient occurred to my Lord, to put his Purposes in execution. Mr. *MacKercher*, upon these repeated Abuses of himself, and of Mr. *Annesley*, having waited upon Lord *Anglesea*, with all the Address and Good-Manners imaginable, told him (without making the least mention of what happened to himself the Day before) *That he was come to acquaint his Lordship with the Rudeness of a Coachman of his to a Gentleman in the Field, and hoped his Lordship would do in it what became a Nobleman and Gentleman.* Lord *Anglesea* asked, *Who the Gentleman was?* He is told, Mr. *Annesley*. Upon that, my Lord, instead of having any Feeling whatsoever for the Transgression of this Coachman of his, *A Gentleman, Sir*, says he, *a blackguard Shoe-boy! I won't turn off my Coachman for any Abuse either to him or to you; and you are a Rogue and a Villain, and he is a Bastard, the Son of* Juggy Landy, *by my Brother*. With this, one of the Traversers, Mr. *Francis Annesley*, a Relation to my Lord, without any Provocation, gave Mr. *MacKercher* a Stroke over the Head with his Whip. Then my Lord began to insult him in a higher and louder Tone, and made a Proclamation to the Company, getting up and resting himself on his Stirrups, that his Voice should reach them all, that this Mr. *Annesley* was a Bastard. *I do*, says he, *declare before you all, that that Fellow is no Gentleman, but a Bastard of* Juggy Landy's, *a Kitchen-maid*; and continued his Abuse of Mr. *MacKercher* with the most scurrilous Language. As soon as Mr. *Francis Annesley* saw that his Relation's Blood was a little up, he repeated the Blow, and with the Butt-End of his Whip struck Mr. *MacKercher* on the Forehead, which stunned him in some Measure. This Blow was followed by some others; but however, Mr. *MacKercher* did not consider his own Safety, but turned about to take care of that which concerned him more than any Misfortune that could have attended himself; and there having laid his Eye upon Mr. *Annesley*, Mr. *Goostry*, and Mr. *Kennedy*, desired them to make the best of their Way off, or they would be murdered, and that he would follow; but before these Gentlemen could turn their Horses to gallop off, Mr. *Francis Annesley* was too nimble for them, and made a Stroke at Mr. *Goostry*, which cut him to the Skull; and he, with many other Persons, repeated these Blows, until there was scarce a Part of him which did not feel the Weight of Mr. *Annesley*'s Arm: He was stunned and knocked down by the first Blow, and continued under Cure of his Wound for a Month after. Mr. *Kennedy*, another of these Gentlemen, without the least Provocation, endeavouring to shift for himself, was most unmercifully beat by the Traversers, assisted by several other Persons unknown; and when stunned and knocked down, my Lord laid on him, until some of the People of the Country cried out to him, *For shame, for shame, for shame, don't kill him.* Mr. *Jans*, my Lord's Agent, I had like to have forgot, had not the least Hand in this Affray, but punctually observed his Lord's Orders, who cried out, *Knock them down, kill the Villains.* When they had thus levelled down Mr. *Annesley*'s Friends, who were his Guard, my Lord then thought it the proper Time to look out for him, and called out, *Where is the Dog, where is the Son of a Whore? kill him.* Mr. *Annesley*, according to the Intimation given him by Mr. *MacKercher*, that he was to be murdered, set Spurs to his Horse, and got out of the Croud; but a Servant of my Lord *Anglesea*'s, upon my Lord's Inquiry where Mr. *James Annesley* was, said he had galloped off. As soon as Lord *Anglesea* heard that Mr. *Annesley* had galloped away, who had no Hand in this Affray, or ever exchanged one Word with my Lord, I say, as soon as Lord *Anglesea* discovered that he had got safe out of the Croud, and that his Friends lay in the Condition I have now mentioned, he cried out to his Friends and Servants, *Follow the Rogue, pursue the Rascal, tear him Limb from Limb, and all that will support him.* He directed them, my Lord, to destroy not only him, but any who should have Humanity to endeavour to protect him. Then this noble Lord's Influence over this Croud will appear to be so absolute, that, to the Number of *Forty* or *Fifty* of them pursued this helpless Gentleman. He had a Horse, happily for him, of great Speed, and he made as good Use of it; he soon outstripped Mr. *MacKercher*, who followed him, and so got out of the Field, with this numerous Train of People, some with Sticks, some with Staves, others armed with Pistols and Hangers, pursuing of them both. Mr. *MacKercher*

Mac Kercher was neareſt to them, and overtaken by them; but however it will appear, that he was not intended to be the Victim of this Rabble that did purſue. I don't ſay that any of the Traverſers did purſue, but I ſay of this Rabble that did purſue, as they underſtood Mr. *Mac Kercher* not to be the devoted Head, though they overtook him, and he was the only Man that could have given the Lord *Angleſea* the leaſt Offence, they paſſed him by, but made all the Speed after Mr. *Annesley* they poſſibly could; and indeed, when he got into a Road that was leading to a neighbouring Town or Village, to *Newbridge*, where he lay the Night before, to ſeek for Protection, this enraged and furious Mob, thus armed and purſuing, came ſo cloſe, as that he thought it would be ſafer, or at leaſt more decent, to die with his Face toward them, than to be deſtroyed, behind his Back. He was called out to by ſome People, that had nothing to do with the Affair, that there were People with Piſtols at his Back, ready to ſhoot him; upon this, he turned his Horſe, and in the Turn the Horſe's hind Feet fell into the Ditch, and the Horſe fell upon this unfortunate Gentleman in the Ditch, and bruiſed him in a very terrible Manner. Whilſt he lay ſpeechleſs in this deplorable Condition, up came this Mob; and had it not been that one Mr. *Archbold*, who is a Gentleman of great Humanity, and well deſerves the Influence he has in that Country, interpoſed and reſcued him, half dead already in the Ditch, from their Violence, there had been a ſpeedy End put to all this Gentleman's Right and Pretence to the *Annesley* Eſtate, by an End being put to his Life. My Lord, we will ſhew your Lordſhip the Condition that this unfortunate Gentleman was in; how he lay in the Ditch till he was taken away ſpeechleſs and ſenſeleſs to *Newbridge*, in a Chaiſe, being not able to ride or ſtand, and his Life deſpaired of for ſome Months.

Now, my Lord, I have only one other principal Fact, concerning this Matter, to trouble you with, which I am inſtructed to charge Lord *Angleſea* with in the moſt expreſs Terms; and that is, when the Mob had returned from the Purſuit into the Field where Lord *Angleſea* was, ſome of them ſeeing him impatient to know what was done, they cried out to him, *By G——d, my Lord, he is killed, he is dead.* I cannot, without Violence to myſelf, mention what is ſaid to have dropped from that Lord upon the Occaſion, and would be pleaſed I could miſtruſt the Truth of it; but I am inſtructed to ſay he could not conceal the Emotions of Joy which he felt on theſe glad Tidings, but cried out, *I am glad of it, then all is well.* So, my Lord, this that was intended to be the moſt tragical Scene, and came within a Hair's Breadth of it, I ſay, by the Interpoſition of Providence, falls out to be this Day but a finable Offence; therefore I ſhall not trouble your Lordſhip any further with the Circumſtances of this Fact; they will come out more emphatically upon the Teſtimony of the Gentlemen, who have had more Reaſon to have felt them than I have. We ſhall examine but a few out of many Witneſſes, and ſhall endeavour to lay this Matter before your Lordſhip, without taking up more of your Time than an Offence of this publick Nature can deſerve from a Court of Juſtice.

Mr. *Mac Manus*. My Lord, as the Caſe has been ſtated to you, I ſhall trouble your Lordſhip but with a few Words; which are, that as the Circumſtances of this Aſſault will be a great Aggravation of the Crime, ſo will they increaſe the Puniſhment: And this, my Lord, will, in Evidence, appear to you to be an Offence of as rude, angry, and revengeful a Nature, as ever appeared in a Court of Juſtice. We have the Happineſs to have alive at this Day the Gentlemen thus aſſaulted, to ſhew your Lordſhip and the Jury the Danger and Violence of this Aſſault. I ſhall call one of the Gentlemen—Mr. *Mac Kercher*, who will tell you in what Manner and by whom he was aſſaulted, and (what will ſtill more heighten this Offence) the Quality and Dignity of the Offenders, the Time and Place where committed. My Lord, the *Curragh* of *Kildare* was the Place where this Aſſault was made; the Time when it was given, when thouſands of Perſons were aſſembled at a public Horſe-Race; one of the Offenders, a noble Peer of this Kingdom; and another of them in the Commiſſion of the Peace; and the Manner of it, which he will tell you, will appear to you to be without any the leaſt Provocation. This, Gentlemen of the Jury, will very particularly and very fully appear to you, from the Evidence which we ſhall lay before you.

Mr. *Morgan*. Here are four Perſons, my Lord, concerned in the four ſeveral Indictments now depending, and they are all included in each Indictment; but, I hope, if it appears that any one or more of them is not affected by the Evidence that ſhall be given on Behalf of the Crown upon any one particular Indictment, ſuch Perſon or Perſons ſhall be allowed to give Teſtimony on Behalf of ſuch of the Traverſers as ſhall be affected by the Evidence given on Behalf of the Crown on ſuch particular Indictment. Suppoſe, for the Purpoſe, it ſhould appear, upon the Indictment for the Aſſault upon Mr. *Mac Kercher*, that one or more of the Gentlemen mentioned in that Indictment is not guilty of the Charge laid in that Indictment, it would be againſt Reaſon that ſuch innocent Perſon ſhould not be admitted as a competent Witneſs on that Indictment, and highly injurious to ſuch of the Traverſers (as may be affected by the Evidence on Behalf of the Crown) not to have the Benefit of that Perſon's Teſtimony, who, by the Evidence on Behalf of the Crown, has no Guilt imputed to him on that particular Indictment; and may, perhaps, be able to give as good an Account of the Matters charged in that Indictment as any Witneſs on Behalf of the Crown can pretend to give. For this Reaſon, and in as much as theſe ſeveral Indictments are but mere Accuſations, I humbly conceive, that, after the Evidence for the Crown is given, the Jury ſhould be ſent out to conſider of their Verdict, as to ſuch of the Traverſers ſeparately, as we apprehend ſhall not be affected by the Evidence given on Behalf of the Crown on any one particular Indictment, and if they are acquitted, that we may be at Liberty to examine them as Witneſſes for the other Traverſers on that Indictment.

Court. This will be almoſt an Impoſſibility; it will be an impracticable Thing, as this Caſe is ſtated by Mr. *Harward*, to keep the Indictments ſeparate; but, however, I don't ſee that the going on with them all together will affect you in this Point.

Mr. *Morgan*. If the Gentlemen concerned for the Crown ſhall not, in the Courſe of their Examination, particularize the Indictment to which they produce this or the other Witneſs, but examine each Witneſs to all the Indictments generally; from thence a Neceſſity ariſes, on our Part, to take Notice what Witneſs or Witneſſes ſpoke to this or that Indictment, and to what Perſon or Perſons mentioned in this or that Indictment; for otherwiſe, according to this Scheme of including four Perſons in four ſeveral Indictments, a Man may loſe the Benefit of the Teſtimony of his moſt material Witneſſes, nothing more being neceſſary to be done to ſtrip him of that Benefit, than to have his Witneſſes included in the ſame Indictment with himſelf, be they never ſo innocent of the Charge contained therein; the Conſequences of which muſt be very fatal, if the Law has not preſcribed ſome Method, whereby ſuch Witneſſes, notwithſtanding ſuch Indictment, are to be at liberty to be examined; and I muſt beg Leave to rely upon it, that ſuch Method is known in Law, and is what I have before mentioned.

I ſay therefore, my Lord, if this Proſecution is to be managed and proceeded upon in that Manner, though any one or more of theſe Traverſers ſhould be guiltleſs as to three of the Indictments, yet he or they can't be examined for any of the other Traverſers upon all or any of thoſe three Indictments; becauſe all the Traverſers being upon their Trial upon the four Indictments at one and the ſame Time, and the Examination on Behalf of the Crown being applied to all the four generally, ſuch guiltleſs Perſon as to three of the Indictments, being guilty as to the fourth, cannot be examined upon any of them, becauſe by that means he may poſſibly ſet about ſwearing himſelf off of the Charge of the fourth Indictment, which perhaps by the Evidence on Behalf of the Crown might be brought Home to him. Suppoſe, for the Purpoſe, that Mr. *Jans* is innocent as to the Aſſault upon Mr. *Mac Kercher*, yet your Lordſhip will not ſuffer him to be examined upon that Indictment, becauſe there is another Indictment upon which he is on his Trial at the ſame Time, and upon which he may poſſibly be found guilty.

Court. You won't be under any Difficulty at all by proceeding upon all the Indictments together; for ſuppoſe now, Mr. *Jans* ſhall be affected with Evidence given upon two of theſe Indictments, but with none upon the third; why then I ſhall tell the Jury, that to ſuch an Indictment, and ſuch an one, they are to receive Evidence againſt Mr. *Jans*, and to ſuch not.

Mr. *Harward*. I apprehend this Courſe that we are proceeding in is the proper one, that the Court may be thoroughly ſatisfied of the Nature of the Fact.

1. *Daniel Mac Kercher*, Eſq.

Mr. *Malone*. I deſire, my Lord, that the Traverſer, who has now ſubmitted to the Indictments, may go out of Court, whilſt the other Witneſſes are examining.

Angus Byrne is ordered to withdraw.

Mr. *Mac Manus*. *Q*. Mr. *Mac Kercher*, were you aſſaulted at the Races of the *Curragh* by any and what Perſons—and in what Manner? Tell the whole Affair.

Mr. *MacKercher*. As well as my Memory can ſuggeſt, after ſo great a Diſtance of Time, I will. Upon the 14th, the firſt Day of the Races, Mr. *Annesley*——

Court. *Q*. Of what Month?

A. Of *September*, my Lord—Mr. *Annesley*, ſeveral other Gentlemen, and I, came to the *Curragh*, for the Diverſion of the Place.

Mr. *Mac Manus*. What, Mr. *Annesley*?---*A*. Mr. *James Annesley*.

D. Go on, Sir.

A. We had not been long there, when paſſing by a Tent where the noble Peer, who is one of the Traverſers, ſtood with ſome other People—Raiſe your Voice.

My Lord, we had not been long upon the Race-Ground, when Lord *Angleſea*, who was ſtanding at a Tent with ſeveral other People, called out to me in particular, (pointing to me) *That* Mac Kercher, *though he appears here like a Gentleman, is an arrant Scoundrel; and the Coat you ſee upon his Back, I ſaw not above a Month ago in* Monmouth-ſtreet. As I looked on this of too low a Nature to deſerve Reſentment, and as I came there with a firm Reſolution not only of keeping the Peace myſelf, but had recommended it to all along with me, I took no Manner of Notice of this Inſult. After the Diverſion was over, we retired to *Newbridge*; and on the *Friday*, the laſt Day of the Races, we returned again to the *Curragh*, with the ſame View as before, of ſeeing the Diverſion of the Place only; we arrived there as the firſt Courſe was at an End; we were no ſooner deſcried by Lord *Angleſea*'s Coachman, than he immediately drove his Coach-and-Six full butt at us.

Q. At whom, Sir?

A. At Mr. *Annesley*, the other Gentlemen of our Company, and myſelf.——This he repeated *three* or *four* different Times, which we as often avoided; at length, when he found we could not be provoked by that Behaviour, he began in a groſs and inſolent Manner to inſult Mr. *Annesley*.

Q. Who did?

A. The Coachman.---Calling him *Shoe-Black*, *Shoe-Boy*; when he found that Mr. *Annesley* did not ſeem to take any Notice of it---he repeated the Inſult, and at length pointed out to him, *There he is, the Shoe-Boy*.

Q. Who did he point to, Sir?

A. To Mr. *Annesley*, my Lord.---Though I thought this a very great Inſolence, and ſcarce to be bore, yet I would not reſent it upon the Fellow, as he was a Servant; but thought it more adviſeable to complain to Lord *Angleſea*, to the noble Peer his Maſter, and expected proper Redreſs from him. Accordingly I went to look for him, and it was ſome Time before I found him. At length I was told, that he was at the Winning-Poſt, in the Middle of a great Circle of Gentlemen, and others, who had aſſembled there in relation to ſome Diſputes that had happened about the Horſes. I came up in the civilleſt Manner I could, and ſaid, *My Lord, I beg Leave to ſpeak with your Lordſhip aſide*; I was unwilling to expoſe the Fact before the Crowd, and for that Reaſon I called him aſide, to acquaint him of it in a proper Manner; whether he miſapprehended me or no, I can't tell; but he replied, *This is no Time nor Place; you ſee I have no Piſtols before me.* I told him, *for what I have to ſay to your Lordſhip, every Time and Place is proper; I come only with a Complaint againſt one of your Servants, who has inſulted a Gentleman; and I ſhould be glad to know, my Lord, whether it be by your Orders or Approbation he behaveth ſo.* My Lord aſked me, who the Gentleman was that was inſulted. I pointed out to Mr. *Annesley*, who ſtood behind out of the Circle, and out of the Croud, and ſaid, *That is the Gentleman, my Lord.* To which he replied, *He a Gentleman! a Shoe-Boy, by G---d, a Blackguard and a Thief.* One or two who ſtood by the noble Lord, upon that, ſaid, *What, my Lord, will you turn off your Servant for that Scoundrel?* I have omitted ſomething, my Lord, I beg Pardon; I likewiſe ſaid,

As the Affront was very publick, it is proper the Satisfaction should also be so, therefore—it is expected that you should strip your Servant, and turn him off in the Field.

Mr. Baron *Mountney* here lets the Jury know what Mr. *MacKercher* had hitherto said; and then says, *Repeat that again, that the Jury may hear the very Words.*

Mr. *MacKercher.* I said, *That as the Affront was very publick, that it was expected his Lordship should give adequate Satisfaction, which was, that he should strip the Servant of his Livery, and turn him off on the Ground*; or Words to that Effect.

Mr. *Harward.* Are you positive that you explained yourself in such a Manner that he could not mistake you?—*A.* I am satisfied I did.

Court. *Q.* And after this it was some Gentlemen said, *What, will you turn off your Servant for that Scoundrel?*

A. It was after this that some Gentlemen interfering, said that.

Mr. *MacManus.* *Q.* Do you know who said that?

A. I can't be positive, but I think it was the same Person that struck me afterwards; I think it was *Francis Annesley.*

Q. Are you sure it was he?

A. I say, Sir, I can't be positive.——Lord *Anglesea* then said, *No, by G—d, I won't*; *and you are a Villain, a Scoundrel, and a Thief*; and a great deal more of the like *decent* Sort of Language he gave me.

Court. *Q.* Whom did my Lord apply to when he said that?

A. To me. *You are a Villain, a Scoundrel, and a Thief*; as near as I can recollect, those are the very Words. With that I believe I might say, in Return, *That his Lordship lied, and that he durst not single himself out and tell me so.* Whereupon *five* or *six* Persons, whom I don't know (but Mr. *Jans* was one of them) called out, *My Lord, you shan't go fight such a Scoundrel*; *here are Abundance of People to go out with him.* My Lord, I don't know whether it was precisely at that Point of Time or not, when a Gentleman came and struck me on the Head; but I think it was.

Mr. *MacManus.* *Q.* Who was that Gentleman?

A. It was Mr. *Francis Annesley*, of *Ballysax.*

Q. Do you see him in Court?

A. That is the Gentleman.

Court. *Q.* With what did he strike you?

A. With the Butt End of a Whip; which Stroke occasioned a Contusion; and there was a little Bit of the Skin broke, which occasioned a Bleeding.

Q. What further passed, Sir?

A. I returned the Blow, my Lord, with the Lash End of my Whip. I had a Case of Pistols before me, but would not make use of them in the Crowd. Then Lord *Anglesea*, finding himself so well supported, raised himself up in his Stirrups, accosted the Populace, and all that were present there, and poured out a great deal of scurrilous Language against Mr. *Annesley.*

D. Go on, Sir.

A. Declared, *That he was not his Brother's lawful Son, but a Bastard of* Juggy Landy's, *and a Shoe-Black.* When I perceived Lord *Anglesea* attended by so great a Crowd, who seemed all to side with him, I began to be apprehensive that there might be some Danger of a Design against Mr. *Annesley*, and thereon I called to Mr. *Goostry* and Mr. *Kennedy*, who were two of our Company, to come away. I myself turned about my Horse immediately, and went in Quest of Mr. *Annesley.* I had no sooner turned my Horse, but I heard Lord *Anglesea* (for I know his Voice very well) call out distinctly, *There is one of the Villains, knock him down.*

Mr. *MacManus.* *Q.* Did you see my Lord *Anglesea* when he said so?

A. I did not; but I know his Voice perfectly well.

Q. Are you positive you know his Voice?——*A.* I am positive I know his Voice, if one Voice can be distinguished from another.

Q. What were the Words?

A. *There is one of the Villains, knock him down.*

Q. Did you hear him name any Person's Name?

A. I heard him name Mr. *Goostry*, and say, that *That* Goostry *is one of the greatest Villains, knock him down.* And I apprehend that it was then that Mr. *Goostry* was struck, though I did not see it.——I went in Quest of Mr. *Annesley*, and when I found him carried him a little aside from the Crowd. We had not been there half a Minute, when one of my Servants and a Gentleman or two, Strangers to me, came up to us, and with great Emotion and Concern said, *For God's Sake get away, get you gone as fast as you can, there is a Design to murder you all.*

Q. Who were they that said so?

A. There was a Groom belonging to us; but I don't know the others.

Mr. *Bagot.* Was it the Groom or the Gentlemen that desired you to get away?

A. The Groom came first, and desired us to go off; I did not give Credit to what he said, being resolved to wait there till our Company joined us; but immediately there came up two Gentlemen, and said, *For God's Sake, Gentlemen, get away as fast as you can, for there is a Design to murder you.*

Court. Who was with you at this Time?

A. Mr. *Annesley* only.—The two Gentlemen varied in their Expression a little; for the one said, *Go off, for there is a Design to murder Mr.* Annesley *and you*; and the other said, *For God's Sake go off, for you will all be murdered.* Upon which I desired Mr. *Annesley* to put Spurs to his Horse, and we galloped away at a gentle Canter. We had not gone above fifty or sixty Yards, when we perceived People moving after us, which made us whip and spur our Horses; but Mr. *Annesley* was mounted on a Horse that had more Speed than mine, and he made a great deal of Way before me. There was a Gentleman passing by, one Mr. *Hacket*, mounted upon a good Horse, and I desired him to keep close to Mr. *Annesley.* After we had passed over the Sod, the *Curragh* Ground, and had entered into the Road, a Lane leading to *Newbridge*, a good Way up the Lane, there I found Mr. *Annesley* lying in a Ditch.

Q. Whereabouts was that?

A. A good Way up the Lane, leading from the *Curragh* to *Newbridge*, speechless and senseless, and, as I imagined, dead, my Lord. I found him with several People about him, to the Number of *Nine* or *Ten.*

Q. Do you know those Persons?

A. Why really there are two that I can now recollect; one Mr. *Archbold*, quite a Stranger to me at that Time, and a Gentleman, who is an Attorney in *Dublin*; I think his Name is *Keravan*, or *Cochran.*

D. Go on, Sir, if you please.

A. There was a Surgeon called for.

Q. Do you know who the Surgeon was?

A. That Gentleman, Mr. *Hacket*, who I had spoke to, and who had passed me.—I don't know whether he had Lancets himself, or borrowed Lancets, but he attempted to bleed Mr. *Annesley*, and he could get no Blood. In this Condition Mr. *Annesley* continued for about three Quarters of an Hour, to the best of my Judgment; and there being no Carriage, nor he able to get on Horseback, I rode directly to the Inn, to order the Coach which had brought us from *Dublin*; but before the Coach was ready, he was brought to the Door of the Inn in a Chaise. I don't know whether I ought to go any further, or to relate what passed the next Day, which had still a darker and more wicked Complexion.

Court. Go on, Sir.

Mr. *Morgan.* I hope your Lordship will think, that as these Indictments are Indictments for Assaults committed upon the 16th of *September*, any Thing that happened after that Day is not proper to be given in Evidence, and more especially as they are not laid with a *Continuando*, and therefore submit it to you, whether it should not be given in Direction to the Gentlemen of the other Side not to travel into the Transactions of any subsequent Day. I think every Fact before that Day relative to the Fact laid in the Indictments is proper to go to the Jury; but any distinct Transactions of the following Day, no way relative to such Fact, are not proper to go to them, and therefore ought not to be admitted as Evidence, and more especially as the Traversers can't be supposed to be prepared in any Defence thereto, not being charged with any Thing but what was previous to the 17th. I apprehend that Mr. *MacKercher* is just about giving an Account of what happened on the 17th, which I conceive is no way material or relative to these Indictments, and therefore hope that the Evidence only that he can give to the very Facts laid in the Indictments will be admitted, and looked upon as proper Evidence, and no other permitted by your Lordship to go before the Jury.

Court. I hope you won't unnecessarily lose Time about Matters that are obvious, and need no Debate. To be sure, any thing not relative to the Fact is improper to be given in Evidence, or to come into the Consideration of the Jury; but any thing relative to the Fact, which can help to explain it, whether before or after it happened, is extremely material for the Consideration of the Court and the Jury. This Case, or Cases of the like Nature, I have heard practised a hundred and a hundred times; for I did, for three or four Years together, constantly attend in a Place where such Cases as this were carried on, and I found it always the Practice for every thing tending to shew and explain the Fact, whether it happened before or after the Committal of it, to be allowed as proper Evidence.

Mr. *Spring.* My Lord, I own it is very proper for every thing to be given in Evidence relative to the Fact; but nothing can relate to, or be the Occasion of this Fact, but what happened before it was committed; and therefore it is highly improper to take in any supplemental Transaction of the following Day, no way relative to the Fact for which the Traversers stand indicted, and which can only serve to inflame the Minds of People. I think it enough for us to have prepared ourselves for any Actions that happened before the 16th, and not be called upon to answer for any Thing that occurred after Indictments were laid, and no way relative to it. This has been the constant Practice, and I think it to be as clear as any thing in the whole Course of the Proceedings of the Law.

The Counsel for the Traversers were over-ruled in their Objection.

Mr. *Malone.* I desire, since Mr. *MacKercher* is permitted to proceed, that he may be confined to the Transactions of the next Day, which are relative to the Fact only.

Court. I shall take care to confine him to such Evidence as is proper. Go on, Sir.

Mr. *MacKercher.* We went early to Bed, with a Design to get up in the Morning betimes, and return to *Dublin*; but before we could get out of our Beds in the Morning, we were alarmed by the Landlord of the House and his Servants, who acquainted us, that the Ways were beset all round the House with a great Number of People with all Sorts of Weapons; and that he apprehended it was with a wicked Design against the Life of Mr. *Annesley*, and the other Gentlemen; that some of them, he knew, belonged to Lord *Anglesea*, and others to Mr. *Francis Annesley.*

Court. What was that Man's Name?

A. *Burchell.*—We got out of our Beds, and expecting the worst, put ourselves in a Posture of Defence.

D. Go on, Sir.

A. This alarmed us a good Deal, my Lord, and we got out of Bed, and put ourselves in a Posture of Defence. The same Advices were repeated over and over again to us.

Q. By the same Persons, or by others?

A. By the same and other Persons.—Several Gentlemen that lodged in the same House that Night, who were not of our Company, were very much alarmed, got their Horses, and rode away.

Q. Do you know who they were?

A. I don't know, my Lord: Mr. *Hacket* and one Mr. *Carrick* stayed; perhaps they can give you some Account of them.—We were likewise told, before we could venture down Stairs, that the Passage was occupied by *three, four*, or *more* of Lord *Anglesea*'s People, armed in a very extraordinary Manner.

Q. From whom had you that Information?

A. From the Landlord, from *Burchell.*—My Lord, as our Company was not very numerous, and consequently not able to defend ourselves long against such a Multitude, we fell upon a Stratagem, which was, to make the Landlord whisper among them, *That we expected a Troop of Horse from* Dublin. In a short Time after he acquainted us, that he had whispered it about, and he believed it would have the desired Effect, for some of them were frightened. I then ventured down Stairs; I no sooner came down, but I was seized upon by one *Michael Lacy* (attended by a Constable), who is a principal Agent of Lord *Anglesea*'s, as I am informed. I asked the Constable at whose Instance I was arrested; *Lacy* answered me, it was at my Lord *Anglesea*'s, and produced a Warrant from one Mr. *Benjamin Fish*, a Justice of Peace of that Part of the Country. I told *Lacy*, that my Lord *Anglesea* had no Occasion to bring all this Croud together with Arms to seize upon Gentlemen, who were always ready to submit to the King's Orders wherever they appeared, unless he had some wicked Design to execute under that Colour. However, I desired him to walk up Stairs, that I would follow him, and give Bail.

Q. What

Q. What was the Warrant for?

A. For an Aſſault. Lord *Angleſea* had ſworn Examinations againſt me, Mr. *Gooſtry*, and Mr. *Kennedy*, for an Aſſault the preceding Day upon the *Curragh*, wherein he had ſworn that he was in Fear and Danger of his Life, as I was told.

D. Go on, Sir.

A. Lacy walked up Stairs, and I ſhewed him Mr. *Gooſtry* and Mr. *Kennedy*, the other Gentlemen that were charged with the Aſſault; they likewiſe ſubmitted. We breakfaſted, and ordered the Coach to be got ready to carry us before a Juſtice of Peace, to give Bail; they ſtruggled hard to have us go back towards the *Curragh* to give Bail; but we told them, that, as we were going forward to *Dublin*, it was more reaſonable we ſhould give Bail to a Juſtice on the Way; in which we prevailed, and went into the Coach.

Q. Who went into the Coach?

A. Mr. *Kennedy*, and I, and Mr. *Carrick*, one of the Gentlemen that was to be our Bail. We would not ſo much as carry a Sword, or any Sort of Weapon, as we looked upon ourſelves to be in the Condition of Priſoners, and reſpected the Laws. Mr. *Anneſley* rode with Piſtols, as he was not charged with any Aſſault; Mr. *Gooſtry*, the Servants, and Mr. *Hacket*, rode along with him. We had not gone far from *Newbridge*, in our way towards *Naas*, when the Coach was ſtopped, and Mr. *Gooſtry* came up and alarmed us.

Q. Who ſtopped the Coach?

A. Mr. *Gooſtry*----and told us, that there was a Man there that was going to ſhoot Mr. *Annesley*, and deſired we would take him into the Coach. I forgot to acquaint your Lordſhip, that *Lacy* followed us likewiſe, armed with Piſtols.

Q. On Horſeback?——*A.* On Horſeback.

D. Go on, Sir.

A. When we were about half-way, we were met by ſeveral People from *Naas*, who had been informed of our Danger, and came to our Aſſiſtance; and in this Order we went to *Naas*, with all this Croud attending us.

Q. How many met you from *Naas?*

A. There were, I believe, about *fourteen* or *fifteen* People.—We ſent for the Magiſtrate of the Place, one Mr. *Bonner* (who is now here in this Town), told him what had happened, and deſired that one *Angus Byrne*, who at that Time called himſelf a Servant to Lord *Angleſea*, and carried a rifled-barrelled Piece, might be examined for what Purpoſe he carried it. Before the Magiſtrate would proceed to Examination, he would ſee whether the Piece was loaded or not. It was a Screw Barrel; the Barrel was unſcrewed in the Preſence of the Magiſtrate, as I was told by Mr. *Hacket* and Mr. *Carrick*, who unſcrewed it, and they extracted *eight* Bullets. Then *Angus Byrne* was called into the Room, where there were *nine* or *ten* Gentlemen preſent, and examined. He was aſked, *Whoſe Gun that was?* He anſwered, *It is my Lord* Angleſea's. *What were you to do with this Gun? I was deſired to purſue Mr.* Lacy's *Directions. What Directions had Mr.* Lacy? To that he anſwered in general, *In caſe there had been a Reſcue*; without explaining himſelf any further. Then he was aſked, *In caſe of a Reſcue, what was he to do with this Gun, loaded as it was with* eight *Bullets? Lacy* upon that came up, and told him, *Sir, anſwer no more Queſtions, you are not obliged to anſwer.* Then *Lacy*, pretending to be Lord *Angleſea*'s Servant, and claiming the Gun as Lord *Angleſea*'s, the Gun (indeed contrary to my Opinion) was delivered to him by the Advice of another Gentleman who was preſent. Mr. *Bonner*, not thinking himſelf ſufficiently authorized to take Bail in a Caſe of ſo high a Nature where a Peer was concerned, referred us to Mr. *John Bourke*, a Gentleman in that Neighbourhood; from whence, after Bail given, we proceeded to *Dublin*. I have narrated the principal Facts, as near as I could recollect them, my Lord, and have nothing further that is material.

Mr. *Harward*. Mr. *Mac Kercher*, If I don't miſtake it, you have mentioned that you were apprehenſive; I think, upon the Information of a Servant, and two Gentlemen that you don't know, who came up to you upon the *Curragh*, to tell you to get away as well as you could; that you might be killed; you ſay, you were apprehenſive that you and your Friends there would be murdered; what I deſire is this, that you will ſatisfy the Court and the Jury, what your Reaſons were for apprehending there was that Deſign?

A. Why really, Sir, I had ſeveral Intimations long before that Time, of Lord *Angleſea*'s Deſigns, of which I could give many Inſtances, were it proper, on this Occaſion; and I ſaw him that Day ſupported by a great Number of People, who bore no agreeable Countenances to Mr. *Annesley*, or any of our Company; theſe I thought Grounds ſufficient for my Apprehenſions.

Q. You gave an Account of a rifled barrelled Gun the next Day; were there any other Arms when thoſe People came to apprehend you, and who had them?

A. Yes, Sir, I perceived one Man, that belonged to Lord *Angleſea*, with a Piſtol on each Side of his Breaſt. He was one of his Servants, as I perceived by the Livery.

Croſs Examination.

Mr. *Spring*. You were pleaſed to ſay, that on the 14th, the firſt Day of the *Curragh* Races, you were inſulted by Lord *Angleſea?*

A. Mr. *Mac Kercher*. Yes.

Q. Did not you go the firſt Day attended by a great Number of Gentlemen and Servants, all armed? The firſt Day, Sir?

A. I believe there were about three of the Gentlemen armed, and two Servants.

Q. Were they armed with Piſtols and Back-ſwords, or with Piſtols, Blunderbuſſes, and Carbines?

A. I can't recollect whether there were any Blunderbuſs, or not.

Q. Were the Servants armed?---*A.* They were, and always were when we travelled in *England*, as well as there.

Q. Is it the Cuſtom to go to Races armed?

A. I don't know that it is the Cuſtom. Any Gentleman that pleaſes may carry Arms, if he will; I have known it the Cuſtom in *Scotland* for Gentlemen to ride with Furniture and Piſtols; and I ſaw ſome at the *Curragh* that Day.

Q. Is it the Cuſtom in *England* or *Ireland*?---*A.* I believe not of late the general Uſage; but any body may, if they pleaſe, ride in Furniture.

Q. You ſaid juſt now, Sir, that you were inſulted the firſt Day?

A. I did ſo.

Q. Can you take upon you to ſay, that it was Lord *Angleſea* called out, and gave you the opprobrious Language you mentioned?---*A.* I can take it upon me poſitively to ſay it was he, becauſe I ſaw him and heard him.

Q. You ſaw him and heard him?---*A.* I did.

Q. Pray, Sir, had not you Reaſon from thence to conclude, that if you went thither, you ſhould meet with the ſame Treatment the next Day?

A. I own, I might have Reaſon from Lord *Angleſea*'s Behaviour, and Attempts before that Time, to apprehend every Thing that's evil; and it was for that Reaſon that we always went very well armed.

Q. You went therefore apprehenſive of ill Treatment?

A. No, Sir, I did not ſay I was apprehenſive of ill Treatment there more than at any other Place, becauſe I looked upon us not only to be under the Protection of the Law, but alſo ſecurer, where all the Gentlemen of a Country were aſſembled, who would not ſuffer us to be inſulted.

Q. But I would know, had not you Reaſon to expect the like Treatment again?---*A.* I had all the Reaſon in the World to expect it from Lord *Angleſea*; but was determined to keep out of his Way, if poſſible.

Q. You'll recollect the Preparations you made the Night before, for any poſſible Event that might happen?

A. We made no extraordinary Preparations.

Q. Were there no freſh Chargings?---*A.* We always charge our Carbines, if we have any, and Piſtols every Morning, when we ride.

Q. Were not your Servants Blunderbuſſes charged?

A. I know not that they had any.

Q. Pray, Sir, recollect the Directions you gave for their loading their Arms.

A. By your enſnaring Queſtion, you ſeem to take for granted that I gave particular Directions; but I gave no particular Directions.

Q. Did you give any general Directions?

A. I always gave general Directions for having our Arms loaded, and in good Order, every Morning.

Q. Did any of your Company load any of thoſe Arms?

A. I don't recollect that they did.

Q. Did not you load ſome of thoſe Arms yourſelf?

A. I loaded none; I leave that to the Servants to be done every Morning.

Q. What! to load every Morning?---*A.* Not to load, but prime; to ſee that the Arms are tight, and in good Order.

Q. You ſay, that *Friday* you met my Lord *Angleſea*'s Coachman; explain, did he drive round you, or at you?

A. He made ſeveral Puſhes at us directly, ſo that if we had not avoided him, he muſt have run over us, and have done us Miſchief. He made ſeveral Puſhes at our Company within the Rails, which obliged us, in order to avoid him, to go without the Rails; and he followed us without the Rails, and made ſeveral Puſhes at us there alſo.

Q. How far was Lord *Angleſea* from this Place?

A. I don't know where he was at that Time. I went in queſt of him afterwards, and was a good while before I could find him, and in the end found him at the Winning-Poſt.

Q. How far was that from the Place where you were inſulted by the Coachman?——*A.* He purſued us all over the Place.

Q. What Place?

A. The Place where the Company reſort, by the Winning-Poſt; the other Side of the Winning-Poſt from *Burchell*'s.

Q. But he could not drive at you, without driving at others at the ſame Time?----*A.* He drove at our Company directly, and followed us when we avoided him.

Q. You looked upon this Treatment as an Affront, and without Queſtion reſented it in ſuch a Manner as Men of Honour would, not on the Servant, but on the Maſter, and went to look for Lord *Angleſea*, to get Satisfaction in the way uſual among Men of Honour?

A. Quite the contrary, Sir; I went with a Reſolution to keep the Peace.

Q. Had you no Directions from Mr. *Annesley* to go to call Lord *Angleſea* to Account?---*A.* I had no Directions.

Q. Then you did it of your own Head, I ſuppoſe?---*A.* I did.

Q. I ſay, you went to find out Lord *Angleſea* either by Directions, or of your own Head?---*A.* If you will let me know your Meaning, if you will ſpeak ſo as to be underſtood, I ſhall give you an adequate Anſwer.

Q. Did you go up to Lord *Angleſea* of yourſelf?

A. I went of myſelf, Sir.

Q. Did not you know that my Lord *Angleſea* had not only at that Time inſiſted that Mr. *Anneſley* was the Baſtard Son of *Juggy Landy*, but knew your Errand into this Kingdom?

A. What if I did? what is that to the preſent Purpoſe?

Q. Anſwer the Queſtion, Sir; Did not you believe that?

A. I heard he had; I believed it.

Q. Could you, Sir, then expect from Lord *Angleſea* in Reaſon, any kind of Apology, or Satisfaction, or Correction of his Servant, for ſaying of Mr. *Annesley* what Lord *Angleſea* himſelf always inſiſted he was?

A. I did, and ought to have expected it; and much more in the Caſe of Mr. *Annesley* than of any other, if my Lord *Angleſea* had acted properly.

Q. You were his *Champion*, I ſuppoſe, and muſt have Satisfaction for the Affront done him?

A. I did not turn *Champion* for him; a Man turns *Champion* for another that goes to fight his Battles; I did not go for that Purpoſe, but in order to avoid a Breach of the Peace.

Q. Could you expect that Lord *Angleſea* could ſubmit to turning off his Servant for ſaying That, that he himſelf had ſaid to all the World?

A. I have repeated it two or three Times, that I did, and had Reaſon to expect it, if Lord *Angleſea* had acted as a reaſonable Man, and a Man of Honour.

Q. But you knew Lord *Angleſea* ſaid, he was the Son of a Kitchen-Maid, could you then expect from him, conſiſtently with his conſtant and repeated Declarations, that Lord *Angleſea* ſhould ſtrip his Coachman for an Affront offered to ſuch a Perſon?

A. What Lord *Angleſea* ſaid proves nothing, nor is it any Way pertinent to the preſent Purpoſe. I thought it not only conſiſtent, but what Lord *Angleſea* of all Men in the World ſhould have done. Nor did what Lord *Angleſea* thought or ſaid, give his Servant or himſelf a Right to inſult Mr. *Annesley* in ſo publick a Manner.

Q. Did you imagine it reaſonable for any Perſon to ſtrip his Coachman at ſuch a Time and Place, and turn him out of his Box?

A. I

A. I looked upon it to be as gentle a Chastisement as the Nature of the Case admitted of.

Q. Must my Lord *Anglesea* have driven his Coach home himself?

A. I saw Lord *Anglesea* on Horseback.

Q. Was not your Intention, in case he refused, to tell him he must fight Mr. *Annesley* or you?

A. No really; I had no such Intention.

Q. Was it not to provoke him to a Quarrel?

A. I do say it was not.

Q. Yet you expected, when you went to make a Demand of this Kind, that he would have complied with this Request of your's?

A. If I had been of that Disposition, I should have done it the first Day.

Q. You mentioned the Words *Public Satisfaction*; had you no other View than to receive it by his stripping his Servant?

A. Sir, I have told you three or four Times I had not.

Q. Did not you strike my Lord *Anglesea* that Day?—*A.* I did not.

Q. Did not you break his Head, Sir?

A. I did not, Sir; I heard Lord *Anglesea* swore I did.

Q. Did you see any body else strike him?

A. I did not; nor do I believe he was struck that Day.

Q. Did not you come up in a very violent Manner, and force your Way through a Croud to come at him?

A. I believe I might, I believe I did press through the Croud.

Q. Did not you apprehend that Lord *Anglesea* knew you were the Friend of Mr. *Annesley*?——*A.* I am persuaded he did.

Q. Did you not, upon some Conversation between Lord *Anglesea* and you, raise your Hand?

A. Why really I do not know whether I did or not; for it is pretty common and habitual with me when I speak to raise my Hand in this Manner.

Q. And you do not know whether it was raised or not?

A. I believe there is no Man that is obliged to stand like a Statue when he speaks.

Q. Did not you say that *James Annesley* was Earl of *Anglesea*, and you an Impostor?——*A.* I did not name the Earl of *Anglesea* that day.

Q. You did not tell him that he was an Impostor?——*A.* I did not.

Q. Did you turn your Whip in your Hand?

A. I do not know how I held my Whip.

Q. I ask you, Sir, whether during that Conversation with Lord *Anglesea*, whether with or without Provocation, you did not tell him that he was an *Impostor*?

A. I now recollect; I remember very well, when he called Mr. *Annesley a Shoe-black, a Bastard, and a Thief*; I told him, *he lied, he was no Bastard, he was the lawful Son of Lord* Altham, *that before two Months went about, it would appear to the World to be so*; and in that I have the Satisfaction to think I have spoke prophetically.

Mr. *Spring*. You are somewhat too early, you must wait further for the Completion of your Prophecy.

A. And you, Sir, are too hasty in forming Conclusions.

Q. Pray, Sir, you remember the next Day to have seen *Michael Lacy*?

A. Yes, Sir.

Q. Did not you thank that *Lacy* for his Civility to you?

A. Why really I believe I did; I believe I might thank him for executing the Warrant peaceably, for I was persuaded, from the *Apparatus* I saw there, his Orders were otherwise; but even in that I cannot help saying that I was obliged to temporize so far.

Q. Did not you thank him at *Naas*?

A. No, not at all, it was at *Burchell*'s, for putting the Warrant in execution as he did peaceably, for we expected worse Usage.

Q. Do you recollect that you desired my Lord to turn aside with you?

A. I believe it was the first Word I said to him.

Q. Did not you say after, that he dared not?

A. After he had called me a *Scoundrel, a Thief, and Villain*, I told him, *he lied, and he durst not for the Soul of him single himself out and tell me so.*

Q. Was not that before you was struck, Sir?

A. I believe it was before. I cannot well remember, but I think it was.

Q. In what Manner was Lord *Anglesea* armed? What Arms had he?

A. I saw none about him.

Q. Did not you see his Pistols?——*A.* I saw none.

Q. How was Mr. *Francis Annesley* armed?

A. I did not observe him so particularly; I know he was armed with a Whip, which I felt the Weight of.

Q. Did you see any of Lord *Anglesea*'s Company armed?

A. I saw some People armed that were of his Side, that were about him, and who seemed to take Part with him.

Q. Are you sure they were of his Company?

A. I concluded they were, as most of them seemed to side with him.

Q. You mentioned something you apprehended from their Countenances that you withdrew yourself from thence, from Mischief; describe those terrible Faces?

A. By their Countenances, I apprehended some Mischief might happen; but I am not so good a Painter as to humour you in drawing the Attitudes they were in.

Q. Who were the Persons who pursued Mr. *Annesley* and you?

A. I can't tell you particularly who they were, being a Stranger; I know there were a great many.

Q. Did you know none of them?

A. There were two Gentlemen I knew, whose Names I am sorry you force me to mention, for I did not intend it, Sir *Kildare Borrowes* and Mr. *Warren* that pursued Mr. *Annesley*.

Q. Don't you believe that they pursued out of Curiosity?

A. I don't know their Intent; but I know I was treated rudely by one of them.

Q. Well! but you can't point out any of Lord *Anglesea*'s Retinue or Servants that pursued you at this Time?

A. I can't, except Mr. *Jans*; he was one of the Company; I was a Stranger, and did not know the rest.

Q. Was he one of the Pursuers?

A. I don't know; I did not observe him; he might be there for aught I know.

Q. Did you observe Mr. *Lacy* there?

A. I did not observe him, yet he might be there for what I know.

Q. But you concluded they were his People, because they pursued you?

A. I concluded so, and do so still.

Q. Mr. *Archbold* too, I suppose, was one of the Pursuers?

A. I don't know whether he was, or not. I found him where Mr. *Annesley* lay, and might, for aught I know, have come the contrary Way, from *Newbridge*.

Q. When you came up to where Mr. *Annesley* was, you found some People attending him, did any body strike him?

A. I did not see any strike him, nor would I tamely have seen it.

Q. Did you see any Servant of Lord *Anglesea*'s in Livery there?

A. I did not see any of his Livery there, but I have been told since they were there.

Q. You know *Angus Byrne*?—*A.* I do.

Q. How long have you been acquainted with him?

A. I have been acquainted with him ever since that Affair of the *Curragh* happened.

Q. Did not you invite him into your Service?——*A.* I did not.

Q. And he is not your Servant?——*A.* He is not.

Q. Was not he in *England* with you?

A. He was in *England*, but not a Servant.

Q. How did he live there?

A. He lived upon my Bounty there, but not a Servant.

Q. Did not you invite him into *England*?

A. I never invited him there, but received him when he came.

Q. Did not you bring him over again?——*A.* I did.

Q. Did not you give him some Advice about submitting to the Indictments?——*A.* I did not.

Q. Did he never complain to you that Lord *Anglesea* had used him ill?

A. He never did.

Q. Did not he tell you that Lord *Anglesea* had sent him to Gaol?

A. He did not; he only told me that Lord *Anglesea* owed him his Wages.

Q. Had you ever *Angus Byrne* at your House on *College-Green*?

A. Yes, Sir, since we came last into this Kingdom.

Q. He was there?——*A.* He was.

Q. Did you never threaten to send him to Gaol, if he did not do as he was directed?

A. I gave him no Directions; but did at first, immediately after the Assault, and before he made his Declaration, threaten to send him to Gaol.

Q. What do you mean by his Declaration?

A. A Declaration that he made in *Dublin*, when he first turned Evidence for the Crown.

Q. Did you take any Declaration in Writing from him?

A. I did not.

Q. Did you know whether Mr. *Livingstone* did or not?

A. I do not know.

Q. Did he take down in Writing, in your Presence, any Thing this Man had to swear?—*A.* I do not know that he did.

Q. Do not you believe he did?

A. I cannot frame any Belief about it.

Q. Is Mr. *Livingstone* an Agent of Mr. *Annesley*'s?

A. He is a Friend of his, but no Agent.

Q. Is he not an Assistant in his Affairs?

A. He has a Share of the Trouble of his Affairs.

Q. Did not he take in Writing what that Man had to say? Recollect.

A. I cannot recollect he did.

Q. Were these People, that you call Servants of Lord *Anglesea*, that surrounded the House, in the Livery or not?

A. I understood *Lacy* to be his Servant and chief Agent, but I saw none in his Livery, save one.

Q. Did you see any in his Livery on the *Curragh*?

A. I saw one in a Livery, that I took to be his Livery.

Q. Did *Burchell* tell you that any of Mr. *Francis Annesley*'s Servants were at the Inn in Arms?

A. I do not recollect whether they were Servants or not, he said his People were in and about it.

Court. Is it your Belief or Opinion, that if you had not made the Application to Lord *Anglesea*, whether this Pursuit, and every Thing that happened after, would have happened?

A. I could then frame no Judgment about it, my Lord; I have since, indeed, in my own Mind, from what I have seen, been thoroughly persuaded that something of that Nature would have happened; and that the Provocations given us, were intended on set Purpose to draw us in.

Q. You are asked to your present Opinion?

A. I am of Opinion now that it would have happened some Way or other, I was not then.

Mr. *Spring* concludes from thence that Mr. *MacKercher* solicited it.

Court. The Jury desire to know whether your Pistols, when you were upon the *Curragh*, were charged and primed, or not?

A. I believe they were.

Q. Whether when you and my Lord were discoursing together you put your Hand to your Pistols?

A. I do not remember I did, and I am positive I did not.

2. Hugh Kennedy, Esquire.

Mr. *Callaghan*. Where were you upon the 16th of *September* last?

Mr. *Kennedy*. Upon the *Curragh* of *Kildare*.

Q. Inform the Court and the Jury of the Transactions of that Day; tell what happened to Mr. *Annesley*, Mr. *MacKercher*, and yourself.

A. When we came first upon the *Curragh*, we were told there was a rising Ground upon the other Side of the Field, from which we might better see the Diversion; accordingly we made towards it; in our Way we were insulted by the Coachman of my Lord *Anglesea*, who drove at us, pointing to Mr. *Annesley*, and calling him *Shoe-black*. Mr. *MacKercher* perceived him sooner than I did; he asked me if I had seen him? I told him I had. Immediately after that we perceived him making up to us with his Coach, which he drove again at us, and repeated it several Times. Perceiving he continued still to drive at us, Mr. *MacKercher* then said, he would see where Lord *Anglesea* was, to complain of the Abuse of his Coachman: Accordingly,

dingly, we went in ſearch of him, and were for ſome time before we could find him. We found him at the Winning-Poſt, where Mr. *MacKercher* went up, and in the mildeſt Manner poſſible told him, he wanted to ſpeak to his Lordſhip. All the Words they had together I cannot diſtinctly repeat; but thus much I heard, that when Mr. *MacKercher* told him he wanted to ſpeak to him, he ſaid, *It was not a proper Place.* Mr. *MacKercher* told him, *Every Place was proper for what he had to ſay to his Lordſhip, which was, to complain of the Inſolence of his Coachman, and to deſire he would give Satisfaction for the Affront he had given a Gentleman on the Field.* Lord *Angleſea* aſked, *What Gentleman was affronted?* Mr. *MacKercher* pointed to Mr. *Anneſley*, and told him *that Gentleman.* Upon which Words aroſe between them, which I cannot diſtinctly repeat at this time; but in conſequence of thoſe Words, ſoon after I ſaw Mr. *Francis Anneſley* of *Ballyſax* ſtrike Mr. *MacKercher* over the Head, ſo that the Blood came. Lord *Angleſea*, quickly after that happened, raiſed himſelf in his Stirrups, and made uſe of the Language already repeated, *That Mr.* Anneſley *was not his Brother's lawful Son, but the Baſtard of* Juggy Landy, *a Shoe-Black*, and to that Effect. Soon after which Mr. *MacKercher* deſired Mr. *Gooſtry* and me to retire; as ſoon as we heard him deſire that, we turned our Horſes to follow him. Immediately on the Turn of my Horſe, Lord *Angleſea* ſtruck me a violent Blow on the Head, ſo as to ſtun me.

Court. With what?---*A.* With the Handle of his Whip, my Lord.

Q. During what Part of the Tranſaction was this?

A. Immediately after the Language that paſſed between him and Mr. *MacKercher*.

Q. Did he ſay any thing before he ſtruck you?

A. I believe he might ſay, *There is one of the Villains.*

Q. Did he name any Man?

A. I believe Mr. *Gooſtry*, *There is that Villain* Gooſtry, or to that Effect.

Q. Was it at the ſame time that he ſtruck you that he ſaid thoſe Words?

A. A very ſhort time before I was ſtruck he ſaid thoſe Words.

D. Deſcribe the Stroke you got.

A. The Stroke I got was on the back Part of my Head with the Butt End of his Whip.

Q. Did it do you any Hurt?

A. It ſtunned me to that Degree that I almoſt fell upon my Horſe's Neck.

Q. What was the Conſequence of that Stroke?

A. There was a very great Effuſion of Blood followed.

Q. What enſued upon that?

A. Immediately after that Blow, it was followed by a Number more from other People which knocked me down on my Horſe, ſo that I ſhould have fallen to the Ground, if I had not been ſupported by the People on each Side of me.

Q. Who gave thoſe Blows?

A. I cannot tell, my Lord, I was knocked down in a good Meaſure, by the Blow Lord *Angleſea* gave me.

Mr. *Callaghan.* Tell what you remember happened after you recovered yourſelf.

A. As ſoon as I recovered and ſat ſtrait on my Horſe again, Lord *Angleſea* came from the Company he was with, and ſtruck me *ſeven* or *eight* Times running over the Head.

Court. With what?—*A.* With his Whip.

Q. Which End of his Whip?

A. It was the Laſh End the laſt Time he ſtruck, but he repeated his Blows ſo long that the People cried out *Shame*, ſaying, *'Tis a Shame to abuſe a Gentleman ſo*, or to that Effect; and ſoon after that he had done, and I rode off the Sod.

Mr. *Callaghan.* Was there any Converſation between my Lord *Angleſea* and you before you got that Stroke from him?

A. I never ſpoke to Lord *Angleſea* in my Life, Sir.

Q. Had he ſpoke to you before he gave you the Blow?

A. I do not know that he did.

Q. Did you give him any Provocation to ſtrike?

A. I gave him no Provocation at all.

Q. I think you ſaid you ſaw Mr. *Francis Anneſley* ſtrike Somebody; who was it he ſtruck?—*A.* I did, I ſaw him ſtrike Mr. *MacKercher*.

Q. With what, Sir?—*A.* With the Butt End of his Whip.

Q. Was that Stroke a moderate Stroke, or given with ſuch Violence as carried an Intent of doing Miſchief?---*A.* His Forehead immediately ſwelled pretty big, and a little Blood came from it.

Q. Before Mr. *Anneſley* gave the Stroke, did you ſee Mr. *MacKercher* give him any Provocation to ſtrike him?---*A.* I ſaw no Provocation that Mr. *MacKercher* gave, for I believe he did not ſpeak to him at all.

Q. Do you believe that Mr. *MacKercher* could have given him Provocation without your ſeeing it?---*A.* I think not, for I was pretty near him, and muſt have obſerved it, if any had been given.

Q. Tell what paſſed after the People cried *Shame*, and you got off the Sod.

A. My Finger was almoſt broke by one of the Blows, and that occaſioned my Whip to fall from my Hand.

Court. Explain yourſelf, Sir.

A. Immediately after my Lord *Angleſea* ſtruck me, I was ſtruck by a Number of other People whom I did not know, and among them I got this Wound on my Finger, which occaſioned me to loſe my Whip.

Mr. *Callaghan.* What became of you after this?

A. As ſoon as I could, I rode down the Hill in queſt of Mr. *Anneſley* and Mr. *MacKercher*; I found Mr. *MacKercher* juſt by where Mr. *Anneſley* lay; I did not ſtay to ſpeak to him, but went on to Mr. *Anneſley*, whom I found fallen in the Ditch, lying ſenſeleſs, ſpeechleſs, and pale.

Court. What Number of People were about him in the Ditch?

A. *Ten* or a *Dozen.*

Q. Did they appear to be Friends, or any of the People you apprehended he was in Danger from?

A. I cannot ſay who they were, or what their Intention might be, I was a Stranger, and could not diſtinguiſh.

Q. Was it at that Time in the Power of any body to do him Miſchief?

A. He had been ſo long in the Ditch when I came up, that they had got a Surgeon to bleed him.

Q. But do you think it was in the Power of thoſe People to hurt him?

A. I believe they might if they had a mind, had not Mr. *MacKercher*, and others of Mr. *Anneſley*'s Friends come up.

Mr. *MacManus* to Mr. *Kennedy*.

Mr. *Kennedy.* Where did you leave Mr. *Gooſtry*?---*A.* I left him, I believe, upon the *Curragh*; I cannot ſay, I did not ſee him after I was ſtruck.

Q. Was he aſſaulted by any one?

A. He was wounded at the inſtant of Time I was.

Q. Did you ſee any Body ſtrike him?---*A.* I cannot ſay diſtinctly that I did, but he was wounded about the ſame Time.

Q. After you took Mr. *Anneſley* to *Newbridge* that Night, did you obſerve any thing on the *Saturday* after?

A. Yes, we were alarmed very early that Morning before we were up; the Landlord and others coming to tell us that the Houſe was beſet by a Number of People, who, they ſaid, they believed had evil Intentions; upon which we got up, and did the beſt we could to make our Defence in caſe they attacked us. This continued for ſome Time, till at laſt Mr. *MacKercher* went down Stairs, to ſee if what we had been told was true; when he found it according to the Information he had received from the People of the Houſe, that there was a Number of People armed about the Houſe. Mr. *MacKercher* returned very ſuddenly, and with him one *Lacy* and a Conſtable, and told us, that there was an Action brought againſt him at the Suit of Lord *Angleſea*——

Mr. *Callaghan.* What do you mean by an Action?

A. A Warrant granted by a Juſtice of Peace.---The Perſon then told me he had the ſame againſt me and Mr. *Gooſtry*. What for, Sir? we aſked him: He told us, on my Lord *Angleſea*'s Affidavit that he was aſſaulted by us, and put in Fear of his Life.

Q. When Mr. *MacKercher*, and *Lacy*, and the Conſtable came up with the Warrant, what happened then?

A. *Lacy* told me and Mr. *Gooſtry* that he had a Warrant againſt us.

Q. And what did you do upon that?

A. We ſubmitted directly. Soon after we had breakfaſted, we diſarmed ourſelves, and went into the Coach, and were carried to *Naas*.

Q. Who went into the Coach?

A. Mr. *MacKercher*, Mr. *Carrick*, and myſelf.

Q. Did Mr. *Anneſley* go into the Coach on the Road?---*A.* He did.

Q. How came that?---*A.* Mr. *Gooſtry* called out to us to take him in, for it was not ſafe for him to be there.

Q. Did Mr. *Gooſtry* give any Reaſon for his ſaying that?

A. He gave it as a Reaſon for taking him into the Coach, that it was not ſafe for him to ride, for that one of thoſe Fellows was going to ſhoot him.

Q. When you came to *Naas*, what happened then?

A. We ſent for the Sovereign of *Naas* to give in Bail, and there this Mr. *Lacy*, who came along with us, followed us into the Room, when this Perſon that appeared here, *Byrne*, was queſtioned in regard to his Gun.

Q. What kind of a Gun was it?

A. The Gun was a ſcrew-barrell'd Gun, ſuch as Game-keepers uſe.

Q. Who queſtioned him about it?

A. He was queſtioned by Mr. *MacKercher* what he was to do with it. He anſwered, to follow *Lacy*'s Directions; and ſoon after *Lacy* ſtopp'd him, and bid him anſwer no more Queſtions.

Q. Was that Gun charged?

A. The Gun was unſcrewed before us in the Room, and from it taken *eight* Bullets.

Q. In your Preſence?---*A.* I was preſent.

Q. Did any body claim that Gun back again?---*A.* Yes, Sir.

Q. How many Bullets were there?

A. There were *eight*, Sir, ſaid by all the Gentlemen in the Room. I did not count them, but I believe there was that Number.

Q. By whom was the Gun claimed?---*A.* By *Lacy*, as Lord *Angleſea*'s.

Q. Had Mr. *Lacy* any Arms?

A. I cannot ſay as to that; I do not remember; I think he had.

Croſs-Examination.

Mr. *Morgan.* Pray, Sir, was you at the *Curragh* the 14th of *September*?

Mr. *Kennedy.* I was, Sir.

Q. Did you ſee Lord *Angleſea* there?---*A.* I did.

Q. Was he in a Coach, or on Horſeback?

A. I think he was in a Tent.

Q. On the 14th?---*A.* Yes, Sir.

Q. Recollect yourſelf whether you ſaw him in a Coach at any Time that Day?---*A.* I did not, to the beſt of my Memory.

Q. Do you know his Coach?---*A.* I can't ſay I did then.

Q. Why then, how can you take upon you to ſay that the Coach-and-Six which haunted you was his?

A. I had particular Reaſon to know it then, from hearing from the Coach-box the Man's Inſults to Mr. *Anneſley*.

Q. On the 16th you knew it, but not on the 14th?---*A.* I did, Sir.

Q. Did you ſee Lord *Angleſea* more than once on the 14th?

A. But once.

Q. Recollect whether you ſaw his Coach driving more than once on the 14th?---*A.* I did not ſee it more than once.

Q. Now I aſk you whether any Violence, or Attempt of Violence was made on the 14th?---*A.* There was none that I was privy to.

Q. How long, how many Hours was you on the *Curragh*?

A. I can't be preciſe as to the Time.

Q. Was you one Hour?---*A.* Yes, Sir.

Q. Was you two?---*A.* Yes, I believe we were there or thereabouts.

Q. Where did you lie the Night before the 14th, on *Tueſday* Night?

A. In *Dublin*, Sir.

Q. What Hour did you come to the *Curragh* on the 14th?

A. I can't call to mind exactly.

Q. Where do you ſay you were the Night before the 14th?

A. We came from *Dublin* to the *New-Inn* the 14th.

Q. Did you lie at the *New-Inn* the Night before you went to the *Curragh*?

A. We did not.

Q. Did you inquire, or any of your Friends inquire, whether my Lord *Angleſea* was to be at the *Curragh* or not?

A. I do not remember that the Question was put by any of us.

Q. Did you converse with any Body in relation to his being at the *Curragh?*——*A.* I remember none.

Q. Had you at any Time after any Conversation about him?

A. Yes, undoubtedly, having so many Remembrances of him with our Blows and broken Heads.

Q. Had you any particular Conversation of him between the 14th and 16th?---*A.* We had not that I remember.

Mr. *Spring.* *Q.* Now, Sir, I would ask you, whether any Body prevented Mr. *Mac Kercher*'s going up to my Lord *Anglesea*, when he came to the Croud where my Lord stood?

A. I can't say I saw any body prevent him.

Q. Do you know one *Chatman?*---*A.* No really, I don't.

Q. How near was you to Mr. *Mac Kercher* when he had the Conversation with my Lord *Anglesea?*---*A.* Not so far as I am now from you.

Q. I ask you, Sir, whether the Words that pass'd between them were not loud Words?

A. They were not loud of Mr. *Mac Kercher*'s Side, because his Words were intended for nothing but to be peaceable and quiet; the Words became louder afterwards; Lord *Anglesea* was particularly loud enough.

Q. I ask whether Mr. *Mac Kercher* did not challenge my Lord to fight?

A. Mr. *Mac Kercher*'s Words I can't distinctly repeat.

Q. Well, but I ask whether he did not challenge my Lord to fight?

A. After many Insults that Mr. *Mac Kercher* had met with, I believe he might say, *That he dared not single himself out*, and tell him so.

Q. But did he not challenge him in direct Words?

A. I do not apprehend he made use of any Words that imported a Challenge to Lord *Anglesea.*

Q. You say you heard part of the Words that passed, did you hear Mr. *Mac Kercher* give my Lord the Lye before he was struck?

A. I really cannot say whether it was before or after; I rather believe it was before he was struck. I cannot say positively, but it was after my Lord had given him abusive Language.

Q. You mentioned your going to *Newbridge* after you had received your Abuse?---*A.* I did, Sir.

Q. Now I ask you, Whether you saw any, and what Number of People riding to *Newbridge*, as if in Pursuit of any Body?

A. When I came to the Place where Mr. *Annesley* was lying, I saw *Forty* or *Fifty* People, Horse-men and Foot, who I suppose had pursued.

Q. Did Mr. *Mac Kercher* and you ride to the Place where Mr. *Annesley* lay, together?——*A.* We did not.

Q. How far distant might you be?

A. I did not see Mr. *Mac Kercher* till I came up to where Mr. *Annesley* was, and the Distance between Mr. *Mac Kercher* and Mr. *Annesley* was about the Length of this Court, or better.

Q. Did you see any and what Number of People pass by you, that seem'd to be in pursuit of any Body?

A. I cannot say; a good many People rode past, but I could not tell with what Intent.

Q. What did you apprehend they rode for?---*A.* I really do not know.

Q. Now do you imagine they, or any of them, were riding in pursuit of Mr. *Annesley?*

A. I do not know. I rather believe they were the Pursuers, otherwise what should make them go after him?

Q. You said at first that you saw some *Forty* or *Fifty* People, on Horseback and Foot, round the Place where Mr. *Annesley* was; who do you imagine they were, Friends or Enemies?

A. For aught I know they might be the Pursuers, I cannot say.

Q. Did you see any one of them offer Violence?---*A.* I did not then.

Q. Did you see any Body lay hold of him, other than in a friendly Manner to assist him?---*A.* I cannot say I did.

Q. Did you inquire of Mr. *Annesley* if any Body had hurt him?

A. Mr. *Annesley* was not capable of speaking.

Q. But when he came to himself, did you ask him how he came by any Hurt?---*A.* I did.

Q. What did he then tell you was the Occasion of that Hurt?---*A.* The principal Occasion was the Fall of his Horse into the Ditch upon him.

Q. And what occasioned his Horse to fall into the Ditch?

A. The Occasion of his Horse's falling was that of his being close pursued; and when he perceived that, he pulled the Horse back, in order to defend himself, and he fell into the Ditch upon him.

Q. Before Mr. *Mac Kercher* and you went up towards my Lord *Anglesea*, to complain of the Coachman, were you cautioned not to do it, for fear of entangling yourselves in a Quarrel?

A. I cannot say that I had any particular Caution from any Body.

Q. Did you hear any such Caution given to Mr. *Mac Kercher?*

A. When I came down the Hill, I was advised by some People to go off the Ground, or else I should be murdered.

Q. I ask again, did you or Mr. *Mac Kercher* receive any Caution not to go to Lord *Anglesea?*---*A.* No, I did not; nor do I know that he did.

Q. Do you know one *Abraham Robinson?*---*A.* I do.

Q. Recollect whether he caution'd you or Mr. *Mac Kercher* not to go?

A. He gave me none.

Q. Did he Mr. *Mac Kercher?*

A. I know not, I did not hear him say any thing to him.

Q. Now then I ask you, whether at any Time during this Affray you struck any Body, and who?---*A.* I know not, indeed, Sir.

Q. But did you strike any Body?

A. The Blow I received made me uncapable of striking any Body?

Q. Did you strike any, and what Person before you received that Stroke?

A. I cannot say, in the Hurry particularly, whether I did or no: I know this, I never altered the Position of my Whip: If I happened to hit any Body, it was with the Lash of my Whip.

Q. How can you be particular concerning what Mr. *Mac Kercher* did, and cannot recollect what you did yourself?

A. That was some Time before the Confusion happened, so that I could better judge then than afterwards.

Q. Was not the Time that Mr. *Francis Annesley* struck Mr. *Mac Kercher* a Time of Hurry and Confusion?

A. There was no Hurry and Confusion till that Blow, which occasioned it all.

Q. Did you, or did you not, strike any Body, before you were struck yourself?

A. I cannot really say; but after my Friend was struck, perhaps I might.

Q. Do you not believe you struck, before you were struck?

A. Yes, I believe I might, when I saw Mr. *Mac Kercher* struck.

Q. Who was it you did strike?---*A.* Why, Sir, I cannot tell.

Q. Did not you strike Lord *Anglesea?*---*A.* I did not.

Q. Can you be certain you did not?

A. I am positive I could not, for he was rather behind me than otherwise.

Q. You say, you believe after your Friend was struck you did strike; can you recollect who you struck?

A. Why really I cannot positively say, I struck one of those who struck Mr. *Mac Kercher.*

Q. And yet you are positive you did not strike Lord *Anglesea?*

A. I can be positive I did not strike Lord *Anglesea* before he struck me.

Q. Endeavour to recollect who it was you struck?

A. I cannot recollect who the Person was I did strike, for in a Minute's Time we were all in Confusion. I am sure it was not Lord *Anglesea* I struck, I knew him.

Q. Might you not have struck Lord *Anglesea* then, as well as another?

A. It was impossible, for he was behind, and his Blow prevented me from striking any Body.

Q. Did not you strike Mr. *Francis Annesley?*

A. I cannot tell; more probably him than another, as he struck Mr. *Mac Kercher.*

Q. You know Mr. *Goostry?*---*A.* I do, Sir.

Q. Did you see him strike any Body?---*A.* I believe I did.

Q. Who?

A. I believe I saw him strike Mr. *Francis Annesley*, after he had struck Mr. *Mac Kercher.*

Q. Are you positive it was not before?---*A.* No; it was not before.

Q. Had Mr. *Goostry* received any Blow before that?

A. He received a violent Blow, and I cannot say whether before or after.

Q. Did you see any of Lord *Anglesea*'s Servants upon the Ground that Day?---*A.* I think I did.

Q. Do you know his Livery?

A. I cannot be positive as to that, I know what is deemed his Livery.

Q. How were your Servants armed that Day?

A. As they are when we travel.

Q. How is that?---*A.* One or two of them had Pistols before them.

Q. Do you believe they all had?

A. I really cannot say positively whether they all had or not.

Q. You can say whether you believe they had or not?

A. I believe they had not all.

Q. Had any of them a Blunderbuss?---*A.* Not that I know of.

Q. A Musquet or a Gun?---*A.* No.

Q. Had not every one of them Back-Swords?

A. I cannot call to mind; I believe not.

Q. Do you travel with Back-Swords?---*A.* No.

Q. Tell how the Servants were armed.

A. They were armed so far as to have Pistols before them, but I believe they had no Blunderbuss nor Back-Swords; to the best of my Memory and Belief they had not.

Jury by the Court. Did you see Mr. *James Annesley* ride off the *Curragh?* Was he in your View?

A. He was in my View when Mr. *Mac Kercher* called to Mr. *Goostry* and me to come away, he was just by us, but he was quickly lost to me, because on my coming away I received the Blow that stunn'd me.

Q. What might be the Space of Time between his going off the Ground and his lying in the Ditch?---*A.* About ten Minutes.

Q. Can you tell what was the Space of Ground from the Place you saw him in the Ditch?--*A.* A Quarter of a Mile.

Q. What Time might a Man ride that in?

A. A Man might gallop it in *five* or *six* Minutes,

Mr. *Malone* to Mr. *Mac Kercher.*

Q. After those Words of the Coachman that you went to complain of, was you, or was you not advised not to go to Lord *Anglesea?*

Mr. *Mac Kercher.* I believe I might.

Q. By whom?

A. Who the Person was I cannot really recollect; but my particular Reasons for going, notwithstanding that Caution, was, that I saw the Insult was continued, and not to be discontinued, unless my Lord *Anglesea* gave Directions to his Coachman to desist.

Q. Was there any new Insult offered after you received the Caution?

A. Yes, while I was in search of Lord *Anglesea.*

Q. What Distance was you from Lord *Anglesea* when you received the Caution?

A. I do not know where Lord *Anglesea* was at that Time that I was in quest of him.

Q. But at what Distance did you find Lord *Anglesea* from the Place where you were cautioned not to go to him?

A. I cannot tell that; I had occasion to traverse the Ground several Times after I had received that Caution before I could find him.

Court to Mr. *Kennedy.*

Q. Did you see any Persons pursue Mr. *Annesley?*

Mr. *Kennedy.* I cannot say I did see any Persons pursue him, for soon after I received my Blow.

Q. Did you see any People riding that Way?

A. I saw a great many People galloping down the Hill, which they told me was after Mr. *Annesley.*

Q. Did you ride in Arms that Day?

A. I had no Arms that Day, I rode a hunting Saddle.

3. John Kirwan.

Mr. *Morton.* Where were you on the 16th of *September* last?

Mr. *Kirwan.* I was upon the *Curragh.*

Q. Whereabouts on the *Curragh?*

A. A

A. A good Piece this Side of the Winning-Poſt.
Q. What Winning-Poſt?---*A.* On the *Curragh.*
Q. What Part of the *Curragh?*——*A.* Upon the high Ground.
Q. Tell what you obſerved to paſs there that Day.
A. What I obſerved was my Lord *Angleſea* was talking to the Gentlemen about him.
Q. Do you know any of the Gentlemen?
A. I do not know their Names.
Q. What did you hear my Lord *Angleſea* ſay?
A. I heard him telling, *That this young Gentleman was only a Baſtard got by the Kitchen-Maid.* And with that *two* or *three* came up and told him that he was gone off the Sod, and with that he bade them *follow him, and tear him Limb from Limb*, and every one that takes his Part.
Q. Who did he ſay this to?—*A.* I took one of them to be his Servant.
Q. Why ſo?——*A.* Becauſe he wore his Livery.
Q. Are you ſure he was his Servant?
A. I could not ſwear that he was his Servant, but I took him to be ſo. But he came back and told him that he was killed. *That's well enough*, ſays my Lord.
Q. Go on, and tell your Story.
A. That's all that I heard, and I have no Benefit to tell any more than what I ſaw, and it is againſt my Will that I came here at all,—for I had no Mind to meddle, but I was brought to it.

Croſs-Examination.

Mr. *Malone.* Where do you live?——Mr. *Kirwan.* I live at *Newbridge.*
Q. What do you follow?——*A.* I follow Dealing.
Q. What Dealing?——*A.* In Linen Cloths.
Q. Are you a married Man?——*A.* I am.
Q. What Family have you?——*A.* I have two.
Q. Two what?——*A.* Children.
Q. Do you hold any Land?——*A.* I do.
Q. From whom?——*A.* From Mr. *Brown.*
Q. How much?——*A.* Not much.
Q. Tell how much?—*A.* Only *three* Acres.
Q. What Rent do you pay?—*A.* *Three* Pounds a Year.
Q. Do you owe any Rent?——*A.* I owe no Rent.
Q. What Day was it you were at the *Curragh?*
A. It was the 16th of *September* I was at the *Curragh*, as I underſtand.
Q. How come you to underſtand it to be the 16th?
A. Becauſe I took Notice of it.
Q. Can you write?----*A.* I cannot write.
Q. Did you make any *Memorandum* of it?
A. I made no *Memorandum* of it then.
Q. How do you know then it was the 16th?
A. Becauſe I am ſure of it. Are not you ſure that you have that Paper in your Hand?
Q. Suppoſe I am, that is nothing to the Purpoſe; upon your Oath, Sir, what Day of the Week was the 21ſt of *September?*
A. I do not know that.
Q. Were you at the *Curragh* the 14th?----*A.* I was.
Q. Was you on the 15th?----*A.* The 15th and 16th too.
Q. Did you ſee the Horſes run?----*A.* I did.
Q. How many were there?
A. *Four*, and ſometimes *three*; that's nothing to the Purpoſe, Sir.
Q. Yes, but it is, Sir; I aſk you how many Horſes ran that Day?
A. I do not know, I remember that there were many running.
Q. But I aſk you how many?
A. I do not know, but I believe there was *three.*
Q. What Colour were they?---*A.* Some of them were bay.
Q. Was there any white Horſe ran?----*A.* No.
Q. Any grey Horſe?----*A.* No.
Q. Did you make any Betts?
A. I made no Bett, I drank my Belly-full.
Q. Had you drank your Belly-full that Morning?
A. I did not drink much that Morning.
Q. What Time of the Day was it that you heard Lord *Angleſea* ſay thoſe Words?
A. I had not my Watch about me; about the Time we drive the Cows home.
Q. What Time is that? About duſkiſh?----*A.* Thereabouts, Sir.
Q. How long before it was duſkiſh?----*A.* I cannot tell.
Q. Was it two Hours?
A. Indeed, Sir, I had not my Watch about me.
Q. Have you a Watch, Sir?----*A.* No, Sir.
Q. What Time of the Day was it that you heard my Lord *Angleſea* ſay he was a Baſtard?----*A.* I cannot tell.
Q. But you muſt tell; Recollect.
A. About the Time of the Cows driving home.
Q. Did you ſtay upon the Sod after that?---*A.* I did, a good while.
Q. Was there any Race after?
A. No, no Horſes ran, not as far as I can underſtand.
Q. What did you do after that?
A. I went into a Tent to take a Glaſs of Ale after.
Q. Do you know Lord *Angleſea*'s Livery?---*A.* Yes.
Q. What Colour is it?—*A.* He gives red.
Q. Red! Why Man, he that you ſaw in red might have been a Soldier for what you know?
A. I do not know but the Man that I ſaw was a Soldier, but he had his Livery on him.
Q. Was the Man that you took for his Servant dreſſed in red?
A. I did not take him to be his Servant then, but I took him to wear his Livery.
Q. You ſaid he wore my Lord's Livery?----*A.* I did.
Q. Did you at that Time underſtand that he was his Servant?
A. I took him to be his Servant.
Q. Why?---*A.* Becauſe he wore his Livery.
Q. What Livery?---*A.* Facing with red.
Q. What Colour was the Outſide?
A. Blue, Sir, and was faced with red; and this was red. [*Pointing to his Veſt.*]
Q. Red Inſide? What the Lining?
A. No, the Facing. [*Pointing at the ſame Time to the Cuff of the Sleeve and the Veſt.*]
Q. Was there any Lace upon the Livery?
A. I believe there was; I did not take ſharp Notice.
Q. Had you ever ſeen any of his Servants before?
A. I ſaw ſeveral of his Servants before.
Q. Are you ſure you know his Livery?
A. I know his Livery pretty well.
Q. Had you ſeen that Man before that Time that you took to be his Servant?
A. I do not know whether I ſaw that Man's Face before that Day.
Q. You live at *Newbridge?*---*A.* I do.
Q. Does any Gentleman there keep a Servant in blue Livery?
A. I cannot tell whether there be or not.
Q. Did you at that Time underſtand the Man to be a Servant to Lord *Angleſea?*
A. I took him to be his Servant, becauſe he wore his Livery.
Q. What Cloaths did my Lord wear that Day?
A. My Lord wore brown that Day, a brown Coat.
Q. What Sort of Hat had he?----*A.* He had a laced Hat.
Q. Had he Lace upon his brown Coat?---*A.* I do not remember.
Q. I aſk you if he had Lace on his Coat?
A. I do not know; I believe he had.
Q. What Sort of Lace?
A. I do not know whether Silver or Gold Lace.
Q. Was he in his Coach, or on Horſeback?
A. He was on Horſeback, riding a bay Mare.
Q. Do you know any of the Company that was about him?
A. I cannot tell any Man that was about him.
Q. Do not you live near that Place?
A. I live within a Mile or two of it.
Q. And yet you did not know any of the Gentlemen?
A. I did not know one of them.
Q. Can you name any one Man that was preſent when my Lord made that Declaration?---*A.* I cannot, I did not take Notice.
Q. Did my Lord ever ſpeak to you before that Time?---*A.* He did.
Q. Did he ever eat or drink with you?
A. I never drank or eat with him, he would not be ſo great with the like of me.
Q. Do you know Mr. *Francis Annesley* of *Ballyſax?*
A. I did hear of him.
Q. Do you know him.---*A.* I know him.
Q. Was you ever at his Houſe?---*A.* I was at his Houſe.
Q. Do you know his Servants?---*A.* I do not.
Q. Nor his Livery?---*A.* No.
Q. Do you know Mr. *Steel?*---*A.* I do.
Q. How far does he live from you?
A. He lives about *three* Miles from where I live.
Q. Was you ever at his Houſe?---*A.* I was.
Q. Do you know his Livery?---*A.* No.
Q. Nor Mr. *Francis Annesley*'s Livery?---*A.* No.
Q. Can you name the Livery of any Man that lives near you?
A. I cannot, Sir.

4. *Mr.* John Archbold.

Mr. *Callaghan.* Where was you on the 16th of *September* laſt?
Mr. *Archbold.* At the Race of the *Curragh.*
Q. Did you ſee any Thing particular that happened that Day between Lord *Angleſea* and any other Gentlemen?---*A.* I did.
Q. Give an Account of it; tell your own Story?
A. I will, Sir. I was drinking, my Lord, in a Tent, on the 16th of *September* at the *Curragh*, and I heard ſome People cry out, *Knock that Son of a Whore* Kennedy *down.* With that I thought it was a Friend of mine that had been at the *Curragh* that Day, that was in danger; upon which I immediately got on Horſeback, and ſaw Mr. *Jans* and Lord *Angleſea* beating this Mr. *Kennedy*, and *Kennedy* had his Head down in this Manner, and they were ſleaking him, beating him, my Lord, very ſeverely: And ſeeing this, I went up to *Jans*, and laid my Hand upon his Arm, and ſaid, *I wonder you would be guilty of beating a Man in this inhuman Manner, and whatever the Fact is you beat him for, he cries out, I have nothing to ſay to it; that ought to ſatisfy you.* I myſelf did not underſtand what the Quarrel was about; but after I had ſpoke to *Jans*, he went to my Lord *Angleſea*, and he ſaid, *My Lord, it is not worth your while to beat him, let him alone.* With that my Lord deſiſted, and I went to Mr. *Kennedy*, and told him, *You had better get off in the beſt Manner you can, for you'll be murdered if you ſtay here.* Mr. *Kennedy* ſaid, *he could not go for his Friends, he could not leave them.* With that the Mob ſaid, Mr. *Annesley* is gone off the Field: And with that Lord *Angleſea* ſaid, *Follow the Son of a Whore, and knock his Brains out.* With that the People rode off after him, and we rode after the Crowd from the Place where we ſtood, towards the Turnpike-Road to *Newbridge*; and by the Time I came up, Mr. *Annesley* was fallen into the Ditch with his Horſe, and ſome Gentlemen came up, and were for ſtriking him as he lay there; and I ſaid, *I believe he is dead already, and there is no need to kill him again.* And with that I alighted, cherished him, and opened his Stock, and the Surgeon came to bleed him, but could get no Blood; and I got a Chair, and ſent him to *Newbridge*, and within an Hour or two after I went to ſee him.
Q. Did you think, when you ſaw him in the Ditch, that he was dead?
A. I did believe he was ſo hurt, that he would not recover in a good while.
Q. Did you hear any Directions given by Lord *Angleſea* to any Perſons?
A. I only heard him ſay what I have ſaid already.
Q. Repeat that again.
A. When the Mob cried out Mr. *Annesley*'s gone off; my Lord *Angleſea* ſaid, *Follow the Son of a Whore, and knock his Brains out.*
Q. Did any Body purſue upon that?
A. I cannot ſay whether it was upon his ſaying it or no that they follow'd him, but there was a great many People follow'd him upon his ſaying ſo.
Q. Do you know who thoſe Gentlemen were that would have ſtruck him, if you had not prevented them?---*A.* I do.
Q. Who? Name them.---*A.* Mr. *William Warren* of *Grangebegg.*
Q. Did any body ſtrike him?
A. No, not one; I believe I prevented that pretty much.
Q. Do you believe any body would have ſtruck him, if you had not been there?

A. Upon my Word, I believe some would have struck, if I had not prevented it; for Mr. *Warren* was alighting in order to strike him; and I told him, *Do not strike him, for he is killed already, I believe; and you are a Gentleman of Fortune and Figure in this Country, and not proper to be seen in such a Riot as this.*

Cross-Examination.

Mr. *Green.* Did you see any other People pursue Mr. *Annesley* besides Mr. *Warren?*—*A.* I saw several.

Q. Did you see any in Lord *Anglesea*'s Livery?

A. I cannot tell; I did not take Notice whether any in Livery pursued him, or not.

Q. Did you stand by him for any time after you came to the Ditch?

A. I did, till I put him into the Chair.

Q. Did you see any of Lord *Anglesea*'s Servants there?

A. I did not observe if any Servant of Lord *Anglesea*'s was present, or not.

Q. Recollect who you found at the Ditch.

A. I found Sir *Kildare Borrowes*, Mr. *William Warren* there; and so was *Dillon Ash*---and a good many Acquaintance.

Q. How soon after his Fall into the Ditch did you come up?

A. He was some time down, I believe, for the Horse had got up before I came.

Q. Did you see Mr. *Annesley* soon after this at *Newbridge?*

A. I turned back at that Time when I put him in the Chair, and saw the other Heat at the *Curragh*, and after that went to *Newbridge.*

Q. Had he no Bruise, or Cut, or Stroke with a Whip, that you perceived?---*A.* He had not, that I perceived; nor did I look.

Q. Was he in his Senses when you put him into the Chair?

A. He was not.

Q. Did he tell you then, that he got ever a Stroke from any body?

A. He did not tell me that he got ever a Stroke. How could he tell me then, when he was senseless?

Q. There was a Heat, you say, after he fell?

A. There was, Sir; I went back to see the Heat.

Mr. *Digby.* Did you see any body pursue him before he fell down?

A. When I came up he was in the Ditch; there were a great many running that Way.

Q. Did you know any of them?---*A.* I knew Mr. *William Warren*, and Sir *Kildare Borrowes*, and spoke to Mr. *Warren* not to strike him.

Q. Did you see Mr. *William Warren*'s Horse run away with him that Day?---*A.* I did not observe his Horse run away with him.

Mr. *Malone.* Do you think the People you saw there intended to do him any Harm?---*A.* God knows whether they intended him Harm, or no.

Q. Do you believe all the People you saw there were bent to do him Mischief?

A. I believe there were several, among such a Concourse of People, that did not: Sure, if they were all bent to murder him, he would have lost his Life indeed!

Court. You said, that you heard Lord *Anglesea* say, *Follow the Son of a Whore, and knock out his Brains?*---*A.* Yes, I did.

Q. Give your Opinion, whether any Pursuit happened in consequence of those Words?

A. My Opinion of the Matter is this, that I saw them pursue him as soon as Lord *Anglesea* spoke; but I do not know whether they followed him out of Curiosity, or by my Lord *Anglesea*'s Means; how can I know their Intention?

Mr. *Spring.* Was it not usual for a Crowd to follow him wherever he appeared?

A. Why, I cannot tell; I never saw him till the Race-day before.

Q. Was he not followed to whatever Part of the Ground he went the first Day?

A. I only saw him come on the Ground from the Turnpike-Road with his Servants, and I was shewed him there, and do not think I saw him after, that Day.

Q. When you came up, did you see Mr. *Warren* attempt to hurt Mr. *Annesley?*

A. Mr. *Warren* was alighting when I came up, and said some Words that made me think he meant to hurt him in that Manner; and what Reason should I have to speak to him, to beg he would not hurt him, if he did not attempt it?

Q. What was it he did say, that made you imagine he intended to hurt him?

A. I think that he called out to Sir *Kildare Borrowes*; I was in such a Hurry of Spirits, that I cannot tell well what happened, but I think, by the Words Mr. *Warren* said, they were something tending to hurt Mr. *Annesley*; upon which I begged of him not to alight; and he did not, nor did not strike.

Q. Did you observe Lord *Anglesea*'s Dress that Day? Had he a plain or a laced Coat on?

A. I cannot tell you; I do not remember whether it was a plain or a laced Coat, but I know he was on Horseback, and *Jans* went up to him, and bid him give over beating Mr. *Kennedy.*

Q. Did you ever see Lord *Anglesea* before?

A. I have seen him very often.

Q. Are you acquainted with him?---*A.* I know him by Eye-sight, but have not the Honour of being acquainted with his Lordship.

Q. At the Time you heard Lord *Anglesea* make use of the Words you mention, how far was you from him?---*A.* No farther than I am from you.

Q. Was there not a great Crowd about him?

A. The Crowd was dispersed pretty much upon Mr. *Annesley*'s going off.

Q. Can you judge whether they followed Mr. *Annesley* thro' Curiosity, or at my Lord's Instigation?

A. I could not judge whether through Curiosity, or at his Instigation; they followed as soon as he ordered them.

Q. You said, that the Crowd went away and followed Mr. *Annesley?*

A. I do not say all; but a great many followed him.

Q. Do not you believe they attended him out of Curiosity?

A. I told you before, that I could not tell whether out of Curiosity, or at my Lord's Instigation.

Q. Did you know any other Person present to have heard those Words?

A. I did not stay to look about me, but rode off directly.

Q. But do you know any body that was there present?

A. I do not know any body that was by, for I did not stay to examine who was by.

Q. When you came up to him in the Ditch, would any Gentleman have done him Hurt, but for your Interposition?

A. If I had not thought Mr. *Warren* had a Design to do him Hurt, I should not have said the Words I said to him.

5. Mr. William Hacket.

Mr. *Morton.* Where were you on the 14th and 16th of *September* last?

Mr. *Hacket.* On the 14th I was in *Dublin*, and the 16th I was at the *Curragh.*

Q. Do you know what happened the 16th between Mr. *Mac Kercher*, Mr. *Annesley*, and my Lord *Anglesea?*

A. I was in a Tent drinking a Bottle of Wine with some Gentlemen, and a Boy came in and said, *The young Earl was killed.* Immediately on hearing that, I ran out, got my Horse, and followed them. There was a cry out, *He's gone that Way, pursue him, pursue him!* Upon which I followed as fast as I could, and came up to Mr. *Mac Kercher*, and said, *Why don't you go on faster, Sir?* He said, My Horse has no Speed. *Pray, Sir, do you follow Mr.* Annesley, *and keep close to him till I come up, for he will be murdered.* Upon that I followed as fast as possible, but he was fallen in the Ditch, and many about him before I got to him. I saw he was very much hurt, upon which I attempted to bleed him; he was quite senseless and speechless, and though I made two Punctures in his Arm, he would not bleed, and after that he was sent off to *Newbridge.*

Q. Was he recovered before he was sent to *Newbridge?*

A. He was not recovered.

Q. Did he say any Thing?---*A.* He did not speak a Word.

Q. When did you see him after this?—*A.* I saw him that Night after.

Q. In what Condition did you find him then?

A. He had recovered his Senses.

Q. Did you stay any Time with him?—*A.* I lay there that Night.

Q. Do you remember any thing remarkable to have happened further?

A. The next Morning I got up early, and went out to look at my Horse. And Mr. *Mac Kercher* was apprehensive of some Danger, and said over-Night they would go away very early. I went into the House again after I had seen my Horse, and a Boy came in and said, *The House was surrounded, and that the Gentlemen in the House were way-laid.* I told Mr. *Mac Kercher* what the Boy said, upon which he and some more went down Stairs to see if it was true, and then they were assured of it.

Q. How do you know that?

A. I went out with them to the Ditch of the Garden to see if we could perceive any People, and then we saw them plainly. We came in again, and then the Landlord told them the same Thing.

Q. What followed after this?

A. Some time after that, Mr. *Mac Kercher* was taken up on a Warrant by one *Lacy* and a Constable, and they came up Stairs together, and then he took Mr. *Goostry* and Mr. *Kennedy.* Then we got ready, and were going to *Naas* to give in Bail there; and when we were a good Way from *Newbridge*, one *Angus Byrne* came up in full Gallop with a Gun in his Hand; Mr. *Annesley* was then on one Side of me, and Mr. *Goostry* on the other; and he laid his Gun upon his Thigh when he came up, and he immediately turned about and gave his Whip to a Countryman, came close to me, and laid his Hand upon the Cock of the Gun. I cannot say positively I heard it snap, but he made a Noise as if he cocked the Gun.

Court. How was the Gun directed?

A. The Muzzle was directed towards Mr. *Annesley*, cross the Pommel of the Saddle.

Q. Did you perceive him touch the Cock of the Gun?

A. I saw him put his Thumb upon the Top of it.

Q. Can you say that he cocked it?

A. I cannot be positive; I did not see it cocked, but I heard it snap: upon which I made Mr. *Annesley* alight; I called out to the Coach to stop and take him in, and Mr. *Goostry* came up to us.

Q. What kind of a Noise was it you heard?

A. It was the Sound of a Gun cocking.

Q. Did Mr. *Annesley* alight and go into the Coach?—*A.* He did.

Q. Who advised him to go into the Coach?

A. I did, and I believe Mr. *Goostry* did.

Q. Why so?—*A.* Because I thought that the Man intended to shoot him.

Mr. *Mac Manus.* You said *Byrne* gave his Whip away?---*A.* I did.

Q. With what Intention did he do that?---*A.* I cannot say.

Q. Was it in order to be the more ready to shoot?

A. I suppose it must be so, Sir; it looks as if it was.

Q. Did you say any thing when he gave away his Whip?

A. Not a Word.

Q. In what Manner did he give it away?

A. He rode up in a Hurry, gave his Whip to the Man, and turned back immediately.

Q. What further happened after this?

A. After that we met some People on the Road, who came from *Naas* to meet us, and they conducted us to *Naas.*

Q. What became of *Byrne?*

A. He turned back immediately after Mr. *Annesley* got into the Coach.

Q. How soon after this Man had given away the Whip, and put his Hand to the Gun, did Mr. *Annesley* go into the Coach?---*A.* Immediately.

Q. Did you see him take his Whip again?---*A.* I did not.

Q. Did he go with you to *Naas?*

A. He came up to us again, and went there with us.

Q. What happened after you got to *Naas?*

A. When we were going to give in Bail for the Gentlemen; *Byrne* came in and laid down the Gun upon a Bed in the Room where the Gentleman that took the Gentlemen in Custody from the Constable was; I think he was Sovereign of *Naas.* I went in, Mr. *Carrick* and that Gentleman was there, and we were desirous to see if the Gun was loaded; and it being a Screw-barrelled Gun, immediately I unscrewed it, and took out *eight* Bullets.

Court. Who unloaded the Gun?

A. I unloaded it myself; unscrewed it, and took out the Shot.

Q. What kind of Shot.——*A.* Large Swan-Shot.

Q. How many of them?

A. There were *eight*; I brought them in to the Gentlemen.

Q. How big were they?---*A.* They were very large.

Q. How large? Deſcribe them.

A. They were thus big. [*The Witneſs deſcribes them to be as big as the tip End of his little Finger.*]

Mr. *Baget.* Were they caſt in a Mould, or were they rough and uneven?

A. They were quite round.

Mr. *MacManus.* Tell what happened after that.

A. Then the Sovereign took the Gun, and *Byrne* was examined with what Intent he carried the Gun, and whoſe it was? He ſaid, *It belonged to my Lord* Angleſea, *and he was to follow the Directions of Mr.* Lacy, *in order, if there was any Reſcue intended, to prevent it.* They then aſked him what he was to do with it in caſe of a Reſcue? He was going to anſwer, when *Lacy* ſtopped him, and ſaid, *You have anſwered it already, and anſwer no more Queſtions.*

Q. Had *Lacy* any Arms?

A. When the Men from *Naas* were coming up, *Lacy* took out a Piſtol upon the Road, and I ſaid to him, Sir, Mr. *MacKercher* told you before we came out, that we expected a Guard from *Dublin* or *Naas*, and you need not fear any Reſcue.

Q. What kind of a Piſtol was it?---*A.* It was a Pocket Piſtol.

Mr. *Bagot.* Did you obſerve Lord *Angleſea*'s Coach driving at any Perſon on the *Curragh*?---*A.* Really, Sir, I did not mind, I was in a Tent drinking a Glaſs of Wine.

Croſs-Examination.

Mr. *Morgan.* You ſay when you heard this Noiſe of the Gun, that the Muzzle was preſented to Mr. *Anneſley*?---*A.* Yes, the Gun lay upon the Pommel of the Saddle with the Muzzle towards him.

Q. Which Side of you was *Byrne* on?---*A.* The Left.

Q. And where was Mr. *Anneſley*?---*A.* On the Right.

Q. You rode then between Mr. *Anneſley* and *Byrne*, when *Byrne* came up?

A. I did.

Q. At the Time you heard this Noiſe of the Cocking, would not the Gun have ſhot you, or your Horſe, if it had gone off?

A. I believe it poſſible it might.

Q. Deſcribe the Poſition of yourſelf.

A. I had Mr. *Anneſley* on the right Hand, and *Byrne* drove upon the left Side of me, and I got cloſe to Mr. *Anneſley*.

Q. In which Hand had *Byrne* the Gun?

A. He had the Gun in his left Hand, and the Bridle in his right.

Q. You ſaid it was pointed to Mr. *Anneſley*?

A. It was lying on the Pommel of the Saddle, acroſs the Horſe's Neck, with the Mouth towards him.

Q. Could he have ſhot him before he got into the Coach, if he had had a mind?

A. To be ſure he might, if he pleaſed; but it would not have been poſſible for him to have eſcaped if he had ſhot.

Q. If the Gun had gone off, muſt it have ſhot Mr. *Anneſley*?

A. If it had gone off inſtantly as he came up, it might have ſhot me.

Q. What happened after *Byrne* came up?

A. Mr. *Anneſley* alighted, and Mr. *Gooſtry* came up, we called to the Coach to ſtop, and he went in, and then *Byrne* turned about and went back again.

Q. Do not you believe that *Byrne* carried that Gun to prevent a Reſcue, and for no other Purpoſe?---*A.* How can I tell?

Q. What do you believe?---*A.* I proteſt, I cannot tell what to believe.

Q. Had the Gentlemen any Arms in the Coach?---*A.* They had not.

Q. How many Servants attended Mr. *MacKercher* and his Company at *Naas*?---*A.* I know there was the Groom, and a Footman, and I really cannot recollect any more.

Q. Were there not *five*?---*A.* I cannot recollect any more.

Q. Were the Servants armed there?---*A.* I know the Groom was.

Q. What did the People that came from *Naas* ſay when they came up?

A. I cannot tell; ſome went on one Side of the Coach, ſome on the other, ſome on Horſeback, and ſome on Foot.

Q. Did not you hear it rumoured by them, that *we will attempt a Reſcue*?---*A.* I did not.

Q. Did not you hear them cautioned not to attempt a Reſcue?

A. I did not indeed.

Q. *Lacy* took out a Piſtol, you ſay?

A. He had a Piſtol in his Hand when the Men came up.

Q. Did the Men ſay any thing to him about his having his Piſtol in his Hand?---*A.* They did not.

Q. Did *Lacy* give any Reaſon for having that Piſtol in his Hand?

A. He gave me no Reaſon for it.

Q. Did you hear him give a Reaſon to any Body?

A. I did not hear him give any Reaſon.

Q. Did not you hear him ſay that he took it out to prevent a Reſcue?

A. I did not.

Q. What did you ſay to him?

A. I told him Mr. *MacKercher* ſaid, before we came out, that we expected People from *Naas*, and that there will be no Reſcue.

Q. What did he ſay when you told him there would be no Reſcue?

A. He made me no Anſwer to that.

Court. Before *Byrne* came up with the Gun, how were you and Mr. *Anneſley* riding?

A. Mr. *Anneſley* was firſt, a little Diſtance before me; immediately upon *Byrne*'s coming up and giving the Whip to the Man, I got up to Mr. *Anneſley*.

Q. Was *Byrne* nearer than you to Mr. *Anneſley* at any Time?

A. I was nearer all the Time.

Q. How near was *Byrne* to you?—*A.* He was within a Yard of me.

Q. If the Gun had gone off, could it have ſhot Mr. *Annesley* or you?

A. It might as well have ſhot him as me; I believe it poſſible it might have ſhot me.

Q. On what Side of Mr. *Annesley* was you?

A. I was on the left Hand Side of him after I joined him.

Q. In what Poſition had *Byrne* the Gun at his coming up?

A. It was upon his Thigh, and immediately upon his coming up he laid it acroſs the Pommel of the Saddle.

Mr. *Spring.* At the Time that the Gun was pointed towards you, where was *Byrne*'s Right Hand?---*A.* I cannot tell.

Q. Did not you ſay that his Right Hand was upon the Bridle?

A. At his coming up he had the Gun upon his Thigh in the left Hand, and the Whip and Reins in the other Hand; he gave his Whip away, and then held the Gun acroſs the Pommel with his left Hand.

Q. In what Poſition was the Gun at his coming up?

A. The Gun was pointed up into the Air at his coming up.

Q. Was the Bridle in his Right Hand then?---*A.* It muſt have been in the Right Hand, becauſe the Gun was in the Left.

Q. Was the Time *Byrne* came up any conſiderable Time before you met the People coming from *Naas*?---*A.* Yes, it was.

Q. How long?---*A.* I cannot tell.

Q. Was it ten Minutes?---*A.* Yes, it was, and more.

Q. A Quarter of an Hour?---*A.* I cannot tell exactly.

Q. What was it *Byrne* did after he came up?

A. He immediately gave the Whip away, and came up cloſe to us, and immediately upon Mr. *Annesley*'s alighting and going into the Coach, he turned back.

Q. Did you ever ſee *Byrne* before?

A. I never ſaw him in my Life before.

Q. Did he ſay any thing to you?---*A.* He did not ſpeak to me.

Q. Did he know you at that Time?---*A.* He did not appear to know me.

Q. Did you know him?

A. I did not know his Name 'till we came to *Naas*.

Q. How long after *Byrne* turned back was it that he followed you to *Naas*?---*A.* A good while.

Q. Was it an Hour?---*A.* I cannot ſay.

Q. Half an Hour?---*A.* To the beſt of my Knowledge it was thereabouts.

Q. Was it after the People met you?

A. I believe it was, I cannot be poſitive.

Q. How long after?---*A.* I cannot tell exactly how long it was.

6. *Mr.* William Gooſtry.

Mr. *MacManus.* Were you at the *Curragh* laſt *September*?

Mr. *Gooſtry.* I was there the firſt and laſt Day of the Races.

Q. Give an Account of what happened there; tell the whole Affair.

A. The 14th of *September* laſt we went to the *Curragh*, and there was but one Horſe to run that Day, and there being no great Diverſion, we rode a little up and down the Courſe that Day, and came off again.

Q. From what Place did you go to the *Curragh*?

A. We went from *Dublin* to *Newbridge-Inn*, and from thence to the *Curragh*.

Q. Did any thing remarkable happen to you on the 14th?

A. We ſaw Lord *Angleſea* and other Gentlemen ſtanding at a Tent as we rode up the *Curragh*, and when we were coming back again from the Courſe, juſt before we came to the End of it, Lord *Angleſea* ſaid, *See that Scoundrel* MacKercher, *though he now looks like a Gentleman, that Coat he has upon his Back I ſaw not a Month ago in* Monmouth-Street. Mr. *MacKercher* ſaid, *Do not let us take any Notice of it, it is not worth while*; ſo we rode off the Ground, and went to *Newbridge*; that was all that happened that Day. The next Day was *Thurſday*; there was no Race that Day; and we went to Gentlemen's Houſes in the Neighbourhood, where Mr. *Anneſley* was known when he was young. On *Friday* we went to the Race again, and juſt as the firſt Heat was over, we came upon the *Curragh*, and went up to the Company. After ſome little Stay there, we left that, and rode on further; and as we were riding, the Coachman of Lord *Angleſea* came full gallop through the Middle of us; we got out of his Way as faſt as we could; he turned ſhort about again, drove at us, and we got on the other Side of the Rail to avoid him, and he came there with his Whip, and pointed to Mr. *Annesley*, crying, *Shoe-boy, that's he, Shoe-black.* Preſently he came to us again——

Court. Which Side of the Rail?

A. The Outſide of the Rail, my Lord—and drove at us there. Mr. *MacKercher* then ſaid, *There is no bearing of this, we muſt either go out of the Courſe, or elſe ſpeak to my Lord to chaſtize him.*

Q. Were there other People on the other Side of the Rail beſides you?

A. There were other People there beſides us, but very few.

D. Go on.

A. Mr. *MacKercher* went up and down to find my Lord *Angleſea*, and we went up along with him to the Winning-Poſt, and there my Lord and others were ſtanding; and Mr. *Annesley* was rather behind, out of the Crowd; *five* or *ſix* Horſe Lengths behind he might be: So Mr. *MacKercher* ſaid, with a low Voice, *I want to ſpeak with your Lordſhip.* My Lord ſaid, *I have no Piſtols*, and was ſtartled, and changed Colour a little, I thought. *This was no Time and Place*, he ſaid further, *to talk thus, I have no Piſtols.* Mr. *MacKercher* ſaid, *For what I have to ſay to your Lordſhip, every Time and Place is proper; for all that I have to ſay, is againſt one of your Servants that uſed a Gentleman ill*, or Words to that Effect. My Lord aſked, *Who the Gentleman was?* Mr. *MacKercher* ſaid, *That's the Gentleman, Mr.* Anneſley. My Lord heſitated a little, and ſaid, *he was no Gentleman, but that he was a Baſtard.* Mr. *MacKercher* ſaid further, *We expect your Lordſhip will turn your Servant away on the Field, as it is a public Affront.* My Lord then flew into a Paſſion, and called Mr. *MacKercher* a great many opprobrious Names; and Mr. *MacKercher* told him, *he lied*; with that Mr. *MacKercher* ſaid, *Your Lordſhip durſt not ſingle yourſelf out, and tell me ſo.* With that Mr. *Francis Annesley* up with his Whip and ſtruck Mr. *MacKercher* on his Forehead, and with that a little Blood came, and his Forehead ſwelled very much. Immediately upon that, I had a little Whip in my Hand, and I ſtruck Mr. *Annesley.* Upon this it was over, and Mr. *MacKercher* ſaid, *Come, we will go away.* There were ſome other Words paſſed afterwards between Lord *Angleſea* and Mr. *MacKercher*, and Mr. *MacKercher* ſaid, turning to go away, *Come along*, Gooſtry *and* Kennedy, *it is not worth while to talk to a Man who dare affront a Gentleman, and refuſeth him Satisfaction.* I could not get away very readily, being in a Crowd of People; and I believe a Minute or two paſſed before any thing further happened at all. When I was turning my Horſe

to ride off, *There's* Goostry, says my Lord, *another of the Rogues, as great a Rogue as any in* Ireland, *knock him down.* Upon which Mr. *Francis Annesley* struck me again, and a great many more struck me. I was stunned with the first Blow, and bled so prodigiously, that I was all over Blood. I got a Blow here [*on his Wrist*] that swelled as big as an Egg; and I had fallen off my Horse, if I had not been supported by a Crowd on each Side, who were so near me that I could not fall.

Q. What Distance of Time was there between the first Blow and the second, given by Mr. *Francis Annesley?*

A. It was two Minutes after the first Stroke, that Mr. *Annesley* struck again.

Q. Did he strike you of himself, or by any Directions from any Body?

A. He did not strike me till Lord *Anglesea* ordered him.

Q. Did you leave the *Curragh* immediately upon that?

A. I did not; I thought the Quarrel had been over, and had a Mind to stay to see the Sport. There were some *English* Horses to run, and I clapped my Handkerchief to my Wound, that I might stay and see the Diversion. I rode forward on the Ground, and immediately I heard *the Pretender*, as they called Mr. *Annesley*, was killed. Thinks I, I'll go down to the Starting Post to see what is the Matter, and there I heard that Mr. *Annesley* was in the Lane leading to *Newbridge*; I rode after him, and when I came about half Way down the Lane, I saw a great Crowd of People about him, and found him lying senseless, his Arm stripped up in order to bleed him, but he would not bleed. I got a Chaise that was coming by, put him into it, and got a Man to go with him to hold him in the Chaise that he should not fall out of it, and so carried him to *Newbridge*. The next Morning we were to go early to *Dublin*; Mr. *MacKercher* said, it was very prudent to get to *Dublin* as early as we could. But before we were up, we were alarmed by the People of the House saying, *That the House was beset, and that there were a* hundred *Men*, fifty *one Way*, *and* fifty *another*, *and that there were Men in the Entry that had Fire-Arms.* We immediately got up, and had nothing but Pistols to defend ourselves: We thought them not sufficient to defend us against such a Number of Men, and sent to the Landlord to get us more Arms, if he could; who brought up a Case of Pistols and a Gun; and we were determined not to stir till we could get some Assistance. Mr. *MacKercher* and Mr. *Kennedy* went out to see if they could discover what Number of People there were in Arms; they returned immediately, and told us, *They saw a great Number of People*; so we were determined to secure ourselves in the Room till we should get Assistance. Some time after it was Day-Light, an Hour or two after, Mr. *Kennedy* went out into the Garden to try if he could see any Body; and when he returned, said, *He saw none:* I went down into the Garden, came back, and was told there was a Warrant granted by a Justice of Peace, on the Complaint of Lord *Anglesea* against Mr. *MacKercher*, and Mr. *Kennedy*, and myself. I asked *Lacy*, who came up Stairs to execute the Warrant, if he was a Constable; he said he was my Lord *Anglesea*'s Steward; the Constable was hard by.

Q. Where was this?

A. In the House; they came up Stairs, and shewed the Warrant: Says I, What Occasion for all these People to execute a Warrant? Whose Complaint is this upon? I looked, and found it was a Complaint of Lord *Anglesea*'s. Upon this *Lacy* said, We must go back to the Gentleman that had granted the Warrant, to give in Security. I said, No, we did not care for that, we have got enough of this Country, I am all over Blood, I don't like it so well to go into it again, and you see the Dress I am in, and I'll go to *Dublin*; and thinking there was some Dirt in my Wound, I had a Mind to go where I might have it searched and dressed, for there were two Gentlemen there that offered to bail us. *Lacy* would not go towards *Dublin*, but insisted on our going to the Justice that granted the Warrant. This occasioned us to dispute about it till the Constable whispered us, Naas *is the County Gaol, Gentlemen, and if you say you will go to that Gaol, I must carry you there, whether they will or no.* Upon this we told *Lacy, That we insisted to go there, and if we did not give Bail, we would be secured there.* There being so much Noise, and the Landlord cautioning us, that there might be Danger of going the Road, we sent for some People from *Naas* to come and meet us; so we got ready, and Mr. *Annesley* and I would not go into the Coach.

Q. Who went in the Coach?

A. Mr. *Kennedy*, Mr. *MacKercher*, and Mr. *Carrick*, went into the Coach; Mr. *Annesley*, Mr. *Hacket*, and I, rode on Horseback; when we had gone a little Way, riding almost all three a-breast, I saw several People follow, and a Fellow came galloping after us: I heard the Horse coming, and I looked, and saw a Fellow coming up with a Gun in his Hand, in a green Coat, and a lusty Man. I said, *I wondered what that Man's coming after us in that Manner could mean.* So I drops behind Mr. *Hacket* and Mr. *Annesley* a little, and let the Fellow come between us; he came close up to Mr. *Annesley*, and just as he was dropping back, I got up. Immediately I heard the Gun cock, as I thought, and I instantly dropped betwixt him and Mr. *Annesley*, and then Mr. *Hacket* and I called out, *Mr.* Annesley, *you'll be shot; get into the Coach this Minute, or this Fellow will fire at you.* Mr. *Annesley* upon that alighted, and got into the Coach, and the Fellow said he was going to *Dublin.* I spoke to the Servants to bid them not let the Fellow come between them and the Coach, and said to Mr. *Hacket*, *Let us keep between him and the Coach to prevent any Mischief.* When the Fellow saw that, he turned back again.

Q. Was he so near as to hear you give those Directions?

A. It was impossible he could avoid it.

Mr. *MacManus.* Were there any others that had Arms besides that Man?

A. There was a Country Fellow by, that had a Pistol, and *Lacy* had a Pistol too.

Q. What happened after that?

A. As soon as we had secured the Coach, the Fellow turned back, and *Lacy* kept behind, and just as they saw the *Naas* People coming, they galloped up again, and they went with us to *Naas.*

Q. What happened when you came to *Naas?* Tell what you observed there.

A. Then we came to examine the Man that had the Gun, and sent for the Sovereign, and desired him to examine that Man; so he was asked, *Whose Gun that was?* He said, *Lord* Anglesea's. He then was asked, *What was he to do with it?* He said, *To follow* Lacy's *Directions.* He then was asked, *What Directions?* He said, *He fancied, in Case of Rescue, he was to make use of it.* We asked, *If* Lacy *gave him any Directions?* He said, *Yes.* We asked then, *What Directions?* Before he could answer, *Lacy* stepped in, and bade him not answer any other Question.

Q. Did you give in Security there?

A. No; we went before the Justice of Peace, and gave in Bail.

Mr. *Digby.* You said that Mr. *Francis Annesley* struck Mr. *MacKercher?*—*A.* Yes.

Q. Did Mr. *MacKercher*, or any Body else, strike Mr. *Annesley* before he struck him?———*A.* He did not, nor Nobody else.

Q. Did you strike him?

A. I struck him after he struck Mr. *MacKercher.*

Q. With what?—*A.* With a Whip, upon his striking Mr. *MacKercher.*

Q. Did you apprehend the Quarrel a continued one, or that it was ceased?——*A.* The Beginning of the Quarrel was, Mr. *MacKercher* and Lord *Anglesea*'s speaking together; and after Mr. *Francis Annesley* struck, it ceased for about two Minutes.

(*Cross-Examination.*)

Mr. *Spring.* Pray, Sir, do you recollect the particular Words Lord *Anglesea* made use of to Mr. *Francis Annesley* before he struck you?

Mr. *Goostry.* I did not know Mr. *Annesley* at that Time, but a Gentleman said, that it was he that struck me.

Q. When Lord *Anglesea* used the opprobrious Language you mentioned, did not he say to Mr. *Annesley*, *There is he that struck you?*

A. I cannot say that I did hear him say that.

Q. Were not you near him?—*A.* We were Side by Side; Mr. *Francis Annesley* and I faced Mr. *MacKercher.*

A. Might not he have received a Blow from you without knowing who gave him that Blow?———*A.* Yes, I believe he might; and did not know, I believe, that I struck him; I dare say he did not see me, because he rode forwards to strike Mr. *MacKercher.*

Q. Do you believe he might have asked my Lord who struck him?

A. I can't tell.

Q. Was not he struck by Mr. *Kennedy* at the same Time?

A. He was not.

Q. Did not Mr. *MacKercher* lift his Hand in this Manner with his Whip, upon his talking to My Lord *Anglesea?*

A. No, Sir, he had his Whip in one Hand, and Bridle in the other, and spoke as coolly as any Man in the World could; and before he went up, said, *He would have no Quarrel.*

Q. Did not he lift up the Butt End of his Whip?

A. He did not lift it up.

Q. Did not Mr. *MacKercher* speak to my Lord *Anglesea* in such Manner as tended to a Breach of the Peace?

A. He did not, to my Knowledge.

Q. Did not he tell him, *He dared not come aside with him*, after he had given him the Lye?

A. He did not, until my Lord *Anglesea* had abused him, and called him Names.

Q. Were not you cautioned by Somebody not to go to my Lord *Anglesea?*

A. No Person cautioned us not to go up to him, that I heard of.

Q. Did you yourself caution Mr. *MacKercher* not to go?—*A.* I did not.

Q. Did not Somebody, in your hearing, tell Mr. *MacKercher*, It was your own Fault, if you had taken my Advice, this would not have happened?——*A.* No Person told him that, that I know of.

Q. Do you know *Abraham Robinson?*

A. I do. It was his Chaise carried Mr. *Annesley* to *Newbridge.*

Mr. *Harward.* We have a vast Number of other Testimonies of the Gentlemen of this Country to examine as to the Assault, and what happened at the *Curragh*, which we shall not trouble your Lordship with, for we have now taken up six Hours of your Time; and the only further Evidence that we shall lay before you to conclude this Scene, is to introduce the Person, who shall account for the premeditated Contrivance of this black Scheme; who the Persons were that were employed to execute it; whose Directions they were to have obeyed; and all the preparatory Steps taken in order to come at this Gentleman's Life. We shall trouble you but with this one Witness; and, as it is a Matter of great Concernment to the Publick to have detected, and to my Clients in particular, we shall crave your Indulgence and Patience to hear this Witness.

7. Angus Byrne.

Mr. *Harward.* Mr. *Byrne*, begin to give an Account of what you know, and what Directions you received, and what Conversation passed between you and any other Persons at *Killcullen-Bridge.* Do you know the Earl of *Anglesea?*———*A.* Yes.

Q. Were you Huntsman to any Person, and who?

A. I was to the Earl of *Anglesea* last.

Q. Do you know Mr. *Jans?*———*A.* I do.

Q. When were you Huntsman to Lord *Anglesea?*

A. I parted from him the twenty-fourth of *March* last, *Easter-Saturday* was the Day, at his own House at *Bray.*

Q. How long have you known Mr. *Jans?*

A. Six Years, or thereabouts.

Q. What is he to Lord *Anglesea?*——*A.* I always found him in the Nature of an Agent, or a Man to take Care of his Business.

Q. You know *Michael Lacy?*———*A.* I do.

Q. What has he been to Lord *Anglesea* during the Time you knew him?

A. In the Nature of a House-Steward, and to sell my Lord's Woods.

Q. Do you remember any Races in *September* last?———*A.* I do.

Q. Where?———*A.* At the *Curragh.*

Q. Now give an Account, whether you saw the Earl of *Anglesea*, Mr. *Jans* and *Lacy*, before the Races at the *Curragh*, at *Killcullen-Bridge*, or any Place?———*A.* I did.

Q. Begin, where you first saw them, and tell gradually, from Time to Time, Day after Day, and Night after Night, what passed from the Time you first saw them, until you came to *Naas.*

A. I will, Sir. *Wednesday*, being the first Day of the Running, I came to *Killcullen-Bridge*, about Ten or Eleven o'Clock, and, as I was going to the Stable, my Lord and Mr. *Jans* were standing at *Cavenagh*'s Door, as I passed by them to put up my Horse. In some time after *Jans* came to me to the Stable, and asked me, *Where I had been?* I told him, *I came from the County of* Wexford. He asked me, *Had I left Mr.* Colclough? I told him, *I had.* He then asked me, *For what Reason?* I told him,

On

On account of a ſore Leg that I had, and was not able to do any thing. Upon that, he ſaid, *I am ſure you muſt know a great deal of this Affair* (meaning *the Pretender*, as they called him). *It would do great Service to tell us what you know of it.* I ſaid, *I know nothing of it, at preſent, I give my Word.* Says he, *You can be of Service to my Lord, if you pleaſe; you muſt have heard a great deal of it.* I told him, *I did not hear a Word of it, but only talking about* Bliſs, *Mr.* Colclough *asked me, if I knew where he was, and I told him I did not.* And then *Lacy* came up, and Mr. *Jans* went out; and *Lacy* came to me, and aſk'd me, *How I did?* I told him, *Very well*; and with that I walked out of the Stable. Mr. *Jans* deſired *Lacy* to fetch me in, and make me drink; accordingly I went in, got a Drink, and we came to the *Curragh* that Day.

Court. Who came to the *Curragh?*

A. Michael Lacy and I together, and ſaw the Running that Day. There was no great Sport, and then I came back to *Cavenagh*'s, and lay there that Night: And, lying there, I got up in the Morning, and went into the Entry, and Lord *Angleſea* ſaw me; he was ſtanding in the Back-ſide. *So*, Byrne, ſays he, *how are you? Very well, my Lord*, ſays I. *I was a little angry with you*, ſays he, *I heard in* England *you ſwore ſome Things againſt me, about that Woman called Lady* Angleſea, *and I find they are Lyes, and am ſorry I was ſo long angry with you. You are come from* Wexford, *what News there?* I told him, *None ſtrange.* Says he, *You ſhall go back to* Camolin *again; there are a good Pack of Hounds for you, but your favourite Hound* Forreſter *is dead. You can be of great Service to me; I ſhall pay you what I owe you, and double the Quantity, and you ſhall ſtay a little, and* Michael Lacy *will ſtay two or three Days, for he has ſome Buſineſs with you. What is it, my Lord*, ſays I? Lacy *will tell you*, ſays he, *follow his Directions.* So that was very well; my Lord went to Mr. *Anneſley*'s to Dinner at *Ballyſax*——

Mr. *Harward.* Were there any Promiſes made you at that Time by any Body?

A. My Lord told me, he would pay me what Money he owed me.

Q. Did he ſay nothing further?

A. He ſaid, *He would pay me what he owed me, and double the Quantity, and I ſhould never want.*

D. Go on.

A So then my Lord went to Dinner at Mr. *Anneſley*'s, and ſome of the reſt of the Gentlemen, I do not know how many; but Mr. *Lacy*, and one *Cavenagh*, a Dancing-maſter, ſtaid at the *Bridge*; and *Lacy*, and *Cavenagh*, and Eſquire *Berkley* dined together.

Court. What Day was this?---*A. Thurſday*, my Lord.

D. Well, go on.

A. Then *Lacy* ordered me to get my Dinner, and after I had dined, there was a Sneaker of Punch, and *Bob Meakins* brought it in.

Q. Who?

A. The Drawer.——And after that Mr. *Lacy* called me into the Parlour, and made me drink Wine.

Q. Who did?

A. Mr. *Lacy* and Mr. *Berkley* of the County of *Carlow*; they gave me ſeveral Glaſſes of Wine each of them.---*Lacy* and I went to the *Curragh* on *Friday*, and we were at the *Curragh* a good while before the Running; and after the firſt Heat was over, and the Horſes were ſtarting the ſecond Heat, Mr. *Lacy* and I were ſtanding at the Starting-poſt; ſays he, *G—d, I'll hold you a Crown that yonder is* Mac Kercher *and the* Pretender. *Where*, ſays I? *There*, ſays he. So they paſſed up till they came almoſt facing the Starting-poſt, and turned off to the Right towards the Winning-poſt. *Lacy* ſaid, *he would ſhew them to me. With all my Heart*, ſaid I: So we rode after them and croſſed them, and ſays he, *That's* Mac Kercher, *and that's the* Pretender; *Would you know them again? I would, to be ſure*, ſays I. *Take notice*, ſays he, *that you know them again.* So we croſſed them again; we came to the Starting-poſt, and the Horſes being ſtarted I rode to the round Hill to ſee the Heat, and when the Heat was over, I went into a Tent and drank a Pot of Beer.

Mr. *Har.* When *Lacy* deſired you to take notice of them, and aſked whether you would not know them again, was there any Talk between any Perſons about bloody Noſes?

A. Yes. He ſaid, *They will have good Luck if they have not broken Heads and bloody Noſes before they leave this Ground.*

Q. Was that before, or after he deſired you to take Notice of them?

A. It was after.

D. Now, go on,

A. So then, I tell you, we came to the Starting-poſt, and went round the Courſe; and I went into a Tent to drink, and while I was there I heard there was a Quarrel; and hearing that, I got up, and ſaw People galloping down towards *Ballymanny*; and when the Race was over, I went to *Cavenagh*'s that Night again: So, coming there, I did put up my Horſe, and had him turned out to Graſs; and my Lord *Antrim*'s Keeper, *Arthur Coock*, met me: We went in and called for a Bowl of Punch; we drank about the third Part of it, and Mr. *Lacy* came in. *So*, Angus! ſays he. *Your Servant, Mr.* Lacy, *Will you ſit down*, ſays I, *and take a Glaſs of Punch? I came in*, ſays he, *with Deſign to drink with you.* So we drank till the Bowl was out, and I called to the Drawer to get another. Says Mr. *Lacy*, *Angus, you ſhall drink no more, for you ſhall go to bed, I ſhall want you in the Morning upon earneſt Buſineſs.* So he went up Stairs and ſaw me go to bed.

Q. Pray, do you know of any Piſtols or Fire-Arms that were a-charging that Night?---*A.* I will tell you by and bye.

D. Well, go on.

A. Then, Sir, when I went to bed I lay there till in the Morning *Lacy* came and called me up betwixt *One* and *Two* o'Clock; I got up and I dreſſed myſelf, and he waited till I dreſſed myſelf.

Court. What Time did you go to bed?

A. I went to bed between *Ten* and *Eleven* o'Clock, I believe; I got up, he brought me down Stairs into the Kitchen, where Mr. *Jans* was, and ſeveral other Gentlemen, and they were charging and priming Arms when I came into the Kitchen.

Q. Who were they?

A. There was Mr. *Jans*, *Cavenagh* the Dancing-maſter, one *Williams* of *Piccadilly*, a Gentleman they called Capt. *Stewart*, and my Lord's Nephew.

Q. What were they doing?

A. They were charging and priming of Arms.

Q. What Arms?---*A.* Piſtols and ſmall Pieces.

Q. What Pieces?---*A.* A Fuzee, travelling Pieces.

D. Well, go on.

A. Mr. *Jans* aſked me, *Would I drink?* I told him, *I would*; ſo the Drawer brought a Mug of Ale, and Mr. *Jans* afterwards gave me a Caſe of Piſtols. *What am I to do with theſe?* ſays I. *You are to go along*, ſays he, *with Mr.* Lacy, *and you are to take his Directions, he'll tell you what to do.* Then I told him, *My Horſe is at Graſs, I muſt ſend out for him before I can go.* Mr. *Jans* ſaid, *You muſt ride my Horſe.* I then called for my Surtout-Coat. He ſaid, *I muſt not ride in it, but go as I was, it will be cumberſome to you.*

Q. For what Reaſon?

A. I cannot tell.—So, with that, the Groom went out, and ſaddled Mr. *Jans*'s Horſe, and the other Horſes, and Mr. *Chapman*, my Lord's Gentleman, and *Michael Doyle* the Groom, and Mr. *Lacy*, and I went out. I got Mr. *Jans*'s Horſe, and mounted him in the Road at the End of the Stable, and they all got on Horſeback; and as we got to the Door, there was a Number of Fellows with Pitch-forks and Staves, I believe *Twenty* of them; and we turned along the Road towards *Kinna*; and when we came as far as *Caſtlemartin*, then I aſked *Lacy*, *Where we were going?* He ſaid, *to* Newbridge, *to take Mr.* Mac Kercher, *Mr.* Gooſtry, *and Mr.* Kennedy, *for the Aſſault at the* Curragh, *for ſtriking Mr.* Francis Anneſley *and* my Lord. I ſaid, *I'm ſorry you did not tell me this before, for I am ſorry to have any Hand in it. Sure*, ſaid *Lacy, you are not afraid; you need not fear, what are they to you? What are you to expect from them? If you wanted me to go with you, I'd go farther than this with you.* So we went forward to *Newbridge*, and when we came near the Houſe, the Signal was given, that none of the Fellows ſhould go to the Houſe but one *Brennan*, a Tenant of Mr. *Anneſley*'s of *Ballyſax*, as I heard after, the Conſtable, Mr. *Lacy*, and I.

Q. What was the Conſtable's Name?

A. I cannot tell his Name.—So when we went in, *Lacy* went into a little Room on the Left-hand-ſide of the Door, called for White-wine, aſked me to come in, and we drank it together; and *Brennan* and the Conſtable went into a Room on the Right-hand as you go up Stairs, and got Ale, and they were there for a while; and by-and-bye comes down Stairs Mr. *Mac Kercher*, about half an Hour after we were there; and he came down, and that Time I pointed at the Conſtable, that That was Mr. *Mac Kercher*, and the Conſtable came up, and I ſaid, *That's he, that's your Priſoner, take him.* So the Conſtable came up and ſaid, *You are the King's Priſoner.* With that *Lacy* came out and told him *he had a Warrant againſt him for an Aſſault on Lord* Angleſea; and *Lacy* and the Conſtable went up Stairs with him; I did not: And the other Gentlemen above Stairs were taken. In about an Hour Mr. *Lacy* ſent *Chapman* and the Groom to my Lord, to let him know that they were taken; and *Doyle*, the Groom, left the Gun and the Piſtol he had behind, by *Lacy*'s Directions. So, in ſome time after, I believe an Hour, the Gentlemen got into the Coach, and *Brennan* got *Doyle*'s Piſtol and put it in his Boſom; Mr. *Lacy* had his Caſe in his Pockets, and took the Gun in his Hand, and a Quarter of a Mile beyond the Bridge gave me the Gun.

Q. How near the Inn was this Bridge?

A. As near as from this to the Market-houſe.--So, a little while after, as I ſaid, he gave me the Gun: *Here's this Gun for you*, ſays he, *your Bread is baked, you ſhall be provided for while you live; and*, ſays he, *you are to uſe this Thing, fire at the* Pretender, *be ſure do not miſs him; we have Horſes to carry us off, and never fear, if we are taken, we'll make a Reſcue of it, we have People enough here to prove it for us.*

D. Repeat thoſe Words that he ſaid to you.

A. Angus, ſays he, *you ſhall be provided for, your Bread is baked, fire at him, and never fear, we have good Horſes to carry us off, and if we are taken, we'll make it a Reſcue; we have People to prove it for us, and there is none that can prove it againſt us.*

Mr. *Harward.* When he gave you the Gun, what did he deſire you to do?

A. He deſired me to fire at Mr. *Annesley.—I will not*, ſays I, *nor have any hand in it for all the World.*

Q. What followed after that?

A. I believe we went about as far as *Morriſtown*, when there was a Mob met us in the Road. As ſoon as Mr. *Lacy* ſaw them, *They are coming*, ſays he, *to reſcue Mr.* Anneſley; *Now is your Time, there is no fear, we can make it a fair Reſcue, and go you on one Side of the Coach, and I'll go on the other, and if you miſs him, I'll hit him.* With that he took my Piſtol out of my Holſter. *What do you take my Piſtol for*, ſaid I? He ſaid, *You have another Piſtol, and we'll have three Shots a-piece*, ſays he. *I have it not, for* Brennan *has it*, ſays I, *and I'll have no hand at all in any Man's Blood, and will not commit Murder.* So I came up to the Coach-Door, and he to the other, and I did no more, and he fell back again.

Q. He made a further Application to you when he ſaw the People coming from towards *Naas?*---*A.* Yes, he did.

Q. Where was Mr. *Annesley* at this Time, on Horſeback, or in the Coach?---*A.* In the Coach.

Q. How ſoon before this, of ſeeing the People coming from *Naas*, was it that Mr. *Anneſley* got into the Coach?

A. I believe about a Mile beyond that Place, where we ſaw the People, but I cannot be ſure.

Q. Well now, while *Lacy* was perſuading of you by theſe Inducements and Promiſes to ſhoot Mr. *Annesley*, pray how many Miles might you have gone along with one another from the firſt Time that he began to diſcover his Mind, and give you Directions?

A. I believe near *three* Miles from *Newbridge*, better than half-way, before the People from *Naas* met us, there or thereabouts.

Q. You had gone a Mile after Mr. *Annesley* got into the Coach before you ſaw the People?---*A.* Yes.

Q. Whereabouts was it that *Lacy* firſt applied to you to perſuade you to ſhoot Mr. *Annesley?*

A. He began that Minute after he gave me the Gun, and he held the Diſcourſe till Mr. *Annesley* went into the Coach.

Q. After that did he renew his Applications?

A. He told me, that *ſure I did not fear, that I never was a Coward, and that I need not fear now, and that I might be done for as well as any Man of the World.*

Q. By whom, pray?---*A.* He told me by my Lord *Angleſea.*

Q. Was there any mention of any thing, upon your Refuſal, to contrive your Eſcape?

A. He ſaid, *That I need not fear if he was killed, for*, ſays he, *we have two good Horſes to carry us off, and we have three Shots a-piece, and ſhall be brought off in caſe we are taken.*

Q. By

Q. By whose Means did he promise you should be carried off?

A. He said these very Words; when I told him I would not do it, nor have any Hand in it, he said, *You need not fear, for you'll be done for; never fear.*

Q. Did you get to *Naas?*—*A.* Yes.

Q. Was you brought to any Magistrate there?

A. We were brought into the House of *Drake* there, and I went out with the two Horses to the Backside; and I came in, and gave the Gun to *Drake* to put up, and went into a Street-Seat, and called for some Drink. So, in some Time after the Sovereign came, and examined, *Who gave me the Gun?* I told them, *Mr.* Lacy. They asked, *If it was my Lord's Gun?* I told them, *It was.*

Court. And whose was it?—*A.* It was my Lord's.

Q. How long have you known the Gun?

A. I have known it these *six* Years.

Q. Is it a Gun of Value?—*A.* It is a Screw Gun.

Q. Did you charge that Gun?—*A.* It was not I charged it.

Q. Do you know who did?—*A.* I cannot tell who did.

D. Well, go on.

A. So then they asked me, *What was I to do with it? Why*, says I, *I was to be directed by Mr.* Lacy, *and to do what he would have me*, So then, *Lacy* said, *You are not to tell any Thing to any Man here.* Then I stayed there some Time, and I thought to go back to *Killcullen-Bridge* for my Wallet; and my Lord's Man comes up to me to *Drake*'s House, and said, *You must go to* Dublin. Says I, *John, I'll not go.* Says he, *My Lord says you must follow him to* Rathcoole. So I went, and my Lord was going off as I got there. Mr. *Jans* gave me a Shilling to get my Dinner, and *Lacy* stayed with me. We went on to *Dublin* together, and I was hired the next Day by *Lacy* for the same Wages I had before from my Lord.

Mr. *Harward.* What Day was it Lord *Anglesea* spoke to you at *Killcullen-Bridge?*—*A. Thursday.*

Q. Was this apart, or in the Place he met you in?

A. In private, in the Backside; I was standing in the Entry leading from the Kitchen, and my Lord was in the Backside; he called me, and said the Words I have told you before.

Q. Did he take you privately or not?

A. He took me about as far as from this to that Door, into the Back-Yard.

Q. Was any Person present when he spoke to you?

A. Nobody was there then.

Court. You did not charge any of the Arms?——*A.* I did not.

Q. Do you know who charged the Gun?——*A.* I cannot tell.

Q. Did not you see People charging Arms that Morning?

A. I saw People in the Kitchen; they were priming of them.

Q. Did you see any body charge them?

A. I saw Mr. *Jans* charge them; it was he gave me the Case of Pistols.

Mr. *Digby.* I would ask him whether, as *Jans* gave him the Pistols, he got any, and what Directions from *Jans?*

Court.] He said, *I was to follow* Lacy's *Directions, and I was to follow what he bade me.*

Cross-Examination.

Mr. *Morgan.* Did you refuse *Lacy* to have your Hand in Blood?

A. I did.

Q. Did not you consent to murder Mr. *Annesley?*——*A.* I never did.

Q. Did you not ride up to Mr. *Hackit* and Mr. *Annesley*, with your Gun rested upon your Saddle?

A. I did, and had it this Way on my Thigh.

Q. On what Account did you do so?

A. I rode up as Mr. *Annesley* was going into the Coach.

Q. How did you hold the Gun then?—*A.* It was upon my Thigh.

Q. Was your Hand upon the Cock?——*A.* It was.

Q. Was the Gun cock'd?

A. It was not cock'd; nor can I say that I did cock it.

Q. In what Manner did you hold the Bridle and the Gun?

A. It was in my right Hand I had my Bridle; I gave my Whip to the Constable, thinking it too cumbersome; I had my right Hand on the Bridle, and the left had the Gun with my Thumb on the Cock.

Q. Did you cock up the Gun?

A. I cannot say that I did cock it up.

Q. Was it cock'd?

A. I had the Cock half bent, and let it down again.

Q. How long was this before Mr. *Annesley* went into the Coach?

A. Just as he was going to alight.

Q. In how long Time after did you turn back?

A. A Man, one *Bernard Neale*, came to me, and kept me back.

Q. How long; half an Hour was it?

A. No; only the Coach went on a little before us.

Q. Did you go from *Newbridge* with an Intent to guard them?

A. I did.

Q. How near did you ride to the Coach all along, till you met the People?

A. Sometimes near, and sometimes at a distance, and was not above *fifty* or a *hundred* Yards at the most from it; never further, but sometimes nearer.

Q. How many Servants attended Mr. *MacKercher* and his Company?

A. I cannot tell; I took notice of one that kept by the Coach-door all the Way; there was such a Number of People along the Road, that I could not tell which were Servants, and which not.

Q. How many People might there be in all?

A. A good many, I cannot tell the Number; I believe the Matter of *thirty* or *forty* in all.

Q. What Number attended these Gentlemen along with you and *Lacy* to *Morristown?*

A. They attended them as well as I, and went all the Way to *Naas.*

Q. Did not you ride in company with them to *Morristown?*—*A.* I did.

Q. Where and when then had *Lacy* the frequent Opportunities you mention, to make the Applications to you to take away Mr. *Annesley*'s Life?

A. Why, because we kept company together all along, and the rest went on before us; we went slow as our Horses could walk; the Constable was on one Side along the Coach commonly, and *Brennan* was before, and I took no Notice of the rest one above another.

Q. Now, Sir, I would ask you, did not you, between *Newbridge* and *Morristown*, frequently ride up to the Coach, and just behind it?

A. I did.

Q. With *Lacy?*——*A.* Yes; and he and I were constantly together.

Mr. *Spring.* How far is *Kinna* from *Castlemartin?*

A. About half a Mile; it is not a Mile out.

Q. Did you not ask *Lacy* there, what it was you were going upon?

A. I did.

Q. Did not he tell you, to arrest the Gentlemen for assaulting my Lord *Anglesea?*——*A.* He did.

Q. Was any body in Conversation with you?—*A.* Nobody was by.

Q. Was not *Chapman* with you?——*A.* He was before us.

Q. Now, did *Lacy* at that Time communicate to you any Design of taking Mr. *Annesley*'s Life?

A. Not at that Time, he did not.

Q. When, then?

A. Not till I went over the Bridge, and he gave me the Gun.

Q. How far was you from the Bridge of *Newbridge*, at the Time of his giving you the Gun?

A. Just beyond it; at the two Cabbins that are there.

Q. How many Yards do you think it was?

A. I cannot tell the Number of Yards.

Q. You know where *King* lives over the Way?——*A.* I do.

Q. Was it as many Yards as his House from this?

A. I cannot tell you to the Number of Yards; but it was just at the House on the right Hand.

Q. Are the Cabbins from the Bridge further than the Houses over the Way from this Court-House?

A. I cannot tell that; but it is hard by the Bridge.

Q. At the Time that he gave you the Gun, was the Coach on before you?——*A.* It was.

Q. How far?—*A.* Just afore us, and we rode up to it.

Q. Were all the other Attendants behind the Coach at this Time?

A. Some behind and some before.

Q. Were not the greater Part of them behind?

A. I do not know, for I never minded to reckon them.

Q. Did not they all leave the Inn along with you?—*A.* I cannot tell.

Q. Did not a great many of them?

A. Yes, a great many; I do not know the Number.

Q. Did you perceive any body near you, when *Lacy* gave you this Gun between the Bridge and the Houses?

A. I do not know; I believe there was People, to be sure.

Q. Well then, did he tell you then you were to take away Mr. *Annesley*'s Life?

A. Before I went *three hundred* Yards beyond it he did.

Q. You went from *Rathcoole* to *Dublin* with him?—*A.* I did.

Q. You were hired in *Dublin?*

A. I was, by *Lacy*, for Lord *Anglesea.*

Q. Did you, when you were hired, go to Lord *Anglesea*'s House?

A. I did not go to Lord *Anglesea*'s House, but kept my Horse upon the *Merchant-Quay* at my Lord's Inn, and there kept for a Week.

Q. Where did you go from that Inn?

A. I went to the *Bull's Head*, in *Abbey-Street*, and kept there.

Q. Where did you go from that?

A. I went to my Service; two Days before *Christmas-Eve* I left Town.

Q. Where did you go to?

A. I went to *Camolin*; my Lord gave me his Hounds and my own Horse, and said—There was another Mare, a black Chaise-Mare I might ride; but I did not like her, and I took my own Horse.

Q. How long did you stay there?

A. I stayed there till *March*, till after the Assizes of *Naas*, and that I heard there that I was indicted, and that *Lacy* was come home; I said it was very hard I should be obliged to run my Country, when I had done nothing to deserve it.

Q. How came you to leave my Lord's Service?

A. I asked *Lacy* first for Money to buy Shoes, and he would give me none; I then said, I would stay no longer; delivered up the Hounds to the Keeper, and the Horse, and so came to *Michael Lacy*'s House in *Camolin*, got a Dram there, and came towards *Dublin*, and lay at *Bray*, and came the next Day to *Dublin*, and put up my Horse at the *York-Minster.* Then I went to my Lord's House, and when I saw my Lord, he asked me, *What I came there for?* I told him, *I had neither Cloaths nor Money, and in dread of the Indictment found against me at the Assizes. Well*, says he, *stay in Town a little, and go to* Camolin, *and bring up some Hounds that I have given to my Lord* Tyrone; and asked me, *If* Fortune's *Hound was at home?* and said, Fortune *he would not give him.* And one Morning, when my Lord went to *Bray*, I went to him for some Money, and found he was gone; and I went to him to *Donnybrook: Sure*, says I to one of the Servants, *he would not go, and not leave me Money! Go to* Donnybrook, says he, *and you'll meet him there; he's gone in a Hackney-Coach, and is waiting till his own is ready.* I accordingly went and met him, and I walked in my Boots. He asked, *What brought my there, and made me wear Boots?* I told him, *Because I had no Shoes, nor Money to buy any, and came to get some from him.* He swore he would give me none; and seeing that, I asked the Coachman to carry me to *Dublin.* My Lord said, *Do not go*; and said, *He would give me half a Guinea, and bid me follow him to* Bray, *and that I should then go to* Camolin, *and carry the Hounds to my Lord* Tyrone; *and then he would make a Present of me and some Hounds to some Gentleman in* England. After this, *Joe* the Coachman told him I made a great Noise for Money in *Dublin*; so my Lord came out again, and called me Mr. *Byrne*; when he called me *Mr.* I thought he was angry with me, and he came and gave me a Chuck under the Chin, and said, *You Villain, do you make a Noise about my House? get about your Business. Green*, his Nephew, bade me not go away, but to beg Pardon, and I'd get half a Guinea; and afterwards my Lord came out and gave me half a Guinea; and, *Follow me to* Bray, says he.

Q. Did you ever threaten my Lord, and tell him, *It should be worse for him if he did not pay your Wages?*

A. I never did.

Q. Do you know *Thomas Stanley?*

A. I do.

Q. Is he any Relation to your Wife?

A. I do not know but he was a Relation of my Wife's.

Q. What Character has he?

A. Aye,

A. Aye, aye, he is a very honeſt Man.

Mr. *Spring.* I deſire the Jury may take Notice, he ſays *Stanley* is a very honeſt Man.

Mr. *Mac Manus.* He does ſo; but every body may eaſily ſee in what manner he ſaid it.

Witneſs. But he is a noted Villain in *Dublin*, and as any Man in *Ireland*.

Q. Do you know Mr. *Francis Annesley?*—*A.* I do very well.

Q. Had you any Converſation with him returning from the *Wexford* Aſſizes about Lord *Angleſea?*

A. I had; I told him at *Killcullen-Bridge* the groſs Uſage I had from my Lord, that I got no Money; and he ſaid he would ſpeak to Counſellor *Annesley*; and, ſays he, you ſhall be ordered your Wages.

Q. Did not you make uſe of ſome threatening Expreſſions if you were not paid?---*A.* I made no uſe of any threatening Expreſſions.

Q. Was you ever in *England?*——*A.* I was.

Q. How long was it that you went there after this Converſation?

A. About a Month, I am ſure; I cannot tell what Time, for I have not the Day of the Month; I went ſoon after, but cannot tell the Time.

Q. What Buſineſs carried you to *England?*

A. I tell you. Firſt, I went there to ſee two Siſters I have married there, and a Brother I have married there. Secondly, I was in dread of theſe Indictments, and as I was bred and born in this Country, and not noted for any thing that was bad, I went to *England* to beg the Gentlemen's Pardons, and try if I could clear myſelf.

Q. In what Part of *England* are your Siſters and Brother?

A. I have a Brother lives in the *Coal-Yard*, he is in the Guards; one of my Siſters lives at *St. Mary Axe*, next Door to the *Hoop* and *Grapes*; the other Siſter is married to a Chairman.

Q. Was not this in *April* you went over?

A. I cannot ſwear to the Month, nor the Day I left *Ireland.*

Q. How many Weeks after you left Lord *Angleſea* was you in *Dublin?*

A. I cannot tell.

Q. Was it a Month?---*A.* I cannot ſwear; I believe it was a Month.

Q. Do you know Mr. *Mac Kercher?*——*A.* I do.

Q. Did you ſee him in *England?*——*A.* I did, in *London.*

Q. How long was you in *London* before you ſaw him?

A. I believe ten Days before I ſeen him.

Q. Was you inquired after by him, or did you enquire for him?

A. Indeed I enquired for him.

Q. When you met him, did not you give him the Account you have mentioned here?

A. I gave him no Account; I gave them to a Gentleman that drew them in *Dublin.*

Q. What Gentleman?

A. To the beſt of my Knowledge his Name is *Baily.*

Q. For what Reaſon was it that you never diſcloſed the Matter till *April?*

A. I would not then, but only that the Indictments were found againſt me in the County of *Kildare.*

Q. Who is *Baily?*——*A.* An Attorney.

Q. Where does he live?---*A.* I cannot tell the Place; to the beſt of my Knowledge he lives in *Golden-Lane.*

Q. Is not he now in this Town?

A. I cannot tell; I have not ſeen him to my Knowledge.

Q. Where do you ſay he lives?

A. To the beſt of my Knowledge his Office is in *Golden-Lane.*

Q. Is he a young Man, or middle-aged?

A. He is a young Man, a middle-aged Man, tall and long viſaged.

Q. How came you to find him?——*A.* I ſent a Man for him.

Q. Were you acquainted with him then?

A. I was acquainted with him two Days or three before.

Q. How came you acquainted with him?

A. A Friend of mine recommended me to him, that he was fit for my Service, that I ſhould employ him to give my Teſtimony.

Q. Where did he draw this Teſtimony for you?---*A.* He drew it for me in the Houſe of *Robert Kennedy* on the *Blind-Quay.*

Q. Who was preſent when he drew it?

A. Nobody was preſent but himſelf and me.

Q. Who wrote the Words you ſaid?

A. He is the Perſon that wrote the Words himſelf.

Q. Was Mr. *Mac Kercher* in *England* when this was done?---*A.* He was.

Q. Was there no Draught of what you had to ſay drawn by your Directions before Mr. *Baily* drew that, by any one elſe?

A. I had myſelf drawn one before that.

Q. By whom?——*A.* I do not know the Man.

Q. Where was it drawn?—*A.* At Mr. *Robert Kennedy's.*

Q. The firſt Time?---*A.* The firſt Time and ſecond Time too.

Q. Did you ſhew Mr. *Baily* any Draught, but what you gave out of your Mouth?--- *A.* I did not, Sir.

Q. What did you do with your firſt Draught?

A. It was tore to Pieces.

Q. Had you any Paper drawn for you in *England?*

A. Not for me, indeed.

Q. Have you any Paper of Inſtructions about you what you were to ſwear?---*A.* I have not.

Q. Did you ſwear to the Examinations you gave in this Kingdom?

A. I did.

Q. Before whom?

A. I do not know the Maſter in *Chancery*, I forget his Name.

Q. Where does he live?---*A.* He lives about *Chancery-Lane.*

Q. Is Mr. *Baily* here?---*A.* I cannot ſay that he is here.

Q. Who adviſed you to go to that Maſter in *Chancery?*---*A.* Myſelf.

Q. Did any body attend you there?---*A.* Mr. *Baily* attended me.

Q. Did he read it and ſign it?---*A.* He did.

Q. Who paid for that Swearing?

A. I did; I borrowed the Money from Mr. *Robert Kennedy.*

Q. Where did you live from the Time you left Lord *Angleſea* till you lived with him again?

A. I lived with Mr. *Colcleugh*, and Mr. *Gerard* in *Dublin*, and Mr. *Marſh.*

Q. How long did you live with Mr. *Colcleugh?*---*A.* About ſeven Months.

Q. Where did you live after that?

A. Lord *Angleſea* put me in the *Marſhalſea.*

Q. For what?

A. I will tell you for what. I came to demand my Wages and my Wife's Wages, that lived with him ſeven Months, and my Lord would give me no Money at *Bray*, but ſaid, my Wife was the vileſt Woman upon Earth; and I ſaid I was very ſorry his Lordſhip thought ſo; and he gave me a Shake, and ſaid, my Children were not my own.

Q. But what did he put you in the *Marſhalſea* for?

A. He put me in for a ſham Writ for 50*l.* and I cannot tell what.

Q. Did you owe him any Money?

A. No; I owed him none; he owed me my own and my Wife's Wages.

Q. How long was it after that you were to kill Mr. *Annesley?*

A. It is near three Years; the latter End of this Month it will be three Years.

Court. What was the Reaſon of your giving your Whip to the Conſtable?---*A.* Becauſe that I could not keep the Whip, the Gun and Bridle in one Hand.

Q. How long had you had the Gun before you gave the Whip to the Conſtable?---*A.* I did not go, I believe, a Quarter of a Mile before I gave it to him.

Q. You carried them that Way?

A. I did; but they were troubleſome to me.

Q. You put the Gun, you ſay, out of your right Hand into the left?

A. I did.

Q. For what Reaſon?---*A.* Mr. *Lacy* was at me to fire, I would not, and I did it to let the Cock down again.

Q. Are you right-handed?---*A.* I am, my Lord.

Q. When you go a-fowling, on which Side do you put your Gun?

A. On my right.

Q. Always?---*A.* Always, my Lord.

Q. Your Gun was at firſt held upwards?---*A.* Yes.

Q. Did you after that level it?

A. I held it this way; directly foreanent the Coach-door the Gun pointed.

Q. When you ſhifted the Gun out of your right Hand into your left, and laid it upon your Thigh, how ſtood the Muzzle?

A. It ſtood this Way.

Q. Did it point towards Mr. *Hacket* or Mr. *Annesley?*

A. I cannot tell; but I had it this Way facing the Coach Door.

Q. Did you never reſt it upon the Pommel of the Saddle?

A. I ſhifted it backwards and forwards.

Q. After you told *Lacy* you would not be concerned in Blood, how long did you continue to ride with him?---*A.* All along.

Q. Did you ſee Mr. *Annesley* alight?---*A.* I did.

Q. Who was by him then?---*A.* I cannot tell the Man's Name.

Q. What Poſture had you the Gun in?

A. This Way. [*Holding it in his left hand, with the Muzzle cocked upwards upon his Arm.*]

Mr. *Harward.* My Lord's Houſe-Steward, *Michael Lacy*, is indicted, we have had Warrants againſt him, and cannot find him; I want to know from this Witneſs, where this *Michael Lacy* now is, in whoſe Service, or upon whoſe Eſtate he lives.

Mr. *Malone.* He is now in this Town, and you ſhall have him.

Mr. *Harward.* Pray, Gentlemen, where is he?

Mr. *Malone.* You ſhall have him; we will bring him hither before this Trial is over. [*He never was produced.*]

Angus Byrne. I ſhall wait three hours in Court 'till I ſee him and talk to him.

STATE of the CASE.

Mr. *Spring.* May it pleaſe your Lordſhip and you, Gentlemen of the Jury, I am of Counſel with the Noble Earl and the other Traverſers of theſe ſeveral Indictments.

The Traverſers, my Lord, ſtand charged with a Crime, which upon the Face of the Indictments appears to be no more than an ordinary Aſſault; but this Offence, though in its nature one of the loweſt which the Law takes Notice of, has by infiniteS kill and Addreſs been heightened into a Crime of a moſt enormous Size; but I hope we ſhall be able to ſhew to your Lordſhip and the Gentlemen of the Jury, that there is not the leaſt Foundation in Truth for the Light, in which the Counſel for the Proſecutors have endeavoured to put this Tranſaction.

Our Caſe, my Lord, will appear to be this; That the Noble Earl and his Friends, who are now upon their Trials, happened to be on the 16th of *September* laſt on the *Curragh* of *Kildare*, to partake of the Diverſions of the Place: Thither repairs Mr. *James Annesley*, attended by his Friends, Mr. *Mac Kercher*, and the other Proſecutors, whether with Intent to meet the Earl, and take hold of any Occaſion that might offer of a Quarrel with him, their ſubſequent Behaviour will beſt explain.

The Earl and his Friends will appear to your Lordſhip to have repaired to this Race-place without any Preparation for what they did not expect, a Battle; they all go unarmed, as Gentlemen always do to a Horſe-race, when nothing is intended but to partake of the Diverſions of the Day.

The Proſecutors, one of whom had, as it is pretended, received ill Treatment two Days before from the Earl, and had conſequently Reaſon to apprehend the like Treatment upon the next Interview, go to that very Place, where they were thus ill uſed, and where it was very notorious the Earl was: but they go prepared for every Event, prepared for that Skirmiſh, which they had Reaſon to expect from the Earl's pretended Miſbehaviour of the 14th; they go in a hoſtile Manner, *in terrorem populi*, no leſs than five or ſix of them armed with Sword and Piſtol, attended by a numerous Train of Servants armed in like manner with Piſtols, cutting Swords, Carbines and Blunderbuſſes; they go thus armed and attended to ſee a common Horſe-race. A Race, my Lord, is a Place of Entertainment, to which Gentlemen repair without any ſuch hoſtile Preparations: I cannot tell indeed what may be done in *North-Britain*, but in *England* and *Ireland* we have no ſuch Cuſtom; the uſual Manner of riding to Races, is on a Hunting-Saddle, and with a Snaffle Bit.

It will appear, my Lord, by poſitive Teſtimony, that the Words charged on Lord *Angleſea*, of the 14th of *September*, as ſpoken to Mr. *Mac Kercher*; *he is a Dog, a Scoundrel, a Villain, and the Coat you ſee on his Back, I ſaw not a Month ago in* Monmouth-Street, were not the Words of Lord *Angleſea*, they were Words uttered by another Perſon. Theſe Gentlemen, two

two Days after theſe Words they complain of were ſpoken, repaired to this ſame *Curragh*. And here I muſt beg Leave once more to obſerve a Circumſtance in itſelf moſt extraordinary: that the Proſecutors, aware of ill Treatment, aware that my Lord *Angleſea* intended to breed a Quarrel with them, alarmed, as they pretend, with the groſſeſt Inſolence that could be offered to a Gentleman and a Man of Honour, go to the ſame Place where they apprehended they had Reaſon to expect the like or worſe Treatment. It might be expected, if theſe Gentlemen had not imagined they might have derived ſome Benefit, ſome Reputation to their Cauſe, I mean to Mr. *Annesley*'s Claim to the Earldom and Eſtate of *Angleſea*, that they might have avoided a Quarrel with the Earl, however diſpoſed he might have been to enter into one; but theſe Gentlemen, who had nothing in View but a Quarrel, go there deſignedly to ſeek one, which they at laſt brought upon themſelves by their own Means, and without even the Concurrence of the Earl.

It will appear to your Lordſhip, that theſe Gentlemen, taking ſome Offence at ſome Expreſſions charged upon the Coachman of Lord *Angleſea*, taking Offence at his driving on the Plain, as he had a Right to do, go to my Lord and demand publick Satisfaction for the Offence his Coachman had given, by ſtripping him in the Field. It will appear, that Mr. *MacKercher* ſeeks out for Lord *Angleſea*, whom with Difficulty he found; that he was cautioned and adviſed not to do it; yet it will appear that he goes to Lord *Angleſea*; that he, who is the known Supporter of Mr. *Annesley*, calls to Lord *Angleſea* for publick Satisfaction for an Injury not done to himſelf, but to another; that as the Champion of Mr. *Annesley*, conſidering himſelf as well the Guardian of this Gentleman's Honour, as the Aſſerter of his Right, he went up towards my Lord, and, in a menacing and violent Manner, forces through a Crowd, and then, with his Whip lifted up ready to ſtrike, cried out, *My Lord, you will not turn him off! ſtep aſide with me.* Lord *Angleſea*, who knew the Man and his Buſineſs, which, conſidering all Circumſtances, could be nothing but to quarrel, endeavours to avoid this Quarrel, declines going, and ſays to him, *Sir, you can have no Buſineſs with me; and if you have, this is no proper Place to talk about it.* Mr. *MacKercher* ſays, *I have no Buſineſs but what may be done here, every Place is proper.* My Lord then inquires what he wanted, and is anſwered, *My Buſineſs is about your Coachman, who has affronted a Gentleman on the Field.* My Lord aſks, *Who is the Gentleman?* He is told the Gentleman *is this very Perſon thus claiming his Honour and Eſtate*; and that, *as the Affront has been publick, the Satisfaction muſt be adequate, and you muſt ſtrip your Servant, and turn him off directly, and drive yourſelf home.* My Lord, this Treatment, which will appear to have been attended with Circumſtances ſufficient to aggravate it, if it had been quite of another Nature, will appear to be the Occaſion of the Quarrel; it will appear that Lord *Angleſea* declined this Combat, to which he was very unequal, as he was not armed, and to which he was not obliged to expoſe himſelf: he refuſes, my Lord, to turn off his Servant. Mr. *MacKercher* reſents this; he raiſes his Whip in a threatening Manner, and loudly demands Satisfaction. I had almoſt forgot ſaying, that, during his whole Converſation, he held his Whip over the Earl's Head. Theſe Circumſtances and Menaces will appear, I apprehend, to be no leſs in Point of Law than that he firſt aſſaulted Lord *Angleſea*. Then it will appear that Mr. *Francis Anneſley*, the Friend and Relation of Lord *Angleſea*, who ſaw the Head of his Family, his Friend and Landlord, thus aſſaulted, gives Mr. *MacKercher* a Blow. It will appear, that though Lord *Angleſea* did not ſtrike Mr. *MacKercher*, yet Mr. *MacKercher* ſtruck him and broke his Head. Mr. *Annesley* ſtands indicted for aſſaulting not only Mr. *MacKercher*, but all the other Proſecutors: It will appear that he, upon the giving of this Blow, received two Blows, one from Mr. *Gooſtry*, and one from Mr. *Kennedy*, and both behind his Back. My Lord, Mr. *Annesley* will appear to have been thus aſſaulted by thoſe two Perſons, and yet this is he that is indicted for aſſaulting Mr. *Gooſtry* and Mr. *Kennedy*. It will appear that Mr. *Annesley* called out, and deſired to know who had ſtruck him; and being informed who they were, then, and not 'till then, returned the Blows. With reſpect to Mr. *Jans*, it will appear that he is the Agent of Lord *Angleſea*, that he ſaw his Employer, we may call him his Maſter, ſtruck and affronted; and that will be a proper Defence for him. As to the Aſſault upon Mr. *James Annesley*, there is no Evidence of any ſuch Aſſault. I ſhall give your Lordſhip no further Trouble at this Time. If I have omitted any thing material, there are other Gentlemen joined with me in this Service, who will ſupply my Want of Recollection.

Mr. *Morgan*. I believe this is our Time to have the Benefit of the Teſtimony of ſome of the Traverſers in Favour of others of them. As to the Indictment for aſſaulting Mr. *MacKercher*, Lord *Angleſea*, Mr. *Francis Annesley*, Mr. *Jans* and *Lacy* ſtand charged with that Indictment; and I beg Leave to appeal to your Lordſhip's Notes, whether there be any Colour (from the Evidence given on Behalf of the Crown) for this Indictment as againſt Mr. *Annesley* and Mr. *Jans*; and therefore hope that they only will now be given in Charge to the Jury, and that the Jury may be directed to bring in their Verdict as to them, in order, that if they be acquitted upon that Indictment, my Lord *Angleſea* may have the Benefit of their Teſtimony upon the ſame. When that is done, we ſhall beg Leave to proceed in like manner upon the ſeveral other Indictments, as to ſuch of the Gentlemen as we apprehend have not been affected by the Evidence given on Behalf of the Crown.

Court. Upon the whole Evidence, I take it, that the Aſſault upon Mr. *MacKercher* ſtands already proved againſt Mr. *Francis Annesley* only, by Mr. *MacKercher*, Mr. *Kennedy* and Mr. *Gooſtry*; the Aſſault upon Mr. *Kennedy* ſtands proved againſt Lord *Angleſea* and Mr. *Jans*, by Mr. *Kennedy* and Mr. *Archbold:* As to the Aſſault upon Mr. *Gooſtry*, the only Perſon that ſpeaks to that is Mr. *Gooſtry* himſelf, who ſays, Mr. *Annesley* ſtruck him with his Whip two Minutes after he had ſtruck Mr. *Annesley*; ſo that upon that Indictment Mr. *Annesley* is not guilty in my Apprehenſion, and may be admitted as Evidence to that.

Mr. *Harward*. I do not know, my Lord, what thoſe Gentlemen would be at; I apprehend the Practice they would introduce is new and unwarranted. Here are in each of theſe Indictments my Lord *Angleſea*, Mr. *Jans*, Mr. *Francis Annesley*, and the out-ſtanding Man indicted; there are four of them in each Indictment.——

Court. It is my Opinion, the Gentlemen of Counſel for the Traverſers may ſeparate the Indictments.

Mr. *Harward*. My Lord, I do admit the Practice to be, that where it has appeared to the Court upon the Trial, that all the Perſons who could give any Account of the Offence have been indicted, or Bills have been found againſt all the Perſons preſent when the Offence was committed: If it appears upon the Trial, that ſome of thoſe Perſons have not been guilty of the Offence, for which they were indicted, I cannot ſay, but it may be the Practice in ſuch a Caſe to ſeparate the Indictments, and permit ſuch as ſhall be found not guilty to give Teſtimony for the reſt, who happen to be indicted; and that may be reaſonable from the Neceſſity of the Thing, as there can be no other Evidence for the Traverſers, there being no other Perſons preſent at the Time of committing the Offence; otherwiſe the Conſequence might be, that all would be found guilty where the Offence was privately committed, though, in fact, ſome of them were innocent. But where the Offence has been committed before Thouſands, as here, and that four Perſons only are indicted for this, and that after ſix Hours Examination it does appear moſt evidently, that each of theſe Four have had a Hand in the general Affray, though not in the Aſſault of every of the Proſecutors, I would ſubmit it, if *that* be ſuch a Caſe, as from the Neceſſity and Nature of it, where there can be no want of other indifferent Witneſſes preſumed, the Court will permit that one of them ſhould be at liberty to give Evidence for the other. The Conſequence of it may be, that they may acquit each other of the ſeveral Indictments, and they are not ſuch equal and indifferent Witneſſes as the Law requires, each of them being proved to have had ſome Hand in one Part or other of this general Affray, though not in the actual Aſſault of every of the Proſecutors, and the Evidence in the whole reaches every one of the Traverſers. Can it be ſaid, that thoſe Gentlemen, againſt each of whom Evidence has been given, are ſo unbiaſſed as to be fit Perſons to be examined as Evidence in the Caſe of each other? I humbly apprehend not; and that it may be an Inlet to Perjury, and in great meaſure defeat the End of all Publick Proſecutions for Breach of the Peace. I beg Leave to ſay, that Lord *Angleſea* is guilty of the Aſſault upon each of the Proſecutors: It has been ſworn that he cried out, *Knock them down, knock them down.* By thoſe Words he is a Treſpaſſer againſt every Man that was knocked down there. I apprehend the Law to be, that he who directs a Man to be knocked down is a Principal, as well as the Man who commits the Fact. Has it not been ſworn, that he not only encouraged, but alſo gave Directions to purſue Mr. *Annesley*?——Why, then, as to Mr. *Annesley* of *Ballyſax*, does it not appear evidently, that he was the Perſon who ruſhed out upon Mr. *MacKercher* and ſtruck him, and that afterwards he fell upon Mr. *Gooſtry*? I think there can be no Doubt but that my Lord *Angleſea* and Mr. *Jans* have been moſt deeply concerned in this whole Affray, not only of aſſaulting Mr. *MacKercher*, but alſo of the reſt. When my Lord was told by Mr. *MacKercher*, *That he dare not for his Soul ſingle himſelf out*; Mr. *Jans* ſaid, *Sure you would not do it; are there not enough of us here to go out and to fight him?*

Court. Upon three of theſe Indictments there has been no Evidence given that can affect Mr. *Francis Annesley*, and therefore he is at Liberty to be examined.

Mr. *Harward*. My Lord, I humbly apprehend, that neither Mr. *Anneſley* nor any of the Traverſers have the Liberty to be examined 'till they are acquitted. I apprehend, though they may not be affected by Evidence on this or that particular Indictment, that they are not thereby cleared of this Charge; becauſe the Gentlemen of the Jury are to conſider upon the Circumſtances and the Evidence of this whole Caſe, whether they are all guilty or not? And the Court are no Judges of Facts, the Jury muſt determine, and are the proper Judges of them.

Court. But you will allow the Judge to ſay, that there has been no Evidence of ſuch or ſuch a Kind given that can affect ſuch or ſuch a Perſon?

Mr. *Harward*. That I do not diſpute, my Lord; but what I ſay is true in Point of Law, that the Court have nothing to do with the Determination of the Fact; that is to be left to the Jury; and if ſo, why then, I ſay, that in this Caſe, the Court cannot foreſee who ſhall be found guilty upon this or that Indictment, and who not.

Court. Why, ſhall I not tell the Jury, that there is no Evidence againſt ſuch or ſuch a Perſon, and that they ought to be acquitted?

Mr. *Harward*. You certainly will, my Lord; but, notwithſtanding that Direction, may not the Jury be of another Opinion concerning this Matter, and may they not conceive, that all thoſe People in general have been guilty, though no Evidence appears againſt Mr. *Annesley* in particular? Unqueſtionably they may. Now, if it ſhould be done, perhaps your Lordſhip will not fine them above a Penny, unleſs the Jury can ſatisfy the Court, that they went upon their own Knowledge from the whole Evidence, which, in all probability, ſome of them will in the preſent Caſe. So that they are the Judges of the Fact; and, if ſo, I would ſubmit it, whether or no the Court can ſay, in a Caſe of that Nature, We will let one of you be Evidence for another, and ſo the third for the fourth, and by that means ſhift and help one another quite out of this Proſecution?

Court. I am greatly ſurpriſed that the Time of the Court is taken up with contending about this Fact of ſeparating the Indictments. You have debated it before, and it was mutually agreed, that that Point ſhould be given to them. For my Part, I think in point of Law they have a Right to inſiſt upon that, and when it was agreed upon that they ſhould be allowed it, I thought that Method was come into in order to ſave Time. The Argument which is inſiſted upon, that where an Indictment is laid againſt a Perſon *ſimul cum* others, they ſhall be all tried together, concludes againſt that which I have known done over and over again, and which hardly eſcapes ever being done in caſe of an Action of Aſſault againſt *A*, with *ſimul cum* other People.

Mr. Att. Gen. Here is an Indictment againſt Lord *Angleſea*, Mr. *Francis Annesley*, and Mr. *Jans*, for an Aſſault, ſuppoſe, againſt Mr. *Gooſtry*; has not any one of theſe three Perſons a Right to ſay Mr. *Jans* is put here to cut me out of my Evidence? They certainly have. I deſire that Mr. *Jans* may be firſt tried, and that his Indictment may be diſpoſed of before any other Proceedings be had againſt the other two; that if he be acquitted, he may be Evidence for them. And as this would be the Law and the Conſequence in the Caſe of a Traverſe, ſo the Law would be the ſame

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in any other Caſe. Why then, this is clear that the Agreement has paſſed in this Manner; the Gentlemen of Counſel for the Traverſers made their Objections to the Indictments being tried together, and thoſe on the other Side replied. What was their Anſwer? It was, that where this or that Perſon was not convicted on any one Indictment, he ſhould be at Liberty to give his Evidence for the others on that Indictment.

Mr. *Mac Manus.* Here are four ſeveral Indictments againſt the Traverſers at the Bar for four Aſſaults; and they are jointly charged in each Indictment.——And where an Offence ariſes from a joint Act, which is in itſelf criminal, the Defendants may be indicted jointly and ſeverally, as that they, and each of them, did ſo and ſo, or jointly only. So is the Law. Now, my Lord, conſider, how it has appeared in Evidence; it has moſt fully and clearly appeared, that all Parties indicted have, one and all, jointly contributed to this unlawful Act; and pleaſe to conſider the Objection theſe Gentlemen make, that *if* they are deprived of this Benefit, they may want the moſt proper and material Evidence for their Defence; as if ſome Perſons might have been here indicted in order to take off their Teſtimony. Your Lordſhip will pleaſe to obſerve where this Action aroſe, at the *Curragh* of *Kildare*, a public Place, where there were a Multitude of People aſſembled; ſo that there could be no Defect of Teſtimony at all on their Side, if any Perſons did or could ſee or hear any thing for their Service; and Numbers of Perſons did and muſt have ſeen this whole Tranſaction; Curioſity, Humanity, or ſome other Motive, muſt have engaged every Eye and every Ear. Then, where there were ſo many Witneſſes that might be had upon this Occaſion, who would either voluntarily, or might have been compelled to come, if material; there can be no Complaint of Want of Evidence, or that the Proſecutors have taken this Method to deprive them of their Teſtimony. And, my Lord, theſe Indictments were of the laſt Aſſizes, ſo there is no Surprize; the Gentlemen might have been fully prepared with any Evidence they thought neceſſary for their Defence, without this extraordinary, this new Method of ſplitting Indictments. And I do apprehend, in this caſe they are in no ſort entitled to the Teſtimony of each other.——It is a ſettled Point, that in Treſpaſs, though one may act more violently, more injuriouſly than another; yet, when all join in an unlawful Act of this nature, the Act of one is the Act of all.——And though *A* did not ſtrike *B*, yet if he ſtruck *C*, where the whole is, as here, one continued Affray, he cannot poſſibly be a legal and competent Witneſs againſt the Crown; the whole is given in Charge to the Jury; he has been in the Affray, and actually committed Acts of Violence; and it has appeared uncontroverted in Evidence, that every Perſon here indicted has been guilty of one Aſſault or another; and that all have been guilty of a publick and dangerous Diſturbance of the Peace.

Court. It has not appeared upon the Evidence, that Lord *Angleſea* or Mr. *Jans* actually aſſaulted Mr. *Mac Kercher*.

Mr. *Mac Manus.* My Lord, all the Acts of Violence of the Day proceeded from the Directions of Lord *Angleſea*; menacing Words, lifting up of Hands, his raiſing himſelf up on his Saddle, commanding and inciting others to ſtrike; he himſelf, as Mr. *Kennedy* and *Archbold* ſwear, violently ſtriking *Kennedy* on the Head, and *Jans* joining him in the Strokes till the People cried out *Shame*; and though opprobrious, abuſive Language may not be an Aſſault, yet, there are many Things that they carried into Action, not only by Words, but by Geſtures, that prove the Aſſault. My Lord *Angleſea* was ſo near Mr. *Mac Kercher* at the Time when Mr. *Annesley* ſtruck him, that he could have ſtruck him himſelf. Every Thing was done by his Directions; and menacing Words, with a lifted Hand, are an Aſſault in Law; and I do inſiſt upon it, in point of Law, that whoever excites, perſuades, or procures another to commit a Treſpaſs or Treaſon is a principal Offender, and equally guilty in Law, as he who ſtrikes; and more eſpecially ſo when all are preſent; and my Lord *Angleſea* and *Jans* were indiſputably preſent, aiding and aſſiſting the aſſaulting of Mr. *Mac Kercher*, and are in Law guilty of that Aſſault.

Mr. *Callaghan.* My Lord, as I do on the one Hand agree, that Traverſers are not to be laid under extraordinary Hardſhips, and that Proſecutors by no means are to make uſe of any Contrivance, any Scheme to entrap Men, in order to deprive them of the Benefit of defending themſelves; ſo, on the other Hand, they are not to elude the Rules of Juſtice, by becoming Evidence for each other. I put it upon the Gentlemen on the other Side to ſhew, that ever they met in any Law-Book, that where there was a Fact done in the Preſence of many, and a few only charged with it, that, on the Trial of thoſe few Perſons, the Indictments ſhould be ſeparated, to make them Evidence, in caſe of their Acquittal, for one another. I am the bolder in this Aſſertion, becauſe it is never done, but where extreme Neceſſity requires it; that Neceſſity can never happen, but when all that were preſent at the Time the Offence was committed, are charged in the Indictment with the Committal of it: The Neceſſity, therefore, of examining any of the People charged with the Offence, if acquitted, as Evidence for the reſt, cannot be, but where there is nobody elſe to give Evidence. In that Caſe, it appears but juſt and reaſonable; but, on the other Hand, if you let thoſe four People be Evidence for one another, when many other Witneſſes might be had, who muſt have ſeen the whole Tranſaction; there is no Proſecution of this nature that will not be eluded. But, my Lord, I will go further, and I do ſay that every Perſon charged here is guilty of every Indictment with which he is charged. Wherever there is an Affray or an Aſſault, let who will be the firſt Promoter, every Man that does any Act whatever, that is aiding and aſſiſting in any manner, is guilty of every Act which is done by the reſt, as much as if done by himſelf; where there are ſeveral People that commit an Affray, each is anſwerable for the Act of the other. There is a Charge againſt Lord *Angleſea* in every Indictment; it ſtands proved in Evidence he has beat Mr. *Kennedy*; there, my Lord, is a direct Charge; and, though it does not appear he actually ſtruck the reſt, yet it is uncontroverted the reſt were ſtruck on his Account, and by his Directions, and in Law he is as guilty of the Aſſault committed on them, as if he himſelf had actually beat them; I ſay, in point of Law he is guilty of all thoſe Facts for which he is indicted. Let any one of them ſeparately be tried before the Jury, and I will undertake to make them guilty in point of Law; and if ſo, I humbly ſubmit it, whether they can be permitted to try theſe Indictments ſeparately.

Court. Was it not agreed upon at firſt, that if any of the Traverſers were acquitted of any of the Indictments, they ſhould be Evidence for the reſt charged with ſuch Indictment?

Mr. *Harward.* Let us not be charged by the Court with a Breach of Conſent. I will tell you very candidly what I meant, when the Objection was made. My Meaning was, that as all theſe Indictments were but upon a ſingle Fact, if it ſhould appear, through the Courſe of the Evidence, that any of the Traverſers had no Hand at all in the Fact, but were idle Spectators there, I thought it reaſonable that ſuch Perſon, who did appear to be only a Spectator, ſhould be examined as Evidence for the reſt. That was my Meaning, my Lord; how I was underſtood I cannot account: But I beg leave to rely upon it for Law, and deſire your Lordſhip's Conſideration; Can any body that lifted his Hand up that Day in the Field, be innocent of this Aſſault? Can it be ſaid that he is not guilty of all the Conſequences of it?

Court. Well; but have they not a Right to be tried ſeparately?

Mr. *Harward.* That is another Point, my Lord.

Court. Gentlemen of Counſel for the Traverſers, you muſt go upon that Indictment, which the Jury are firſt charged with. The Traverſers are firſt charged with the Indictment for aſſaulting Mr. *Gooſtry*.

Mr. *Malone.* The Indictment for aſſaulting Mr. *Gooſtry*, is in no ſort proved againſt the Traverſers. We have many Witneſſes to ſhew, that before ever he was ſtruck, he knocked Mr. *Francis Annesley* down, which indeed he very candidly admits himſelf; and this appears ſo clearly from his own Teſtimony, it would be miſpending the Time of the Court for us to call our Witneſſes to it. Your Lordſhip obſerves, that in two Minutes after Mr. *Francis Annesley* got up, and recovered himſelf, Mr. *Gooſtry* ſwears my Lord *Angleſea* ſaid to Mr. *Francis Annesley*, *That is he, that is* Gooſtry, *the greateſt Rogue alive, damn him, knock him down.* Mr. *Gooſtry* does not ſay, whether he heard Mr. *Francis Annesley* aſk my Lord, who had knocked him down; but, from the Nature of the Thing, it could not be otherwiſe; and the very Anſwer itſelf imports ſuch a Queſtion. A Gentleman is knocked down behind his Back (for ſo the Evidence is), and inſtantly, when he gets up, was it not moſt natural for him to enquire who ſtruck him? It was to this Inquiry, moſt plainly, that Lord *Angleſea* gave that Anſwer; and then Mr. *Francis Annesley* goes up to Mr. *Gooſtry*, and returns his Compliment by breaking his Head. I ſubmit it, therefore, to your Lordſhip, where a Witneſs fairly owns he firſt knocked me down, whether that is not ſuch a ſufficient Juſtification for my ſtriking him, that I need not lay any other Matter before the Jury; for, if Mr. *Francis Annesley*, who gave the Blow, be not guilty of this Aſſault, it is impoſſible my Lord *Angleſea*, or Mr. *Jans*, who did not ſtrike, ſhould be guilty of it. Therefore, I hope your Lordſhip will acquaint the Jury, that there is no Colour for charging any of the Traverſers with this Indictment.

Court. Mr. *Gooſtry* ſaid, that he was ſtruck, and was all bloody; but I heard none ſay that Lord *Angleſea* or Mr. *Jans* ſtruck him, and *Gooſtry* did acknowledge that about two Minutes before he received the Blow he had ſtruck Mr. *Francis Annesley*, and at the Time that he did ſtrike him, did ſay, that he believed Mr. *Francis Annesley* did not know who it was that ſtruck him, and that about two Minutes after my Lord *Angleſea* ſaid, *There is that Villain* Gooſtry *that ſtruck you*; upon which Mr. *Francis Annesley* ſtruck him. This, as I remember, was Mr. *Gooſtry*'s Evidence.

Mr. *Harward.* I now deſire to know when it was that Lord *Angleſea* ſaid, *Knock them down, knock them down.*

Mr. *Callaghan.* Mr. *Gooſtry* expreſly ſwears, it was by the Directions of Lord *Angleſea*, that Mr. *Francis Annesley* ſtruck him. He ſays, I thought the Quarrel was all over, there were above two Minutes between the Strokes, and then my Lord *Angleſea* ſaid, *There is the Villain* Gooſtry, *knock him down.*

Mr. *Malone.* It does not appear from Mr. *Gooſtry*'s Teſtimony, that my Lord ſaid, *Knock him down*; the utmoſt *Gooſtry* ſaid, was, that my Lord ſaid, *There is the Villain, that is he.*

Court. I have nothing upon my Paper about his ſaying any thing concerning the knocking them down.

Mr. *Bagot.* My Lord, I have it upon my Paper, that Mr. *Gooſtry* ſaid, *There is* Gooſtry, *as great a Villain as any in* Ireland, *knock him down.*

Mr. *Mac Manus.* We deſire Mr. *Gooſtry* may have leave to inform your Lordſhip what he did ſay.

Mr. *Gooſtry.* My Lord ſaid, *There is* Gooſtry, *another of the Villains, as great a Rogue as any in* Ireland, *damn him, knock him down.*

Court. You ſee, Gentlemen, Mr. *Francis Annesley* was ſtruck by Mr. *Gooſtry*, on Evidence, two Minutes before he ſtruck Mr. *Gooſtry*, can he then be found guilty of an Aſſault on Mr. *Gooſtry*?

Mr. *Grattan.* Mr. *Gooſtry* ſaid, That there was Hurry and Confuſion, and that during that Time he ſtruck Mr. *Annesley*, and believes Mr. *Annesley* did not ſee him ſtrike him. I take the Liberty to ſay, that if Mr. *Annesley* did ſtrike Mr. *Gooſtry*, and did not ſee Mr. *Gooſtry* ſtrike him firſt, it was the ſame Thing, in the Intention of his Mind, as if he had not ſtruck him firſt: for, ſince he did not know who had ſtruck him, and yet ſtruck Mr. *Gooſtry*, it ſhews plainly he was determined to ſtrike him, and nothing can juſtify Mr. *Annesley* for ſtriking him, but the Provocation of his ſtriking Mr. *Annesley*.

Mr. *Callaghan.* There is another Matter, my Lord, which is to be conſidered, that Mr. *Annesley* ſtruck Mr. *Gooſtry* after his Paſſion was over. It is true, there is no limited Time for determining a Man's Paſſion, and a Man may in Paſſion commit an Act, and not be the Aſſailant. Your Lordſhip may remember many Caſes in the Books to this purpoſe, which it is not neceſſary to trouble you with; but the Rule is, where a Man has cooled and come to temper, there the precedent Act, which was the Effect of Paſſion, is no Juſtification of the ſubſequent Act. Mr. *Gooſtry*'s Evidence is: *I did apprehend all that Matter was over; I do not apprehend the Stroke Mr.* Annelley *gave me was in conſequence of the Stroke he had received, but of Lord* Angleſea's *Directions*; and if ſo, Mr. *Annesley* is undoubtedly guilty of the Aſſault on Mr. *Gooſtry*.

Mr. *Malone.* As to the Indictment for the Aſſault on Mr. *Gooſtry*, we contend for it, that there is no Colour for charging the Traverſers with that Indictment, and hope your Lordſhip will let it go to the Jury upon the Evidence of Mr. *Gooſtry*.

The Counſel for the Proſecuters were over-ruled in their Objection.

The

The Jury go to find whether Lord Anglesea, *Mr.* Francis Annesley, *and Mr.* Jans, *are guilty of the Assault on Mr.* Goostry, *on the first Indictment; and, after a quarter of an Hour's stay, return into Court, and find*

Lord *Anglesea* —— Guilty.
Mr. *Francis Annesley* — Not Guilty.——Mr. *Jans* — Not Guilty.

Court. Gentlemen of Counsel for the Traversers, call your Evidence.

[Neile O'Neile *is called to the Second Indictment, for assaulting* Hugh Kennedy, *Esq.*]

Mr. *Malone.* There are three Gentlemen, my Lord, Lord *Anglesea*, Mr. *Annesley*, and Mr. *Jans*, indicted for assaulting Mr. *Kennedy*; they have traversed this Indictment, and Mr. *Kennedy* himself swears this Assault only on Lord *Anglesea*.

Court. And upon Mr. *Jans*; and there is not only his Evidence to prove it, but the Evidence of Mr. *Archbold*.

Mr. *Malone.* But there is no Sort of Evidence to affect Mr. *Francis Annesley*, and therefore, I hope your Lordship will direct the Jury to acquit him, that we may have the Benefit of his Testimony upon this Indictment.

Court. Have you any Objection, Gentlemen concerned for the Crown? You have not offered a Word upon this Indictment.

Mr. *Harward.* What I have offered before, is all any body can offer to this; and I believe it will soon be seen what the Consequence of it will be.

Court. I call upon you to know, whether you've any Objection to the examining Mr. *Francis Annesley* on the Indictment for assaulting *Hugh Kennedy*, Esq.

Mr. *Harward.* We have an Objection; we do object against examining him, and submit it to the Court.

Mr. *MacManus.* My Lord *Anglesea* and Mr. *Francis Annesley* mutually assisted each other; it is all one and the same Trespass, all one and the same Affray, each is *Particeps Criminis*, and the whole Scene is interwoven, and mixed together.

Mr. *Malone.* There is not a single Word of Evidence given, to prove that Mr. *Francis Annesley* was concerned in the Assault upon Mr. *Kennedy*, and Mr. *Kennedy* himself swore to that Effect; therefore we desire that Mr. *Annesley* may be acquitted of that Indictment, and permitted to give his Evidence.

The Jury go to find, whether Francis Annesley, *Esq. is guilty of the Assault on* Hugh Kennedy, *Esq. or not; and, without quitting the Box, find him——Not Guilty of the Assault in the Indictment.*

Mr. *Malone.* We are now upon an Indictment of Lord *Anglesea* and Mr. *Jans*, for assaulting Mr. *Kennedy*, and desire Mr. *Annesley* may be sworn.

1 Francis Annesley, *Esq.*

Mr. *Spring.* Were you present upon the *Curragh* on the 16th of *September?*—Mr. *Annesley.* I was.

Q. I ask you, was you upon the *Course* at the Time of the Race?

A. I was.

Q. Was you present when Mr. *MacKercher* and his Company came up upon the Horse-Course?

A. I never saw one of them before that Day in my Life.

Q. Did you see Mr. *Kennedy* come up to speak to Lord *Anglesea?*

A. I don't remember that I ever saw his Face before this Day.

Q. Did you see any body come to ask him about his Behaviour?

A. I did.

Q. Who?——*A.* Mr. *MacKercher*.

Q. Do you remember any such Person upon the Course that Day, as Mr. *Kennedy?*

A. I was told after, that his Name was *Kennedy*, and I saw some Strokes between him and Lord *Anglesea*.

Q. Can you say that the Person you saw there was the same with him you now see here?

A. I don't remember his Face at all, but was told it was he.

Q. Can you take upon you to say you saw him that Day?

A. I did not see him that Day that I know of.

Q. What colour'd Cloaths had the Person on you saw engaged with Lord *Anglesea?*

A. It was Scarlet.

Q. And did not you see his Face?

A. I saw his Face, but I don't know it again.

Q. In what Situation was you when he struck you?

A. I had my Back to him.

Q. How do you know then that he struck you?

A. I apprehend, though my Back was to him, it was he, and upon his striking me, my Lord struck him.

Q. Did you see him strike my Lord?——*A.* I did.

Q. Which of them gave the first Stroke?

A. The first Stroke that was given was by my Lord to Mr. *Kennedy*, some Minutes after I had got a Stroke upon my Head.

Q. Were Mr. *MacKercher* and Mr. *Goostry* near?—*A.* They were.

Q. Was Mr. *Jans* near Mr. *Kennedy?*

A. I believe Mr. *Jans* was pretty near, but not within Reach of him.

Q. Did you see Mr. *Jans* or he give any Stroke to each other?

A. I did not.

Q. Do you think Mr. *Jans* could have struck him without your seeing him?—*A.* I don't think he could.

Neile O'Neile.

Mr. *Morgan.* Pray, Sir, do you know the Inn at *Newbridge?*

O'Neile. I do.

Q. Where was you on the 13th of *September*, in the Night?

A. In the Afternoon I went there, I was at Lord *Besborough*'s; and Mr. *MacKercher*, Mr. *Kennedy*, and Mr. *Livingstone*, to the best of my Knowledge, sent a Messenger to my House to speak with me.

Court. Who told you they sent to speak to you?

A. My Wife, when I came home.

Q. Did you go to them?---*A.* I went to *Newbridge*.

Q. What Day was this?---*A.* It was the 15th I went to the Races.

Q. You went to them?---*A.* I did.

D. Name them again.

A. Mr. *MacKercher*, Mr. *Kennedy*, Mr. *Livingstone*, and Mr. *Goostry*.

Mr. *Morgan.* Where did you go to the 15th?---*A.* To *Newbridge*.

Q. When you came there, who did you meet, and what passed?

A. On the 15th, the Gentlemen never were upon the Sod before, and they went all together to the *Curragh*.

Court. Upon the 15th?

A. Whatever Day the Race was, it was that Day,----on *Wednesday*,---as to the Day, I cannot be positive, I did not observe the Day of the Month.----It was the 14th. There was never a Horse to start but one. They said, they never were upon the Ground but at that Time, and upon going to the *Curragh*, there was no Diversion, and we came back, and Mr. *MacKercher* said, he saw Lord *Anglesea*, *See what a Look*, says he, *he gave at us all that Day; but*, says he, *I want nothing but to expose him to the Populace, and I'll make it my Business to do it before I go back to* Dublin.

Q. Who was the Company? Name them.

A. There was Mr. *MacKercher*, Mr. *Kennedy*, Mr. *Livingstone*, and Mr. *Goostry* present, and I don't know but Mr. *Robinson* was there.

Q. Can you be positive who was there?

A. I know Mr. *MacKercher*, Mr. *Kennedy*, Mr. *Livingstone*, Mr. *Goostry*, and Mr. *Annesley* were there.

Mr. *Harward.* My Lord, I desire the Court may take Notice he swears positively that Mr. *Livingstone* was one of the Company, and we can prove him to be in *England* at that Time.

Witness. In *England!* I can bring People to prove, that saw him in *Naas* the next Day after the Races.

Mr. *Spring.* Was you upon the *Curragh* the 16th?---*A.* I was.

Q. Was you there when Mr. *Kennedy* was there?

A. I saw him there.

Q. What Part of the *Curragh* did you first see him on?

A. I went along with him to the *Curragh*, for we dined at *Newbridge* that Day.

Mr. *Att. Gen.*] If you can prove, Gentlemen, that Mr. *Livingstone* was not there, what need you ask this Man another Question?

Mr. *Malone.*] My Lord, we will produce the top Men of the Country to his Character.

Mr. *Spring.*] Was you by with Mr. *Kennedy* when he met my Lord *Anglesea?*

A. I was by with him most Part of the Day.

Q. Then give an Account of what happened when they first met?

A. I cannot tell whether I was present at their first Meeting; but when they met, they never spoke a Word to one another, but at the Time of the Action.

Q. What Action, was there a Quarrel?

A. There was a Quarrel, and Mr. *MacKercher* was the Beginner of it. So there happened some Words that the Coachman had said to Mr. *Annesley*; and upon the same, Mr. *MacKercher* was very angry, and said, that the Thing was intended on purpose.

Court.] To whom?

A. To Mr. *Kennedy* and the Gentlemen in the Crowd with him; and I was there at the same Time.

Q. What Words were they?

A. The Words *Shoe-boy*, or some such Thing.—And upon that, he said, *He would make Application to my Lord, and if he did not discharge the Servant, he would have Satisfaction for it.* Upon which, my Lord happened to be down where there was a Dispute about Sir *Edward O'Brien*'s Mare running on the wrong Side of the Post; and we rode around until they came to the Winning-Post, where my Lord was. Upon which, Mr. *MacKercher* told him, *That his Servant used him ill, and hoped for Satisfaction from him, and that he would turn him off.* My Lord said, *He would not.* And upon that Mr. *MacKercher* said, *He did not use him well, and would have Satisfaction.* And he had the Whip up in his Hand in order to strike, and he rode a Stone-horse, and he was vicious, and I don't know whether the Stroke was intended for my Lord or for the Horse.

Mr. *Spring.*] Did you see Lord *Anglesea* and Mr. *Kennedy* together that Day?---*A.* I saw them close together.

Q. Did any Thing happen between them?

A. I saw them strike one another.

Q. Who?---*A.* Mr. *Annesley* and Mr. *Kennedy*.

Q. Give an Account of that?

A. When Mr. *Goostry* struck Mr. *Francis Annesley*, he was for about two Minutes before he found out who it was. Upon which, he asked who it was; and my Lord said, *That is the Man, that* Goostry, pointing to him. Upon which he went over, and made a Stroke at Mr. *Goostry*, and there were some Strokes that passed; and upon that, Mr. *Kennedy* came and made a Stroke at Mr. *Francis Annesley*, and hit my Lord over the Wig, but whether it hurt him or no I cannot tell, or whether the Stroke was intended for him or not, I cannot tell.

Court.] Did you see the Stroke reach my Lord?

A. I did see it reach him upon the Wig.

Q. Did you see my Lord strike Mr. *Kennedy?*

A. I did. As soon as he received that Stroke, he up with his Whip and struck him.

Mr. *Spring.*] Did you see Mr. *Jans* there?---*A.* I did.

Q. Where was he at the Time of this Quarrel?--*A.* He was in a Crowd.

Q. Did you see any Engagement between Mr. *Kennedy* and *Jans?*

A. I did.

Q. Who struck first?

A. That I cannot swear to at all, which of them struck first; for the Crowd rushing backward and forward, I could not be distinct.

Q. Was the Blow given by Mr. *Kennedy* to Lord *Anglesea*, before Mr. *Jans* and *Kennedy* were engaged?

A. It was before I saw them engaged.

Q. Which struck first, *Jans* or *Kennedy?*

A. By virtue of my Oath, I cannot tell which; I saw Blood run down Mr. *Kennedy*, and whether it was he struck Mr. *Jans* first or no, I cannot tell: for when I saw my Lord receive the Stroke, I turned about my Horse, and did not mind. I was just crossing between him and my Lord, and whether Mr. *Kennedy* struck at *Jans* first I cannot tell.

Q. But you said you saw Mr. *Kennedy* strike Lord *Anglesea* before you saw Lord *Anglesea* give a Stroke?---*A.* I did, Sir.

Q. What happened between Mr. *Kennedy* and Mr. *Jans?*

A. I cannot tell.

Court.] Gentlemen concerned for the Crown, will you ask this Man any Questions?

Mr. *Harward.*] We will not aſk him any Queſtion, but beg, for Juſtice ſake, he may not be permitted to get out of the Court, till we proceed to give Evidence againſt him for Perjury.

Court.] How long have you been acquainted with Mr. *Mac Kercher? O'Neile.* I believe ſince his firſt coming into the Kingdom.

Q. And with Mr. *Kennedy?*---*A.* Yes.

Q. And with Mr. *Gooſtry?*---*A.* No, not with him.

Q. How came you to go with them to the *Curragh?*

A. I had an Intimacy with Mr. *Annesley*, (for he was ſome time at my Father's Houſe when a Child) on his firſt coming into the Kingdom, and they ſent for me.

Q. On what Buſineſs did they ſend for you?

A. I cannot tell, my Lord.

Q. Who went to the *Curragh* with you?

A. We went all together to the Races, and we had diſcourſe as we went along.

Mr. *Mac Manus.*] Who did they then ſend for you?---*A.* Several.

Q. Who were they?---*A.* Their own Servants.

D. Name the Servants.---*A.* One *Barney Neale*, and ſeveral of them.

Mr. *Digby*, Foreman of the *Jury.*] Did you meet me coming home on the Road that Day?

A. Yes, Sir, I believe I did, I cannot recollect.

Q. Did you ſay any thing to me?---*A.* I cannot ſay I did.

Q. Did not you expreſs Concern to me at the Treatment Mr. *Mac Kercher* and Mr. *Annesley* had received?---*A.* I do not remember that I did.

Q. Did not you expreſs yourſelf, that you thought they were uſed very hard?---*A.* I do not know but I might tell you ſo.

Mr. *Har.*] I deſire, my Lord, that Mr. *Livingſtone* may be called, to ſatisfy you he was in *England* laſt *September.*

Court.] You had better ſtay a little.

[Patrick Cavenagh *is called, and goes away again, being to be examined to another Point.*]

Mr. *Callaghan.*] We'll beg Leave to produce Mr. *Livingſtone*, to ſhew your Lordſhip where he was in *September* laſt.

WILLIAM LIVINGSTONE, Eſq.

Mr. *Callaghan.*] Where was you in *September* laſt?

Mr. *Livingſtone.*] In *London.*

Q. Was you any Part of that Month in *Ireland?*---*A.* I was not.

Q. When did you come over to *Ireland?*

A. It was the Middle of *October* before I came to this Kingdom.

[*Mr.* Malone *informs the Court, that in* October *he ſaw Mr.* Livingſtone *at* Parkgate *ready to embark for* Ireland.]

Croſs Examination.

Mr. *Spring.*] Do you know this Mr. *Neile?*

Mr. *Livingſtone.*] Yes, Sir.

Q. Did you ever ſee him in Mr. *Mac Kercher's* or Mr. *Kennedy's* Company?---*A.* I have.

Q. Were they not well acquainted?---*A.* Yes, I believe they were.

Q. Was he employed by Mr. *Mac Kercher* or Mr. *Kennedy?*

A Sir, when we came firſt into *Ireland* about two Years ago, *Neile* met us uncall'd-for at *Kill*; he told us a great deal of his Knowledge of Mr. *Annesley* at *Kinna*, and the Witneſſes that knew his Affairs; and often came about us upon that Errand, till at laſt he came ſo often, that he was uſed with the utmoſt Diſregard; and when we found out his Character, he was never ſuffered to come about the Houſe at all.

Mr. *Digby.*] What Character has he? Do you think he is an honeſt Man?

A. We were Strangers in this Country; he looked like an honeſt Man to us at firſt, but upon a better Information we found him quite the Reverſe.

Mr. *Mac Manus.*] My Lord, we deſire my Lord *Allen* may be ſworn, to give a Character of this Man.

The Right Honourable Lord Viſcount ALLEN.

Mr. *Mac Manus.*] Pray, my Lord, do you know this *Neile O Neile?*

Lord *Allen.* I know him very well, and believe no Man bears a more infamous Character in the County of *Kildare.*

Q. Does your Lordſhip think he deſerves any Credit?

A. I am confident he does not; he is a very great Villain; I would not credit him, nor believe one Word he ſays. I know that no Gentleman would admit you into his Company at the Time you were employed by me; and my Uncle and I had often many Words becauſe I employed you, and we found you out to be the greateſt Rogue that could be.

Court.] Do you think he is a Man to be credited upon Oath?

A. No, my Lord, he is not.

Mr. *Mac Manus.*] We beg leave to produce the Miniſter of the Pariſh where he lives.

The Rev. Mr. JOHN DAWSON.

Mr. *Mac Manus.*] Do you know *Neile O Neile?*

Mr. *Dawſon.* I know him ever ſince I came into the Pariſh of *Naas.*

Q. How long is that, Sir?---*A.* I have been two Years there.

Q. What Character has he generally bore during that Time?

A. I have always heard he was a Perſon guilty of as many Frauds as he was capable of committing; I cannot account for his Morals, but he is a Perſon that was always very litigious.

Q. What is his general Character?

A. Why, I proteſt, I have known him guilty of Numbers of Lyes and Falſhoods, and is a Perſon, I think, not to be credited.

Q. Do you believe him a Perſon to be credited upon his Oath?

A. The general Character is, that he is a Perſon not only litigious, but capable of any Cheat imaginable.

Q. Is he, or is he not to be believed upon his Oath?

A. I ſhould give little Credit to his Oath, becauſe I have heard his Word ſo often forfeited.

Lord Viſcount *Allen.*] He is the greateſt Rogue alive. 'Tis nine Years ſince he robbed me; I have had Warrants out againſt him, and could never catch him, but will now ſend him to Gaol before I leave this Town.

Mr. *Malone.*] We deſire *Maurice Keating*, Eſq. may be called to the Character of *O-Neile*— [*Mr.* Keating *is called, but does not come into Court.*

Mr. *Spring* to Mr. *Dawſon.*] Was not this *Neile* an Agent to Mr. *Mac-Kercher* and Mr. *Annesley?*

Mr. *Dawſon.* He had the Repute in *Naas* ſome time ago of being a ſtrenuous Friend of theirs; but I never ſaw him about them; I had no Occaſion to interfere in their Affairs.

Court.] Gentlemen of the Jury, the Lord *Angleſea* and Mr. *Jans* ſtand indicted for an Aſſault on Mr. *Kennedy.* I ſhall only tell you, Gentlemen, that I find, on the Recollection of the Evidence, it ſtands fully proved by Mr. *Kennedy* and Mr. *Archbold*, that both his Lordſhip and Mr. *Jans*, without Provocation, without any Attempt in Mr. *Kennedy* to ſtrike a Blow, did ſtrike and ſorely beat this Gentleman. Thus it ſtands proved upon their Teſtimony; and, Gentlemen, the only Evidence offered to take off this Charge was firſt Mr. *Francis Annesley*; and I do think you may lay what he ſays entirely out of the Caſe; for he tells you he never ſaw Mr. *Kennedy* before this Day, and did ſee Lord *Angleſea* and a Gentleman in Red engaged that Day on the *Curragh*; but who that Gentleman was he cannot tell, and knows not whether it was Mr. *Kennedy* or not, but that he ſaw ſeveral Blows paſs between them. And Mr. *Annesley* with great Candour and Integrity ſaid, that if it was proved that Mr. *Kennedy* and that Gentleman were the ſame, he ſaw him give no Provocation; ſo that it ſtill remains clear and undoubted upon the Teſtimony of Mr. *Annesley*, that my Lord *Angleſea* and Mr. *Jans* are both guilty of the Aſſault upon Mr. *Kennedy*; for he tells you farther, that the firſt Stroke that was given between them was by my Lord. Why then the only other Evidence produced was a Perſon of extremely different Character from Mr. *Annesley*, one *Neile O Neile*, a Surgeon from *Naas*; and what does he ſay? He tells you that he was at the Inn of *Newbridge* with thoſe Gentlemen; that he was ſent for by them to *Naas*, and being from home, was told, when he returned, they had ſent for him, and that there he went and found Mr. *Mac Kercher*, Mr. *Kennedy*, Mr. *Gooſtry*, and twice I am poſitive, I think three times, ſwore that he ſaw Mr. *Livingſtone* there too. That with theſe Gentlemen he went to the *Curragh*; that in the Way Mr. *Mac Kercher* told him, *He wanted of all Things in the World to expoſe the Lord* Angleſea *to the Populace, and was determined to do it before he returned to* Dublin; that for that Purpoſe he began the Quarrel: but ſays he did not ſee Mr. *Mac Kercher* ſtrike my Lord, nor attempt to ſtrike him: That he was upon a vicious Stone-Horſe, and whether he lifted up his Whip to correct his Horſe, or for what other Purpoſe, he cannot tell. He tells you further, that he ſaw Mr. *Kennedy* ſtrike my Lord, but knows not whether he intended to ſtrike him or not: and ſays, he believes the Stroke did not hurt my Lord. That upon this, my Lord ſtruck him; but if you believe him, the firſt Blow hit upon my Lord. Why then, this Man having ſworn that Mr. *Livingſtone* was one of this Company, and it being alledged that he was then in *England*, Mr. *Livingſtone* was ſworn to account whether he was or no. He declares upon his Oath he was not in *Ireland* at that Time, but in *London*, and came over to this Kingdom in *October*; and ſays, he knew that this Man was acquainted with Mr. *Mac Kercher* and Mr. *Kennedy*, and employed by them; but that he met them on the Road uncalled-for, frequently attended them under Pretence of ſerving them, until at length he became ſo troubleſome, they were obliged to diſmiſs him, and forbid him to come near them. Then, in the next place, in order to diſcredit him further, the Counſel for the Proſecutors called my Lord *Allen* to give a Character of him; and his Lordſhip tells you, that he is of a moſt infamous Character, of ſuch a one, that his Lordſhip ſwears poſitively he is not to be credited on his Oath. The ſame bad Character is given him by Mr. *Dawſon*, the Miniſter of the Place where he lives.

You ſee, Gentlemen, there is nothing in the World offered but the Evidence of this Man to take off the Weight of Mr. *Kennedy* and Mr. *Archbold*; and you will conſider what Credit he deſerves.

The Jury go to find whether Lord *Angleſea* and Mr. *Jans* are guilty of the Aſſault upon *Hugh Kennedy*, Eſq. or not; and find

Lord *Angleſea* - - - - Guilty.
Mr. *Jans* - - - - Guilty.

The Indictment for the Aſſault on DANIEL MAC KERCHER, Eſq.

Mr. *Malone.*] This, in reality, is the main Indictment, upon which all the reſt have been grounded. It does not appear by any Evidence, that my Lord *Angleſea* and Mr. *Jans* had any hand in aſſaulting him; and therefore we hope, upon the Rule you have laid down, to be allowed the Benefit of their Teſtimony. Mr. *Mac Kercher* himſelf, in his Evidence upon this Indictment, does not pretend that either Lord *Angleſea* or Mr. *Jans* did aſſault him on the *Curragh.* If I miſtake your Evidence, you'll ſet me right.

Mr. *Mac Kercher.*] What do you underſtand, Sir, by aſſaulting me?

Mr. *Malone.*] I mean a Blow.

Mr. *Mac Kercher.*] I cannot ſay they gave me any Blow.

Court.] The Account Mr. *Mac Kercher* gave was, that after a good deal of opprobrious Language, he told my Lord *Angleſea, He lyed, and dared not for the Soul of him ſingle himſelf out, and tell him ſo.* That upon thoſe Words Mr. *Francis Annesley* ſtepped forward, and ſtruck Mr. *Mac Kercher* upon the Forehead, which occaſioned a Swelling and a Bleeding: and I do not recollect that Mr. *Mac Kercher* gave any thing in Evidence that my Lord ſaid or did to him more than this.

Mr. *Malone.*] As there does not appear any Evidence that can affect Lord *Angleſea* and Mr. *Jans* on this Indictment, we beg leave to deſire your Lordſhip will give the Jury ſome Directions concerning them before we proceed further.

Mr. *Harward.*] I believe there can be very little Doubt, when you conſider, but that Mr. *Jans* is guilty of the Aſſault upon Mr. *Mac Kercher*; and I'll tell your Lordſhip the Reaſon why I apprehend it ſo; becauſe there is no Controverſy but that this Man, upon the Words which paſſed between Lord *Angleſea* and Mr. *Mac Kercher*, ruſhed out and ſaid, *Sure, my Lord, you would not offer to fight this Fellow, while there are ſo many here by to fight him for you.* What follows upon this? Why then, one of this very Company goes out and ſtrikes him. Pray, my Lord, are not they all

all guilty of the Trespass committed against him? I do say they are all Principals, and that there is no distinguishing in Law between the Man that struck, and the Man that assisted by Word or Act.

Mr. *MacManus.*] I apprehend the Question to be, Whether my Lord *Anglesea* and Mr. *Jans* assaulted a particular Person whom they incited others to strike, and whom their Rage and Passion would have inclined them to strike, if they could as forcibly have struck him, as they did other Persons nearer to them of the same Party. In Construction of Law it is an Assault; they both did assault Mr. *MacKercher*, and that clearly appears from the Evidence.

Court.] The Evidence of Mr. *MacKercher* was, that upon my Lord's calling him *Thief, Scoundrel, and Villain*, Mr. *MacKercher* said, *You dared not for your Soul single yourself out, and tell me so.* Upon which some that were by said, *My Lord, you go fight such a Scoundrel! here are enough to go out with him.* What ensued upon this? Why, then Mr. *MacKercher* tells you, that upon further Words between them, he said, *My Lord, you lye*; and that immediately upon his saying so, not a Word said by any other Person, Mr. *Francis Annesley* stepped forward, and struck him a Blow on the Forehead.

Mr. *Bagot.*] If I apprehend his Testimony aright, Mr. *MacKercher* said the Words, *You lye*, were antecedent to the other Words.

Court.] The Jury, I see, have taken very accurate Notes, and they'll take care to do what is right.

(Patrick Cavenagh, *Dancing-Master.*)

Mr. *Morgan.*] Do you recollect where you were the 16th of *September* last?——Mr. *Cavenagh.*] I do.

Q. Where was you?——*A.* I was at the *Curragh* at the Time of the Races.

Q. Did you see Lord *Anglesea* there?——*A.* I did.

Q. Did you see Mr. *Jans* there?——*A.* I did.

Q. Did you see Mr. *MacKercher* there?——*A.* I saw him there.

Q. Give an Account to the Court and the Jury, what you recollect to have passed touching Mr. *MacKercher's* coming up to Lord *Anglesea*.

A. I heard some little Thing when I was at *Kilcullen-Bridge* before the Race, of some Design, and it made me a little more particular. My Lord *Anglesea* was going down to the Winning-Post when the Dispute was about the Running of the Horses, and I parted from him there; and as I was going, I saw these Gentlemen, Mr. *Annesley*, Mr. *MacKercher*, *Goostry*, and *Kennedy*, going towards Lord *Anglesea*. When I saw that, I immediately recollected what I had heard at the Bridge, that there would be a Quarrel; upon which I returned immediately again, and when I came up, I found there was a Crowd about them, and they were engaged in Words: And I just came up at the Time when my Lord *Anglesea* said, *Sir, I would not suffer my Servants to affront any one, let alone a Gentleman.* I just came in upon that Answer, and I don't know what passed before at all.

Q. What did Mr. *MacKercher* reply to that?

A. I could not hear well what he said, for he spoke very low; but Lord *Anglesea* spoke very loud.

Q. Was Mr. *MacKercher* near Lord *Anglesea*?

A. He was close to my Lord, the Horses Heads were just together; and then I heard Mr. *MacKercher* some little Time after say, *My Lord, your Servant has affronted a Gentleman.* And my Lord answered, *What Gentleman?* And Mr. *MacKercher* assured him again, *That he was a Gentleman*; but did not tell who he was.

Q. Did not he tell my Lord at all who he was?

A. Mr. *MacKercher* assured him twice or thrice that he was a Gentleman, and insisted upon my Lord's doing him Justice, without telling him who the Gentleman was, but at last pointed to him; upon which, when Mr. *MacKercher* insisted on that, and desired him to turn him off, my Lord said, *Is it for you?* or Words to that Purpose. And Mr. *MacKercher* still insisted upon it for affronting a Gentleman.

Q. Was Mr. *Francis Annesley* or Mr. *Jans* near my Lord at this time?

A. Mr. *Annesley* was close by my Lord, and so was Mr. *Jans*; they stood close together, and my Lord a little on one Side speaking to Mr. *MacKercher*.

Q. What was it my Lord said to Mr. *MacKercher?*

A. My Lord said, *He would not turn him off for him.*

Q. What ensued upon that?

A. Mr. *MacKercher* insisted upon it, and held up the Butt-End of his Whip at my Lord; upon which Mr. *Annesley* gave him a Blow before he could give my Lord a Blow, if he intended it.

Q. Did he positively turn up the Butt-End of his Whip?

A. He turned up the Butt-End of his Whip, Sir.

Q. How did he hold his Whip when he spoke to my Lord?

A. He had the proper End of it in his Hand first; but upon my Lord's refusing to turn his Coachman off, he turned his Whip, and said, *You won't turn him off, my Lord!*

Q. What Kind of a Whip was it that Mr. *MacKercher* had?

A. I cannot be particular.

Q. Was it a long or a short Whip?

A. It was a long Whip; it either had a Lash, or was one of the Whips with a prodigious long End to it.

Mr. *Harward.*] Was it not a short Jockey-Whip?——*A.* It was not.

Q. Had it a Lash to it?——*A.* I don't believe it had a Lash, but he took it about the Middle, or thereabouts, in his Hand.

Q. Did he hold it in a threatening Manner?

A. He did, and said in Anger, *You won't turn him off, my Lord!*

Mr. *Morgan.*] Was there, or was there not before that Time in which he turned his Whip, any Stroke given, by virtue of your Oath?

A. There was none given before that Time, by virtue of my Oath.

Q. Did you observe Mr. *Jans* at that Time?——*A.* I did.

Q. Did you see him do any Thing?——*A.* I did not.

Q. Did you see him strike Mr. *MacKercher*, or any body?

A. I did not. He spoke to Mr. *MacKercher*, and asked him, *Dared he ask any one else there, for he was not worth my Lord's while?*

Mr. *Digby.*] I think you said, some Conversation had passed at *Kilcullen-Bridge*, about a Design to quarrel?

A. I heard there, as I was mounting my Horse, that there would be a Quarrel.

Q. When was it you heard so?

A. It was the Morning, the 16th, before I went to the *Curragh*.

Q. Who was it told you so?

A. I heard that a Gentleman came from *Dublin*, and told Mr. *Jans* there would be a Quarrel, and I think it was he told me, that there would be a great Quarrel at the *Curragh* that Day.

Q. Who said this?

A. I heard it from Mr. *Jans*, and, I think, Mr. *Tynan*. *Jans* said he was informed by one out of *Dublin*, that there would be a Quarrel there.

Q. When did Mr. *Jans* say he was told so by one from *Dublin?*

A. He said, he heard by one from *Dublin* that Morning, that there would be a Quarrel.

Mr. *Bagot.*] You say, that Mr. *Jans* told you he heard from *Dublin* there would be a Quarrel; did he hear it from *Dublin*, or from a Gentleman that came from *Dublin?*

A. He told me from a Gentleman that came from *Dublin*.

Q. Do you know the Road from *Dublin* to *Newbridge?*

A. Not very well.

Q. Do you know whether *Newbridge* lies on the Road between *Kilcullen* and *Dublin?*

A. I know it does not lie on the Turnpike Road.

Mr. *Digby.*] Explain yourself, what you mean had passed when Mr. *MacKercher* had challenged my Lord.

A. When my Lord refused to give him Satisfaction, he said, *He dared not tell him so aside by himself.* And my Lord said, *He would go with him aside.* Upon which Mr. *Annesley* and Mr. *Jans* said, *He should not.*

Q. You said Mr. *Jans* told you, he was informed of a Quarrel that would happen; I ask you, whether he told you the Gentleman that informed him gave him any Reasons why he apprehended there would be a Quarrel?

A. Mr. *Jans* told me, he was informed there would be a Quarrel, that a Gentleman from *Dublin* told him there would be a Quarrel; and told me no more.

(*Gross-Examination.*)

Mr. *Harward* takes a Gentleman's Whip in his Hand, and says, *A Thong-Whip is where there is a Thong, this is a* Fox-Hunter.

Cavenagh.] I understand it to be such a Whip as that; I cannot tell what you call it.

Mr. *Harward.*] This is a *Fox-Hunter*. Now, Sir, will you take this Whip, and shew us how Mr. *MacKercher* exercised his Whip?

A. Sir, this is the Way he had it when I saw him first, [*holding the Handle in his Hand*] and while I saw him talking with my Lord, he took it up in this Manner [*holding the Whip by the Middle*].

Q. Tell what People were next to you at that Time.

A. I do not know who was next to me, for I did not know them; I saw Mr. *Jans* on the other Side, almost opposite to me, and Mr. *Francis Annesley*, Mr. *Kennedy*, and Mr. *Goostry*, were, I think, together to my left Hand.

Q. Now, I think you said, when Lord *Anglesea* was challenged, you understood it was a Challenge to fight?——*A.* I did.

Q. I think you have also said, that Lord *Anglesea* upon that said, he would go out and fight Mr. *MacKercher?*

A. He said he would go with him, but I do not think he would have gone.

Q. Are you sure he said he would go out and fight him?

A. I am sure he said so.

Q. What was it my Lord said?

A. Mr. *MacKercher* asked him the Question twice or thrice; upon which my Lord said, *Well, I will.* And the others said, *He should not.*

Q. Did what Mr. *MacKercher* said appear to be in a challenging Manner?——*A.* It did.

Q. When Lord *Anglesea* said he would go out with him, did not you apprehend that he would go and fight with him?

A. How do I know, Sir, whether he would or no?

Q. What did you understand my Lord meant?

A. To me it looked indeed as if they would be engaged.

Q. What did you apprehend my Lord intended to do upon his saying those Words?

A. I did not believe my Lord would go out to fight.

Q. You apprehended Mr. *MacKercher* meant that my Lord should go to fight?——*A.* I did.

Q. If so, what Reason could make you not apprehend that my Lord did not mean to fight?

A. No, perhaps not, it might be otherwise; it did not come to that Issue, therefore I cannot judge.

Q. Had my Lord any Arms?

A. He had not.

Q. Are you certain that Mr. *MacKercher* meant to fight?

A. Indeed I cannot tell. How can I be certain? If you challenge me, how do I know whether you will fight me or no?

Q. What do you believe?

A. I protest I cannot answer whether they would have fought, if my Lord had gone.

Q. Do not you believe, if a Man challenges another to fight, he who gives the Challenge means to fight?——*A.* I do believe.

Q. Do not you believe the Man that accepts the Challenge does?

A. It is probable he does; but I do not believe my Lord intended to fight.

Q. What Kind of a Whip had Mr. *MacKercher* in his Hand?

A. It was a long Whip, a hunting Whip.

Q. Was it not a Jockey Whip that Mr. *MacKercher* had that Day?

A. It appeared to have a Tail twice as long as this almost; (the Witness at the same time held out a hunting Whip with a long Lash to it.)

Q. To Mr. *MacKercher.* Had you ever such a Whip?

A. I might possibly some time or other in my Life have had such a Whip in my Hand, but I never make use of such a Whip; I had a very small Whip, one of the smallest Size, that Day.

Dennis Tynan.

Mr. *Spring.* Do you know Mr. *Jans?*

Tynan. I do.

Q. Recol-

Q. Recollect what Converſation you had with him at the Time of the Races at the *Curragh*, the 15th or 16th of *September*, concerning any Quarrel that you had heard there was likely to be. Had you any Converſation with him?---*A.* I had.

D. Tell what it was.

A. On *Monday* before the Races, I cannot tell the Day of the Month now, but I could if I was in *Dublin*, becauſe I kept a regular Table.

Q. What do you mean by a regular Table?

A. I mean of my Buſineſs.

Q. What Buſineſs do you follow?—*A.* That of a *Druggiſt* and a *Dyer*.

D. Well, go on.

A. Mr. *Uſher* of *Balſoon* and *Purcell* the Butcher, as he told me he was, the Man that kept the young Earl ſome time, they were in my Shop; I happened to be backwards when they came in, and when I ſaw them, I came out to know what Buſineſs they had, and I firſt ſpoke to *Purcell*, and aſked what he wanted. He told me they were come there to wait for the young Earl. I went backwards on that, and came into the Shop again; and in a little while after, Mr. *MacKercher* came into the Shop, and ſpoke to my Man over the Counter. I did not hear what he ſaid, and my Man had a Room over the Way, and they went there together and ſtayed for ſome Time; and while he was away, ſays I, *Is that the young Earl? No, by G—d, ſays* Purcell, *but a cleverer Fellow, a Fellow that would whip the old Earl if he had hold of him. Aye*, ſays Uſher, *by G—d he would wring his Noſe.* So Mr. *MacKercher* came back, took Coach and went off; and they went off after him.

Q. What Day was this?—*A.* It was *Monday*.

Q. Tell what you did relate to Mr. *Jans*.

A. I told him, that my Servant had told me, that *Uſher* had told him, there were *ten* Men armed and gone to the *Curragh*.

[Note, *Mr.* MacKercher *and his Company did not ſet out till* Wedneſday.]

Court. To Mr. *MacKercher.*] Do you hear what this Man ſwears; was you ever in his Shop?—*A.* I do not know that ever I was.

Croſs Examination.

Mr. *MacManus.*] Do you know young Mr. *Annesley?*

A. I believe I ſhould know him.

Q. Was you ever in *England*, Sir?---*A.* I was.

Q. Was you ever concerned in the Proſecution of Mr. *Annesley* at the *Old-Bailey?*---*A.* Not upon the Proſecution, upon my Oath.

Q. Was you a Witneſs there?---*A.* I will anſwer you. I was to be a Witneſs to tell what I knew of one *Paul Keating*.

Q. Do you know Mr. *Giffard?*

A. I do. Mr. *Jans* brought me to him, and deſired me to tell Mr. *Giffard* what I knew of *Paul Keating*.

[*Hereupon this Witneſs was turned off the Table by the Traverſers own Counſel.*]

The Jury go to try whether Lord *Angleſea* and Mr. *Jans* are guilty of the Aſſault on Mr. *MacKercher* or not, and find

Lord *Angleſea*——————Guilty.
Mr. *Jans*——————Guilty.

Mr. *Spring.* My Lord, I do not know whether it will be neceſſary to trouble your Lordſhip with any further Evidence; for my Part, I am ſatisfied to reſt upon the Evidence of the Crown, and not trouble your Lordſhip and the Jury with any thing further upon that Evidence; but my Duty calls upon me to do every thing I can for my Clients, and therefore with reſpect to Mr. *Annesley*, I would ſay a ſhort Thing. The Jury will conſider who was the firſt Aggreſſor in this Aſſault, and will find it was Mr. *MacKercher*. I do inſiſt upon it, in Point of Law, that the lifting up an Hand in the manner Mr. *MacKercher* did, as appears even from his own Confeſſion, is in point of Law an Aſſault; it appears, and the Jury cannot forget, that theſe Gentlemen went into the Field armed and prepared for Battle, that they went to this Horſe-Race attended by many Servants, all armed in an unuſual Manner, in ſuch an extraordinary Manner, as cannot be juſtified by Law; becauſe going armed to Places, where all other People generally go unarmed, is in *terrorem populi*, and not ſuffered by the Law. Why then Mr. *MacKercher* and his Company, who, as they pretend, had been inſulted by my Lord on the 14th, repair to the ſame Place again armed in this manner, which plainly ſhews what their Intent was, and that it was no other but to bring on a Quarrel with my Lord *Angleſea*. It appears from the Evidence, that upon ſome Indignity offered by a Coachman to Mr. *James Annesley*, Mr. *MacKercher* goes to call Lord *Angleſea* to an Account, and demand publick Satisfaction, and it appears that he was cautioned not to go for fear of bringing on a Quarrel, and that, notwithſtanding, he went and forced through the Crowd to get at my Lord; ſo that it appears, inſtead of declining a Combat, as he would willingly make you believe he did, he brought it upon himſelf, he went to call upon Lord *Angleſea* for an Offence not done to himſelf, he calls him out to fight him, and my Lord declines doing ſo, by telling him, *This is no Time nor Place, you ſee I have no Piſtols.* Mr. *MacKercher* anſwered, *Your Servant has affronted a Gentleman, Mr.* Anneſley, *and as it was publick, it is expected that you ſtrip him and turn him off.* And ſo my Lord, to ſatisfy Mr. *MacKercher*, muſt take upon him to drive his own Perſon home in this Coach. This Treatment of a Nobleman, muſt call for ſuch a Degree of Reſentment, as muſt of Neceſſity have ended in a Quarrel; it tends plainly to a Breach of the Peace, and I would know what Right Mr. *MacKercher* had to reſent an Affront done to another, and demand Satisfaction in ſuch a manner, as no Gentleman would have complied with. What Right had he to preſcribe the Method of receiving this Satisfaction? That very Circumſtance plainly ſhews he had an Intent to quarrel, and his Manner of demanding Satisfaction, amounts to a Challenge. Why then, if, beſides this, your Lordſhip and the Jury will pleaſe to conſider, who the Perſon affronted is, and for whom this publick Satisfaction is demanded, that my Lord *Angleſea* looked upon him as his Brother's *Baſtard*, by a *Kitchen Wench*, and knew he was claiming his Eſtate and Titles; I hope you will think my Lord's Behaviour was no more than could reaſonably be expected from him, under ſuch Circumſtances. But this is not all, Mr. *MacKercher* gives my Lord the Lye, deſires him to withdraw with him, and in caſe of his Refuſal, threatens him with a lifted-up Hand. Mr. *Cavenagh* poſitively ſwears to his lifting his Hand with the Butt-End of his Whip towards my Lord, and threatening him at the ſame time; and Mr. *MacKercher* in his Evidence does not deny but he might do it. He ſays indeed, that he has a different manner of carrying and holding his Hand from other Perſons, that it was his Cuſtom in Converſation to raiſe his Hand; it may be ſo to his Footman, but to a Peer of the Kingdom, an Earl of *Great Britain*, that raiſing of his Hand did not become him, and was in point of Law an Aſſault: Why then, what is the Conſequence? Here is a Gentleman, Mr. *Francis Annesley*, attending Lord *Angleſea*: this Gentleman, his Tenant, his Relation and Friend, ſees him thus affronted and aſſaulted, and ſtrikes the Perſon who threatened to ſtrike him; I do ſay, that Mr. *MacKercher* thus aſſaulting Lord *Angleſea*, could expect no other Return, than that which Mr. *Annesley* made him. It was incumbent in ſome meaſure on Mr. *Francis Annesley*, even for the Safety of Lord *Angleſea*, to do what he did. Was he to wait for this Gentleman's drawing out his Piſtol? Did it not ſeem incumbent on him to prevent this? I beg leave to ſay it was, and that he was juſtifiable in point of Law; if he had been no Relation or Friend to my Lord, but even a Stranger, and ſaw him threaten'd in the manner Mr. *MacKercher* threaten'd him, he ought to prevent the Quarrel likely to enſue between them; and if in ſo doing, he hurted Mr. *MacKercher*, he is juſtified by the Law. It would be taking up too much of your Time to ſay more; but for my Part, all Circumſtances conſidered, I am only amaz'd, that inſtead of the ſlight Injury done thoſe Gentlemen, they were not much worſe off.

Court.] What you have offered may be conſidered as a Mitigation of the Offence, but not by the Law as a Juſtification of it. I already find that the *Jury* have determined upon that Aſſault, to be an Aſſault committed by my Lord *Angleſea* upon Mr. *MacKercher*; becauſe had it appeared from Evidence that Mr. *MacKercher* had aſſaulted my Lord *Angleſea* firſt, the Jury could not poſſibly have found the Lord *Angleſea* Guilty.——— As to Mitigation, that is a Matter proper for the Conſideration of the Court when they come to give Judgment for the Offence. But as to the Aſſault of Mr. *Francis Annesley* on Mr. *MacKercher*, it ſtands proved againſt him by the Evidence of Mr. *MacKercher*, Mr. *Kennedy*, and Mr. *Gooſtry*, and in my Apprehenſion he is guilty of that Aſſault.---Now, as to the fourth Aſſault, that on Mr. *James Annesley*, I believe that fourth Indictment may go to the Jury. It appears to me, that the moſt Part of the Evidence as to that, was principally material for the Conſideration of the Court to determine their Diſcretion, to ſhew the Nature and general Tendency of this unfortunate Affair. But, I ſay, that as I recollect it, it does not appear upon the Evidence, that any one Perſon ſtruck, or attempted to ſtrike Mr. *James Annesley*; and before any Words were uttered by Lord *Angleſea*, directing the Purſuit of him, there was an Account brought that he was gone off the Sod, and then thoſe Words were ſpoke by my Lord, *Follow the Son of a Whore, and knock his Brains out.* Mr. *Annesley* gallops away, and falls into a Ditch, and there lay in a very miſerable Manner; but how that happened is accounted for, by the Feet of his Horſe ſlipping into the Ditch; it does not appear that it was by a Stroke given by any body; it does not appear that any one Perſon did attempt to ſtrike him; there was a Gentleman, that one of the Witneſſes ſaid, had not he interpos'd, would have ſtruck him; but he is out of the Caſe, and not to come within your Conſideration. If you that are concerned for the Crown have any thing to ſay, proceed.

Mr. *Harward.*] We are ready to offer what occurs to us upon this Indictment; and, my Lord, I humbly apprehend that this Queſtion is reduced to a very ſingle Point of Law upon the following Facts; that Mr. *MacKercher* being apprehenſive of an Intention in Lord *Angleſea* and his Company to murder him and all his Friends, deſired Mr. *Annesley*, who was his chief Care, to get away as faſt as he could. It is given in Evidence that Mr. *Annesley* did ſo, and alſo that upon my Lord *Angleſea*'s hearing that he had left the Field, that he cried out to the People about him, *Purſue him, and tear him Limb from Limb.* In conſequence whereof, ſeveral did purſue, and drove him on full Speed; and Word being brought back to him that he was killed, my Lord approved of it, and ſaid, *All was well.* This being the Fact as nearly as I can recollect it, I apprehend the Law will be clearly determined by your Lordſhip in our Favour. Lord *Angleſea*, throughout this Evidence, has appeared to have abuſed this Gentleman, to have aſſaulted ſome of his Friends, for which he and ſome of his Aſſociates are found guilty; here is an Abuſe given to this very Gentleman precedent to every thing that happened; here follows an Aſſault upon two or three of his Friends, and Advice being brought from the Place where the noble Lord and his Aſſociates were, of his bad Intentions to this young Gentleman, for fear the like Fate ſhould attend him, he is deſired by one of them to run away, or he would be murdered. The Minute my Lord hears he has left the Field, he hallooes to all his People after him, to tear him Limb from Limb, and one of the Purſuers attempts to ſtrike him, but was prevented. This is clearly proved by the Evidence offered to your Lordſhip; and this being ſo, then the Queſtion is, whether my Lord *Angleſea* is guilty of an Aſſault upon this Gentleman, who was thrown into the Ditch by his Horſe, as he was turning him about to defend himſelf againſt the Purſuers? I ſubmit it to your Lordſhip, whether you won't take the whole Caſe, both Words, and Facts, and Circumſtances, into your Conſideration, and then pronounce what the Law is. Why then it appears, that this Gentleman, upon the Purſuit of him, finding the People come up ſo cloſe to him, turned his Horſe to defend himſelf; and then it appears that the Horſe fell into the Ditch, and upon him, and there he received his Hurt. The Queſtion then is, Whether or no Lord *Angleſea* is a Principal in this Aſſault or not? Whether he was not the Cauſe of the Hurt that Mr. *Annesley* received by the Fall of the Horſe upon him? I believe Nobody will deny, but that the Perſons who actually purſued and gave Occaſion immediately to this Fall, were guilty of an Aſſault, and alſo of the Battery and wounding received by the Fall. There is a Difference in point of Law between an Aſſault, a Wounding and a Battery; an Aſſault is in its Nature of the leaſt Degree of theſe Kind of Offences. If this Gentleman, who was thus purſued, had happened to be drove into the River *Liffy* and drowned, there I apprehend, every Man that puſhed him to the Brink of that River was guilty of his Murder. The Law is clear, that in High Treaſon and Treſpaſs they are all

all Principals, and there can be no Accessories in those which are the highest and lowest Offence; the Persons aiding, inciting, in any kind assisting, by Language or Ouvert-Act, are all Principals; and if I am present, and encourage or desire a Man to break another's Head, and he does it, I am guilty of that Assault. If the Persons then, who have pursued this poor Gentleman, had been guilty of Murder, in case he had been forced into the River and drowned, I would be glad to be informed by the Counsel of the other Side, how it comes about, that the Law should be more tender in determining a Man to be a Principal in Trespass, than it does in Cases of Murder; I presume they must allow the contrary, and that there is more Indulgence shewn in favour of Life. And if the Case I put, would have been Murder in the Pursuers, and also in Lord *Anglesea*, I think the Consequence must be, that he is to be looked upon as a Principal in the Assault, as all Cases of Murder include a Trespass; also there are many Mitigations in Cases of Killing, not allowed in an Assault: So that I am at a loss to find how it can be imagined that a Man is not guilty of an Assault, when, if the Person he pursued had been driven into the River and drowned, he would have been guilty of Murder. If this be the Case of the Principal, pray consider, whether any Distinction in Law, or in point of Reason, can put Lord *Anglesea* in a better Condition, with regard to the Offence, than the Persons he prevailed upon to do it. He was the first Person that stirred up these Men to pursue, who were the Occasion of the Fall into the Ditch; he was the principal Agent, who wrought up their Spirits to execute that unlawful Intention which he had against him, and approved of what was done, when he heard Mr. *Annesley* was dead. I beg leave to say, that every Act they did in pursuance of his Directions, is his Act in point of Law; and the Law does not separate any of them, but makes them all Principals in Trespass. I would suppose, my Lord, that instead of a brutish Mob, I had got a mere Brute, a fierce Dog, and halloo'd him at a Gentleman without Provocation, and this Gentleman had leap'd into a River to escape from the Dog and was drowned; and if it had appeared I had halloo'd this Dog in order to wound, hurt, or frighten him into this Distress, am not I the Cause, and guilty of all the Distress the Dog frightened him into, and guilty of this Murder? And, tho' the Dog did not come so near as to bite him, and that he rather chose to leap into the River and be drown'd, than be mangled by this Dog, I conceive it would be a Case of Murder, and that it would be so. I put another Case: Suppose a Man designedly had scared another Man's Horse with an Intention that he should do some Mischief to the Man that rode him; the Rider is thrown upon this, though the Man never meddles with him, only scares his Horse; if he breaks his Neck in the Fall, is not that Murder? I must humbly insist upon it that it is, because the Law will not permit any one, either by himself, or others by his Procurement, to do any Act, whereby another's Property or his Life may be in danger or destroyed. Why then, I apprehend, that if my Lord *Anglesea* had ordered the Men to pursue in such a manner, that they had affrighted this Gentleman's Horse, and that he was unruly, and he had broke his Neck, I look upon it that that was a determinate Murder in Lord *Anglesea*. If in point of Reason, what I have mentioned has not the Weight that I proposed by it, to prove that this was an Assault in consideration of the Law, as much as if my Lord had with his own Hand broke his Head; I will put your Lordship in mind of a determined Case that comes up to the Point in question, and is this: There was a Man confined above Stairs in a Castle; another Man below sends armed Men up in order to murder him; they get into the Door, and run up the Castle Stairs. As he found them coming up, the Man had not resolution to stand; he thought he might have some Prospect of escaping, by leaping down from the Top of the Castle; he leap'd down from the Battlements, and it so happened that he broke his Neck and died: And in that Case I recollect, upon the Determination of the Judges, there was no doubt but that it was clearly Murder in the Man that commanded them, as well as in those, who by their Appearance of Violence, occasioned him to leap down. Here, my Lord, there was no Stroke given, no Man came near him, they had not got up to the Place where he was; however, the Man not being of Resolution strong enough to wait their cutting his Throat, he chose to leap down, and by that lost his Life. Here was no Election left to Mr. *Annesley*, he was thrown down by his Horse. If a Man lets loose a mad Bull, knowing him to be so, with Intent only to frighten People, it is Murder in him if any body is killed. Now, my Lord, as I have mentioned some Cases, which I conceive would be held to be Murder, if they were to be determined by your Lordship; and, as I have mentioned others upon my Memory, which have been so determined, and that would make this Fact, had this Gentleman died, Murder in Lord *Anglesea*; I am at a loss in recalling any Distinction taken in our Law-Books, that any Fact, which would be Murder in case the Person died, shall be extenuated, and said not to be an Assault in case he survived it. I know the Law is quite the contrary, and takes large Strides in Matters of Assault to come at Offenders, to protect the publick Peace, when it will not go so far as to take away the Life of a Man upon a capital Prosecution. I shall only trouble you with this further; that there can be no doubt but that Lord *Anglesea* gave the Directions I have mentioned, desired them to go and tear him in pieces; it is as certain that People did go and pursue; and it is to be left in the Breast of the Jury, whether that Pursuit was in consequence of my Lord's Directions, or not; and whether it is so natural to believe that this Crowd of People, who don't appear to be any way concern'd, or to have any Ill-will towards Mr. *Annesley*, would have pursued and galloped after him, who was galloping away to save his Life, had it not been in pursuance of my Lord's Commands, who had such Influence on them. This is to be left to the Consideration of the Jury, and I apprehend you will be pleased, when all the Words and Circumstances attending this public Affray is taken into your Consideration, from the Beginning to the End, to direct the Jury to find my Lord guilty of the Assault against Mr. *Annesley*, as he not only directed it, but approved of it, when done; nor can he complain of it as a Rigour in the Law to charge him with an Assault, where his Directions amounted to a Crime of Murder.

Court.] Gentlemen of the Jury, this Case, upon the Evidence, stands thus: Mr. *Annesley* is already gone off the Sod by the prudent Advice of Mr. *Mac Kercher*; he goes away after Mr. *Mac Kercher* had given him this Advice, and before the Words are uttered by my Lord, which it is insisted upon is a Foundation for the Jury to find the Traversers guilty of the Indictment for assaulting Mr. *Annesley*. You must observe, Gentlemen, Mr. *Annesley* is not driven off the Ground; he is prudently gone already: upon which Intelligence, Lord *Anglesea* does most improperly, and in a manner that the Court will consider when they come to pronounce their Judgment, call aloud and say, *Follow him, and knock his Brains out.* The material Evidence to what happened to Mr. *Annesley*, after he was thus gone off the Field, was Mr. *Archbold*, who was several times ask'd, I ask'd him myself no less than three times; Did any of the People that you saw follow, in pursuance of and under the Influence of that Direction given by my Lord *Anglesea*, strike him? He did not say they did. And when he was ask'd, if they pursued Mr. *Annesley* by my Lord's Directions, or for what other Purpose, he could not account for that; he said, some might, and some might not; some might follow him out of Curiosity, and others not, so far as he could judge. There does not appear after this any Blow given; there does not appear any actual Attempt, upon the Evidence, or any actual Blow by any Man to Mr. *Annesley* in the Ditch. Nothing appears, but that several People, some out of Curiosity, and some with different Intentions, rode after him, who is already gone, and not forced to go. He goes off the Field by Advice from his Friend, he is followed, after he is gone, by these People, he apprehends he is pursued by them with an evil Intent, he turns about to face them and defend himself, and in the Turn his Horse throws him into the Ditch, upon which he lay senseless, and no Person whatever attempts to hurt him: this, I say, is the Evidence; and I can't persuade myself to direct the Jury, that any of the Traversers are guilty of assaulting him.—As to the other Indictment for the Assault on Mr. *Mac Kercher*, if I err in point of Law, I have the Assistance of a Gentleman, who can and will set me right. Upon the other Indictment, in which Lord *Anglesea*, Mr. *Francis Annesley*, and Mr. *Jans*, stand indicted for assaulting Mr. *Mac Kercher*, the Jury have already disposed of two of them, my Lord *Anglesea* and Mr. *Jans*. As to Mr. *Francis Annesley*, it stands proved by the Testimony of Mr. *Mac Kercher*, Mr. *Kennedy*, and Mr. *Goostry*, that he did without any legal Provocation strike Mr. *Mac Kercher* with the Butt-End of his Whip upon his Forehead; upon which Blood came, and there has been no Evidence given to contradict that; so that I do apprehend Mr. *Annesley* is guilty of assaulting Mr. *Mac Kercher*.

Mr. Attorney-General.] I concur in Opinion, as to that Point, with Mr. Baron *Mounteney*; and as to the Indictment for the Assault on Mr. *Annesley*, I also think the Traversers are not guilty. He gallops off the Field, and is accidentally thrown by his Horse into a Ditch. The Accident happened in the Flight; the Flight was not in consequence of the Words that Lord *Anglesea* said, but by the Advice of Mr. *Mac Kercher*; but yet, if in consequence of those Words, supposing the Parties did pursue, and that there was a Fall; yet if it was no more than a Hurt by the Fall, it does not come within the Consideration of the Law to be an Assault.

The Jury go to find whether Mr. *Francis Annesley* is guilty of an Assault upon Mr. *Mac Kercher*. Also,

The Jury go to find whether Lord *Anglesea*, Mr. *Francis Annesley*, and Mr. *Jans*, are guilty of the Assault upon *James Annesley*, Esq. and find

Mr. *Francis Annesley* guilty of the Assault on Mr. *Mac Kercher*. And

Lord *Anglesea* ——
Mr. *Francis Annesley*
Mr. *Jans* —— } Not guilty { of the Assault on *James Annesley*, Esq.

Clerk of the Crown.] *Neile O Neile*, call your Security; you must give Bail, or stand committed for a Charge of Perjury.

Neile O Neile *giving no Security, was committed.*

Saturday, August *the 4th.*

A Bill of Indictment for Perjury is found by the Grand Jury against *Neil O Neile*, which is read by the Clerk of the Crown.

Clerk of the Crown.] Do you submit to your Traverse or not?

Neile O Neile.] Traverse.

Clerk of the Crown.] How will you be tried?

Neile O Neile.] I am not ready for my Trial at present, for it is too sudden upon me.

Mr. Attorney-General.] I don't see what Defence the Man can make; but however the Rule of Law must prevail.

Mr. Baron *Mounteney* comes into Court.

Mr. *Mac Manus.*] I hope your Lordship will think that there is a Necessity for a speedy Execution of Justice in Crimes of this nature, that a Man so dangerous to the Publick should be removed from the Society of Mankind as speedily as possible. No Man's Life or Property is, or can be safe but upon the due Observation of Oaths; when these are violated, a quick Execution of the Law should follow for the sake of the Publick. I hope therefore we shall be permitted to go to Trial for this Perjury, committed in the Face of the Court; but if you don't try it this Assizes, this Man must go unpunished. My Lord, Captain *Livingstone*, a material Witness, had the Honour, about two Years ago, to be sent from the Province of *South Carolina* with a Petition from that Province to his Majesty, and, as he thinks his Sollicitations in regard to that Petition are now at an end, he verily believes that he shall be obliged to set out for *South Carolina* before the next Assizes for this County; so that we cannot promise ourselves to have him here at the next Assizes, and it would be a Hardship to have him bound over to prosecute, when he is obliged to go on his Majesty's Commands. My Lord, this is a recent Case, a wilful Perjury acted openly last Night before your Lordship, which ought to be instantly punished: I humbly therefore hope your Lordship will bring on this Trial at this Time, considering the many and great Inconveniences that must attend the putting it off, that so flagrant a Perjurer may be brought to Justice.

[Mr. *Moreton* enforces this with the Case of the King against *Davis* at the Assizes at *Maryborough* some Years ago, where *Davis* was convicted,

and a Bill of Indictment being sent up, and found against the Witness (a Brogue-maker) for Perjury, the Court would not put it off, but pillo-ried him that very Day.]

Court. I understand this Matter has been ruled already.

Mr. *Mac Manus.* Here is an Affidavit of Capt. *Livingstone*'s, which we desire may be read.

Court. I do think when a Man is indicted on the last Day of the Assizes, and desires Time, he has a Right to traverse.

Mr. *Mereton.* I hope the Court will make *Neile* give good Security.

Court. Indeed he shall.

Court. Mr. *Mac Kercher*, I desire to be informed whether you design to bring any Action to recover Damages for this Assault?

Mr. *Mac Kercher.* We do not, my Lord; we prosecute for publick Justice, for the Safety of our own and Mr. *Annesley*'s Life.

Court. Mr. *Kennedy*, do you design to bring any Action to recover Damages for the Assault?

Mr. *Kennedy.* I do not, my Lord.

Court. My Lord, the Concern I am under is very great to see your Lordship here as an Offender against the Law; and it is extremely more so that it falls to my Lot to punish your Lordship for that Offence. Your Lordship has been found guilty of an Assault, and before I mention the Judgment of the Court, it will be necessary to remind your Lordship of some Circumstances appearing upon the Evidence attending this Fact, which greatly aggravate it. It appears, to the Satisfaction of the Court, that the Persons assaulted by you and Mr. *Jans* gave no Provocation, had not struck or attempted to strike; and it appears upon the Evidence of one of the Witnesses, that not so much as one Word had passed between your Lordship and them. This Circumstance is a great Aggravation of the Assault. My Lord, your Quality likewise greatly aggravates the Offence; you have the Honour to be a Peer of *England*, as well as of this Kingdom; and that Quality calls upon you to set an Example of Obedience to the King's Laws. The Place where this Accident happened, is another grand Aggravation of the Offence; it was done at a publick Meeting of Gentlemen on the *Curragh*, in the Presence of great Numbers, to whom such a Behaviour in a Person of your Dignity and Station of Life, must be of a very bad Example; the Prevention of which is the Thing principally regarded by the Law. A Number of People there, by your Lordship's Example, might be led to take Part on the one Side or the other; and if they had done so, it is to be feared that there might have been more fatal Consequences. It is with great Concern I mention this, but such was the Evidence, and I cannot doubt but that your Lordship will be thoroughly persuaded, as I am satisfied every body else will, that the Court exercises their Discretion with Tenderness, when they pronounce the Judgment, that a Fine of *Thirty* Pounds only is imposed on your Lordship for assaulting Mr. *Kennedy*, and you are fined accordingly in the Sum of *Thirty* Pounds for that Assault.

Mr. *Francis Annesley*, you likewise have been found guilty of an Assault on Mr. *Mac Kercher*; great Part of what I have mentioned to my Lord *Anglesea* will be applicable in your Case; you being a Gentleman of Fortune and Character in your Country, the People expect, and will take Example from you. It appears, upon Evidence, that a Gentleman was assaulted by you, who had not assaulted you; and I must say this in Justice to the Prosecutor, that there was no Reason to strike any body for the Words which were said by the Prosecutor; and though the Words did pass in your Hearing, yet they were but Words; and Words the Law does not consider as a Provocation sufficient for an Assault. Besides, they did not pass till after very opprobrious Language had been given. It also appears, that this Blow given by you, was the first Blow given in that Action, and that Blow occasioned all the rest which were given. That is the aggravating Circumstance, which makes it necessary for the Court to lay a pretty smart Fine upon you; but they are pleased to mitigate the Severity of the Law, and go no farther than to fine you in the Sum of *Twenty* Pounds.----Mr. *Jans* stands guilty of assaulting Mr. *Kennedy*, for which he is fined in the Sum of *Ten* Pounds.----This Assault of Mr. *Mac Kercher*, my Lord *Anglesea* has likewise been found guilty of, and a Fine of *Five* Marks is laid on him for that Offence.-----And on Mr. *Jans*, who is likewise guilty of assaulting the same Gentleman, *One* Mark.--------I think I have disposed of all of them but the first Indictment for the Assault on Mr. *Geoffry*, for which Lord *Anglesea* is fined *Sixpence*.

XXVI. The Trial in Ejectment between Campbell Craig, Lessee of James Annesley, Esq. and Others, Plaintiff; and the Right Honourable Richard Earl of Anglesea, Defendant; before the Lord Chief Baron *Bowes*, the Honourable Mr. Baron *Mounteney*, and the Honourable Mr. Baron *Dawson*, Barons of his Majesty's Court of Exchequer in *Ireland*: Begun on *Friday*, *November* 11, 1743; and continued by several Adjournments to *Friday* the 25th of the said Month *.

The Court being sat, the Jury were called over, and answered to their Names; of whom the following Twelve were sworn to try the Issue joined between the Parties:

Sir *Thomas Taylor*, Bart.	*Nathaniel Preston*, Esq.
R. H. *Will. Graham*, Esq.	*Charles Hamilton*, Esq.
Richard Wesley, Esq.	*Clotworthy Wade*, Esq.
Her. Langford Rowley, Esq.	*Thomas Shaw*, Esq.
Richard Gorges, Esq.	*Gorges Lowther*, Esq.
John Preston, Esq.	*Joseph Ashe*, Esq.

Campbell Craig, Lessee of *James Annesley*, Esq. PLAINTIFF.

The Right Honourable *Richard* Earl of *Anglesea*, - - - - - } DEFENDANT.

Michaelmas Term, in the 16th and 17th Years of *George* II.

In the *Exchequer.*

County of Meath, *to wit.* } THE Plaintiff declares that *James Annesley*, Esq. on the first Day of *May* 1742, at *Trim*, in the County of *Meath*, demised to the said *Campbell Craig* 30 Messuages, 30 Tofts, 50 Cottages, 2 Mills, 50 Gardens, 800 Acres of arable Land, 300 Acres of Meadow, 600 Acres of Pasture, 50 Acres of Furze and Heathy Ground, 50 Acres of Moory Land, with the Appurtenances, in *Great Stramine* otherwise *Stameen*, *Little Stramine* otherwise *Stameen*, *Little Donacarney*, *Shallon*, *Kilcarvan*, otherwise *Kilsharvan*, *Cruffey*, *Annager*, otherwise *Annager*, and *Little Gaffney*, situate, lying, and being in the County of *Meath* aforesaid: All which said Premisses were formerly the Estate of the Right Honourable *James* Earl of *Anglesea*, deceased, and lately the Estate of the Right Honourable *Arthur* Earl of *Anglesea*, also deceased; to hold the said demised Premisses, with the Appurtenances, to the said *Campbell Craig*, his Executors, Administrators, and Assigns, from the first Day of *May* aforesaid, for the Term of Twenty-one Years then next ensuing, fully to be compleated and ended.

The Plaintiff also declares upon two other several Demises made by his said *Lessor* of the same Premisses, that is to say, one by the Name of the Right Honourable *James* Earl of *Anglesea*, and the other by the Name of the Right Honourable *James Annesley*, only Son and Heir of *Arthur* late Baron of *Altham*, deceased; otherwise the Right Honourable *James* Baron *Altham* of *Altham*. By virtue of which said several Demises, the said *Campbell Craig*, on the second Day of *May* aforesaid, in the Year of our Lord aforesaid, entered and was thereof possessed, until the aforesaid *Richard* Earl of *Anglesea* afterwards, on the 3d Day of *May* aforesaid, in the Year of our Lord aforesaid, with Force and Arms, and so forth, entered into the said demised Premisses with the Appurtenances, and ejected, expelled and removed him the said *Craig* from his said Farm, (his said *Term* not being then or since determined) and otherwise did unto him, against the Peace of our Lord the King that now is, and to the Damage of the said *Craig* One Hundred Pounds *Sterling*.

* This was the longest Trial ever known, lasting 15 Days, and the Jury (most of them) Gentlemen of the greatest Property in *Ireland*, and almost all Members of Parliament.—They were only to try a meer Matter of Fact, whether Lord *Altham* had a Son?——Therefore this Trial cannot be called a State Trial, or a Trial in a criminal Case, and as it was so long, and contains so much Repetition and Tautology in examining and cross-examining the Witnesses, *&c.* (and as the *Trial at large*, is in almost every body's Hands) we shall only give you the Opening of the Evidence on both Sides, and the Depositions of the two most material Witnesses, *viz.* Mr. *Giffard*, who was reckoned a very principal one for the PLAINTIFF; wherein a Point of Law is determined: 'Whether an Attorney shall be allowed to disclose, and give in Evidence, what his Client had 'told him in secret?' with the Arguments of the Counsel and Judges upon the Question: (perused by themselves) as also the whole Evidence of Mrs. *Mary Heath*, Lady *Altham*'s Woman, who lived with her from her Ladyship's first going to *Ireland* until her Death; and was the chief and principal Evidence for the DEFENDANT: which, with the summing up of the Evidence, by the Lord Chief Baron *Bowes*, Baron *Mounteney*, and Baron *Dawson* (as corrected and revised by themselves) will shew the Substance of the whole Trial, and sufficient to carry on the Connection to the following Trial of Mrs. *Heath* for Perjury.——Besides, as great Part of the Evidence will be repeated in her Trial, it would be unnecessary to insert it here.

To

To this Declaration the Defendant pleaded the general Iſſue, *Not Guilty*.

Mr. *Lill*, of Counſel for the Plaintiff. My Lord, we ſhall call our Evidences, and prove the Plaintiff's Title, and then we hope you Gentlemen will find for the Plaintiff.

Mr. Serjeant *Marſhall*. I am in this Caſe of Counſel with the *Leſſor* of the Plaintiff, whoſe Title ſtands thus; The Lands in queſtion were the Eſtate of *Arthur*, late Lord *Altham*, of which he died ſeiſed, and the *Leſſor* of the *Plaintiff* is his only Son and Heir. My Lord, if this were a common Caſe, I ſhould have reſted here; but as the Courſe of Deſcent has been interrupted on a Suppoſition that Lord *Altham* died without Iſſue; and as this is a Matter of great Expectation, very extraordinary in its Nature and Circumſtances, and may be much more ſo in its Conſequences; ſo it will be incumbent on me particularly to point out to your Lordſhip, and to the *Jury*, the Time and Place when and where the *Leſſor* of the Plaintiff was born; for on that important Birth this Cauſe muſt depend.

My Lord, in the Year 1706, *Arthur* late Lord *Altham* was married to *Mary Sheffield*, natural Daughter of *John* Duke of *Buckingham*. After the Marriage, Lord *Altham*'s Affairs required his Attendance in this Kingdom, and in the Year 1709 he came over; but his Lady remained in *England* till the Year 1713, when ſhe came into *Ireland*; and in the Year 1714, Lady *Altham* reſided in the City of *Dublin* with Lord *Altham* her Huſband, and proved with Child. When ſhe had been ſome Months advanced in her *Pregnancy*, and at the latter End of the Year 1714, Lady *Altham* went to his Lordſhip's Houſe at *Dunmaine*, in the County of *Wexford*, where it was publickly known in the Neighbourhood that Lady *Altham* was with Child, and the then *Dowager* Lady *Altham* (who was married to Mr. *Ogle*, one of the Commiſſioners of the Revenue in this Kingdom) made Lady *Altham* a Preſent of a very rich *Quilt* againſt her *Lying-in*: And it will appear to your Lordſhip, and to the *Jury*, that Lady *Altham*'s *Pregnancy* was ſo well known in the Country, that Intereſt was made by ſeveral Women to nurſe this Child when it ſhould be born; and that great Care was taken in examining the Milk of the ſeveral Women who did apply to be Nurſes, and that one *Joan Landy* was approved of to be the Nurſe. My Lord, in the Beginning of the Year 1715, Lady *Altham* fell in Labour, and was delivered of the *Leſſor* of the *Plaintiff* by Mrs. *Shiel*, a *Midwife* of Skill and Reputation, who then lived at *Roſs*, about three Miles from *Dunmaine*; and it will appear to your Lordſhip and to the *Jury*, that Lord *Altham* expreſſed great Satisfaction and Joy upon the Birth of this Son; that a *Bonfire* was made upon this happy Event, and Drink publickly given to the Neighbours and People who came in to teſtify their Joy upon ſuch an Occaſion. It will likewiſe appear to your Lordſhip, and to the *Jury*, that great Preparations were made for the *Chriſtening* of this Son, and that about a Month after the Birth, the *Leſſor* of the *Plaintiff* was chriſtened at the late Lord *Altham*'s Houſe at *Dunmaine*, in the Pariſh of *Tynterne*, by one Mr. *Lloyd*, who was his Lordſhip's Chaplain, and at that Time Curate of *Roſs*, by the Chriſtian Name of *James*, after the third Earl of *Angleſea*, from whom Lord *Altham* had received great Favours, and the *Sponſors* on that Occaſion were Mr. *Colclough*, Mr. *Cliff*, and Mrs. *Pigot*. I mentioned to your Lordſhip before, that *Joan Landy* was appointed the Nurſe; her Father's Houſe was about a quarter of a Mile from *Dunmaine*, where the Child continued for about a Month; and then the Nurſe's Father's Houſe being firſt made fit for the Reception of ſuch a Child, he was carried to that Place with his Nurſe: And it will appear to your Lordſhip, and to the *Jury*, that for the Conveniency of Lady *Altham*, and that ſhe might viſit this Child as often as ſhe pleaſed, a Coach-Road was made from the Houſe of *Dunmaine* to the Nurſe's Father's Houſe. When the Child was about ſixteen Months old he was weaned, and brought back to Lord *Altham*'s Houſe at *Dunmaine*, where one *Joan Laffan* was appointed his dry Nurſe: And it will appear to your Lordſhip, and to the *Jury*, that while Lord and Lady *Altham* were united, the greateſt Fondneſs was ſhewn to this Infant by both. My Lord, in *February* 1716, there were ſome very unhappy Differences between the late Lord *Altham* and his Lady, upon which they, by Agreement, ſeparated; but Lady *Altham*, as was extremely natural, deſired to have the Company of her Child, which Lord *Altham*, but with great Expreſſions of Regard and Tenderneſs for the Child, refuſed; and it will appear to your Lordſhip, and to the *Jury*, that Lady *Altham* left her Son with the utmoſt Concern and Regret. After this unhappy Separation, Lord *Altham* forbade Lady *Altham*'s Acceſs to this Child, and directed that ſhe ſhould by no means ſee him, and that the Child ſhould not be carried to viſit her. The *Leſſor* of the *Plaintiff*, thus deprived of his Mother, continued at *Dunmaine* in the Care of Servants, 'till the Year 1718, and in that Year Lord *Altham* removed his Family to *Kenna*, in the County of *Kildare*, where he continued about two Years; and it will appear to your Lordſhip, and to the *Jury*, that the *Leſſor* of the *Plaintiff* was educated there with the greateſt Affection, and was conſtantly reputed and deemed to be Lord *Altham*'s Son and Heir. My Lord, in the latter end of the Year 1719, or beginning of the Year 1720, Lord *Altham* removed to *Dublin*, and had a Houſe in this Town for ſome Time, to which the *Leſſor* of the *Plaintiff* was alſo brought; and it will appear to your Lordſhip, and to the *Jury*, that he was then cloathed in a very extraordinary Manner, and was treated and eſteemed as the Son and Heir of the Lord *Altham*. My Lord, ſome Time in the Year 1720, Lord *Altham* removed to a Place called *Carrickduffe*, in the County of *Carlow*; and it will appear to your Lordſhip, and to the *Jury*, that as the *Leſſor* of the *Plaintiff* was then of Years capable of Inſtruction, ſo Lord *Altham* provided a Tutor for him in the Houſe; and when afterwards Lord *Altham* ſent the *Leſſor* of the *Plaintiff* to a publick School at *Bunclody* in the County of *Carlow*, that he was there attended as the Son of a Nobleman, and treated as ſuch. My Lord, in the Year 1722, (it was a Year extremely fatal to my Client) Lord *Altham* began a criminal Correſpondence with one Miſs *Gregory*, and in the Winter of that Year, Lord *Altham* ſettled in *Dublin* with her, in a Houſe in *Croſs-Lane*; and it will appear to your Lordſhip, and to the *Jury*, that this Miſs *Gregory*, before ſhe had made her Intereſt in Lord *Altham* quite ſecure, behaved tolerably well to the *Leſſor* of the *Plaintiff*; and the *Leſſor* of the *Plaintiff* was brought to the Houſe where Lord *Altham* reſided with her, and was ſent to a publick School in this *City*, and was uſed with great Care and Tenderneſs by his Father, and at School was deemed and taken to be the Son of Lord *Altham*. It will be neceſſary to mention to your Lordſhip and the *Jury* what became of Lady *Altham* after this Separation. She reſided in the Town of *Roſs* for about three Years, and her Affection for the *Leſſor* of the *Plaintiff* was ſo ſtrong, that, notwithſtanding Lord *Altham*'s Prohibition, ſhe found means privately to ſee the Child, and always expreſſed the greateſt Regard and Fondneſs for him, and complained much more ſeverely of being deprived of the Comfort in her Child, than the Loſs of her Huſband. In the Year 1720, or thereabouts, Lady *Altham* came to reſide in *Dublin*; but, unhappily for this Lady, ſhe had in her *Lying-in* contracted Diſorders, which at laſt ended in a *Dead Palſy*, and not only took from her the Uſe of her Limbs, but alſo, in ſome Meaſure, deprived her of her Memory and Senſes; but notwithſtanding; it will appear to your Lordſhip and to the *Jury*, that during the Time ſhe continued in this Kingdom, ſhe kept a ſecret Correſpondence with this Family, relative only to this Child. In the Year 1723, Lady *Altham* was carried from this Kingdom to *London* in a very languiſhing Condition, and there, during the Remainder of her Life, lived upon the Bounty of ſome Perſons who had Charity enough to ſupport her. My Lord, from this languiſhing Condition of Lady *Altham*, Miſs *Gregory*, who had gained a prodigious Influence over Lord *Altham* (who will appear to your Lordſhip to have been a very weak Man), had Hopes from him of every Thing in his Power, expected to be Lady *Altham*, and had aſſumed the Title even in the Life-time of Lady *Altham*; and therefore conſidered the *Leſſor* of the *Plaintiff* as the greateſt Bar to her Hopes, in caſe ſhe ſhould have Iſſue by this Lord, and thereupon grew very harſh and ſevere to the *Leſſor* of the *Plaintiff*; ſhe raiſed Doubts in the Lord *Altham*, that, though this was the Son of the Lady *Altham*, it might not be the Son of his Lordſhip, that ſo ſhe might take off that paternal Affection from the *Leſſor* of the *Plaintiff*, which he had always ſhewn to him before; and, my Lord, ſhe gained ſuch an Influence at laſt upon this unhappy Lord, that ſhe prevailed on him to remove the *Leſſor* of the *Plaintiff* out of his Houſe; and in the Year 1724, the *Leſſor* of the *Plaintiff* was ſent by Lord *Altham* to one *Cooper*'s in *Ship-ſtreet*, in this Town. But the Heart of Lord *Altham* was not at this Time quite eſtranged from his Son, for he gave Directions there that the *Leſſor* of the *Plaintiff* ſhould be taken great Care of, that he ſhould be put to School; and it will appear to your Lordſhip and to the *Jury*, that he was put to School at one *Dunn*'s, in *Warburgh-ſtreet*, in this Town, and that Lord *Altham* came privately ſometimes to ſee him there. My Lord, it will appear to your Lordſhip, and to the *Jury*, that about this Time the Neceſſities of the late Lord *Altham* were ſo extremely great, that he looked out to raiſe Money by all Manner of Ways and Means; and Lord *Altham* being adviſed, that if the *Leſſor* of the *Plaintiff* were out of the Way, large Sums might be raiſed by the Sale of Reverſions, in conjunction with the Remainder-man in *Tail*; and this Scheme being agreeable to the Inclinations of Miſs *Gregory*, who was willing to get rid of the *Leſſor* of the *Plaintiff* at any rate, it was determined that this great Obſtacle to Lord *Altham*'s Deſire of raiſing Money ſhould be removed; and to that End the *Leſſor* of the *Plaintiff* was ſent to the Houſe of one *Cavenagh*, with Directions to be kept quite private, ſo as it ſhould not be known where he was. What farther was deſign'd againſt him I can't ſay; but it will appear to your Lordſhip, and to the *Jury*, that though the *Leſſor* of the *Plaintiff* was at this Time a very young Lad, yet he was a little too ſprightly to be confined in that Manner; he found Means to make his Eſcape from thence, and being denied Admittance into his Father's Houſe, he roved about from Place to Place (as will be more particularly given an Account of to your Lordſhip and to the *Jury*, by the Witneſſes) for the Space of two Years before the Death of the late Lord *Altham*, his Father, which happened on the 16th of *November*, 1727. But during all that Time he was taken Care of by ſeveral Perſons of extreme good Credit, and conſidered as the Lord *Altham*'s Son and Heir. Upon the Death of the late Lord *Altham*, in the Year 1727, the *Leſſor* of the *Plaintiff* was extremely young; he was by the Mother's Side deſtitute of all Friends whatſoever in this Kingdom; and the now *Defendant*, the Earl of *Angleſea* (I muſt take the Liberty now of mentioning him), he, my Lord, upon the Death of the Lord *Altham*, claimed the Title of Lord *Altham*, as Brother and Heir to the deceaſed Lord, upon a Suppoſition that the late Lord died without Iſſue Male. My Lord, it will appear to your Lordſhip, and to the *Jury*, that many People who had known the *Leſſor* of the *Plaintiff* for ſeveral Years before his Father's Death, appeared to be greatly ſurprized that the *Defendant* aſſumed the Title of Lord *Altham*, in regard that they believed the *Leſſor* of the *Plaintiff* to be the Son and Heir of the Lord *Altham*; and there were Murmurings among the Servants, and a great many People who were acquainted with the *Leſſor* of the *Plaintiff*, on that Account. It will appear to your Lordſhip, and to the *Jury*, that, in order to remove every Obſtacle out of the Way of the *Defendant*, and to take from the *Leſſor* of the *Plaintiff* all Poſſibility of aſſerting his Right, and claiming the Title, an Attempt was made very early after the Death of the late Lord *Altham*; an Attempt was made, I ſay, to *kidnap* the *Leſſor* of the *Plaintiff*; and it will appear that the firſt Attempt was in vain; a ſecond Attempt of this Kind was made, and likewiſe defeated; but the third Attempt was more ſucceſsful; and in about four Months after the Death of the late Lord *Altham*, the *Leſſor* of the *Plaintiff* was ſent into *America*, and there ſold for a *common Slave*. I, my Lord, have not taken upon me to mention by whom thoſe ſeveral Attempts were made, it will much more properly come out of the Mouths of the Witneſſes; and when they ſhall ſpeak it here upon the Table, every body will judge with what View and Deſign ſuch a wicked Attempt could be made. My Lord, the *Leſſor* of the *Plaintiff*, while he was in *Slavery*, ſuffered many and various Hardſhips, as every body in thoſe unhappy Circumſtances does, and did make an Attempt to regain his Liberty; but being retaken, he ſuffered according to the Law of that Country, and continued about 13 Years in Slavery: But it will appear to your Lordſhip, and to the *Jury*, that even in that miſerable Condition, when he had an Opportunity of relating his Misfortunes to any body that had Compaſſion of them, he did mention the Unhappineſs of his Caſe, and by what Means he was reduced to ſuch Circumſtances. It will appear to your Lordſhip and to the *Jury*, in what Manner the Plaintiff, was brought by the Care and Bounty

of

of Admiral *Vernon*, into the Kingdom of *Great Britain*. There an unhappy Misfortune detained him for ſome time; he happened by an accidental Shot, to kill a Man near *London*, for which he was *indicted*, and ſtood his Trial: How that Proſecution was carried on, or for what Purpoſe, I ſhall not take upon me to ſay; though it will have its Weight in the Caſe; but it was neceſſary to mention this Circumſtance, to ſhew that, when we were at liberty of coming into this Kingdom, and proſecuting our Right, we did it as recently as was in our power. When theſe Facts are laid before your Lordſhip and the *Jury*, we of Counſel for the *Leſſor* of the *Plaintiff*, do apprehend there is ſuch a Connection in every one of them, that the Force of Truth will prevail, and that your Lordſhip will direct the *Jury* to find a *Verdict* for the *Leſſor* of the *Plaintiff*.

Mr. Serjeant *Tiſdall*. My Lord, Mr. Serjeant *Marſhall* has ſo fully ſtated the Caſe of the *Leſſor* of the *Plaintiff*, that I have no further Facts to mention, unleſs the Gentlemen on the other Side ſhould require of us to prove the Title of the late Lord *Altham* to the Lands in queſtion; if they do, we are ready to enter into it, and to ſhew that by the Will of *James* Earl of *Angleſea*, a Remainder of the Lands in the Declaration was limited to the *Leſſor* of the *Plaintiff*, after the Death of his Father.

Mr. *Lebunt*, of Counſel for the Defendant. My Lord, I hope they will read the Remainders in the Will of *James* Earl of *Angleſea*, and the Codicils; whereby it will appear that the next Remainder of the Lands in queſtion, after Failure of Iſſue of *Arthur* late Lord *Altham*, was limited to *Arthur* Earl of *Angleſea*, and not to the preſent *Defendant*, who was Brother to the late Lord *Altham*.

Mr. Serjeant *Marſhal*. We admit that the late Lord *Altham* was Tenant for Life of the Lands in the County of *Meath*, and that *Arthur* late Earl of *Angleſea* had a Remainder before the preſent *Defendant*, and did enjoy it accordingly.

Mr. Serjeant *Tiſdall*. My Lord, the *Legitimacy* of the *Leſſor* of the *Plaintiff* is the material Point.

Mr. *Recorder*, for the Defendant. My Lord, the *Leſſor* of the *Plaintiff* inſiſts that he is the *Legitimate* Son of the late Lord *Altham*; if this be proved, there will be no neceſſity to read the Wills and Codicils: for we admit, that if *Arthur* Lord *Altham* left a Son, the preſent Earl of *Angleſea* has no right to the Lands in queſtion.

Mr. Serjeant *Marſhal*. My Lord, there is one Point further to be admitted, which is, that the late Lord *Altham* intermarried in the Year 1706 with *Mary Sheffield*, Natural Daughter of the Duke of *Buckingham* (which was admitted). My Lord, we have been ſo happy as to be able not only to trace the *Leſſor* of the *Plaintiff* from his Birth, but to ſhew ſome preceding Circumſtances, rendering it highly probable; with which we ſhall begin, by laying before your Lordſhip and the *Jury*, that immediately after Lady *Altham*'s coming into this Country ſhe proved with Child, that ſhe miſcarried at *Dunmaine* of that Child, that ſhe proved *pregnant* a ſecond time, and was delivered of the *Leſſor* of the *Plaintiff*.

Lord Chief Baron *Bowes*. *Gentlemen*, From the Evidence as opened, I ſee this is like to prove a Trial of Length, as well as Expectation; and I think it is to the Honour of your Country, as well as for the Advantage of the Parties concerned, that Men of your Rank and known Probity attend the Trial of this Iſſue: But I fear it will not be in the power of the *Court* to take the Evidence with ſuch Exactneſs as to give you the uſual Aſſiſtance, by ſumming of it up at the End of the Trial. I muſt therefore requeſt you, Gentlemen, to take Notes, as we proceed.

*Here follow the Names of the Witneſſes produced on the Part of the Plaintiff; thoſe marked thus * were the moſt material.*

1 Mrs. *Dorothy Briſcoe*, *
2 Mrs. *Henrietta Cole*, *
3 *Alice Bates*, *
4 *Catharine Mac Cormack*, *
5 *Charles Mac Carthy*,
6 Major *Richard Fitzgerald*,
7 *John Turner*,
8 *Dennis Redmond*, *
9 *Margaret Surcliff*,
10 *Mary Doyle*,
11 Mrs. *Deborah Annesley*, of *Ballyſonan*, in *Kildare*,
12 *(a)* Alderman *Thomas Barnes*, of *Kilkenny*,
13 *(b)* *Southwell Piget*, Eſq;
14 *Philip Breen*,
15 *Eleanor Murphy*, *
16 *Chriſtopher Brown*,
17 *John Scott*,
18 *Joan Laffan*, *
19 *Thomas Brookes*,
20 *Lawrence Miſſet*, Eſq.
21 *James Walſh*, of *Dromdowny*, in *Kilkenny*,
22 Mr. *James Cavenagh*,
23 *James Dempſey*, *
24 *Charles Byrne*, of *Byrnes Grove*, Eſq.
25 *Charles Cavenagh*,
26 *Nicholas Duffe*,
27 *Catharine O'Neile*, *
28 Mr. *John Byrne*,
29 Mrs. *Charity Blake*,
30 *Edward Lutwyche*,
31 *Bartholomew Furlong*,
32 *Hugh* Earl of *Mount-Alexander*,
33 *Margaret Hodgers*,
34 *(c)* Mr. *Thomas Byrne*,
35 *Michael Waldron*, Gent.
36 *Barnaby Dunn*,
37 *Patrick Plunket*,
38 *Amias Buſh*, of *Kilfary*, in *Kilkenny*,
39 *Dominic Farrell*,
40 *John Purcell*, *
41 *Silcroſs Aſh*, Gent.
42 *Mark Byrne*,
43 *James Reiley*,
44 *George Babe*, Eſq;
45 Mr. *Andrew Crommy*,
46 Mr. *Henry Gonne*,
47 *Richard Tyghe*, Eſq;
48 *John Broders*,
49 Mr. JOHN GIFFARD,
50 Rev. Mr. *Abel Butler*,
51 *Joſhua Barton*.

Theſe Witneſſes ſwear, That after Lord and Lady *Altham* came to *Ireland*, my Lady miſcarried, and they ſaw an Abortion, and afterwards was with Child again; ſome ſwear they felt her Belly, and found ſhe was with Child, and that ſhe grew bigger and bigger; and ſeveral, that they ſaw her big with Child.—*Dennis Redmond* ſwears, he ſaw my Lady big-bellied; was ſent to *Roſs* by Mrs. *Heath*, for a Midwife, and brought Mrs. *Shiel* the Midwife; and that my Lady was delivered of a Son, about *April* 1715; and that Bonfires were made on the Occaſion; that the Boy was chriſtened by Mr. *Lloyd*, my Lord's Chaplain, by the Name of *James*, and that the Godfathers were Mr. *Colclough*, Counſellor *Cliff*; and the Godmother, Mrs. *Pigot*.—*Mary Doyle* and *Eleanor Murphy* ſwear they were in the Room at the Delivery; ſeveral ſwore, that the Child was put to nurſe, firſt to *Joan Landy*, and afterwards to *Joan Laffan*, and that a Coach-way was made to the Houſe of the latter, for my Lord and Lady to go and ſee their Son.—Others, that my Lord kept it and maintained it as his lawful Child, and owned it as ſuch to ſeveral People; put it to School, and maintained it there as his lawful Son; till at laſt Lord *Altham* parted from his Wife, and took Miſs *Gregory* into keeping; ſhe hated the Boy, uſed him ill, and was continually telling Stories of his bad Behaviour to my Lord, and at laſt prevailed on my Lord to turn him out of doors under pretence of thieving.—That this Boy afterwards wandered about for ſome time, living ſome time with one *Farrell*, and ſome time with others, till my Lord's Death, in *November* 1727. Soon after which, he was kidnapp'd and tranſported abroad, and not heard of for many Years, till at laſt he was diſcovered and ſent home by Admiral *Vernon*, to aſſert his Rights, &c. That in 1742, when Mr. *Annesley* happened accidentally to kill a Man at *Staines* in *Middleſex*, that Lord *Angleſea* was at a great Expence to proſecute him, &c. But Mr. *Giffard*'s Evidence will beſt explain the whole Affair.

Tueſday, November 15th.

49. *Mr.* JOHN GIFFARD.

Q. Do you know the Plaintiff Mr. *James Annesley*?

Mr. *Giffard*. Yes, Sir,

Q. Did you know when it was that he arrived in *England* from the *Weſt-Indies*?

A. No, Sir.

Q. Do you know of any *Proſecution* carried on againſt the Plaintiff by the Defendant for Murder?

[The Queſtion is objected to by the Counſel for the Defendant.]

Mr. *Fitz Gibbon*, of Counſel for the Plaintiff. My Lord, this Witneſs is brought to ſhew that the Lord *Angleſea*, knowing that the Plaintiff claim'd the Eſtate of the Family, as *Son* and *Heir* to the late Lord *Altham*, expended vaſt Sums of Money on a *Proſecution*, which he ſet on foot againſt him for the *Murder* of an unfortunate Man at *Staines*, in *Middleſex*, though the Perſon killed ſtood in no Degree of Relation to my Lord *Angleſea*, that could have engaged him to have taken up this Matter.

It will alſo appear, that while he laboured to convict the Plaintiff for *Murder*, he knew the Perſon, whoſe Death gave Occaſion for the Proſecution, was killed by *Accident*. And this we apprehend to be a Circumſtance proper to be laid before the *Jury*, to ſhew that my Lord *Angleſea*, conſcious of the Plaintiff's Title, took theſe Methods to cut him off.

Mr. Recorder, (*Eaton Stannard*, Eſq;) of Counſel for the Defendant. My Lord, I apprehend that the Evidence now offered is not legal Evidence in this Cauſe, becauſe it appertains not directly to it; it is a collateral Thing. It was proper to ſhew the Plaintiff to be the *legitimate* Son of Lord *Altham*, and that he was intitled to the Lands ejected; but to produce Evidence of a Trial in *England*, is very improper; in my Apprehenſion, this is no Evidence in this Trial of Ejectment. The taking away a Perſon, and ſecreting him after the Title accrues to him, is a material Evidence to ſhew that he could not aſſert his Right ſooner; but how is the *Indictment* of a Man for this *Murder*, be it accidental or not, relative to this Cauſe? For pending the *Indictment*, it was no Hinderance to him to put in his Claim when he pleaſed, and to aſſert his Title.

This Cauſe was tried in *England*. Can you have all the Witneſſes there brought before you? Could any Perſon concerned for Lord *Angleſea* foreſee that this Indictment would be introduced? And therefore my Lord *Angleſea* could not be prepared to have the Witneſſes of that Trial here. I ſay, it is not proper to introduce it, for what Man living could guard againſt it?

This Evidence is offered, as I apprehend, to raiſe a Preſumption that the Plaintiff is the *legitimate* Son of the Lord *Altham*, becauſe the Defendant endeavoured to deſtroy him; and then the Queſtion will be, Whether ſuch Evidence is proper to be admitted? It would be a Queſtion whether any improper Meaſure taken to affect the Life of the Plaintiff would be Evidence; but where, from their own opening the Caſe, it does appear to your Lordſhip nothing more than a Proceeding according to the regular

(a) As ſome Points of Law were determined, on Queſtions aſked the Witneſſes by the Counſel, we ſhall inſert them by way of Notes.
Alderman *Barnes* was aſked, Whether he heard Lord *Altham* mention his having a Son?
The Queſtion was objected to by the Counſel for the Defendant, who ſaid, That what Lord Altham *told the Witneſs was not to be given in evidence, but only what came within the Compaſs of his own Knowledge.* But the Court were of Opinion, that any Declaration of my Lord *Altham*, relative to this Tranſaction, the Birth of the *Leſſor* of the *Plaintiff*, was proper Evidence, and ought to be received.

(b) Mr. *Piget* was aſked, Whether ever *he heard* from his Mother, that ſhe was Godmother to Mr. *Annesley*, or no? *The Queſtion is objected to, by the Earl of* Angleſea's *Counſel; That Hearſay was no Evidence, and that he ſhould not be admitted to declare what his Mother told him. And the Court allowed the Objection.*

(c) Mr. *Thomas Byrne*, in his Evidence, ſaying, Mr. *Annesley told him*, he would not go to his Father at *Inchicore*, for Miſs *Gregory* was there, who would never let him alone.

" *Mr. Attorney-General.* My Lord, I deſire to have the Senſe of the Court upon this Part of the Evidence: The Witneſs was going to ſay what the Plaintiff *told him*: So long as this was for Connection, I made no Objection to it; but he is going by a Side-wind to reflect upon the Credit of a Perſon, who may be produced in evidence for the Defendant; this makes it material to object to this Part of the Evidence.

" *Lord Chief Baron.* It may be material to know what Reaſon the Boy gave for refuſing to go to my Lord *Altham*.

" *Mr. Attorney-General.* The Boy's Declaration cannot be Evidence for him.

" *Lord Chief Baron.* I ſhall confine the Witneſs to Facts.

and open Courſe of the Law, with humble Submiſſion, that in this Caſe or any Caſe whatſoever, is not to be imputed to a Man as a Crime. As they ſtate it, there was a Proſecution for Murder, whereas the killing was accidental, every *Homicide* in the *Indictment* is laid *Murder*; and if there was a *Proſecution* on this *Indictment*, is it not a material Circumſtance, that this *Indictment* muſt have had the Sanction of a *Grand Jury?* Here has been an Indictment, is all that they have ſaid, and a Proſecution upon that Indictment. I deſire your Lordſhip to conſider, whether my Lord *Anneſley*, or any other Perſon, might not have carried on the Proſecution? Nothing is more frequent, in *Murder* eſpecially, than that the Proſecution is carried on, not at the Expence of the *Crown*, though the Proſecution is in the Name of the *Crown*. Will it not then be a Matter of very great Conſequence, to ſay, that this ſhall be imputed to a Man as a Crime, and affect him not only as to his Character, but his Fortune? Your Lordſhip cannot judge now whether or not this Proſecution was what they would make it appear to be, without entering into the Merits of the Cauſe. How can it appear to your Lordſhip whether this was a real *Murder*, or the Perſon eſcaped only by a *favourable Verdict?* And therefore we hope, for the Sake of Evidence, that it may not be made a Precedent of in other Caſes.

Mr. Serj. *Marſhal*, for the Plaintiff. My Lord, we have endeavoured to lay before the *Jury* a *ſpiriting away* of the now Leſſor of the Plaintiff, at a Time when he was extremely young, not capable of aſſerting his Right, and with a View of putting him out of the Way of ever aſſerting that Right. We now come to offer Evidence, to ſhew that the Malice of the Defendant did not reſt there; that after he had actually cauſed him to be *tranſported*, the Leſſor of the Plaintiff, at his Return, unfortunately killed a Man; what we now propoſe to lay before your Lordſhip and the *Jury*, is the very extraordinary Part that the Earl of *Angleſea* took in that Trial; a Trial wherein he was not any way concerned. When the Witneſs ſhall be permitted to tell you what Expence the Earl was at in this Proſecution, it will ſtrengthen that Evidence, of the Defendant's *ſpiriting away* the Leſſor of the Plaintiff, and ſhew the Defendant's continued Deſign of removing this Gentleman from any Poſſibility of aſſerting his *Birthright*. And therefore we humbly hope your Lordſhip will permit us to go into this Evidence; and ſubmit it to the *Jury*, whether there could be any Reaſon *but one* for ſuch an uncommon Proceeding.

Mr. *Harward*, for the Plaintiff. My Lord, I apprehend, that every Matter which in any degree tends to ſhew whether the Plaintiff was the *lawful* Son of the late Lord *Altham*, or no, is proper Evidence to be laid before the *Jury*. This Evidence now offered, is to ſhew that the preſent Lord *Angleſea*, conſcious of the Plaintiff's *Legitimacy*, undertook the Proſecution to take away his Life, and ſpent great Sums of Money in it. If it is an Act of the Defendant's, it is proper for the *Jury* to conſider, *quo animo* he undertook it, whether from a *publick Spirit* of Juſtice, or a *private View* to take away the Life of this Rival to his Eſtate; for every Act of the Defendant that can give Light to the *Jury* of the Opinion that my Lord himſelf had of the Plaintiff's Right, is proper Evidence to be offered to them. We have already laid Evidence before the *Jury* that we apprehend clearly ſhews that the Lord *Angleſea* had, ſeveral Years ago, *ſpirited away* this Plaintiff, to prevent his aſſerting his Right to the Eſtate. This now offered is a further Proof of my Lord *Angleſea*'s Opinion concerning his Right; and to corroborate that Evidence that has been already laid before the Court, we have a Right to produce it, as a further Inſtance of this Lord's own Opinion, that it was neceſſary for him to come at his Life at any rate.

The Queſtion is not now, whether the Proſecution was juſt or not? Whether Mr. *Anneſley* was guilty or not of the *Murder* charged on him? He has been acquitted. I muſt beg leave to ſay, if he had been found guilty, and got a Pardon, and came to ſeek his Right in this *Court*, my Lord's carrying on the Proſecution might have been imputed to a *Zeal* for *Juſtice*; but being acquitted, there is Room for the *Jury* to conſider, whether his interfering was not owing to ſome *other Motive*, and ſome *other End* than that of *publick Juſtice*. The ſingle Queſtion is, Whether my Lord *Angleſea*, being a Stranger to the Deceaſed, became a voluntary Proſecutor, for the Death of a Man who ſtood in no Degree of Relation to the Family, from a Principle of Juſtice, or to gratify ſome private End of his own? It might have been very proper for Lord *Angleſea* to have expended ſuch large Sums of Money in proſecution of Juſtice, had he been any way related to the Deceaſed; but as he was not, his expending ſuch unuſual Sums in a Proſecution no ways relating to him, more than to any other Stranger, argues, that it was to anſwer his private Ends, by ſecuring his own Title to the Eſtate, if he could prevail to have the Plaintiff found guilty of Murder. If we were going to charge him with any thing that might involve him in any Sort of Guilt, the Objections might have been proper, but as we are not, they can carry no Weight.

Lord Chief Baron. This Witneſs was produced to ſhew that the Proſecution againſt the Plaintiff, for killing a Man at *Staines*, was promoted and carried on by the Defendant, and at his Expence; which, as it was an Attempt to take away the Plaintiff's Life, his Counſel have inſiſted is proper to be laid before the Jury, as further Proof of the preſent Defendant's Diſtruſt of his own Title, and his Opinion of the now Plaintiff's Right: And this has been offered without any previous Evidence, that the Defendant had been convicted or proſecuted for the malicious Proſecution of the Plaintiff, or that the Court, before whom the Plaintiff was tried for that ſuppoſed Murder, had, by any Act of theirs, declared their Opinion that this Proſecution was malicious, as is frequently done by ordering the Priſoner a Copy of his Indictment.

This is a new Attempt, and were it neceſſary for me now to give my Opinion, I ſhould think it ought not to be admitted.

The Proſecution in itſelf was not unlawful, on the contrary, it is the Duty of every Man, eſpecially in the Caſe of *Blood*, to take care that the Offender be put upon his Trial. And therefore, without entering into the Merits of that Caſe, the Motives of the Proſecution cannot appear; and thoſe alone can, in my Apprehenſion, introduce this Evidence as pertinent to the Matter in Iſſue in this Cauſe: Who, without going farther, can ſay, this Proſecution, though lawful, was carried on with an unlawful Intention?

Theſe Reaſons weigh with me at preſent. But as this Trial will laſt another Day, the Counſel for the Plaintiff may proceed to ſome other Evidence, and we, if it be inſiſted on, will give you our Opinions in the Morning.

Mr. Baron *Mountney*. It will always give me Concern, to find myſelf under a Neceſſity of delivering a ſudden and immediate Opinion upon any Queſtion, the contrary Sides of which are with equal Zeal contended for, by Gentlemen of ſuch Figure and Character in their Profeſſion as thoſe concerned in the preſent Cauſe: that Concern muſt be extremely increaſed, whenever I have the Misfortune to differ in Opinion, either from my Lord Chief Baron, or my Brother *Dawſon*, for both of whoſe Opinions I have the higheſt Regard; and ſtill infinitely more ſo in the preſent Cauſe; the immenſe Conſequence of which will incline me to heſitate even upon ſuch Points, as I ſhould otherwiſe be moſt extremely clear in. I ſhall therefore very gladly avail myſelf of that Opportunity, which, as my Lord Chief Baron hath been pleaſed to mention, the Adjournment of this Cauſe will afford us, of giving this Matter a farther Conſideration.

But my preſent Opinion is, that the Evidence now offered ought to be admitted; and the Foundation of my Opinion is this: Every Act done by the Defendant, which hath a Tendency to ſhew a *Conſciouſneſs* in him of Title in the Leſſor of the Plaintiff, muſt, I think, be admitted, beyond all Controverſy, to be pertinent and legal Evidence in the preſent Cauſe: —I think that the Evidence now offered hath that Tendency, and conſequently is proper to be admitted.

This Evidence of the Proſecution, in my Apprehenſion, ſtands exactly on the ſame Footing with the Evidence of the Kid-knapping; (againſt which not the leaſt Objection was attempted by the Defendant's Counſel) for I can by no means enter into the Diſtinction of lawful and unlawful Acts; which ſeems to have ſo much Weight with my Lord Chief Baron.

That unlawful Act was not therefore, in my Apprehenſion, to be admitted in Evidence, becauſe unlawful, but, becauſe it had a Tendency to ſhew ſuch a Conſciouſneſs, as I have mentioned, in the Defendant: and if the carrying on the Proſecution (which muſt be admitted to be a very extraordinary, though lawful, Act of the Defendant) hath the ſame Tendency, it ought, upon the ſame Principle, to be admitted.

Many Inſtances, I believe, might be put of lawful Acts done by one Party, which yet, it could not be controverted, would be legal and material Evidence for the other. One Inſtance occurs to me at preſent, which I think cannot bear the leaſt Diſpute. Suppoſe it could be proved, that the Defendant had offered to the Leſſor of the Plaintiff a conſiderable Part of his Eſtate, or a large Sum of Money, to compromiſe this very Suit ——Will any of his Counſel ſay, or can any Man living imagine, that this would not be legal Evidence in the preſent Cauſe?———And yet, the compromiſing of a Law-Suit is not only, univerſally, a lawful, but is, generally ſpeaking, a commendable Act.

Cui bono hath ever been eſteemed one of the ſtrongeſt, and moſt unanſwerable Arguments in all Caſes:———And therefore the Fact, which I have mentioned, would be not only legal, but, in my Apprehenſion, moſt exceedingly material Evidence to be left to the Jury; who would be the proper Judges *quo animo* ſuch an Offer was made.

As to the Fact now offered to be proved, it is poſſible indeed, that the Noble Lord might take up a Proſecution, deſerted (ſo far as appears) by the near Relations of the Deceaſed (the Perſons moſt likely to have carried it on, if they had thought Mr. *Anneſley* guilty of Murder) merely out of a publick-ſpirited Regard to Juſtice;——it is likewiſe poſſible, that his Motive for engaging in it might be an intereſted one——a Conſciouſneſs of Right in that Perſon, and conſequently that, unleſs that Perſon could be put out of the Way, the Titles and Eſtates which he was in Poſſeſſion of would be inſecure.

I think the Jury will be the proper Judges upon the whole Evidence in this Caſe, upon which of theſe two Motives, it is moſt probable, the Defendant acted:---and that therefore the Evidence of that Fact ought to be admitted, and left to their Conſideration.

This, I ſay, is clearly my preſent Opinion: but, as I mentioned before, I ſhall make uſe of the Opportunity of conſidering it further; and, if I find Reaſon to think that I am at preſent miſtaken, I will mention it To-morrow, and ſhall be exceedingly glad to change the Opinion which I have now given for a better.

Mr. Baron *Dawſon*. I am very glad that there is no Neceſſity for our giving our Opinions immediately on this Point, I ſhall therefore decline giving any poſitive Opinion, as we have this Night to conſider of it. The Proſecution here is agreed to be a lawful Act, and is not immediately relative to the Matter in Iſſue. The Difficulty with me is, that if this be given in Evidence, a Jury may, from a lawful Act not immediately relative to the Iſſue, draw an unwarrantable Conſequence.

If the Act were unlawful, it would undoubtedly be good Evidence, there could be no other Way of accounting for the Party's ſubjecting himſelf to legal Puniſhment: But where it is not unlawful, it may be dangerous to leave the Intent to the Jury. We will conſider of this Matter, and give our Opinions in it To-morrow.

Wedneſday, November the 16th.

The Counſel for the Plaintiff propoſed to examine Mr. *John Giffard* to what he had heard the Defendant ſay concerning the Leſſor of the Plaintiff, and his Title; and being called upon to open the Nature of that Evidence;

Mr. *Harward*, of Counſel for the Plaintiff, ſpoke as follows: My Lord, the Converſation Mr. *Giffard* had with Lord *Angleſea* was to this Purpoſe, Mr. *Giffard* is an Attorney of Reputation in *England*, and as ſuch has been twenty Years or thereabouts employed by this noble Earl in his Buſineſs, as he had Occaſion for him. When my unfortunate Client was to be tried at the *Old Bailey*, that was the Time Lord *Angleſea* had greateſt Occaſion for this Mr. *Giffard*; and it will appear to your Lordſhip that Lord *Angleſea* diſcloſed his Intentions to him in this Manner: "*I am adviſed* "*that it is not prudent for me to appear publickly in the Proſecution, but I would* "*give ten thouſand Pounds to have him hanged. Mr.* Jans *my Agent ſhall al-* "*ways attend you. I am in great Diſtreſs; I am worried by my Wife in* Ire- "land; *Mr.* Charles Anneſley *is at Law with me for Part of my Eſtate,* "*and,*" ſays he, "*if I cannot hang* James Anneſley, *it is better for me to* "*quit this Kingdom and go to* France, *and let* Jemmy *have his Right, if he* "*will remit me into* France *Three thouſand Pounds a-Year; I will learn* French "*before I go.*"

Mr. *Daly*, of Counſel for the Defendant, objects to Mr. *Giffard*'s being examined, ſince as an Attorney he was to keep the Secrets of his Client,

and ought not to be permitted to disclose them; and cited the Case of *Cutts* and *Pickering*, 1. *Vent.* 197.

Mr. Serj. *Marshall*, for the Defendant.] But if an Attorney will voluntarily come and disclose any Secret, he ought to be heard.

Mr. *Blake*, of Counsel for the Defendant.] An Attorney or Solicitor might not, nor is he compellable to disclose the Secrets of his *Client*; this is a Privilege inherent in the Office of an Attorney or Solicitor: But as this Privilege has its Source in a publick Consideration, I shall, with Submission to better Judgment, insist that this exemptive Privilege is not merely and solely the Privilege of the Solicitor or Attorney, but is, in Law and Reason, the Right and Privilege of the Client. Formerly, Persons involved in Contests and Litigations appeared in Court personally, and pleaded and inforced their several Demands and respective Defences, and beyond all doubt retained some Secrets unrevealed; but when, from an inevitable Variation of Things, an Increase of Trade, and an Exuberance of Opulence, legal Altercations became innumerable, then it became necessary to employ others to represent the Parties engaged; these Persons are denominated Attornies or Solicitors, and they, in the Nature of Things, must unavoidably be trusted with the most retired and secret Thoughts and Actions of their Employers, not only with respect to Suits actually instituted, but also with regard to Suits threatened or intended to be commenced; for a Person menaced, if directed by Prudence, will be conducted by Vigilance and Caution, equally as if attacked; therefore it is absolutely necessary to extend this Privilege to the Client, and not restrict it entirely to the Solicitor, especially as there may be some of that Profession, who cannot be supposed to be actuated by such Principles of Honour and Virtue, as an Office of so great Confidence requires; I mean the Person now produced to be a Witness for the Plaintiff. The Case of Lord *Say* and *Seal*, in *Macclesfield*'s Reports, I think, is an Authority in point.

Mr. *Recorder*, for the Defendant.] My Lord, formerly Persons appeared in Court themselves; but as Business multiplied and became more intricate, and Titles more perplexed, both the Distance of Places, and the Multiplicity of Business, made it absolutely necessary that there should be a Sett of People who should stand in the Place of the Suitors, and these Persons are called Attornies. Since this has been thought necessary, all People and all Courts have looked upon that Confidence between the Party and Attorney to be so great, that it would be destructive to all Business, if Attornies were to disclose the Business of their Clients. In many Cases Men hold their Estates without Titles; in others, by such Titles, that if their Deeds could be got out of their Hands, they must lose their Fortunes. When Persons become Purchasers for valuable Considerations, and get a Deed that makes against them, they are not obliged to disclose whether they have that Deed. Now, if an Attorney was to be examined in every Case, what Man would trust an Attorney with the Secret of his Estate, if he should be permitted to offer himself as a Witness? If an Attorney had it in his Option to be examined, there would be an intire Stop to Business; Nobody would trust an Attorney with the State of his Affairs.

The Reason why Attornies are not to be examined to any thing relating to their Clients or their Affairs, is, because they would destroy the Confidence that is necessary to be preserved between them. This Confidence between the Employer and the Person employed, is so sacred a Thing, that if they were at liberty, when the present Cause was over that they were employed in, to give Testimony in favour of any other Person, it would not answer the End for which it was instituted. The End is, that Persons with Safety may substitute others in their room; and therefore if you can't ask me, you can't ask that Man; for every thing said to him, is as if I had said it to myself, and he is not to answer it. Now, the Question will be, for whose Sake it was instituted? Be sure, for the Sake of the Person employing him. Who then has the Option that he should be examined? Why, the Employer; because otherwise it would be in vain to fix a Confidence in Persons, if that Person was at liberty on any Account to shake him off, and say, While I was employed by you, it was not in my Option to disclose it, but now that I am not, I will unravel all. As it was for the Sake of the Employer that Attornies were instituted, they cannot in Civil Suits become Witnesses without the Consent of the Employer; therefore, I submit it, whether the Option is in the Attorney or in the Person who is the Employer; and if in the Employer, as I think it must be both for his Safety and Advantage, the Attorney neither can nor ought to reveal what is intrusted to him. In Pleading, it is, *ponit in loco suo Attornatum*, the Attorney is as himself. And it is contrary to the Rules of natural Justice and Equity, that any Man should betray himself. I apprehend it is not material whether this be a *turpis Causa* or not; as this Man was employed by my Lord *Anglesea*, he can be asked no other Questions than my Lord *Anglesea* himself.

My Lord, I must submit it, whether an Attorney's Testimony should be received, altho' he offers to give it? And in the next place, I submit it, whether this Kind of Testimony in this criminal Case ought to be received? It would be very little Satisfaction to a Client to be put to apply to the Court for an Attachment against this Person who offers to lay his Evidence before the Jury, if his Testimony could be received. I apprehend that Person is in the Place of the Client, and as he intrusts him with Secrets, he is not to disclose them without his Leave; and if he should disclose them out of Court, an Action of Deceit lies against him. And tho' an Attorney should not insist upon his Privilege, yet it is in the Power of the Employer to insist upon that Privilege, and to say he is the Person intrusted with his Secrets. Now, in this Case it is much stronger, for here it is said, that he is employed by my Lord *Anglesea*. Now, if that Party can't disclose those Secrets in a civil Case, he ought not, for a stronger Reason, in a criminal Case; because that is subjecting his Client perhaps to a criminal Prosecution.

Mr. *Lee*, of Counsel for the Defendant.] My Lord, if the Attorney confess Judgment upon Record, it shall bind the *Conusor*, though done without Warrant; and the Reason is, that the Attorney appearing for the Party is, since the Statute of *Merton*, considered as the Party himself. If then the Attorney and Party are considered as one Person, why shall the one be suffered to be examined in this Cause, when the other cannot?

Mr. Serj. *Marshall*.] I do admit in some Cases the Attorney ought not to be permitted to disclose the Secrets of his Clients; but that must be where the Confidence was necessary and lawful: but here the Trust was unlawful, and the Attorney could not conceal it without Breach of his Oath, as an Attorney, which was to do Right to all Men. This was a criminal Secret, that was not only to affect the Plaintiff's Property and Life, but also to acquire a Title in which the Public were interested; so that it became the Duty of the Attorney to disclose it.

[*Mr.* John Giffard called and sworn]

Q. Are you an Attorney of any, and what *Court?*

A. I am an *Attorney* of the *Common-Pleas* in *England*, and a Solicitor of the High-Court of *Chancery*, and sworn and admitted as such by Virtue of the Act of Parliament.

Q. Did you know the Defendant the Earl of *Anglesea?*---*A.* Yes.

Q. Was you ever Agent or Solicitor for him in any, and what Cause?

A. In the Year 1722, Lord *Anglesea* employed me to assist him on a particular Occasion to make his Defence.

Q. Name the Parties.

A. He was prosecuted, the King against him, as *Richard Annesley*, Esq.

Q. Were you employed in any other Cause?

A. In the Year 1722, the same Year, when an Action was brought against him at the Suit of one *George Risden*. But from the Year 1722, 'till he became Earl of *Anglesea*, I never heard of him. In the Year 1737 I met him in *London*, and he desired me to solicit an Affair between him and his Countess that lived at *Biddiford*.

Q. Name the next Cause.

A. Between the Right Honourable *Maurice Thompson* Lord *Haversham*, and the Earl of *Anglesea*.

Q. The next.

A. I was concerned in another, the same Year, and attended it, (it is very well known through the Houses of Lords and Commons in *England*) in order to throw a Bill out of the House of Commons, for the exemplifying the late Earl of *Anglesea*'s Will.

Q. Go on.

A. I was likewise concerned in a particular Cause, between my Lord *Anglesea*, in the Year 1741, and one Mrs. *Simpson* of this Place; and have also sued out several Writs out of the Court of Common-Pleas, at the Suit of my Lord *Anglesea*, against one *Henderson* a Quaker.

Q. Go on.

A. I likewise was employed by Lord *Anglesea* in a Cause, wherein his Lordship was Plaintiff, and one *Rachel Cooper* was Defendant.

Q. Go on.

A. I issued out Writs against *Henderson*, at the Suit of one *Banks*, by Lord *Anglesea*'s Directions.

Q. Go on.

A. I was sent for, and commanded by him to solicit and carry on a Prosecution against the Plaintiff Mr. *Annesley*.

Q. Have you been retained as Agent or Solicitor for the Earl of *Anglesea*, in any other Causes within these three Years?

A. I do not know; some frivolous Thing might have slipped my Memory, but I was not concerned in any other Cause, since the Prosecution of Mr. *Annesley*.

Q. Name the Time when you was retained by the Earl to prosecute that Murder.

A. The second Day of *May*, 1742.

Q. The Conversation that passed between you and my Lord, to which you are now produced as an Evidence, was it before, or after, that Time?

A. There were several Declarations, some before, and some after. The Conversations were from the 7th of *December* 1741, to the Time of Mr. *Annesley*'s being discharged at the *Old-Bailey*.

Q. When was the Bill of Indictment found against Mr. *Annesley?*

A. The Bill was found in *June*, and he was admitted to Bail in *July* Sessions, 1742.

Q. On what Day is the Murder laid in the Indictment?

A. On the first of *May*, 1742, the 15th Year of the present King.

Q. Was you Agent or Solicitor for Lord *Anglesea* at the Time that the Conversation passed, before the 2d of *May?*

A. Not for the Cause of Mr. *Annesley*.

Q. Were not the other Causes subsisting?

A. The Causes were on Writs which were never executed.

Q. I desire you may answer directly, whether the Conversation before the 2d of *May* was not on some Affair in which my Lord *Anglesea* consulted and advised with you as his Agent or Solicitor, designing to employ you in that Affair?

A. No, my Lord, it was not; for I did not expect to be employed by him again, he having employed Mr. *George Garden* and Mr. *Adam Gordon*.

D. Name the People.

A. Mr. *Garden* and Mr. *Gordon*. They are Attornies, they are Partners, and I received my Instructions, in a great part, from them; my Lord ordered me to take Directions from them, and I have Instructions under *Gordon*'s own Hand-writing.

Q. Had my Lord *Anglesea* those Conversations with you relative to the Plaintiff, between the 7th of *December* and the 2d of *May*, as intending to employ you, or not?

A. I never was employed, nor intended to be employed, in any Suit for or against him, during that Time.

Q. When did you first receive Instructions from *Garden* and *Gordon?*

A. In a Week after the first of *May*.

Q. Had you any Instructions from them, except what were relative to the Prosecution, in relation to the Plaintiff?

A. No; no Instructions but what were relative to the Prosecution.

Q. Did you charge Lord *Anglesea* with any Term Fees in the Year 1741, relative to particular Suits?

A. I believed I charged 10 *s.* 4 *d.* for Lord *Haversham*'s Suit.

Q. In what Term did you charge it?

A. I find that Cause was in the Vacation between *Hillary* and *Easter* Term, and was concluded before *Easter* Term came. It was depending in *Hillary* Term 1741, and was concluded before the next Term.

Q. Was it depending for any time before *Hillary* Term?

A. The Beginning of it was the 20th of *January*, the Essoign Day before *Hillary* Term.

Q. Was you concerned for Lord *Angleſea* from the latter end of *November* to the beginning of *January* 1741?

A. I was concerned in iſſuing out ſome Writs.

Q. And do not you think, if any Suit had depended upon them, you would have been concerned?——*A.* I do not know but I might.

The Witneſs goes off the Table.

Mr. Prime Serjeant, (Anthony Malone, Eſq.) for the Defendant.] An Attorney ſhall not diſcloſe any thing whatſoever in a collateral Queſtion, that ſhall affect the Property of the Client.

Mr. Serj. *Tiſdall,* for the Plaintiff.] My Lord, we propoſe to examine to no Fact which came to his Knowledge as an Attorney, in any Suit in which he was employed for Lord *Angleſea:* but he declares he never was employed in any Suit relating to the *Leſſor* of the *Plaintiff*, nor was even intended to be employed in any Suit relating to this Trial. We hope, therefore, we are proper to give in Evidence ſeveral Declarations and Converſations Lord *Angleſea* had with the Witneſs concerning the *Leſſor*, his Title to this Eſtate, and the Neceſſity he apprehended himſelf under of putting him out of the Way at that Time. We do not propoſe to examine him as to any Facts relating to the Proſecution of that Suit in which he was then employed; we deſire only to examine him as to the Converſations with Lord *Angleſea* concerning this Cauſe; and I apprehend we have undoubtedly a Right to examine him as to theſe Points.

I cannot ſay, but the Gentlemen on the other Side have good Reaſon to oppoſe this Evidence, which, if it appears in the Manner we are inſtructed it will, muſt be an Evidence of great Weight. I ſhall firſt beg Leave to conſider, whether an Attorney may be examined to any Matter which came to his Knowledge as an Attorney. If he is employed as an Attorney in any unlawful or wicked Act, his Duty to the Publick obliges him to diſcloſe it; no private Obligations can diſpenſe with that univerſal one, which lies on every Member of the Society, to diſcover every Deſign which may be formed, contrary to the Laws of the Society, to deſtroy the publick Welfare. For this Reaſon I apprehend, that if a Secret, which is contrary to the publick Good, ſuch as a Deſign to commit Treaſon, Murder, or Perjury, comes to the Knowledge of an Attorney, even in a Cauſe wherein he is concerned, the Obligation to the Publick muſt diſpenſe with the private Obligation to the Client: But in this Caſe the Witneſs propoſed to be examined was not Attorney to the Defendant in any Caſe relative to his Teſtimony. And the Secrecy of the Attorney is neceſſary to the Client in that Cauſe only, for the carrying on of which he is under a Neceſſity to entruſt him. For this Reaſon I agree, that whatever is communicated to him from that Neceſſity ought not to be diſcloſed, even in a future Cauſe, wherein he is not concerned; but as the Client is not obliged to entruſt his Attorney with any of his Secrets, but ſuch only as are relative to, or may be uſeful for carrying on the Cauſe in which he is employed; if he truſts him with any Matter foreign to that, even during the Time that he is employed, with any Matter which was not neceſſary, or any way material to the Cauſe depending, he is not obliged to conceal it.

I beg Leave to ſay, as there was no Neceſſity upon the Client to entruſt him with it, ſo mutually there can be no Obligation upon the Attorney to conceal it; for as the only Obligation which lies on the Attorney to Secrecy, ariſes from the Neceſſity of Confidence between him and his Employer, from the Neceſſity the Client muſt be under to entruſt him, it cannot extend to any Caſe where that Confidence was not neceſſary, where the Client was not under ſuch a Neceſſity. If this be admitted, the Matters we propoſe to examine to are quite foreign to thoſe Suits in which the Witneſs was employed for the Defendant. My Lord *Angleſea* was indeed under a Neceſſity of entruſting him with all the Evidence that he thought neceſſary for the Proſecution carried on againſt the Plaintiff in *England*, and the Attorney is under an Obligation of concealing that Evidence: but was he under a Neceſſity of telling the Attorney he wanted to put this Man out of the Way, or that he was entitled to his Honours and Eſtate? This was a Secret he ought in Prudence to have kept within his own Breaſt, and not to have diſcovered. This was a Secret not neceſſary to be communicated, and therefore not to be concealed.

Upon theſe Principles, therefore, I ſhould ſubmit it to your Lordſhip, that we muſt be at Liberty to examine Mr. *Giffard* as to thoſe Converſations which were no way relative to the Matter in which he was then employed by the Defendant, and which, if true, as they are repreſented to us, import a Deſign contrary to all Laws of Nature and Society.

Mr. *Walſh,* for the Plaintiff.] I do admit that an Attorney ſhall not be examined to any Fact diſcloſed to him by his Client as an Attorney, relative to a Cauſe wherein he was employed; becauſe a Client muſt of Neceſſity entruſt the Secrets of his Title to his Attorney, to enable him to conduct his Suit; and therefore the Attorney ſtands in the Place of his Client, who cannot be examined as a Witneſs againſt himſelf. But this Rule can never be extended either to a Caſe where the Matter was not communicated to him as a Secret, in the Cauſe wherein he was employed, or before he was employed as Attorney in that Cauſe; becauſe there the Client was not under any Neceſſity of diſcloſing the Fact to him; and if it were otherwiſe, this Inconvenience muſt happen, that no Attorney could ever be a Witneſs againſt a Perſon, if he ever happened, upon any Occaſion whatſoever, to be his Attorney. The Queſtion then is, Whether the Fact to which we want to examine Mr. *Giffard* was communicated to him by Lord *Angleſea*, as his Lordſhip's Attorney, or not? or whether he was actually employed by him in the Proſecution of Mr. *Annesley*, at the Time the Diſcourſe we would examine him to happened? It is true, Mr. *Giffard* had been Attorney to Lord *Angleſea* in ſeveral Suits before this Converſation happened; but he could not be at that Time employed in the Proſecution of Mr. *Annesley*; becauſe it appears, that this Diſcourſe happened before the Coroner's Inqueſt ſat, or any Proſecution began on that Account; ſo that I apprehend this Caſe does not come within the Rule I mentioned, and that Mr. *Giffard* ought to be examined. But beſides, what we would examine him to is, not as to any Secret in the Proſecution itſelf, but only as to Lord *Angleſea*'s Intention and Deſign in engaging himſelf in the Proſecution. But I muſt mention another Reaſon, which puts this Matter out of doubt, and that is, that this Proſecution was at the Suit of the Crown; if any Secrets were in that Suit, they were the King's Secrets, the revealing of which could be no Inconvenience to Lord *Angleſea*, or affect his Property; and therefore, my Lord, I apprehend, for theſe Reaſons, that Mr. *Giffard* ought to be examined as to the Point we have opened.

Mr. *Harward.*] I apprehend, that what is contended for by the Gentlemen on the other Side, is not ſupported by the Authorities they have relied on; becauſe, in all the Caſes quoted by them it does appear, that the Attorney propoſed to be examined, was the Attorney or Agent in that very Cauſe that was then to receive a Determination, and it appears that the Secrets to which he was to be examined, were Secrets that came to his Knowledge from his Client concerning that very Cauſe. So that the Caſes quoted do not maintain the Objection made; for this Witneſs was never in this Cauſe employed as Agent, or in any other, in which the Title to the *Angleſea* Eſtate was controverted, as it is here; ſo can't be ſaid to violate any Confidence repoſed in him, as to any Secrets concerning the Title to the Eſtate; for that could not come in queſtion on the Proſecution for Murder, or be in any Sort neceſſary for the Client to reveal to him to carry on the Proſecution; and therefore not within the Rule laid down, *That the Client has a Privilege to hinder his Attorney from diſcloſing any of the Secrets communicated to him neceſſary to carry on the Cauſe he is employed in:* And in the Caſe of *Cutts* and *Pickering* in *Ventris*, it was agreed, that if the Secret came to him from his Client before he was retained, he might be examined; and a Retainer in a capital Proſecution cannot, in the Nature of the Thing, imply any Truſt in the Attorney to keep the Secrets of the Title to an Eſtate, no way to be in queſtion in that Proſecution: And the Caſe of Lord *Say* and *Seal* mentioned, makes rather for us than againſt us; for there the Attorney employed to ſuffer a Recovery was examined againſt his Client as to antedating a Deed to make a Tenant to the *Præcipe*; for that the Time of executing a Deed could not be called the Secret of his Client; and the Rule laid down on the other Side, in ſuch general Terms as it is urged, inſtead of promoting public Juſtice, would ſubvert it, and ſcreen all Villainies that could be contrived to carry a Cauſe. I take the Diſtinction to be, that where an Attorney comes to the Knowledge of a Thing that is *malum in ſe*, againſt the common Rules of Morality and Honeſty, though from his Client, and neceſſary to procure Succeſs in the Cauſe, yet it is no Breach of Truſt in him to diſcloſe it, as it can't be preſumed an honeſt Man would engage in a Truſt that by Law prevented him from diſcharging that moral Duty all are bound to, nor can private Obligation cancel the Juſtice owing by us to the Publick. But the Truſt repoſed in this Attorney was, to carry on a Proſecution of Murder. The Matter diſcloſed by this Lord to him was foreign concerning the Title to an Eſtate; then, how can the revealing of that be a Breach of Truſt, when not within the Truſt he was employed in? The Proſecution was properly at the King's Suit, and not at the Lord *Angleſea*'s; this Ejectment was not then even in Contemplation, or could be foreſeen that the Title to the Eſtate would ever come in queſtion; ſo, what Lord *Angleſea* declared to him concerning the Title, is no more within the Bounds of the Truſt repoſed, than if any other Perſon had declared it to him, for whom he never was employed.

But to go a little farther, ſuppoſe I employ an Attorney to recover *Blackacre* for me, and I bring an Ejectment for it; while he is thus employed, I come and diſcover to him that I have forged a Deed which relates to *Whiteacre* in my Poſſeſſion, and which is the Right of another Man; might not the Attorney hereafter diſcloſe that Forgery, to enable the other to recover *Whiteacre* from me? For he never was employed or entruſted as an Attorney by me in that Caſe. So, in the preſent Caſe, the Attorney was never employed in any Cauſe where the Title of the Eſtate was or could come in queſtion; ſo not at all within the Reaſon of that neceſſary Privilege given by Law to the Client, to hinder his Attorney from diſcloſing any of the Secrets communicated to him, neceſſary for, and relative to the carrying on of the Cauſe he has engaged himſelf in to proſecute. The Thing therefore that varies this Caſe from the Rule of Privilege laid down on the other Side is, that this Attorney was never concerned in any Suit of my Lord's relative to the Title of the Eſtate, and to which we now produce him; and there can be no ſuch Privilege, but where there is ſuch Suit and Retainer for that individual Purpoſe, and cannot extend to Concealment of Secrets diſcloſed under the Confidence of ordinary Friendſhips or Diſcourſes.

And laſtly, As it is a Diſcovery to the Agent to contrive the Death of an innocent Man, that there is no Protection whatſoever can be given to diſpenſe with that moral Engagement he was under to the Diſcovery of it; if this unfortunate Gentleman had come to the Diſcovery, that the Lord *Angleſea* and his Attorney had entered into a Conſpiracy to bribe Witneſſes, could the Court ſtand by and ſay, That this Witneſs ſhould not be examined? How can he now then, in a Civil Caſe, wherein he never was concerned, have that Protection? Will any Gentleman deny, that this Attorney could have gone and given in an Examination concerning this Proſecution? He certainly could; for no Man can have a Protection againſt the King. And if Lord *Angleſea* was ſo idle, or if Providence has ſo ordered it, that he ſhould be ſo unwary, or ſo wanton, as to make a Diſcovery of this, and of the Plaintiff's Title to the Eſtate, he has no Privilege againſt the Diſcovery of it.

Mr. Solicitor General, (Warden Flood, Eſq.) for the Defendant.] I humbly hope your Lordſhip will not admit this Perſon to be examined in this Cauſe. If the Queſtion were only to his Credit, ſurely he can deſerve none; for he appears under the Circumſtances of a Perſon who was employed from the Year 1722, by this noble Perſon as his Attorney; a Man willingly betraying thoſe Secrets, which, in point of Duty and common Honeſty, he ought to keep. Beſides, the Secrets he pretends to diſcloſe are ſuch as it was not neceſſary for my Lord to communicate to him, and ſuch as no Man in his Wits could diſcloſe to any Perſon, under what Obligation ſoever of Secrecy, without an unavoidable Neceſſity, which does in no Sort appear to be the Caſe here; and this makes what he ſays the leſs credible, and him the leſs fit to be believed as to his Competency. The Caſe of the Lord *Say*, which has been cited, is a full Authority that the Secrecy indulged to this Sort of People by the Law, is not for their Sakes, but that of their Clients. That it is the Privilege, not of the Attorney, but of the Client; and of conſequence cannot be waved without his Conſent. 'Tis true, this Privilege will not hold in a criminal Caſe, but is ſuperſeded, when it is incompatible with the Peace and Welfare of the Publick; but ours is a private Caſe, and falls not within this Rule.

Mr.

Mr. *Hargrave* mentions the Case of *Staples* and *Staples*, wherein a Settlement that was concealed, but not suppressed, was wanted to be known by Mr. *Matthews*; when the Lord Chancellor directed it so, that there was a Meeting, by Consent of all Parties, between the Attorneys on both Sides, and a Copy taken and signed.

Mr. *Daly*, of Counsel for the Defendant, supposes, that if he was concerned for a Man guilty of High-Treason, the Court could not oblige him to disclose the Secrets committed to him by that Man.

Mr. *Smith*, for the Defendant.] If I rightly apprehend the Nature of Mr. *Giffard*'s Evidence offered by the Gentlemen on the other Side, it relates to two different Kinds of Declarations alledged to have been made to him by my Lord *Anglesea* in Conversation during two different Periods of Time; first, the Declarations of my Lord concerning the Right of Mr. *Annesley*, (the Lessor of the Plaintiff) and these are alledged to have been made at several Times in the Year 1741, antecedent to the Prosecution of Mr. *Annesley*; and in the next Place, my Lord's Declarations that he would give Ten Thousand Pounds to have Mr. *Annesley* hanged; and these are said to have been made during the Continuance of the Prosecution. We objected to this Evidence, that as Mr. *Giffard* appeared from what he said on the Table, to have been employed by my Lord as his Attorney, he ought not, by Law, to be permitted to disclose any Thing that was uttered to him by my Lord under the Trust and Confidence reposed in him as an Attorney. There have been two Answers given to this Objection: First, That the not disclosing the Secrets of the Client is a Privilege given by Law to the Attorney, and in his Favour only, and therefore he is at Liberty, if he thinks fit, to wave it. In the next Place, the Gentlemen say, that the Declarations touching Mr. *Annesley*'s Right, were made at a Time when my Lord had no Cause depending, and that whatever is disclosed by the Client to his Attorney, when there is no Cause depending in which the Attorney is employed, is not within the Reason of the general Rule; because in such Case he may be said to be intrusted as a Companion or Acquaintance, but cannot be said to be trusted as an Attorney; and therefore, they say, Mr. *Giffard* ought to be examined, at least to these Declarations. Before I speak to these Points, I shall beg Leave to observe in general, that Breach of Trust and Confidence is a Thing no ways to be favoured in any Man whatsoever, whether he is or is not an Attorney; for mutual Trust and Confidence is one of the strongest Cements of human Society, and without which it could not subsist; and therefore I apprehend, that the Court will always go as far in every Case, as by Law they can, to prevent a Person from being guilty of so base an Action as Violation of Trust and Confidence, although he should be ever so willing to do it.

As to the first Point, Whether Mr. *Giffard* ought to be at Liberty to wave his Privilege; I think the Case of my Lord *Say* and *Seal*, in the Book called *Macclesfield*'s Cases, fol. 41. mentioned by *Mr. Prime Serjeant*, seems to be an express Authority that he ought not. In that Case, the Court in giving their Opinion, lay it down as a general Rule, "*That an Attorney's Privilege is the Privilege of his Client; and that an Attorney, tho' he would, yet shall not be allowed to discover the Secrets of his Client.*" The different Interest which the Attorney and the Client have in this Privilege, shew this Rule to be highly agreeable to Reason. As to the Attorney, this Privilege is an Exemption from the General Rule, which obliges every one to testify his Knowledge in any Affair where he is called upon as a Witness. By this Exemption he is freed from the disagreeable Necessity of revealing what was disclosed to him by his Client under the Seal of Confidence; this is a Privilege which every honest Attorney will set the highest Value upon, and will endeavour to preserve; and whenever any Attorney desires to be discharged from that Exemption, and to be at Liberty to wave his Privilege, he does, in effect, desire to be at Liberty to be guilty of one of the basest of Actions, Breach of Trust and Confidence; which as it is a Thing highly to be discountenanced in any Case, more especially in that of an Attorney; he ought not to be permitted to do it, let him have ever so strong an Inclination to it. As to the Client, the Interest which he has in this Privilege, is very obvious. No Man can conduct any of his Affairs which relate to Matters of Law, without employing and consulting with an Attorney; and if he does not fully and candidly disclose every Thing that is in his Mind, which he apprehends may be in the least relative to the Affair he consults his Attorney upon, it will be impossible for the Attorney properly to serve him: Therefore, to permit an Attorney, whenever he thinks fit, to betray that Confidence which the Client is under such an absolute Necessity of reposing in him, would be of the most dangerous Consequence, not only to the particular Client concerned, but to every other Man who is or may be a Client. The Gentlemen on the other Side have attempted to confine and circumscribe this Privilege, and to make it extend only to Matters disclosed by the Client relative to some Suit, then depending, in which the Attorney is concerned. But I apprehend this would be making the Rule a great deal too narrow; for, if the Principles on which the Rule is founded, are considered, the true Meaning of it must be, that the Attorney shall not be permitted to reveal any thing that his Client discloses to him under a general Confidence as his Attorney; so that it cannot be material whether a Suit was then actually depending or not; but the material Point to be considered is, whether the Client did not consider him as his Attorney, when he so disclosed his Mind to him? In the present Case, that my Lord *Anglesea*, at the Time these Declarations touching Mr. *Annesley*'s Right are said to have been made, did consider Mr. *Giffard* as his Attorney, cannot be doubted. Mr. *Giffard* says, That my Lord, at several Times before, and particularly in the Year 1741, had employed him in several Suits; that he, after those Discourses, employed him again, and in the Month of *May* 1742 discharged him. So that the general Confidence my Lord reposed in him as his Attorney, must be presumed actually to subsist from the Time he first retained Mr. *Giffard*, till the Time he discharged him; and whatever my Lord said to him, during that Space of Time, touching his Affairs, was plainly said to him under Confidence as his Attorney; my Lord had employed him as an Attorney before, and plainly intended again to employ him as his Attorney afterwards; and because there was an Interval, during that Space of Time, in which my Lord was at Peace, and happened to have no Suits on his Hands, to say that his Attorney shall therefore be at Liberty to disclose what was in that Interval revealed to him, would be equally productive of all the ill Consequences that would attend his being permitted to disclose what he was intrusted with relative to a Suit actually depending; the Confidence reposed in the Attorney, is the same in the one Case as in the other, and his Violation of that Confidence equally prejudicial both to the Client and the Publick. It has been objected, That what has been cited out of the Case of Lord *Say* and *Seal*, is not the Point adjudged in the Case: But although the Court do there decide the Question before them upon another Point, yet the general Rule which they lay down (as I have mentioned it) stands admitted. The Case of Mr. *Matthews*, the Attorney, was mentioned on the other Side: If I am rightly informed of that Case, Mr. *Matthews* had, in the Presence, and at the Desire of his Client, attested and subscribed a Deed as a Witness. The Question asked of him, was touching the Execution of that Deed, and he was ordered to answer it; but that Case is entirely different from the present; whenever a Man attests the Execution of a Deed as a Witness, he does thereby engage to prove the Execution of it, whenever he is judicially called upon so to do; and his Client's desiring him to attest the Deed, is a Consent that the Attorney shall enter into that Engagement; therefore that Case is no way relative to the present Question. This is all I shall trouble the Court with as to the supposed Declarations of my Lord, antecedent to the Prosecution of Mr. *Annesley*. As to the Declarations supposed to have been made by my Lord during the Prosecution; besides the other Reasons I have before mentioned, as to the Confidence my Lord reposed in him as an Attorney, I have another Objection against the examining Mr. *Giffard* in this Point. The Gentlemen last Night produced Mr. *Giffard*, and proposed to examine him, to shew that my Lord *Anglesea* was concerned in, and assisted to carry on this Prosecution; which Evidence was objected to on our Side, and upon Debate the Court seemed to be of Opinion, that they ought not to be let in to give that Evidence; and I apprehend the Point was this Morning given up by the Gentlemen on the other Side: But the Examination now proposed, is an Attempt to do the same Thing in another Shape; they were not admitted to give Evidence directly that my Lord was concerned in, or carried on the Prosecution; but if they are admitted to prove his Declarations touching his Intention in carrying it on, it is plainly doing the same Thing in other Words, and would be to admit them to do that this Morning which was refused last Night. The Gentlemen have, in proposing their Evidence on this Occasion, used many harsh Expressions concerning the Defendant; but I apprehend they are a little too early; harsh Reflections should not be used until the Facts on which they are founded are proved and given in Evidence; whether that Evidence shall be given or not, is now the Point under the Consideration of the Court; and until that Matter is decided, I make no Doubt but that the Gentlemen of the Jury will not permit the Supposition of Facts to have any Influence upon them, before the Facts themselves shall be proved. Upon the whole, as whatever the Court shall do in this Case will be a Precedent, and, for the Reasons I have mentioned, a Precedent of very great Consequence, in all other Cases between every other Client and his Attorney, I hope the Court will be of Opinion, that Mr. *Giffard* ought not to be examined to any of the Points proposed.

The *Lord Chief Baron*. The Objections to Mr. *Giffard*'s being admitted to give the Evidence proposed by the Plaintiff's Counsel, have been argued with great Strength; and undoubtedly the Publick is interested in the Event of this Question, so far as it may affect the necessary Confidence between the Client and his Attorney or Agent, which will make me cautious of fixing Boundaries to that Trust. The proper Way will be to determine this and every like Case upon their own Circumstances. What has been urged to take the present Case out of the general Rule, was, that the Conversation to which they would examine Mr. *Giffard*, was neither in any Cause wherein he was concerned for the Defendant, or relative to any in which he was consulted, or intended to be employed by the Defendant. If so, the Question will be, Whether an Attorney shall be permitted to disclose the general Conversation he had with his Client, without relation to him as his Attorney? Now, admitting the Policy of the Law in protecting Secrets disclosed by the Client to his Attorney, to be, as has been said, in Favour of the Client, and principally for his Service, and that the Attorney is *in loco* of the Client, and therefore his Trustee, does it follow from thence, that every Thing said by a Client to his Attorney, falls under the same Reason? I own, I think not; because there is not the same Necessity upon the Client to trust him in one Case as in the other; and of this the Court may judge, from the Particulars of the Conversation. Nor do I see any Impropriety in supposing the same Person to be trusted in one Case as an Attorney or Agent, and in another as a common Acquaintance. In the first Instance, the Court will not permit him, though willing, to discover what came to his Knowledge as an Attorney, because it would be in Breach of that Trust which the Law supposes to be necessary between him and his Employer: But where the Client talks to him at large as a Friend, and not in the Way of his Profession, I think the Court is not under the same Obligations to guard such Secrets, tho' in the Breast of an Attorney. The Case cited of *Cutts* and *Pickering*, 1 *Vent.* 197. restrains it to what came to his Knowledge as Attorney; and so I think is the Case of Lord *Say* and *Seal*; the Evidence to which he was produced being to the defective Execution of a Deed, to make a Tenant to the *Præcipe* for suffering a Recovery, in which the Witness had been employed as Attorney, which was the Secret of his Client's Cause.

The Lord Chief Baron was going to mention the Case of one *Hamilton*, where he apprehended the Attorney had been examined in Chancery; but being informed he was not, his Lordship proceeded:

What I found myself upon is, the Nature of the Testimony proposed, which appears to me to have been casual Conversation between the Witness and the Earl of *Anglesea*, which was not necessary to have been communicated to *Giffard* by his Lordship. And as to the private Trusts between Man and Man, we cannot interpose. Besides, as this was in Part a wicked Secret, it ought not to have been concealed; though, if earlier disclosed, it might have been more for the Credit of the Witness. I therefore think Mr. *Giffard* may be examined to the Defendant's Declarations concerning the Plaintiff's Person and Title.

Mr. Baron *Mounteney*. The prodigious Consequence of the Cause now depending before us, hath, very properly, induced the Gentlemen who are of Counsel

Counſel on both Sides, to inſiſt upon, and argue at large, every Point ariſing in the Cauſe, which could poſſibly bear the leaſt Debate.—The ſame Reaſon hath induced the Court to hear gladly, with the utmoſt Patience and Attention, every thing which could poſſibly be offered on either Side; and, I think, nothing hath been omitted, which could have been materially offered upon the preſent Queſtion.

For my own Part, notwithſtanding all the Objections which have been raiſed againſt the Evidence now under Conſideration by the Defendant's Counſel, I ſtill continue of the ſame Opinion, which I entertained when the Evidence was firſt offered and objected to; which is, that the Queſtion now before us will receive a very eaſy, clear, and ſhort Determination, and that in favour of the Evidence propoſed. I the rather ſay ſo, becauſe I think, that upon the very Principles laid down, and upon the Authority of the very Caſes cited by the Defendant's Counſel, it is to Demonſtration clear that the Evidence now offered ought to be admitted.

Mr. *Recorder* hath very properly mentioned the Foundation upon which it hath been held, and is certainly undoubted Law, that Attornies ought to keep inviolably the Secrets of their Clients, *viz.* That an Increaſe of legal Buſineſs, and the Inability of Parties to tranſact that Buſineſs themſelves, made it neceſſary for them to employ (and as the Law properly expreſſes it, *ponere in loco ſuo*) other Perſons who might tranſact that Buſineſs for them.—That this Neceſſity introduced with it the Neceſſity of what the Law hath very juſtly eſtabliſhed, an inviolable Secrecy to be obſerved by Attornies, in order to render it ſafe for Clients to communicate to their Attornies all proper Inſtruction for the carrying on thoſe Cauſes which they found themſelves under a Neceſſity of intruſting to their Care. And if this original Principle be kept conſtantly in view, I think it cannot be difficult to determine either the preſent Queſtion, or any other which may ariſe upon this Head: for upon this Principle, whatever either is, or by the Party concerned can naturally be ſuppoſed, neceſſary to be communicated to the Attorney, in order to the carrying on any Suit or Proſecution, in which he is retained, That the Attorney ſhall inviolably keep ſecret.

On the other hand, whatever is not, nor can poſſibly by any Man living be ſuppoſed to be, neceſſary for that Purpoſe, That the Attorney is at liberty, and in many Caſes, as particularly, I think, in the preſent Caſe, the Attorney ought to diſcloſe.

The Declarations of the Defendant to his Attorney, which are now offered to be proved, I ſhall not mention at large, but ſhall only take notice of one, which was, that (ſpeaking of Mr. *Annesley*, the now *Leſſor* of the *Plaintiff*) he declared, *he did not care if it coſt him ten thouſand Pounds, if he could get him hanged.* Does any Man living, who hears theſe Words pronounced, heſitate one Moment as to the Meaning and Import of them? They ſpeak too plainly to be miſunderſtood, or doubted of. For God's ſake then let us conſider, what will be the Conſequence of the Doctrine now laid down, and ſo earneſtly contended for, that ſuch a Declaration made by any Perſon to his Attorney, ought not by that Attorney to be proved? A Man (without any natural Call to it) promotes a Proſecution againſt another for a Capital Offence—he is deſirous and determined, at all Events, to get him hanged—he retains an Attorney to carry on the Proſecution, and makes ſuch a Declaration to him as I have before mentioned, (the Meaning and Intention of which, if the Attorney hath common Underſtanding about him, it is impoſſible he ſhould miſtake)—he happens to be too honeſt a Man to engage in ſuch an Affair—he declines the Proſecution—but he muſt never diſcover this Declaration, becauſe he was retained as Attorney. This Proſecutor applies in the ſame Manner to a ſecond, a third, and ſo on, who ſtill refuſe, but are ſtill to keep this inviolably ſecret:—at laſt, he finds an Attorney wicked enough to carry this iniquitous Scheme into Execution—and after all, none of theſe Perſons are to be admitted to prove this, in order either to bring the guilty Party to condign Puniſhment, or to prevent the evil Conſequences of his Crime with regard to civil Property. Is this Law? Is this Reaſon? I think it is abſolutely contrary to both.

As the Principles upon which the Defendant's Counſel have argued, ſo I think likewiſe the Caſes which they have cited make directly againſt them, and are expreſs Authorities in favour of the Evidence now offered.—In the Caſe of *Gutts* and *Pickering*, in 1 *Vent.* the Court were of Opinion, that the Solicitor might be ſworn to the Diſcoveries made to him by his Client before his Retainer.——The Meaning of which I take to be, that ſuch Diſcovery not being made in conſequence of the neceſſary Confidence between Client and Attorney, was therefore not within the Rule of Secrecy: and if the ſame Reaſon will hold in the preſent, or any other given Caſe, even after a Retainer, the Objection muſt equally fail. Now I think the ſame Reaſon does hold in the preſent Caſe, becauſe the Declaration now offered to be proved does not appear, nor could poſſibly by the Defendant be ſuppoſed, to be a neceſſary Inſtruction, or Communication between him and his Attorney, in order to the better carrying on either that Proſecution, or any other legal Buſineſs in which he had retained that Attorney.——So that this Declaration, after the Retainer, ſtands entirely, in my Apprehenſion, on the ſame Footing as if it had been made before. For to ſay that the Confidence between Client and Attorney (to which inviolable Secrecy is to be annexed) is to be taken in the Latitude laid down by the Defendant's Counſel, is, in my Apprehenſion, to ſay that which hath no Foundation in Law, nor the leaſt Colour in point of Reaſon.

The other Caſe which was cited by the Defendant's Counſel, that of Lord *Say* and *Seal*, is, I think, ſtill infinitely ſtronger againſt them; and every Reaſon which the Court in that Caſe proceeded upon concludes directly in favour of the Evidence which is the Subject of the preſent Debate.

In that Caſe the Court were of Opinion (and I think moſt rightly), that the Privilege of an Attorney is the Privilege of his Client; (and ſo I have always underſtood the Law to be) but, notwithſtanding that, the Court admitted the very Attorney, who had been intruſted in ſuffering the common Recovery, to prove that the Deed to lead the Uſes of that very Recovery was antedated. And what were the Reaſons upon which the Court proceeded? The firſt mentioned in the Book is, that "*the Time of executing the Deed could not be called the Secret of his Client.*" Now, I think, in this Caſe, the Declaration offered to be proved, can ſtill infinitely leſs be conſidered as the Secret of the Client. The next Thing mentioned in the Report of that Caſe now produced, is, that "*it was a thing he might come to the Knowledge of without his Client's acquainting him;*" and that, I think, will hold equally ſtrong in the preſent Caſe. *Giffard* might have heard from others, that Lord *Angleſea* had made ſuch a Declaration; or Lord *Angleſea* might himſelf equally have made it to *Giffard*, altho' he had not retained him as an Attorney, it not being, as I have before mentioned, a neceſſary Inſtruction, nor what could poſſibly by the Defendant be thought ſo, for the better carrying on the Buſineſs in which he was retained; and conſequently, not proceeding from that Confidence which is neceſſary between Client and Attorney; and to which, only becauſe, and ſo far as it is neceſſary, the Privilege of Secrecy hath been annexed. The laſt thing mentioned in the Book is that the Fact offered to be proved, "*was of that Nature,*" that an Attorney concerned, or any body elſe, might inform the Court of it. Now I cannot help thinking from theſe Words, that one Ingredient in the Determination of the Court, was, that the Proof offered in that Caſe was the Proof of a criminal Fact: If it were, that Reaſon will hold infinitely ſtronger in the preſent Caſe. The Declaration now offered to be proved, is of that Nature, and ſo highly criminal, that, in my Opinion, Mankind is intereſted in the Diſcovery; and whoever it was made to, Attorney or not Attorney, lies under an Obligation to Society in general, prior and ſuperior to any Obligation he can lie under to a particular Individual, to make it known.

I ſpeak this without Prejudice: God knows whether ſuch Declarations, as have been mentioned, were, or were not, made by the now Defendant; but, when we are debating the Propriety of the Evidence, we are, during the Debate (and for Argument's ſake only) to ſuppoſe it true: If they ſhall afterwards appear in Proof, I think they will be exceedingly material for the Conſideration of the Jury; and do therefore moſt heartily concur in the Opinion given by my Lord Chief Baron, that the Evidence now offered ought to be admitted.

Mr. *Baron Dawſon.*] If there had been no Objection made on the Part of the Defendant that the Attorney had been employed by him, the Plaintiff would have had a Right *primâ facie* for his being admitted a Witneſs; therefore to deprive the Plaintiff of this Right, it muſt be ſhewn, that the Particulars offered here to be given in Evidence came to the Knowledge of *Giffard* meerly as Attorney for the Defendant. Nothing that came properly to the Knowledge of the Attorney in defence of his Client's Cauſe ought to be revealed. I will ſuppoſe an unknowing Man to have twenty Deeds by him, and he delivers them all to his Attorney to ſee which were relative to the Suit; he looks them over, and finds not half of them to be relative thereto; I apprehend the Attorney is not compellable to diſcloſe the Contents of any one of thoſe Deeds; neither do I think it neceſſary that there ſhould be a Suit actually depending. If I have an Apprehenſion that a Man intends a Suit againſt me, and I employ an Attorney to draw a State of my Caſe from my Papers, though there is no Cauſe depending, there I apprehend it would be a Breach of Truſt to diſcloſe the Contents of thoſe Papers, and that the Attorney ought not to be admitted to diſcloſe what has been ſo intruſted to him: And I think the Court muſt, in this Caſe, be ſatisfied, firſt, that what came to this Man's Knowledge was not neceſſary to his Client's Affairs; and in the next place, that the Client could not think it neceſſary. The Cauſe to be carried on, was a Proſecution for the killing of a Man; what was neceſſary for the carrying on that Proſecution, I think the Attorney ought not to diſcloſe. I think further, that any thing that the Client thought neceſſary, ought likewiſe not to be diſcloſed. The Motive for carrying on the Proſecution againſt the Plaintiff is ſaid to be, becauſe he has a Right to the Eſtate the Defendant was in poſſeſſion of. Can any Man think that this was neceſſary to tell the Attorney, or that the Defendant could have thought it ſo? What was neceſſary, or what a Man might have thought neceſſary, ought not to be diſcloſed. But if the Defendant in this Caſe, has gone any thing further, he has truſted him, not as an Attorney, but as an Acquaintance. The Attorney is to keep ſecret what comes to him as an Attorney; but this Converſation I don't think was neceſſary for carrying on the Cauſe. I agree therefore with my Lord Chief Baron and my Brother *Mounteney*, that the Evidence is proper to be given.

I think it proper at this Time to mention, that I have conſidered the Point of Evidence that was propoſed Yeſterday, and if it was now to be determined, I ſhould be of Opinion to allow the Evidence; and if the Counſel for the Defendant ſhould ſo pleaſe, they may take a Bill of Exceptions.

Mr. JOHN GIFFARD *ſworn.*

Q. Do you know the preſent Earl of *Angleſea?*

Mr. *Giffard.* Yes, Sir.

Q. Pray, Sir, do you know the preſent Plaintiff, Mr. *Annesley?*

A. Yes, Sir.

Q. Pray had you at any time any Converſation, and when, with the preſent Lord *Angleſea* concerning the Plaintiff, or his Title to the Lands in this Ejectment, or any other Lands?

A. It was ſome time between the 7th of *December* 1741, and *May* 1742, my Lord *Angleſea* had an Appeal from this Kingdom to the Houſe of Lords in *England* between *Charles Annesley*, Eſq; and him, which Appeal was heard on the 10th of *March* 1741.

Court. Anſwer the Queſtion directly.

A. I am only giving you the Reaſons of this Diſcourſe.

My Lord *Angleſea* having that Suit, and a good many others, with my Lord *Haverſham*, *Francis Annesley*, and Mrs. *Simpſon*, he was very uneaſy at it. He ſaid, *he would be very glad to ſend to the preſent Plaintiff, and if he would give him* 2 *or* 3000*l. a-Year, he would ſurrender up to him the Titles of* Angleſea *and* Altham, *and the Eſtate, and go over to* France *and live there; and then he ſhould be much eaſier and happier than to be tormented with thoſe People that were ſuing of him, for that he would rather his Brother's Son ſhould have it than any other Perſon.*

D. Go on.

A. For if Jemmy *had the Eſtate on thoſe Terms, he ſhould live much happier and eaſier in* France *than he was here, as he was tormented by Law; for it was his Right, and he'd ſurrender it to him, (for he did not value the Title) rather than* Frank *and* Charles Anneſley, *and thoſe that were ſtriving to take it from him ſhould have it; and that he would ſend for a Gentleman to teach*

him the French *Tongue, to qualify him to live in that Kingdom*; and accordingly he sent for one Mr. *Stephen Hayes*.

Q. What is he?

A. He was an Officer in the *French* Service, as *Hayes* himself and my Lord told me; and my Lord had him in the House a considerable Time, on purpose to converse with him in *French*.

Q. Did you ever see him there?—*A.* I did, my Lord, forty Times.

Q. Can you recollect any particular Time when this Conversation happened?—*A.* I told you, my Lord, it was about *March* 1741, when he had the Appeal in *England*.

Q. Was it before or after the Determination of that Appeal?

A. I believe it was both before and after; the Appeal was determined the 10th of *March*, and he continued in that Resolution till *May* 1742.

Q. And, pray, what altered his Resolution then?

A. Why, on the first of *May* Mr. *Annesley* had shot a Man at *Staines*; it was on *Saturday*, as appears by the Indictment and Coroner's Inquest; upon which, the second of *May*, my Lord sent for me, and ordered me to go to *Staines*, and to inquire into the Affair, and to collect the Evidence, and carry on the Prosecution, and to follow the Directions of Mr. *Garden* and Mr. *Gordon*, with the Assistance of one Mr. *Jans*, who was a Surgeon; which I accordingly did. My Lord told me further, that I should follow their Directions, and in some small Time after (perhaps three or four Days) told me, *That they had consulted together, and advised him not to be seen to converse with me, for that it was not proper for him to appear in the Prosecution, for fear of its hurting him in the Cause that was coming on between him and the Plaintiff*; and, *that he did not care if it cost him* 10,000*l. if he could get the Plaintiff hanged*; *for then he should be easy in his Title and Estate*.

Q. After he told you that he did not care if it cost him 10,000*l.* if he could get the Plaintiff hanged, for then he should be easy in his Titles and Estates, who laid out the Money in carrying on this Prosecution of this unfortunate Man?

A. Money came privately from Mr. *Jans*; my Lord told me, *He was determined, as he was advised, not to appear in it himself, but that I should apply, from Time to Time, to Mr.* Jans *and Mr.* Jans *should, from Time to Time, supply me, for that he had ordered him to provide Money*; and accordingly I had Money from him.

Q. What was *Jans* to my Lord *Anglesea*?

A. His Companion, and Manager, and Agent, and managed every Thing for him.

Cross-Examination.

Q. Repeat again the Time when you first had this Discourse with the Defendant, of his desiring Mr. *Annesley* to be sent to.

A. Some Time before the 10th of *March* 1741, we had the first *Colloquium*; we had the like Discourse, at sundry Times, between the 7th of *December* 1741, and *May* 1742.

Q. When was the first *Colloquium*, as you call it?

A. The first Time was some Time before the 10th of *March*, 1741.

Q. Where was Mr. *Annesley* at this Time?

A. I don't know, I never saw him at that Time.

Q. Do you know whether he was in the Kingdom of *England* or not?

A. I cannot tell. I believe he was.

Q. Do you know for what Purpose it was that my Lord said these Words to you? Was it with an Intent that you should apply to Mr. *Annesley*?—*A.* No, I don't believe it was.

Q. Pray now, Sir, do you know of any Steps that were taken in order to this Accommodation that my Lord desired?

A. I don't know of any, Sir.

Q. Pray, Sir, how soon after this 10th of *March* 1741, was it, that you first saw this *Frenchman* with my Lord?

A. Near about that Time; I cannot tell exactly. *Frenchman* he was not, I believe he was an *Irish* Gentleman, a Tenant's Son of my Lord's.

Q. How soon was it that my Lord said this after the 10th of *March*?

A. Near about the Time it was.

Q. Had my Lord Mr. *Hayes* in the House with him?

A. He had him in the House for that Purpose, of learning the *French* Tongue.

Q. Did you ever hear any Thing of my Lord's applying for an Accommodation?

A. It was very often talked in the House, Sir, that one Mr. *Paterson* and one Mr. *Mac Kercher* should be sent to.

Q. Do you know of any Steps that were taken towards an Accommodation?

A. I know, of myself, of no Steps in order to an Accommodation.

Q. Sir, I see you have refreshed your Memory with Papers and Memorandums as to Periods of Time, are they of your own Hand-writing?

A. They are.

Q. I should be glad to know when it was that you put down those Periods of Time in Writing?

A. Sir, I put down the Days as they came on. I could shew you every Day where I was for seven Years last past.

Q. Were they wrote about the Time the Transactions happened?

A. I always did, since I was a Practitioner of the Law, keep a Day-book of every thing I did; and the first thing I do in a Morning is, to set down the preceding Day's Work.

Q. You say, my Lord used some Words to this Purpose, *that he did not care if it cost him* 10,000*l. if he could get the Plaintiff hanged*; and you were the Agent, under *Garden* and *Gordon*, to carry on that Prosecution?

A. I was.

Q. How came you to be employed?

A. The Reason I was sent for was, that I had been a Coroner myself in the County of *Devon* for some Years (a Dozen or Fourteen), and was thought a proper Person because of that.

Q. Did you go on with that Prosecution till there was a Verdict?

A. I did, Sir.

Q. Pray now, did you inform yourself of the Nature of that Fact at any Time before the Trial came on?

A. I attended the Coroner's Inquest, Sir, and did inform myself of it. I collected Evidences, and drew the Brief. I have the Brief here.

Q. Did you see, or had you a Copy of, the Examinations upon which the Indictment was found?

A. I was present at the Examination of the Witnesses before the Coroner, and took some Notes of my own at that Time, which I have with me.

Q. How was the Indictment found?

A. The Indictment was upon the Coroner's Inquest.

Q. Were there any Examinations upon which the Bill of Indictment was found?

A. The Coroner only took their Examinations short, as Memorandums. The Bill was found upon the Evidence of the Son of the Deceased, and others, *vivâ voce*, before the Grand Jury.

Q. Were there, to your Knowledge, any Examinations taken in Writing?

A. I was told that Sir *Thomas Reynell* took some Examinations in Writing; I applied to him for them, but he refused me; I applied to him a second Time for them, when he told me that he had consulted with Sir *John Gonson*, and that no Examinations should be shewn till they were produced in Court.

Q. Were the same Witnesses that were examined before the Coroner examined in Court upon the Trial?

A. Most of them were, and a great many more.

Q. Were they not all examined?

A. I believe they all were. A Matter of forty People were examined.

Q. Was your Brief framed from the Depositions of those People that were examined before the Coroner?

A. My Brief was framed from the Examinations of Witnesses that I took myself.

Q. Pray now, did the Case appear, for the most part, to be the same upon the Trial, as upon the Examinations before the Coroner?

A. No, Sir, it differed vastly.

Q. What was the finding on the Coroner's Inquest?

A. Wilful Murder.

Q. Recollect some one material Circumstance wherein the Evidences varied?---*A.* I tell you, Sir,---

Q. Was the Evidence stronger on the Coroner's Inquest than it was in Court on the Trial?

A. Yes, it was stronger against Mr. *Annesley*, because the main Evidence was taken off upon the Trial, for Reasons----

Q. Had my Lord *Anglesea* any Hand in taking off the main Evidence?

A. No.

Q. Who then took it off?

A. It was the Prisoner who took it off. His Evidence was rendered invalid; his Evidence was given in Court, but his Evidence was discredited in Court by Reason of his Character; and there was a strong Reason given for it in Court by a Witness.

Q. What was that Witness's Name?---*A.* It was *Paul Keating*?

Q. Were there any Persons produced upon that Trial to the Character of *Paul Keating*?---*A.* Yes.

Q. Was *Paul Keating* for or against the Prisoner?

A. He was for the Prisoner.

Q. Who was the main Witness that swore against the Plaintiff on his Trial?---*A.* It was *John Eggleston*.

Q. Had you any Conversation with that *John Eggleston* before the Trial, touching his Evidence?

A. I had. He was brought to me by one *Williams*, that keeps the *White-Horse* in *Piccadilly*, and he varied from his Evidence that he gave before Sir *Thomas Reynell*.

Q. Was you present when he gave that Evidence?---*A.* I was not.

Q. How do you know it?

A. It was declared so in Court, and you asked me what passed in Court.

Q. Tell us, whether this Fact, for which Mr. *Annesley* was prosecuted, was committed by Day or Night?

A. By Day. The Fact was committed at *Staines*.

Q. What Time of the Day was it?---*A.* As it appeared upon the Examinations, one or two o'Clock in the Afternoon.

Q. Did it appear to have been done in a publick Place?

A. In a Meadow.

Q. Did it appear on the Trial, that there were any Number of Persons present?

A. There were present, *John Eggleston*, *John Fisher*, and one *John Bettesworth*, and one more, I think

Q. Were there any other of the Witnesses that appeared on that Prosecution that were discredited on account of their Character, besides *Eggleston*?

A. There was a Variation in their Testimony, but that they were discredited for their Character, I can't say.

Q. What Time was the Trial?

A. The Trial, I believe, was the 14th of *July* 1742.

Q. What Time was the Coroner's Inquest held?

A. The 4th of *May* 1742.

Q. Pray now, when my Lord *Anglesea* said to you, *That he did not care if it cost him* 10,000*l. to get the Plaintiff hanged*, did you understand that it was his Resolution to destroy him if he could?---*A.* I did, Sir.

Q. Did you advise my Lord *Anglesea* not to carry on that Prosecution?

A. I did not advise him not to carry it on; I did not presume to undertake to advise him.

Q. Did you say any thing in answer to my Lord, and what, when he told you, *he did not care if it cost him* 10,000*l. if he could get the Plaintiff hanged?*---*A.* I don't know any particular Answer that I made him.

Q. Did you approve or disapprove of his Expressions and Design together?——*A.* I can't say that I did either.

Q. Did not you go on as effectually after, with the Prosecution, as you could?——*A.* I did, to be sure, Sir. Indeed, I advised my Lord *Anglesea* not to appear upon the Trial.

Q. Since my Lord had told you, that he would agree with the Plaintiff, and go to *France*, and disappoint *Charles Annesley*, how came you not to tell him, that if he hanged this Pretender, it would frustrate his Designs, and the Expectations he had?

A. In answer to what you say (that if the Pretender, as you call him, were hanged, there would be a greater Fund left than 2 or 3000*l.* a Year to go abroad with), it certainly would destroy that Project of disappointing Mess. *Annesleys*; but then it would put a greater Estate in his own Pocket.

Q. Was not the Intention of the Prosecution to disappoint the *Annesleys*?

A. No, the Intention was to put this Man out of the Way, that he might enjoy the Estate easy and quiet.

Q. When my Lord *Anglesea* said, that he would not care if it cost him 10,000*l.* so he could get the Plaintiff hanged, did you apprehend from thence,

thence, that he would be willing to go to that Expence in the Proſecution?

A. I did.

Q. Did you ſuppoſe from thence that he would diſpoſe of that 10,000 *l.* in any Shape to bring about the Death of the Plaintiff?---*A.* I did.

Q. Did you not apprehend that to be a moſt wicked Crime?---*A.* I did.

Q. If ſo, how could you, who ſet yourſelf out as a Man of Buſineſs, engage in that Project, without making any Objection to it?

A. I may as well aſk you, how you came to be engaged for the Defendant in this Suit.

Q. Was it before, or after, the Coroner's Inqueſt, that my Lord *Angleſea* told you, he did not care if it coſt him Ten thouſand Pounds to get the Plaintiff hang'd?

A. I can't charge my Memory; it was there, or thereabouts.

D. Look in your *Diary*, and ſee.

A. I'll look in my Diary. I cannot exactly tell you, Sir. The Second of *May* was the Day I was ſent for to my Lord, at the *White Horſe* in *Piccadilly*; and I believe one *Thompſon Gregory* was ſent for me, and with a great deal of Joy they ſaid, that Mr. *Anneſley* had killed a Man, and would be hang'd. The 3d of *May* I went to *Colebrooke*, within three Miles of *Staines*. The 4th of *May* I went to *Staines*, and the Inqueſt was held there.

Q. Was it after that 4th of *May* it was held?

A. I came home the 5th, and I believe it was that Day; for my Lord met me at *Hounſlow*, in his Coach-and-Six to know how Things went on.

Q. Was it at that Meeting he ſaid this to you?---*A.* I cannot tell. It was within a Day or two, up or down. I did not take particular Notice.

Q. Did you ever enter down in Writing any Converſation between you?

A. I have made Memorandums about my Buſineſs, but private Converſation in Company I never entered in Writing.

Q. Was it not upon the Day he ſent for you to go down to *Staines* that he ſaid theſe Words?

A. I can't ſay more than I know. I believe it was not. And I believe it was after, or juſt upon, holding the Coroner's Inqueſt.

Q. Did not you underſtand from thence, that he would lay out that Money, in any Shape, to compaſs the Death of this Man?

A. I cannot tell. But my Lord is very apt to be flaſhy in his Diſcourſe.

Q. Did not you apprehend it to be a bad Purpoſe to lay out Money to compaſs the Death of another Man?

A. I do not know but I did. I do believe it, Sir: But I was not to undertake that bad Purpoſe. If there was any dirty Work, I was not concerned in it.

Q. If you did believe this, I aſk you, how came you to engage in this Proſecution without Objection?---*A.* I make a Diſtinction between carrying on a Proſecution, and compaſſing the Death of a Man.

Q. How came you to make that Diſtinction?

A. I may as well aſk, How the Counſel came to plead the Cauſe?

Q. Did you ever mention to any of your Counſel, that my Lord made that Declaration?---*A.* I did not.

A. If you had told any of them that my Lord made that Declaration, would they have appeared for you?

A. I can't tell whether they would or not.

Q. Do you believe any honeſt Man would?

A. Yes, I believe they would, or elſe I would not have carried it on, Sir. And I do aſſure you, it is the only Cauſe I was concerned in at the *Old Bailey* in my Life, and ſhall be the laſt.

Q. Don't you believe, that my Lord's engaging in that Proſecution was, becauſe the Man ſet up a Title to his Eſtate, and not on account of his killing the Man at *Staines*?

A. I believe it was; and believed it then, and do now.

Q. Do not you believe it was an unlawful Purpoſe?

A. I cannot help that. I was employed by the Church-warden of *Staines* to proſecute. I ſhould not have been concerned upon any Account whatſoever, had not I the Sanction of the Coroner's Inqueſt for Wilful Murder, which I thought a Juſtification of the Proſecution.

Q. When was it that the Church-warden employed you?

A. The 8th of *May*, 1742. He wrote a Letter to me, "*Pray proſecute* "James Anneſley, *&c.*" Signed *Stephen Bolton.*

Q. Was not this after my Lord declared *he would ſpend Ten thouſand Pounds to get him hang'd?*---*A.* It was.

Q. Sir, I aſk you, was there any Money given to any Witneſs to appear and give Evidence?---*A.* I don't know of any.

Q. What Sum was given for their Attendance?

A. About Half-a-Crown a Day for their Attendance. If there was any dirty Work, I knew nothing of it.

Q. Are you paid your Bill of Coſts?---*A.* Not all of it.

Q. How much does it come to?

A. The Proſecution coſt Eight hundred Pounds: But the Total remaining due to me is Three hundred and Thirty Pounds.

Q. Was there any body preſent, when you had this Converſation with my Lord?

A. No, I believe not; for we uſed to converſe together alone frequently.

Q. Was Mr. *Jans* ever preſent?---*A.* No, never.

Q. Was *Thompſon Gregory* preſent when he went and brought you to my Lord?---*A.* He came with me.

Q. Did he remain in the Room?---*A.* I believe he did, all that Night.

Q. Was this the 2d of *May*?---*A.* Yes.

Q. Had you that Day any Diſcourſe about the Sum of Money that my Lord would ſpend?---*A.* No, not that Day.

Q. Was it by your Advice and Directions that that Letter was ſent to you by the Church-warden of *Staines*?

A. No, it was by *Garden*'s and *Gordon*'s Advice.

Q. Was you privy to it?

A. Yes, I was. And this Letter was adviſed in order that the Defendant might not appear in the Proſecution.

Q. Did not you know this was to give a Colour?---*A.* I did.

Q. Did you think this was for a good Purpoſe?

A. Mr. *Garden*, *Gordon*, *Jans*, and Lord *Angleſea* had a Conſultation, and it was thought proper that I ſhould have another Perſon to my Aſſiſtance, becauſe they would not appear, and my Inſtructions were, to ſend this Order to the Church-warden and get it ſigned, that my Lord ſhould not appear in it; and the Reaſon was, that if my Lord ſhould appear in it, they thought it would be attended with ill Conſequences.

Q. Did you know at the time of the Trial that Mr. *Anneſley* intended to ſue for the Title and Eſtate of Lord *Angleſea*?---*A.* It was reported he would, that he intended it; and this was in order to prevent it.

Q. Do you know one Mr. *Thomas Smith*?---*A.* Yes, Sir.

Q. I deſire to know, if Mr. *Anneſley* gets this Suit, whether you will be paid your Bill of Coſts?

A. No, Sir, if he gets it, I ſhall loſe every Shilling of it.

Q. Where do you lodge?---*A.* At one *Parſons*'s in *King-Street.*

Q. Are you acquainted with *Thomas Smith* the Cabinet-Maker?

A. I am very well acquainted with him.

Q. Had you any Diſcourſe with him about this Evidence that you have given To-day?---*A.* I have had ſome Diſcourſe with him about it.

Q. Did not you tell him that you had been ill uſed, and that that provoked you to give in this Evidence?

A. No, I never did; for he knew that I had been ill uſed. I will tell you what I have ſaid to him: *That it was a wrong Step in my Lord; for this Bill of Coſts of mine would never have come to light, had not I been obliged to ſue for my Right. That my Lord filed a Bill in the Exchequer againſt me in* England, *to diſcloſe what Buſineſs I had done for him, and that I was obliged in my Juſtification to annex in a Schedule this my Bill of Coſts.*

Q. Did not you look upon my Lord *Angleſea* as your real Client in the Proſecution of the Plaintiff?

A. He promiſed to pay me, but I did not look upon him as my immediate Employer, for my Lord told me he had directed Mr. *Jans* to employ me.

Q. Did you look upon Mr. *Jans* at this Time as your Client?

A. I did look upon him as my Client.

Q. Do not you believe that my Lord had theſe Diſcourſes with you as his Attorney?

A. No, Sir; for I knew I was never to be concerned in the Cauſe.

Q. In what Light then did you look upon that Diſcourſe?

A. I looked upon it to be a Diſcourſe to me as a Friend.

Q. Was not the Diſcourſe with you on the 4th and 5th of *May*, as his Attorney or Solicitor?---*A.* I looked upon him to be my Client.

Q. And therefore did not he look upon you as his Solicitor?

A. I cannot tell what he did.

Q. Did he meet you as his Friend, or Solicitor?

A. Sir, there was another Man with me.

Q. Were not you employed by him to ſee the Inqueſt held?

A. I was. I wiſh you would produce any Perſon to attempt to prove that I am a diſhoneſt Man.

Q. How long have you been a Practitioner?

A. I have had a great many Clients in the Courſe of twenty and odd-Years.

Q. Do not you look upon it as a Rule of Prudence and Honour, for Attornies to keep religiouſly the Secrets of their Clients?

A. I do, indeed.

Q. Do not you think, that if a Solicitor or an Attorney diſcloſes theſe Secrets, he is a very bad Man?---*A.* I think he is.

Q. And how came you to diſcloſe this Secret?

A. I would not have diſcloſed this, if I had not been obliged to do it; and the Reaſon which obliged me to do it, was, my Lord's filing a Bill in the Exchequer to diſcloſe what Buſineſs I had done for him; when I was obliged to anſwer the Interrogatories I am now aſked.

Q. You ſaid my Lord *Angleſea* was a very flaſhy Man in his Diſcourſe; did not you ſay ſo?---*A.* Yes.

Q. Is not he a Man ſubject to Paſſion and Heat, and haſty and raſh in his Expreſſions?---*A.* He is.

Q. At the Time that he talked to you about giving up theſe Things to *Jemmy*, was not he chagrined, and in a Paſſion?

A. He was far from being in a Paſſion, and aſked my Opinion whether it was proper for him to do it.

Q. Was not the Reaſon he gave this, that he did not value his Titles, and ſhould live eaſier in *France*?---*A.* It was.

Q. Was it a conſcientious Scruple, or his Deſire of Eaſe?

A. I believe it was both. The Reaſon of it was, he was extremely angry with the *Anneſleys*, becauſe they pulled away Money too faſt from him.

Q. Was not this ſaid out of the Effect of his Chagrin at this Time, or out of Spleen to *Charles Anneſley*?

A. No, I believe he ſaid it for his own Sake, for his own Advantage; for the Cauſe then coming on with the preſent Plaintiff made him deſirous to be eaſy.

Q. Was there any Intercourſe or Treaty ſet on foot between him and Mr. *Anneſley*?---*A.* I cannot tell: I have anſwered that already.

Q. At the Time this Diſcourſe happened, about the 10th of *March* 1741, and ſeveral other Times, can you recollect whether any one was preſent?

A. None at all, Sir; we were conſtantly alone; but I heard Mr. *Jans* ſeveral times adviſe him to leave the three Kingdoms.

Q. In your Anſwer to the Bill in the Exchequer, did you inſert that Declaration that my Lord made to you?

A. Sir, I wonder you would aſk that Queſtion; it has no relation to the Bill.

Q. Did you ever tell any Perſon that my Lord made that Declaration?

A. Yes, I have ſworn it before in *London.*

Q. Before whom?---*A.* Before the Examiner.

Q. Did you mention it at any other time before you were examined?

A. Yes.

Q. To whom?

A. Upon having the Copy of this Bill, the Managers of Mr. *Anneſley* came to me to know if I knew any thing of this Matter.

Q. What Managers?

A. Mr. *Kercher*, Mr. *Paterſon*, and two or three more.

Q. Was you ſerved with a *Subpœna*?---*A.* I have it here.

Q. Where did you receive it?

A. Here, Sir. They applied to me to go to *Ireland*, and ſaid I muſt go; and ſaid, Will you give us the Trouble of ſending you a *Subpœna*? and I told them I would not give them the Trouble.

Q. Did

Q. Did not you say that you would not have given Evidence here, except you had been forced to it?

A. Why, Sir, is not that a Force? If a Man applies to me, and says, he will subpœna me, must not I obey that Subpœna?

Q. Did you ever hear my Lord *Anglesea* say any Thing about the stealing of a Silver Spoon?

A. I have heard my Lord *Anglesea* say, that this Pretender, as he called him, was transported for stealing a Silver Spoon.

Q. When did you hear that?

A. At the Time of the first Discourse between us.

Q. Did you ever hear it more than once?

A. Yes, fifty Times, I believe.

Q. Can you recollect any one Time of those fifty Times, and who was present?

A. I cannot recollect; but it was between the 7th of *December* 1741, and the 14th of *July* 1742.

Q. Upon your Oath, did you ever, in any Conversation between my Lord *Anglesea* and you, hear my Lord say, that the Plaintiff was a Bastard?

A. I have. I have heard him say, he was *his own Bastard*. I have heard him say, that he was *his Brother's Bastard*. I have heard him say, *That he got the Wench with Child, and made her lay it upon his Brother, because he was better able to maintain it than himself.*

Q. Did you hear him say that as often as you heard him speak of the Silver Spoon?

A. That is not possible for me to charge my Memory with. I have heard him say both very often. When he said *he got him transported*, he said *he stole the Silver Spoon.*

Q. Was any one present when he said this?

A. Yes, I will tell you one, who said he was in the Bed with her along with my Lord, one *Rolph.*

Q. Was *Rolph* present?——*A. Rolph* was present.

Q. At what Place?—*A.* I believe in my Lord *Anglesea*'s Lodgings.

Q. Where?——*A.* In *London*; either there, or at a Tavern.

Q. Who did you hear this from?——*A.* I heard *Rolph* say this.

Q. Was *Rolph* one of the Company at the Tavern?——*A.* He was.

Q. Did he sit down at Table with you?

A. I believe it was in the Morning, at my Lord's Lodgings in *Bury-Street*, at the Time of Breakfast, now I recollect me of it.

Q. What was it my Lord said then?

A. What do you say to this, says he? *Here is* Rolph *says, he was in the Bed at the same Time, and knows the* Pretender *is a Bastard.*

Q. Was this when he mentioned the stealing the Silver Spoon?

A. I believe it was at the same Time.

The Evidence closed for the Plaintiff.

Mr. Attorney General, (St. George Caulfield, Esq.) opens the Defendant's Evidence.

May it please your Lordship, and you Gentlemen of the Jury,

I am Counsel for the Defendant, the Earl of *Anglesea*. You have heard a great deal of Evidence carried on for several Days, entirely taken up in the Examination of Witnesses on the Part of the Plaintiff.

It is necessary, before I mention the Nature of our Proofs, to take Notice of the Method observed in producing the Evidence that has been already given, in order to attend the Gentlemen of the other Side in the same Method.

Though they were very sensible, that this Fact, if true, must admit of the clearest Proof in the Affirmative, yet, they were pleased to begin, as I thought, at a considerable Distance from the Point, and took up much Time in examining Witnesses to shew, that it was probable, or at least not improbable, that my Lady *Altham* might have a Child, and gave Evidence, such as it was, that my Lady *Altham* had been with Child, and had one or two Miscarriages before the pretended Birth of the Plaintiff.

They afterwards came more directly to the Question, and called Witness to prove the actual Birth of the Plaintiff; that it was at *Dunmaine*, in the County of *Wexford*, in *April* or *May* 1715, (though one of their Witnesses of the best Appearance swore it to be in *September* 1715, and gave very particular Reasons for it) that there were great Rejoicings, a publick Christening, who the Sponsors were, the nursing, and bringing home again of the Child, when nursed, to the House of *Dunmaine*, and his Stay there with my Lord his Father, 'till about three Years old; this seems to me a material, and indeed the most material Part of the Case; the Jury will therefore recollect the Inconsistencies and Contradictions of the Witnesses to these Facts, and judge of the Truth and Probability of the Evidence, by comparing the Nature of the Facts testified, with the Witnesses produced to prove them, how likely, how possible, that such Persons as these, and these alone, should be able to prove a Fact of this Nature.

They proceeded afterwards to give an Account of this Child in the several Places where my Lord *Altham* had resided after his Separation from my Lady; at *Kinna*, at *Carrickduff*, and in *Dublin*, in the several Places where he lodged there, and I think one of the Witnesses produced, late last Night, gave some Account of him during my Lord's Residence at *Inchicore*: Whether this Evidence has Substance and Strength in it, or does not rather consist of loose Expressions, and the private Apprehensions of People, who knew but very little of the Family, is a Matter that will be observed upon by those Gentlemen, whose Province it is.

It was judged necessary, in the next Place, to shew, how this unfortunate, unoffending Child came to be forsaken and quite neglected by my Lord his Father; for they were sensible it would be proved, that my Lord considered him only as his Bastard, and even doubted, whether he was justly laid to his Door; you remember what Sort of Witnesses were called to give this Account, and what the Proof was. It is not my Business to make Observations.

I cannot but think the Evidence that ensued was produced, and judged to be necessary, from a Consciousness, that all their former Proofs were in themselves insufficient to establish this Fact; for after positive swearing, and so much of it, what Occasion could there be to enter into Evidence, that at most could induce but a Presumption? But this Evidence was, it seems, withal very proper to captivate, and therefore it was they called Witnesses to prove, that the Defendant, the Earl, did (not in any Hurry, but about three Weeks after his Brother's Death) employ some Bailiffs to seize this Boy, then publick in Town, and at Noon-Day to carry him by Force on Ship-board, in order to be transported, and that my Lord himself assisted in it. But you, Gentlemen, will consider of the whole Proof as to this Transaction, and judge, whether it does not very plainly contradict and refute itself, and shew, that this Person did of himself desire, and in the usual regular Way procure an Opportunity of going abroad, without the least Interposition on the Part of the Earl. They then called a single Witness to shew my Lord was so sensible of the Plaintiff's Right, for this is the Turn they give it, that taking Advantage of a Misfortune that happened to befall him, his killing a Man by mere Accident, the Earl had him indicted and prosecuted for that Fact, in order to have him capitally convicted, and so to put him out of the Way; and to conclude all with a finishing Stroke, this same Witness tells you, that the Earl confessed the Estate, and Honours, and all were the Plaintiff's Right, and that he had a full Purpose to strike up a Bargain with him. If the Earl did at all interpose in this Prosecution, it will be shewn to you in proper Time, that the Inference drawn from such a Piece of Misconduct is by no Means just; and we shall insist, that the Witness being entirely unsupported as to this Fact, had, of his own shewing, too great a Share in the Transaction, to be capable or deserving of Credit, as to this, or any other Matter of Fact.

This then, in a few Words, is the Scope and general Tendency of their Evidence; but how these Circumstances and Facts have been proved, by whom, with what Circumstances of Probability, and how just their Conclusions, are Matters that might well deserve the Consideration of the Jury, though no Evidence was to be offered on our Part, by comparing it with what might be expected, and must have been in their Power, if the Fact really was, as they would now have it thought to be.

We apprehend it will be material to our Defence, before we enter into other Proofs, to state to your Lordship and the Jury the Pedigree of this Family, shortly to open somewhat of the Settlements in the Family, their Prospects and Expectations, as well as the Circumstances of the Fortune in Possession at the Time of this supposed Birth; which will shew that a legitimate Son of my Lord *Altham* (supposing there was a Desire to conceal it, which is not pretended) must have been a Matter of such Notoriety, as that the Proof of it at this Day could not possibly admit of the least Difficulty.

Arthur, the first Earl of *Anglesea*, had a considerable Family Estate, and upon the Settlement of the Kingdom at the Time of the Revolution made great Additions to it; his Credit at Court, and the Condition of the Times, gave him, as it did to many others, an Opportunity to do: this Estate, taken together, does, as I am informed, far exceed any other now in the Kingdom: this Earl, *Arthur*, had Issue five Sons, *James*, *Altham*, afterwards created Lord *Altham*, *Richard*, *Arthur*, and *Charles*.

On the Marriage of his eldest Son *James*, with a Lady of the *Roscommon* Family, he settled the greatest Part of his Estate in the usual Manner, with Limitations over to his other Sons, and their Issue, successively, in Tail Male, and soon after died.

James, his eldest Son, also died, leaving Issue of this Marriage, three Sons, *James*, *John*, and *Arthur*.

Altham, the second Son of *Arthur* the first Earl, died without Issue, and his Honour devolved

Upon *Richard* the third Son; and this *Richard* Lord *Altham* had Issue, *Arthur*, late Lord *Altham*, and *Richard*, the present Earl of *Anglesea*.

Arthur, the fourth Son of the first Earl *Arthur*, died without Issue; and

Charles, the fifth Son, died, leaving Issue Mr. *Charles Annesley*, whom we all know.

My Lord, *James*, the eldest Son of Earl *James*, and Grandson to Earl *Arthur*, being in Possession of the Honours and Estate of the Family, he levied Fines, and suffered Recoveries of a great Part of this Estate, and in the Year 1701 made several Wills and Codicils disposing of it. By the first of these Wills, dated *May* 14, 1701, after the Limitations to his Brothers, on default of Issue-Male in them, he devised his Estate to his Uncle *Richard*, Lord *Altham*, the Defendant's Father, and the Heirs-Male of his Body, and in default of such Issue, to his Uncle *Charles Annesley*, and the Heirs-Male of his Body. On the 9th of *December* following, he made another Will, and limited the Estate in the same Manner; after recollecting that his Uncle *Richard*, Lord *Altham*, died some little Time before, he apprehended it would be wrong to let his Name stand in his Will, and therefore, in the Will of *December*, drew a Line across his Name, and instead of *Richard*, wrote over it *Arthur*, and then the Limitation stood to *Arthur*, Lord *Altham*, and the Heirs-Male of his Body; by which Alteration *Richard*, the younger Brother, the now Defendant, stood excluded from the Succession. After this he made several Codicils, which I have not read, but by some of them, the Will of the 14th of *May* is recited and established, by others the altered Will that was in *December*; but by the last of these Codicils, the Will of *May* 14, 1701, is, as we apprehend, clearly set up and established. This we shall shew, if not admitted, from the Wills and Codicils that are now on the Table.

Soon after this, Earl *James* died without Issue-Male; his Brother *John* also died without Issue-Male, and *Arthur* the youngest Brother succeeded to the Honours and Estate. From this Confusion in these Wills and Codicils it remained a Matter of great Doubt, if the late Earl *Arthur*, and the late Lord *Altham*, should both die without Issue-Male, of which there was no Prospect, who should succeed to the Estate, whether the present Earl, under the first Will of *May* 1701, or Mr. *Charles Annesley*, under the altered Will in *December* 1701; but the general Opinion was, and it was the Apprehension of the late Earl himself, that the present Earl stood excluded. A Son of the late Lord *Altham* would have made this Question unnecessary, for clearly he must have succeeded to these great Honours, and to this vast Estate. Such a Son, and such a Birth, must therefore be an Event, as of great Consequence, so of great Notoriety; how could it be unknown, or known only to such as you have seen, in a Country so peopled, and, as I may say, in the Midst of their own Estates?

But it will appear further, that the late Lord *Altham* was possessed himself of an Estate of about 1200 *l.* a Year; the Town of *New Ross*, in the Neighbourhood of *Dunmaine*, was Part of it; this Estate, on the Failure of Issue-Male in him, was to go, not to his Brother the Defendant, but to the late Lord *Anglesea*. It will appear, that this Estate, on

the Death of Lord *Altham*, was entered upon and enjoyed by the late Earl of *Angleſea*, until his Death.

Is it poſſible then there could be ſuch a Son of Lord *Altham*, and the late Earl know nothing of it? Could he be ſuch a Stranger to his own Family? Nay, though a Stranger in other Reſpects, the Lord *Altham* and his Family, and his Family-Affairs, made too much Noiſe in the World to ſuppoſe it poſſible. There is no Pretence, that the late Earl was concerned in any iniquitous Scheme. If he knew of this Child, can it be ſuppoſed he would do him ſuch an Injury? In Policy, if from no better Principle, ſure he would have more Regard to his own Character.

My Lord, we ſhall ſhew it further in Proof, that the late Lord *Altham*, for particular Reaſons, was deſirous to have a Son, and would very greatly have found his Account in it, being in Remainder to the *Angleſea* Eſtate; as I ſaid, often in Diſtreſs for Money, one Method of raiſing it was by the Sales of Reverſions of Parts of this Eſtate; the Validity of theſe Sales depended on his ſurviving the late Earl *Arthur*. Now upon his adviſing with Counſel, touching theſe intended Sales, we ſhall prove he was adviſed and informed, that theſe Sales, as Matters ſtood, could produce but little Money, becauſe the Title depended on the Contingency of his ſurviving the Earl, who was judged the better Life of the two, as it really fell out. But if he had a Son, that ſomething worth while might be expected, becauſe then, by levying a Fine, the Eſtate would have ſtood aſſured to the Purchaſer ſo long as there was Iſſue Male of his Body. This we ſhall prove by a Gentleman of undoubted Veracity and Reputation.

The Gentlemen on the other Side think, they have great Advantage againſt us, that the Proof on our Part is in the Negative; the Obſervation is partly juſt, that it is much more eaſy to prove the Affirmative in any Queſtion of Fact; but they might carry it a little further; for as ſuch Proof is more eaſy, ſo it ought to be in proportion more clear and ſatisfactory: But be that as it will, we apprehend this is a Fact of ſuch a Nature as admits of Proof in the Negative, and that ſuch as may produce a full and clear Conviction; for this Purpoſe, therefore, we ſhall now proceed to give an Account of my Lady *Altham* from the Time of her Arrival in this Kingdom in the Year 1713, by a Perſon who attended her Ladyſhip into the Kingdom, continued in her Service as Woman to her all the Time of her being here, I think was never a Week together from her, went back with her again, and continued in the ſame Service and Attendance, till my Lady's Death. This Witneſs will prove, that my Lady *Altham* was never with Child, never had any Miſcarriage that ſhe knows of; and that it ſhould be, and ſhe not know of it, is, I think, next to impoſſible. She will prove my Lady's Expreſſions of Concern upon this Head, that ſhe had not the good Fortune to bring a Child to this Family: She will prove to you, that my Lady lived ſome Years after her Lord, had an Account of his Death, of the late Lord *Angleſea*'s going into Poſſeſſion of her Lord's Eſtate, and the preſent Earl's aſſuming the Title of *Altham*; that ſhe had at this Time Acceſs to the Ducheſs of *Buckingham*, and other Perſons of Quality in *England*, and was in a lonely, diſconſolate Way; but as to her ever having had a Son, complaining of any Injury done to this Son, that not one Syllable to this Purpoſe was heard to proceed from her.

We ſhall produce alſo one *Thomas Rolph*, who was Butler to my Lord, and lived with him at the Time of this pretended Birth; my Lord's Gentleman likewiſe, and ſome other Servants of the better Sort, who were in the Family and Service at this Time; and they all agree in this, that my Lady was not with Child; that there was no Miſcarriage or Birth that they ever knew or heard of: and this, we apprehend, will be far better Evidence than that of *Murphy*, *Laffan*, or *Doyle*, becauſe theſe People teſtify what was properly within their Sphere, and muſt know, if there was ſuch a Fact.

We ſhall produce Perſons of the beſt Condition in the Neighbourhood of *Dunmaine*, between whom and my Lord *Altham* there paſſed a conſtant Intercourſe of Viſits, and with ſome of them you will find the Intimacy was very great: They have mentioned Mrs. *Lambert* as a Perſon extremely intimate with my Lady; we ſhall produce her, and her Huſband Mr. *Aaron Lambert*; he had ſet *Dunmaine* to my Lord, lived himſelf at *Roſs*; his Dealing, as well as Neighbourhood and Acquaintance, gave him and his Lady great Opportunities of knowing more of his Family than many others.

We will call Colonel *Palliſer*, and alſo his Son, who was unfortunately made the Pretence of the Separation, and from him you will have a full Account of that Matter; and he will not only ſwear it, but ſhew you that what *Laffan* has teſtified is falſe.

That I may not mention all as to this Point, we ſhall call, in the laſt Place, Mrs. *Giffard*, a Woman of an exemplary good Life and Character; ſhe will not only prove, as others, that there was no Child that ſhe ever heard of; but ſhe will prove further, that there being ſome Pretender's Men to be tried at the Aſſizes at *Wexford*, which were held in the Beginning of *April* 1715, and this being a Buſineſs of ſome Expectation, my Lord, my Lady, and ſeveral others, went to that Aſſizes; that my Lady was at all publick Places, and was in Court at the Trials of thoſe People: This was ſo near the Time of the pretended Birth, 'tis plain her being with Child, if fact, muſt be viſible and conſpicuous to all the World. This therefore will be proved by Mrs. *Giffard*, and ſhe will be corroborated herein by many others.

We ſhall alſo lay before you the frequent Declarations and Expreſſions, not only of my Lady, but of my Lord alſo, upon this Head. They have likewiſe, on their Part, given ſome Evidence of this Kind; you will compare together the Witneſſes, and what they ſay: We apprehend there is little Streſs to be laid on this Part of their Proof, teſtified at this Diſtance of Time, where the Omiſſion or Addition of a ſingle Word might invert the whole Senſe. We think it ſtrange that theſe Witneſſes, if they knew and believed ſo much, neither ſaid nor did any thing in conſequence of it; and we think this Conduct can only be accounted for by their not believing, their not laying any Streſs upon what they had heard; and when we have ſhewn all this, I can't but think, for my Part, that we might ſafely reſt our Caſe here.

But we ſhall go a great deal further, and give an Account of the Plaintiff from the Moment of his Birth. When my Lady returned to *Ireland*, my Lord was at *Dunmaine*; he came to Town, they were reconciled, ſtayed ſome time, and then they both went to *Dunmaine*. One *Joan Landy* was before, and at the Time of my Lady's coming to *Dunmaine*, Kitchen-maid there; and in a few Months ſhe appeared ſo big with Child, that it came to my Lady's Knowledge; upon which ſhe was turned off, and went to her Father's, who lived on the Land of *Dunmaine*, at a very little Diſtance from the Houſe. As my Lord, as well as others, had, it ſeems, given Cauſe, ſo it was wiſely reſolved to make him the Father of this Child. We ſhall ſhew the Birth, the Chriſtening, and Manner of Keeping this Child till the Separation of my Lady: We ſhall prove, that, on the Separation, the Child was ſuffered into the Houſe, and the Schooling of it, while my Lord lived at *Dunmaine*; that the Pretence that *Landy*'s Child died is falſe; that there was but this Child; that my Lord regarded it but little; that it was brought after him to *Kinnea*, *Carrickduffe*, and *Dublin*, and as it grew up gained ſome ground; but ſtill treated, conſidered, and reputed as a Baſtard, and no other. This we ſhall prove in thoſe ſeveral Places, not by looſe Expreſſions, but by thoſe who knew my Lord and Family well: We ſhall prove to you the Reputation concerning him, when at thoſe poor Schools that have been mentioned: We ſhall ſhew the Occaſion of my Lord's Neglect of him; that he was untowardly, vicious, and incorrigible; that he rambled down to *Roſs*, my Lord's Eſtate, where he and his Mother were well known, and was there treated and conſidered as my Lord's Baſtard by *Landy*;—and ſhew him after in *Dublin*, for a great Length of Time, in a poor Condition, yet known and reputed by ſuch as knew any thing at all of him, to be my Lord's Baſtard; that he himſelf pretended no other; and being aſked about his Parents, mentioned not only my Lord as his Father, but *Landy* alſo as his Mother.

And we ſhall ſhew, in the laſt Place, while he was thus neglected, and in this Diſtreſs, that my Lady was in *Dublin*, knew of his Condition, and that her Diſlike of him was ſuch, that ſhe could not endure to hear him named; and from Perſons of undoubted Character, and with whom ſhe lodged and dieted here, it will appear, that, amidſt all her Complaints of Wrongs and Injuries, there never was the leaſt mention of any, with reſpect to a Son or Child that ſhe ever had. Her Silence upon this Head, at this Time, and under her Circumſtances, we apprehend to be great Evidence; but much more ſo after my Lord's Death, when ſhe ſaw one aſſume the Eſtate, and another the Honours of the Family. My Lord, we apprehend their Evidence, as to the ſpiriting away, and the Teſtimony of Mrs. *Giffard*, when conſidered, is in Truth already anſwered; but if thought to be neceſſary, I doubt not but we ſhall give you full Satisfaction.

You obſerve they don't produce *Joan Landy*, though in the Liſt of their Witneſſes, and in their Power: We charge her to be the Mother, they ſay the Wet-Nurſe only; can there be a ſtronger Inference than that which muſt of neceſſity be drawn from the keeping back this Woman?

Gentlemen, I ſhall trouble you no more, but proceed to prove what I have now ſtated, and indeed a great deal more which has eſcaped my Memory; and when this is done, as we reſt aſſured that this Cauſe will be tried uninfluenced by any Conſiderations that have not a Tendency to prove the Matter in Iſſue, and that the Purchaſers from, and Creditors of the Family, and thoſe who have a Right to ſucceed to the Honours and Eſtate, will receive no Prejudice from Conſiderations that do not properly relate to the Caſe, and certainly have no Relation to them; ſo we do not doubt but you will put an End to this ſtrange Buſineſs, by finding according to our Plea, that the Defendant is not guilty of the Treſpaſs and Ejectment in the Declaration mentioned.

The Names of the Witneſſes produced on the Part of the Defendant.

1. *Nicholas Loftus*, Eſq.
2. *Thomas Palliſer* the Elder, Eſq *.
3. *Wm. Wall*, of *Maryborough* in the *Queen's County*, Eſq.
4. *Aaron Lambert*, Eſq.
5. *William Elms.*

[*Here a Dialogue between* Joan Laffan *and* William Elms.]

6. Mrs *Anne Giffard.*
7. *(a)* Mrs. *Catherine Lambert.*
8. Mr. *John Kerr.*
9. Mr. *Thomas Palliſer* the Younger.
10. *Thomas Rolph* *.
11. *Owen Cavennagh* of *Kilcullen-Bridge.*
12. *Anthony Dyer* *.
13. Mrs. MARY HEATH *.
14. *Robert King*, Eſq. Alderman of *Dublin* *.
15. *Elizabeth Molloy.*
16. *Martha Neif.*
17. *Anne Caulfield.*
18. *William Rowles.*
19. *Michael Downes*, Eſq.
20. *Patrick Furlong.*
21. *(b) Arthur Herd.*
22. *Henry Brown.*
23. *Thomas Strong.*
24. *Thomas Barret.*
25. *William Napper.*
26. *George Brehon.*
27. *Elizabeth Mac Mullen.*
28. *(c) Matthew Derenzay.*
29. Dr. *James Meddlicot.*
30. Col. *William Becket.*
31. *Wentworth Harman*, Eſq.
32. Mr. *Chriſtopher Stone.*
33. Mrs. *Hannah Shaw.*

(a) Mrs. *Catherine Lambert* being asked, on her Croſs-Examination, if her Huſband did not put in an Anſwer to a Bill filed on her Behalf againſt Mr. *Matthias Reilye*, anſwered, Yes, he did. Then was asked, *Is he to be believed on his Oath?* The Defendant's Counſel objected, "That the Queſtion is improper, and therefore not to be "asked; and that a Woman ought not to give Evidence for or againſt her Huſband, eſpecially where he is *intereſted*. Should ſhe anſwer this Queſtion, it might "prejudice her own Cauſe. The Huſband is not to be affected by any Declaration of his Wife, even upon her Oath; and the only Inſtance where ſhe can be examined "againſt her Husband, is in High Treaſon."

The Plaintiff's Counſel waved the Queſtion.

(b) On the Croſs-Examination of *Arthur Herd*, the Counſel for the Plaintiff asked the Witneſs, *Whether he did not tell the Company that Lord* Altham *debauched Miſs* Gregory? which Queſtion was objected to by the Defendant's Counſel, as it might ſubject the Witneſs to an Action, and tend to defame her, who was a Witneſs for the Defendant in this Cauſe. And the *Court* were of Opinion the Witneſs *might refuſe* to anſwer the Queſtion; and the Witneſs *refuſed*.

(c) On the Examination of *Matthew Derenzay*, an Agent for Lord *Angleſea*, he was asked, Whether, if my Lord *Angleſea* loſt his Eſtate, he did not apprehend he ſhould loſe the Balance of his Account? He anſwered, *I believe, if my Lord* Angleſea *has it upon Earth, he won't let me loſe a Shilling.*

The Counſel for the Plaintiff objected to this Witneſs, *That he was conſequently intereſted in the Fate of this Cauſe, as he might loſe his Agency, or Receiverſhip*; but the Court were of Opinion, that this did not go to his Competency, but might to his Credit.

These Witneſſes prove, that ſeveral of them lived in the Neighbourhood of *Dunmaine*, (where it was ſaid Lady *Altham* was brought-to-bed of a Son) and viſited Lord and Lady *Altham* frequently; and they never heard Lady *Altham* had a Son, or ever was with Child, or that they ever ſaw her with Child. Several Servants of the Family ſwear, who lived with Lord *Altham* in the Year 1714 and 1715, that they never heard Lady *Altham* had a Son, or ever was with Child; or that any Midwife was ſent for, or any Chriſtening, or any Bonfires, or any Godfathers or Godmothers; or any Coach-road for Lord and Lady *Altham* to go and ſee their Child; and that there could be no Child born without their Knowledge: Others, that Lord *Altham* had a Baſtard by *Joan Landy*, which he called his Baſtard; but they never heard of any Son by his Lady. Others depoſed, That Lady *Altham* went to the Aſſizes at *Wexford*, in *April*, 1715, and ſtaid ſome Days (which was about the Time it was ſaid ſhe was brought to-bed of a Son): Others, that Lord *Altham* would have been glad to have had a legitimate Son, becauſe he could have raiſed Money on his Eſtate, and wiſhed for a Son: Others, that Lady *Altham* lived two Years after my Lord, and never enquired after any Son of her's; and that if there had been any ſuch, he would have been entitled to an Eſtate of 1200*l. per Ann.* and my Lady might have applied for the Guardianſhip of him, and had a good Allowance from my Lord Chancellor for the Truſt, which ſhe very much wanted, *&c.* But as the moſt material Witneſs for the DEFENDANT was Mrs. *Mary Heath* (Lady *Altham*'s Woman), we ſhall give her Evidence at full Length, with the Evidence brought to confront Mrs. *Heath*; and then cloſe with the Judge's ſumming up of the whole.

Friday, November 18.

13. Mrs. MARY HEATH.

Sworn to the Voir Dire.

Q. Do you know the Plaintiff, Mr. *James Annesley*?—Mrs. *Heath*. No.

Q. Has he any Law-Suit with you?—*A.* He filed a Bill againſt me for the Effects of Lady *Altham*. I had a *Subpœna* given me in *England*.

Q. At whoſe Suit?——*A.* At Mr. *James Annesley*'s.

Q. Have you any of the Effects of Lady *Altham* in your Hands?

The Queſtion is objected to by the Defendant's Counſel, who ſay, that the Adminiſtrator will have the Right to recover them, let this Cauſe go which Way it will; and the Effects are no way relative to the real Eſtate which is now in Diſpute.

The Witneſs ſworn in Chief.

Q. Did you know *Arthur* late Lord *Altham* and his Lady?

Mrs. *Heath*. Yes, very well.

Q. What Time did you firſt become acquainted with the one or other of them?——*A.* I have known them a great many Years.

Q. Were you in any Service in that Family?

A. Never till the Time of my coming to *Ireland*.

Q. When was that?——*A.* In the Year 1713.

Q. At what Time?

A. In *October* I came over with my Lady as her Woman.

Q. How long did you live with my Lady after ſhe came over?

A. I lived with her to the Day of her Death.

Q. When was the Day of her Death?

A. I can't juſtly tell; it was ſome time in *October*, 1729.

Q. During that whole Courſe of Time, was you ever out of her Service?——*A.* Never out of her Service.

Q. Did you conſtantly reſide with her as her Woman?

A. I was one Week from her in *Ireland*.

Q. What Time was that?—*A.* When I come on further, I can tell you.

Q. Do you not remember that you were longer abſent from her?

A. Not in *Ireland*, nor one Day, except ſhe was out a-viſiting. I was never from her a Night but that Week.

Q. Do you know a Place called *Dunmaine* in this Kingdom?

A. Yes, I do.

Q. Do you remember who lived at *Dunmaine*? Did my Lord and Lady *Altham* live there?——*A.* Yes, we went down there.

Q. At what Time, Madam?

A. We got down to *Dunmaine* the *Chriſtmas-Eve* after we came over.

Q. How long did my Lord and Lady reſide together at *Dunmaine*?

A. My Lord did come up, but I can't tell juſtly whether it was in *May* or *June* following; but I know he was there in *April*: He came to *Dublin* himſelf, and left my Lady and I at *Dunmaine*. Upon St. *George*'s Day I know he was at *Dunmaine*, I am ſure of that.

Q. How long in the whole did they live together at *Dunmaine*?—*A.* About three Years and two Months, to the beſt of my Remembrance.

Q. Do you remember in what Month they parted?—*A.* In *February*.

Q. In what Year?—*A.* I call it 1716-17.

Q. Had my Lady a Child at *Dunmaine*?

A. A Child! never had, nor never was with Child; I never had Reaſon to think ſhe was with Child all the while I lived with her.

Q. Who dreſſed and undreſſed my Lady?

A. I always did, except the Week I was abſent; while ſhe was at *Dunmaine* I always put her to Bed, and attended her at her Riſing in the Morning; for ſhe was ſuch a Woman, ſhe would not permit any body elſe to do it.

Q. Could ſhe then ever be with Child, or have a big Belly, unknown to you?——*A.* No, never.

Q. Was not you at *Dunmaine* at the Time of the Separation?

A. Yes, to be ſure.

Q. To what Place did ſhe go when they parted?

A. We went to one Capt. *Butler*'s, in *Roſs*.

Q. Did you go with her?—*A.* Yes, I went with her in a four-wheeled Chaiſe and a Pair of Horſes.

Q. Did you get to *Roſs* the ſame Day?

A. Yes, at Night, dark Night; for my Lady made it as late as ſhe could; for ſhe had no Mind to be ſeen coming in.

Q. Can you remember the particular Day this happened?

A. To the beſt of my Remembrance, it was on the 3d of *February*; but it was on a *Sunday*, I am poſitive.

Q. Did you live any Time there, and how long?

A. We lived about four Years in *Roſs*, to the beſt of my Remembrance.

Q. Did my Lord and Lady come together again within that Period of Time?—*A.* No, never. I don't know whether ſhe ever ſaw him.

Q. Will you recollect yourſelf, who were the Servants of the Houſe when you came down to *Dunmaine*?

A. It is very hard for me to do ſo at this Diſtance of Time, there were ſo many. There was Mr. *Ralph* as the Butler, and there was Mr. *Anthony Dyer*, my Lord's Gentleman; there was one (I believe *Ralph* went down with us) *Settwright*, the Houſe-keeper, and there was *Michael*, but what his Sirname was, I can't tell, but he was Cook, and there was *Juggy Landy* that was the Kitchen-maid, big with Child.

Q. At what Time?—*A.* When we came down, my Lord, a Kind of Scullion under the Cook.

Q. Did you obſerve her to be with Child?

A. When we went down firſt, I went up to the Room to my Lady, and ſoon after I came down to ſpeak to the Houſe-keeper; and I turned about and ſaw this Woman with Child; *What*, ſays I to the Houſe-keeper, *you have got a Maid big with Child here! Yes*, ſays ſhe, *an Officer was here ſome time ago, and his Servant got to Bed to her, and got her with Child.* This was what I heard that Day; and the next it was buzzed about that it was my Lord that got the Child, and ſome ſaid my Lord's Brother, and ſome the Dog-Boy, and ſeveral of the Servants had to do with her. This is what they told me, it was the Talk about the Family.

Q. Give an Account what became of this *Joan Landy* afterwards.

A. She ſtaid two or three Months, till the Houſe-keeper was afraid to keep her any longer, till we were afraid ſhe would cry out; and then ſhe went to her Father's, and I never ſaw her there; but I knew he lived upon the Land.

Q. Did ſhe go of her own Accord, or was ſhe turned out?

A. I can't tell.

Q. Did you know of any Child this Woman was delivered of?

A. I ſaw the Child.

Q. Give an Account of that.

A. I ſpoke to the Coachman's Wife to bid her bring it up to the Gate that I might ſee it; and accordingly ſhe did, and it was in Blankets then.

Q. Who brought the Child?—*A. Juggy Landy* herſelf brought it.

Q. About what Age might the Child be at that Time?

A. I can't really tell, whether ſix Weeks or two Months old when I ſaw it, I can't tell juſtly.

Q. Had this Child any tolerable Cloaths on it?

A. The Neckcloth it had on was what I gave it, it was a Cambrick one, and a very fine one; I brought it from *England* among my own Things, and the Child was in a clean Blanket, and I gave her ſeveral other Things.

Q. How came it to paſs, that you did not rather direct that the Child ſhould be brought to *Dunmaine-Houſe*, than to that Gate?

A. I would not bring it to the Houſe.

Q. What was your Reaſon for that?

A. Becauſe I would not have my Lord or Lady know any thing of it.

Q. What was your Reaſon for ſeeing the Child?

A. To know who it was like.

Q. How far was that Gate you mentioned from the Houſe?

A. A little Diſtance.

Q. What was your Reaſon for ſeeing it there?

A. I did not care my Lady ſhould know any Thing about it. My Lady would not care the Child ſhould be brought into the Houſe.

Q. Was there ever a Child either chriſtened or living at that Houſe while you were at *Dunmaine*?——*A.* No, never.

Q. Did my Lady ever talk to you any Thing of her being with Child, or having had a Child, during that Time?—*A.* No, never a Word.

Q. Ladies ſometimes talk to Women in your Situation; had you any Diſcourſe ever with my Lady about having Children, and what was that Diſcourſe?——*A.* Yes, Sir, my Lady often wiſhed ſhe had a Child, on Account of a Quarrel ſhe had with Mr. *Anneſley*.

Q. Pray give an Account of that Quarrel.

A. I don't know how the Quarrel began; but ſhe came up one Day after Dinner, and was crying. I aſked her, what was the Matter with her Ladyſhip? She ſaid, *That Brute below*, meaning the Defendant, *had ſaid, he wiſhed ſhe might never have a Child*; and my Lady ſaid, *ſhe wiſhed ſhe might but have a Child to inherit, and ſhe did not care if ſhe was to die the next Hour.*

Q. You ſaid, you had been an entire Week abſent from my Lady, and no more; give an Account of that Week's Abſence, and the Occaſion of it; was it while you lived at *Dunmaine*?——*A.* My Lady was in *Dublin* the Week I was from her; I left my Lady in *Dublin*, and went to *Dunmaine*; I was never a Night from her in *Dunmaine*.

Q. Do you recollect how long that Quarrel was after you went to *Dunmaine*?——*A.* Not very long.

Q. Was it before they came to *Dublin*?

A. Yes, it was; this Quarrel was ſome little Time after our going down, and Mr. *Anneſley* upon it left the Houſe, and went to *Dublin*.

Q. Do you remember, during your Service, that ever you were at the Town of *Wexford*?——*A.* Yes.

Q. Give an Account at what Time, and on what Occaſion you went there.

A. My Lady went there to hear the Trials at the Aſſizes, and it was about the Pretender's Men, as they were called; and my Lady told me that there was one *Walſh* tried, and how handſomely he pleaded his own Cauſe, and the Defence he made; and there was one Mr. *Maſterſon* who was picked up in the Court at that Time, and tried.

Q. Can you recollect yourſelf the Time of the Year?

A. I know we came to *Dublin* the *May* after; and what I remember it for is, that it was King *George* the Firſt's Birth-day that we were in *Dublin* in *May*; and I remember it for this Reaſon, that there were Fireworks in the Cuſtom-houſe Yard, and this preſent Lord *Angleſea*, that was Mr. *Anneſley* then, had Lodgings juſt oppoſite to it, and we went to his Lodgings to ſee the Fireworks.

Q. Did my Lady go to Mr. *Anneſley*'s Lodgings?

A. She did, my Lord, and my Lord and I.

Q. Do you know what Day of that Month was the Birth-day of King *George* the Firſt?

A. I can't tell whether it is the 28th or 30th; I know there is the *Reſtoration* next to it; but I don't know which it is, the Day before or after.

Q. Recollect how long a Time before your going to *Dublin* was it that you were at *Wexford*?

A. It

A. It was not long indeed. I can't recollect: I know we were in *Dublin* ſome time before the Birth-day; I don't know, about a Fortnight.

Q. But what time from your Return from *Wexford* Aſſizes, did you go to *Dublin?*

A. I can't tell what time the Aſſizes were, not I, for I don't remember the Month.

Q. Do you remember the Seaſon of the Year?

A. Yes, I know it was the *Spring*, and I know it was a little before we came to *Dublin* that the Aſſizes were.

Q. Recollect who was the Company that went at that time to *Wexford* with your Family.

A. Mrs. *Giffard* went in the Chariot with my Lady, my Lord went on Horſeback, and I went on Horſeback, and *Ralph* went on Horſeback, and Mrs. *Giffard*'s ſiſter on Horſeback, but what her Name was I cannot tell; but what other Servants went I cannot tell; and there were ſeveral more which I don't know.

Q. Do you remember any other Servants that went?

A. No, except the Coachman, one *Weedon*, and the Poſtillion, one *Burke*.

Q. You ſay, you lived at *Dunmaine* at the time of this unfortunate Separation? ——*A.* I did.

D. Give an Account of the Occaſion of that Separation.

A. On *Saturday* Night, my Lord ſaid, *he would go out ſomewhere to dine the next Day*, but I don't know where, indeed; but my Lady begg'd of him *not to go*, for ſhe hated he ſhould be out on a *Sunday*; but he ſaid, *he would go*; and accordingly on *Sunday* Morning he did go from the Houſe; and I heard a Noiſe, and was going down Stairs to ſee what was the matter, and I met my Lord coming up with his Sword in his Hand, and he ſaid, Heath, *I have found* Tom Palliſer *in Bed with my Wife.* I ſaid, *It was impoſſible, and that he was ſet upon by a Sett of Villains*; upon that, my Lord ſaid, *She ſhould go out of the Houſe*; and upon that, he ſent for one Mr. *Wilman* from *Roſs*, and he came and adviſed my Lord, I believe, to turn my Lady out; but ſhe begged, *he would let her have one Room in the Houſe, and he needed not come near her, till ſhe wrote to my Lord Duke*; but he would not hear her; but he hauled her out of Bed, and I adviſed her to come out: Upon which we packed up ſome Things, and went into the four-wheel'd Chaiſe, and I believe it was duſkiſh when we went out, and it was Night when we got into *Roſs*.

Q. Was there any thing happened to you when you went away?

A. Mr. *Taylor* handed my Lady into the Chaiſe.

Q. Was there any Child brought to take leave of my Lady?

A. O no! no Child, indeed.

Q. Who was in the Chaiſe with her?

A. I was, my Lord; ſhe got in firſt, and I after her directly.

Q. Did you know *Joan Laffan?*—*A.* Yes, I did.

Q. During your Reſidence at Mr. *Butler*'s in *Roſs*, was there any Child that my Lady received in that Houſe as her Child?

A. No, no ſuch thing.

Q. How long did you live at Mr. *Butler*'s?

A. We were not long at Captain *Butler's.*

Q. Was he and his Family at home when you went there?

A. There was Nobody at home but the Servants: Mrs. *Butler* and Captain *Butler* were out of Town; there was one Mr. *Watſal* that was Clerk to the Captain, and he ſent a Man and Horſe to let Mrs. *Butler* know that we were there, and ſhe came home the next Day; but Captain *Butler* did not come home for three or four Days after.

Q. Recollect the ſeveral Places in which my Lady lodged at *Roſs*.

A. I believe ſhe ſtayed two Months or more at Captain *Butler*'s, and then we went to one Mr. *Wright*'s, and then we went to one Mr. *Croft*'s, and there we ſtaid till we came to *Dublin.*

Q. During this time, was there any Child brought to my Lady as her Child?

A. No, never was; ſhe had no Child. I can ſay no more, if they rack'd me to Death.

Q. Did you know one *Joan Laffan?*——*A.* Yes, I did.

Q. What was ſhe?——*A.* She was what we call Houſe-maid.

Q. Was it her Buſineſs to clean the Rooms?

A. Yes, to waſh the Rooms, and make the Beds.

Q. What time did ſhe come to live at *Dunmaine?*

A. Three or four Months before my Lord and Lady parted.

Q. During the time that you lived at *Dunmaine*, had ſhe any other Employment in the Family?

A. No other, except ſhe went to the *Laundry*, when the Buſineſs was done in the Houſe, and help'd the *Laundry-maid* to waſh.

Q. Who was *Laundry-maid* at this time?

A. I cannot tell, we had ſeveral.

Q. Did ſhe dry-nurſe any Child before the Separation?

A. No, we had no Child for her to dry-nurſe.

Q. Did you ever ſee a Child in the Hands or Care of *Joan Laffan* while ſhe was at *Dunmaine* Houſe?

A. No, never, for we had no Child.

Q. Did you know one *Edward Lutwyche*, a Shoe-maker at *Roſs?*

A. No, I don't know any thing of him.

Q. Who made your Lady's *Shoes* at *Roſs?*--*A.* I don't know, indeed.

Q. Do you know of her buying any Shoes whilſt ſhe lived there?

A. I don't remember ſhe did.

Q. What ſort of Shoes did her Ladyſhip uſually wear?

A. She wore *braided* Shoes.

Q. Of what Colour?

A. Several Colours, and ſeveral Pair of Shoes, I cannot tell what.

Q. Do you remember her ever beſpeaking a pair of Shoes for a little Boy?——*A.* That I'm ſure ſhe never did.

Q. Had ſhe a Pair of *white Damaſk* Shoes at *Roſs?*

A. She never had, while I liv'd with her.

Q. Can you recollect what Perſons were preſent when you ſaw my Lord come up Stairs with his Sword in his Hand?

A. Indeed, I don't know any.

Q. Where did you remove to from *Roſs?*

A. We came to one Mr. *Cavenagh*'s, in a Place called *Stable Yard*, I think they call it ſo, in *Mary*'s *Lane.*

Q. There you came to a Lodging?——*A.* Yes, and boarded there.

Q. How long did you ſtay at that Houſe?

A. I really cannot tell; but from thence we went to one Mr. *King*'s.

Q. What was he?——*A.* An *Apothecary* in *Charles-Street.*

Q. Did you lodge and board there?——*A.* Both.

Q. How long might you ſtay there?

A. I cannot tell; from thence we went to one Mrs. *Mac Mullen*'s, I don't know what the Street is, I think it is *Taſh*'s *Square* in *Mountrath-Street*, it turns up by Mr. *King*'s, and there we were a little while, two Months or more, before we went over to *England.*

Q. Can you recollect in what Year you went to *England?*

A. Yes I can, in the year 1724.

Q. In what Month?——*A.* I believe about *September.*

Q. Before Lady *Altham* went to Mr. *King*'s, the *Apothecary*, had you, or any other Perſon, look'd out for other Lodgings?

A. Yes, I went ſomewhere upon the Quay, but I don't know whoſe Houſe it was.

Q. Did you ſee the Owner of that Houſe?—*A.* Yes, it was a Woman.

Q. Do you recollect her Name?——*A.* No.

Q. Did you come to any Agreement?

A. Yes, I gave her a Piſtole in earneſt; but afterwards we did not like the Place, and I went and told her ſo, that the Doctor did not like my Lady ſhould live upon the Quay, and ſhe gave me the Piſtole again.

Q. Did you ever ſee that Woman afterwards?

A. Never, to my Knowledge.

Q. Did my Lady ever tell you, that ſhe ſaw that Perſon?

A. My Lady never did ſee her in her Life, for my Lady never knew any thing of her, and never did ſpeak to her, to my Knowledge.

Q. During your Lady's Reſidence either at *Cavenagh*'s, or *King*'s, or Mrs. *Mac Mullen*'s, did any Boy viſit or wait upon her, as her Child?

A. No, never, nor they could not.

Q. Did any other Perſon go with you, when you went to ſee this Gentlewoman about the Lodgings?

A. One Mr. *Mac Mullen* went with me.

Q. What was he?——*A.* He dealt in Linens.

Q. Did any Servant of Lady *Altham*'s go with you?——*A.* No.

Q. Did you ever hear or know any thing of this ſame Boy, that you ſay was *Joan Landy*'s Child, from the time you left *Dunmaine?*

A. No, I never troubled my Head after him.

Q. Did you ever hear that he was in *Dublin?*

A. I had heard that my Lord had took him; but I know nothing of him.

Q. Do you know whether my Lord *Altham* was alive when you went to *England?*——*A.* I heard he was alive.

Q. Had you any Account afterwards of his Death?

A. I had a Letter from Mrs. *Mac Mullen*, giving me an Account that he did die.

Q. What was the Purport of that Letter?

A. I have the Letter in my Pocket.

Q. Did you communicate that Account to your Lady?

A. I went directly and ſhewed her the Letter.

Q. How ſoon after you received this Letter was it that you gave her the Account?——*A.* I went directly and ſhewed the Letter to her.

Q. What happened upon that? Did my Lady make any Reflections upon that Affair?——*A.* She ſaid nothing at all.

Q. Had your Lady any Fortune come to her upon the Death of her Huſband?

A. No, the Eſtate went to the late Lord *Angleſea*, ſhe not having a Jointure ſettled upon her; had ſhe a Child, the *Altham* Eſtate would have come to it.

Q. Did my Lady know that this Eſtate went to the Earl of *Angleſea?*

A. My Lady told it me, or elſe I ſhould not have known it; I had all my Knowledge of it from her, otherwiſe I ſhould not have known it.

Q. When was it you had that Diſcourſe; before, or after, my Lord's Death?——*A.* Both before the Account of his Death came, and after.

Q. Did you acquaint my Lady *Altham* of the Purport of that Letter?

A. I directly went up Stairs, and ſhew'd her the Letter as ſoon as I had read it.

Q. When did my Lady *Altham* die?

A. She dy'd in *October*, 1729; ſhe has been dead fourteen years laſt *October.*

Q. Had my Lady any Account how, and where my Lord was buried, and any Circumſtances relating to it?

A. No more than what is in this Letter.

Q. Did ſhe go into Mourning?

A. No, ſhe made no Mourning, ſhe was in Mourning at that time.

Q. What Sort of Mourning?

A. A *Norwich* Crape that ſhe had had for my Lord *Duke*, and which ſhe made a Night-gown of when King *George* the firſt died.

Q. Were there any further Particulars in the Letter?

A. She told in the Letter, that my Lord died, and was miſerably poor.

Q. Did you communicate the whole Contents of that Letter to Lady *Altham?*——*A.* Yes, I did.

Q. Had ſhe any Diſcourſe with you, or did ſhe make any Obſervations touching any Part of the Contents of that Letter?

A. I do not know any thing that ſhe ſaid: ſhe took no Notice of it, but ſhe read the Letter as well as I.

Q. Was there any Converſation between you, about any other Perſon mentioned in that Letter beſides my Lord her Huſband?

A. No, ſhe made no Reflection upon it, nor ſaid any thing.

Q. Had my Lady any Maintenance or Allowance from my Lord after their Separation?---*A.* No, my Lord never ſent her a Farthing.

Q. Who ſupported her then?——*A.* My Lord Duke.

Q. What Allowance did he give her?

A. There was 1200 *l.* Remainder of her Fortune in the Duke's Hands, for which he allowed her 80 *l.* a Year, gave her 20 *l.* a Year more, and when he died left her 100 *l.* a Year.

Q. Do you know a Gentleman whoſe Name is *Mac Kercher?*

A. He was once with me.

Q. Should you know him now if you ſhould ſee him? Look about.

A. That is the Gentleman I am ſure (pointing to Mr. *Mac Kercher*); he told me his Name was ſo.

Q. Had

Q. Had you any Acquaintance with him, and when did that Acquaintance commence?

A. He came to my House, I live in *St. Andrew's* Court, *Holborn*, and he came there; there is the Directions he gave me to find a Gentlewoman, and I put the Day of the Month upon it that he was with me. It was the 13th of *April* 1742. for he said, one of Captain *Briscoe's* Daughters was in Town, and told me her Name; and he wrote his Name upon it, that I should not forget it.

Q. Are you certain he wrote it?---*A.* He wrote it, and I saw him write it.

Q. What passed between you at that Visit?

A. When he first came in, he was a Stranger to me, begged my Pardon, and said he came to ask me some Questions about my Lady *Altham*, *Whether she had ever a Child?* I told him, *She never had one while I lived with her, I could take my Oath.* Then he told me, how this Mr. *Annesley* was recommended to him by two Lieutenants, one of their Names was Lieutenant *Simpson*, but the other I do not know; and then he told me how he came to him; and that he, *Mac Kercher*, gave him Ten Guineas; and then Mr. *Annesley* told him he had no Lodging, and did not know where to get one. He said his House was small, but if he would lodge with him he might, and should be welcome, and took him in. He then shewed me a List of the Servants Names, and my Name was crowded in at the Top, and I laughed at it. There were several Names, some that I did know, and others that I did not; there was *Martin Nieff*, and *Charles Magher* the Butler after *Ralph* went away, and there was *Juggy Laffan*; and with that I said: *What can she know of this Affair? Why*, says he, *Madam, she says that she saw old Parson* Lloyd *christen it; I suppose you know him, Madam? Aye*, says I, *I knew him very well, but I cannot think how she can know any thing. Why*, says he, *she says she came to* Dunmaine *about a quarter of a Year after my Lord and Lady came from* Dublin. *So she did*, says I, *but that was the last Time we came down from* Dublin. He then thanked me very kindly, said, *He was very well satisfied with what I had told him, that he would go home and wash his Hands of them, and turn them all out of Doors, and would not for a Thousand Pounds that he had not seen me; for*, says he, *if you were dead, my Lord* Anglesea *would lose his Estate and Title, as sure as you are alive, there would be such bloody Swearing.* Says I, *Sir, I am sorry you have been so imposed on, for I assure you my Lady had not a Child.* He said, *Madam, for what I have been at the Charge of, I do not value.* And I told him farther, *Do you suppose, Sir, if my Lord and Lady had had a Child born to such an Estate, that they would not have him registered?* He said, *That they lived in a Country Parish where no Register is kept, and could not have it done.* But I told him again, *Could he suppose if they had had a Child born Heir to such an Estate, that they would not have had his Birth registered?*

Q. Did you acquaint Mr. *Mac Kercher* at the Time of this Discourse, or offer to shew him this Letter of Mrs. *Mac Mullen's*?

A. Yes; and he told me, *that* Juggy Landy *did not deny that she had a Child by my Lord, but that it died young.*

Q. Did Mr. *Mac Kercher* make any Application in relation to your giving Evidence?——*A.* There was not any.

Q. Did he promise you any thing?---*A.* No, he did not; for he said, *he would have nothing farther to say to them.*

Q. When you returned to *Dublin*, after the Assizes at *Wexford*, where did Lady *Altham* lodge in this Town?——*A.* At Mrs. *Vice's*.

Q. Where was that?——*A.* In *Essex-Street.*

Q. Did you know one Mr. *Maurice Annesley?*—*A.* Yes.

Q. What Family had he?

A. There were three Daughters that used to come to visit my Lady.

Q. Name them.

A. One was named *Cherry*, one was named *Sarah*, and the other *Dorothy.*

Q. Did you hear of Mrs. *Cherry's* being married to any one since?

A. Yes.

Q. To whom?—*A.* I did not hear to whom.

Q. Was not her Name *Blake?*---*A.* I don't know, I never saw her after.

Q. Did they visit as Relations?

A. They did, and were Relations to my Lord.

Q. What Condition was your Lady in when she lodged at Mrs. *Vice's*, was she with Child?---*A.* No, she was not.

Q. Did you ever hear of any Miscarriage at that Time?

A. Never while I lived with her.

Q. Did your Lady at any Time keep her Bed at Mrs. *Vice's*?

A. I do not know; she might lie a-bed a Day or so.

Q. Did you ever tell any body that she miscarried?

A. No, I never did.

Q. Or that she was with Child?---*A.* No, never.

Q. Had she any particular kind of Shoes or Slippers made when she was there?---*A.* None particular.

Q. Was there any Woman-Servant in the House of the Name of *Mac Cormack?*---*A.* Yes, Mrs. *Vice's* Maid, one *Catherine.*

Q. Did you ever tell her that your Lady miscarried?

A. Never; I never had any Conversation with her in my Life.

Q. Did you ever tell her any thing relating to your Lady as a Piece of good News?---*A.* No, never.

Q. Did you know one *Alice Bates*, a Servant of Mrs. *Briscoe?*

A. There was one *Ally*, that waited on Mrs. *Briscoe's* Mother, but what her Name was I cannot tell.

Q. Had you any Discourse with her of my Lady's being with Child?

A. No, never, for we were not so long in *Briscoe's* House.

Q. Had she Access to my Lady *Altham*, did she use to visit her?

A. Visit my Lady! I never saw her out of Captain *Briscoe's* House.

Q. Did you never see her put her Hand upon my Lady's Belly?

A. No, I never did.

Q. Do you remember *Alice Bates's* going at any Time in a Sedan-Chair to see my Lady at *Vice's*?

A. No, nor I do not know that ever I saw her at Mrs. *Vice's.*

Q. Did you ever hear my Lord *Altham* call his Lady by any remarkable, familiar Appellation?

A. He used to call her *Molly.*

Q. Did he ever use to call her *Moll Sheffield*, in good Humour?

A. No, I never heard him say so.

Q. You are positive you never told any Thing to *Alice Bates* as a Piece of good News?

A. I am positive as to that, I never did.

Q. Do you remember at any Time, during Mrs. *Briscoe's* and her Daughter's being at *Dunmaine*, that you called Mrs. *Briscoe* out of her Bed?---*A.* No, never.

Q. Do you remember any Fright my Lady received during the Time they were there?---*A.* No, I never did.

Q. Do you remember any particular China in the House of *Dunmaine*, or any thing concerning them?

A. I remember, when we came to *Dunmaine*, that there were some Cups and Sawcers that had very ugly, nasty Figures on them, indecent Figures, and my Lady never cared to have them used; but one Day the House-keeper had got some of the Sawcers to put the Desert on, and there happened some Words at the Table, and my Lord threw them on the Ground, as I was told.

Q. Did that cause any Fright in my Lady?---*A.* No, none at all.

Q. Did you ever call Mrs. *Briscoe* and her Daughter out of Bed, and tell them that my Lady was very ill?---*A.* No, I never did.

Q. Do you remember one *Mary Doyle* in the Family?

A. No; *Betty Doyle*, I did.

Q. Was my Lady in any sort out of Order the Night that the Sawcers were broke?---*A.* No, she was not at all.

Q. Was you in my Lady's Room the next Morning?---*A.* Yes.

Q. Were there many Servants there?

A. No, not at all; the House-Maid might be there, that used to come and light the Fire.

Q. Was Miss *Briscoe* in my Lady's Room the next Morning?

A. I cannot tell but she might.

Q. Did you see her there? --*A.* She might be there, for my Lady always breakfasted in her Chamber, and she breakfasted with her.

Q. Do you remember Mr. *Sutton* the Surgeon?---*A.* Yes.

Q. Do you remember any Quarrel that happened about him?

A. Yes, my Lady never liked him, and he went from the House, and was away some time.

Q. Do you recollect any Occasion of sending for *Sutton* from *Ross* to my Lady?——*A.* I cannot tell whether there was or no.

Q. Do you remember any such Occasion as required a Surgeon?

A. I remember once she had an Inflammation as we thought in her Leg, and I do not know whether my Lord sent for him then; and once her Arm was cut, but *Sutton* was then in the House.

Q. Could he attend her in any Disorder of any Continuance without your knowing it?---*A.* No, I think not.

Q. Did he attend her in any Disorder after that Quarrel?

A. I do not remember any thing ailed her after that Quarrel.

Q. Was there any Confinement for about a Fortnight that required the Attendance of a Surgeon?

A. No, not that I know of.

Q. Did *Sutton* ever refuse to come when sent for?

A. I do not know that ever he refused to come.

Q. Do you remember the Chariot to be sent for him?

A. I do not know; he generally had a Horse.

Q. Did you know Mrs. *Shiels*, a Midwife?

A. I knew her at *Ross.*

Q. Did you ever see her at *Dunmaine?*

A. I never saw Mrs. *Shiels* at *Dunmaine* in my Life.

Q. Do you remember the Name of *Dennis Redmonds?*

A. No, not that I remember.

Q. Did you ever send that Man to *Ross* for Mrs. *Shiels?*

A. I never gave any Directions to him or any Servant to fetch Mrs. *Shiels* to my Lord's House.

Q. Did any thing particular happen after breaking of the Sawcers?

A. No, nothing particular.

Q. Did not you go to Mrs. *Briscoe's* Room, to tell her my Lady was ill?——*A.* I did not.

Q. Do you remember the Name of one *Thomas Brooks?*

A. I do not remember any such Name.

Q. Do you remember whether my Lady was, or was not, let Blood at that Time?---*A.* I cannot be positive whether ever she was let Blood.

Q. Do you remember any particular Person being sent for that Afternoon that the Sawcers were broke?

A. No, I do not remember that any Person was sent for.

Q. Recollect if you know *Dennis Redmonds.*

A. I do not remember any such Name.

Q. Was there a Huntsman in my Lord's Family?

A. Not a particular one; there was the Groom and other Servants.

Q. Do you remember any thing particular to be done at the Time of the Separation by any of my Lord's Servants to any Gentleman in the House?

A. They said that they had cut off Mr. *Pallser's* Ear; but I cannot tell any thing of it, not being present; I was waked with the Noise, and came down Stairs.

Q. Had you ever any Discourse with any to this Purpose, *That if my Lady was to be affrighted at this Rate, she would never go on with a Child.*

A. No.

Q. Did you ever expostulate with my Lord about giving my Lady ill Usage?——*A.* No, I never did about any such thing as a Miscarriage.

Q. Can you say that my Lady kept her Bed one Day or more during the Time of Mrs. *Briscoe's* being at *Dunmaine?*---*A.* No, I do not know that ever she kept her Bed a Day, or more, while they were there.

Q. Did you ever call Mrs. *Briscoe* out of Bed at any Time earlier than usual?——*A.* No, I did not indeed.

Q. Do you remember, whether my Lady took any Offence at my Lord's breaking the Sawcers?——*A.* No, I heard no more than what the Servants told me, I was not in the Parlour.

Q. Did you hear her express herself in any Manner concerning it?

A. No, not at all concerning those Sawcers, she never liked them.

Q Con-

Q. Conſider whether the Night of that Day Mrs. *Briſcoe* was called up by you?---*A.* No, I never called her up at all. I am ſure of it.

Q. Recollect whether *Sutton* the Surgeon, after he quitted the Family, came and ſtayed any particular time?

A. Often after he was turned out; he went away becauſe my Lady did not uſe him as pleaſed him.

Q. Did he come again and ſtay any time?

A. Often, may be a Fortnight, ſometimes more, and ſometimes leſs.

Q. Was he reſident in the Houſe?

A. He was only backwards and forwards.

Q. Recollect yourſelf, whether *Sutton*, about the time of the Sawcers being broke, came and lived there any time?

A. I do not remember that.

Q. Did he come and attend my Lady as a Surgeon?

A. Indeed I cannot ſay he did.

Q. Who was it firſt told you of that unfortunate Affair of Mr. *Palliſer*'s?

A. My Lord *Altham* himſelf.

Q. Do you recollect, whether *Joan Laffan* called you down to reſcue Mr. *Palliſer* from being murthered?

A. No, I am ſure ſhe did not; becauſe my Lord came up, before I could get down on the Noiſe, and told me of it.

Q. Had you any Converſation with her that Day concerning that Accident?

Q. No, for I was in too great a Fret to talk to her about it.

Q. Can you recollect how ſoon after my Lady came firſt to *Dunmaine* that *Sutton* quitted the Family?---*A.* I cannot tell indeed how long.

Q. How long was it after ſhe firſt came that this Accident of the Sawcers happened?

A. It was whilſt Mrs. *Briſcoe* was in the Houſe, and that was not long.

Q. Was you in the Room during any Part of the Dining-time?

A. No, I was not.

Q. Were you ever in the Dining-room during the Stay of Mrs. *Briſcoe* there whilſt they were at Dinner?

A. No, I cannot ſay I was, I had no Buſineſs there at Dinner-time, but went in with the Tea-things ſoon after Dinner.

Q. What was the Age of Miſs *Briſcoe*?---*A.* I cannot tell.

Croſs-Examination.

Q. You ſay, Madam, you came over with Lady *Altham*, and ſhe lodged at Captain *Briſcoe*'s?-- *A.* Yes, we did.

Q. Was not Lord *Altham* brought to that Houſe, and reconciled?

A. Yes, he was.

Q. Did not they ſtay ſome few Days after there?---*A.* Yes.

Q. Did not they go from thence, after four or five Days Stay, and lodge at *Vice*'s in *Eſſex-ſtreet*?—*A.* No, they went directly down to *Dunmaine*.

Q. How many Days Stay did you make at Captain *Briſcoe*'s?

A. My Lord and Lady met the 4th and 5th of *December*, and we got to *Dunmaine* on *Chriſtmas-Eve*.

Q. Did my Lady ſtay there all the time till ſhe went to *Dunmaine*?

A. My Lady did not lodge out of Captain *Briſcoe*'s Houſe at the firſt Meeting.

Q. How ſoon, after the firſt time that you went to *Dunmaine*, did my Lady come next to *Dublin*?

A. I know Mrs. *Briſcoe* and her Daughter were at our Houſe at *Dunmaine* on St. *George*'s Day; afterwards my Lord came up to *Dublin*, I do not know in what Month, but ſhe deſired my Lord to make uſe of her Houſe while he ſtayed in *Dublin*; for Mrs. *Briſcoe* did not go to *Dublin*, but to ſome other Acquaintance. My Lord was at her Houſe for ſome little time, and after went to Mrs. *Vice*'s; and when we were at *Dunmaine*, we heard a great many Quarrels that my Lord was in; and my Lady, when ſhe heard of ſuch doings, came up. He ſent down a running Footman, who came when all were in bed but me and Mr. *Rolph*; he knocked at the Door and alarmed us, for we were afraid he was come with ſome ill News about my Lord. I went down, and aſked how my Lord did; he ſaid, Very well; and he brought ſome Green Tea for my Lady. I carried the Tea to my Lady, the Man was to go to *Roſs* the next day, and ſo return to *Dublin*; there was one Captain *Najack* and his Lady at our Houſe, and they perſuaded my Lady to go up to *Dublin*.

Q. When was that?

A. In violent hot Weather, whether in *July* I cannot tell; but it was a little while before the Queen died, for I ſaw King *George* proclaimed at the Caſtle.

Q. Did not you lodge then at Mrs. *Vice*'s in *Eſſex-ſtreet*?

A. Yes, we did.

Q. Were my Lady *Altham* and you ever before at *Vice*'s?

A. My Lady *Altham* was one Day, but not to lodge there; ſhe was there the Day after my Lord and ſhe met, which was on a *Saturday*; my Lord took her out on a *Sunday*, and ſhew'd her where ſhe was to lodge.

Q. Did not you continue in the Lodgings at Mrs. *Vice*'s till the *Chriſtmas* following?---*A.* No.

Q. How long then?

A. A little after the News of the Queen's Death my Lady got Mourning, and we ſtayed three Weeks, or a Month, or five Weeks, I cannot gueſs the time, after my Lady went into Mourning; and then we returned to *Dunmaine*.

Q. How long then were you at *Dunmaine*, after my Lady's Return, and after the Queen's Death, before you came to Town again?

A. Till the *May* following that was the firſt Birth-Day of King *George* Iſt; may be a Fortnight or three Weeks, or thereabouts, in *May*.

Q. You named the Daughters of one Mr. *Maurice Anneſley*?

A. I did.

Q. Now, recollect yourſelf very well, did they viſit Lady *Altham* when ſhe was at *Vice*'s, in the Month of *Auguſt*, after the Queen's Death, the firſt time ſhe lodged there?

A. I cannot recollect that, whether they did the firſt time, or not.

Q. Where did you lodge the ſecond time?

A. At Mrs. *Vice*'s again in *May* 1715.

Q. Did any, and which, of Mr. *Maurice Anneſley*'s Daughters viſit Lady *Altham* at *Vice*'s in *May* 1715, or at any time after?

A. In *May* 1715 they all did.

Q. Now name them.---*A.* *Cherry*, *Sarah*, and *Dolly*. I know *Cherry* was the eldeſt; but which of the other was elder, I cannot tell.

Q. How long did you ſtay then in *Dublin*?

A. We ſtayed above a Year in Town, from *May* 1715, and better.

Q. Did my Lord and Lady leave Town during that time?

A. My Lord went down, but my Lady did not.

Q. Did you know Mrs. *Charity Anneſley*?—*A.* I did very well.

Q. Was my Lady viſited by Mrs. *Charity Anneſley*, after ſhe came to *Vice*'s in *Eſſex-ſtreet*, in *May* 1715?

A. She was viſited by her then, I am ſure.

Q. You mention, Madam, that there were Inſtances of ill Uſage from my Lord to my Lady; when he behaved in that manner, I ſuppoſe, you did not always eſcape; had you ever any Quarrel with my Lord at *Vice*'s, or any where elſe?

A. I cannot ſay I had at Mrs. *Vice*'s. I know one Night he was making a great Noiſe with a Chair, and I went to take away the Chair, and he took hold of my Head-clothes.

Q. Which of the times you lodg'd there did this happen?

A. I cannot tell.

Q. Was it in the Year 1714, or 1715?—*A.* I cannot tell.

Q. Did he make a great Noiſe?

A. Yes, and I went to take the Chair from him, that he might not diſturb the Family.

Q. Did my Lady *Altham* ſcream out upon that Occaſion?

A. No, I do not believe ſhe did; for ſhe would rather have been killed, than any one ſhould have heard it.

Q. Did you know any one that was called *Lucas*?

A. I had no Knowledge of any ſuch.

Q. Did you ever hear any Perſon, in that Family of Mrs. *Vice*'s, name the Name of *Lucas*?—*A.* I remember ſome Quarrel there was, that I heard my Lord make uſe of the Name of *Lucas*.

Q. My Lord and Lady were both in bed at that time, you ſay?

A. Whether they were or not, I cannot ſay.

Q. Did either of them get out of Bed?---*A.* I cannot tell.

Q. Suppoſe either of them ſhould have opened the Window, and called out of the Window, muſt not you have heard it?

A. I cannot tell; I remember one Night my Lord was going towards the Window, and my Lady held him.

Q. Was it that Night that you took the Chair from him?

A. I don't know whether it was; but I believe not. My Lord ſaid, *That he would ſend for one Mrs.* Lucas, *to ſee whether my Lady was with Child; for if ſhe was not, he would turn her off, and would not live with her; but he would know whether ſhe was with Child before he turned her away.*

Q. Can you be poſitive, whether, immediately after this, my Lady was confined to her Chamber?

A. I do not remember that ſhe was confined to her Chamber; ſhe was out of order with a Cold or ſo.

Q. Was there any Diſcourſe the next Morning about a Miſcarriage?

A. I am ſure there was not; for I am certain there was no Miſcarriage, and therefore there could be no Diſcourſe of it.

Q. You are ſure you heard the Name of *Lucas* mentioned?

A. Yes, I did by my Lord.

Q. You mentioned your having gone to take a Houſe upon the Quay?

A. Yes, when we went from Mr. *Cavenagh*'s.

Q. And you gave a Piſtole in Earneſt?

A. Yes, which the Gentlewoman returned.

Q. You ſay this Woman never ſaw your Lady that you know of?

A. No.

Q. Might not ſhe have ſeen her, without your Knowledge, in the Houſe of Mr. *King*?---*A.* No, never that I know of; ſhe might have gone there when I was out of the way.

Q. Was there any Converſation with Lady *Altham* and you, about the returning of that Piſtole?---*A.* Not that I know of.

Q. Did ſhe ever tell you that ſhe had ſeen the Woman?

A. She never did; and I believe if ſhe had, ſhe would have told me of it.

Q. Did you ever tell any body that that Piſtole was returned?

A. I ſpoke of it; I made it no Secret.

Q. Did you ever hear of that Piſtole being returned?

A. One *MacMullen* went and received it, and not I.

Q. And who did *MacMullen* give it to?

A. He gave it either to me, or my Lady.

Q. Did *MacMullen* go with you both times to the Lodgings you took on the Quay? Did not you ſay, you went and told the Woman that the Doctor ſaid the Air of the Quay was not fit for my Lady?

A. Really, I do not know whether I went with *MacMullen* or no; I do not believe I was with him.

Q. Was it you that made the Excuſe to the Woman?

A. Indeed I do not know whether I did or no, I believe it was he that went.

Q. Where did Mr. *Anneſley*, now Lord *Angleſea*, live in 1715?

A. Oppoſite the Cuſtom-Houſe I think; it was ſo that I could ſee the Fire-works.

Q. How far was that Lodging from *Eſſex-Bridge*?

A. Indeed I cannot tell how far.

Q. Do you know whoſe Houſe it was in?—*A.* No indeed.

Q. Did you know the Houſe where Sir *Alexander Cairnes* and Mr. *Henry* lived?---*A.* I do not know where any of them lived.

Q. What kind of an Apartment was there for Lord and Lady *Altham* to be entertained in?---*A.* There was a Dining-Room and a Bedchamber, the Supper was in the Bedchamber ſet out.

Q. Did not you go over *Eſſex-Bridge* to go to theſe Lodgings?

A. We did.

Q. Did you turn on the right hand or the left?---*A.* On my right hand.

Q. How far did you drive on the Quay?---*A.* I went in a Chair.

Q. How far did you go then?---*A.* I cannot tell.

Q. Was it up one or two Pair of Stairs?---*A.* One Pair.

Q. Was that Mr. *Anneſley*'s Lodging?---*A.* It was.

Q. Was it a very handſome Apartment?---*A.* Indeed I cannot tell.

Q. You mentioned in your going to *Wexford* a Siſter of Mrs. *Giffard*?

A. Yes.

Q. Did she ride behind any body?——A. No, she rode single.
Q. What was her Name?——A. I cannot tell.
Q. Was she a Maiden, or a married Woman?
A. She was unmarried.
Q. Was she Part of Lady *Altham*'s Company?
A. She was when she came there.
Q. Did she lodge with Lady *Altham*?—A. Yes.
Q. At whose House did Lady *Altham* live?---A. At Captain *Sweeny*'s.
Q. Did my Lady go there to visit Mrs. *Sweeny*?
A. I cannot tell whether she did or no.
Q. Was it not to hear the Trial of the Pretender's Men?
A. I cannot tell, for I did not know of any particular Trial.
Q. Was there any particular Trial expected?
A. My Lord and Lady might know it, but I did not know it.
Q. What Clothes did my Lady wear at *Wexford*?
A. Indeed I cannot tell you what Clothes.
Q. Had not my Lady a Silver Silk?
A. No, not then; she did not wear it at *Wexford*, because she was in Mourning for the Queen.
Q. Pray, what Servants attended my Lord at that Time?
A. I cannot tell what Servants, but his own Servant *Anthony Dyer* was ill.
Q. But you are sure *Rolph* went there?——A. Yes.
Q. What Colour was the Horse he rode?
A. Indeed I cannot tell, nor what coloured Horse I rode myself.
Q. Did *Rolph* lodge in the same House with my Lord?
A. No, he did not.
Q. Did he come to my Lord at Mrs. *Sweeny*'s?
A. I cannot tell, for my Lord was a Justice of Peace, and *Rolph* had some Informations to deliver.
Q. Did he attend him as a Servant?
A. I do not know but he might, for my Lord never dressed in my Lady's Room, and I cannot tell who attended him.
Q. Was it the Day after you came down that you mentioned *Juggy Landy*'s being with Child?
A. The very Night. It was said that Night that it was an Officer's Servant's, and the next Day that it was my Lord's, or his Brother's, or the Dog-Boy's, or some else of the Servants.
Q. How long did this Woman continue in the House after?
A. I cannot tell.
Q. And pray, Madam, could your righteous Spirit bear that this Woman should stay so long in the House?
A. Indeed I did not concern myself about her.
Q. Do you know the Lady *Blessington*?
A. I do not know Lady *Blessington*; what Lady *Blessington* do you mean? There was one Capt. *Boyle*, I've seen his Lady.
Q. She is the Lady I mean; did you ever see her visit Lady *Altham*?
A. I am sure I've never seen her.
Q. Do you remember one Mrs. *Pigot*?——A. Yes.
Q. Did she visit Lady *Altham*?——A. Yes, she did.
Q. Was there an Intimacy in the Family?
A. She visited us more in *Ross* than at *Dunmaine*.
Q. Did she visit my Lady at *Dunmaine* frequently?
A. She did, but not often.
Q. Where did you dine the Day of *Palliser*'s Affair?---A. No where.
Q. Did you get any thing to eat when you came into *Ross*?
A. I know we had some Tea there, I cannot tell whether we had any thing else.
Q. Did you eat nothing else that Day?
A. I cannot tell, for there were none but the Servants there.
Q. Did not Crowds gather about to see my Lady come into *Ross*?
A. There was a Crowd of People, but it was so dark, I could not see who they were.
Q. Was it dark when you left *Dunmaine*?
A. It was duskish when we left *Dunmaine*, but it was dark when we came into *Ross*.
Q. What happened upon the Quarrel between my Lady and Captain *Annesley*, did he leave the House upon it?
A. Not immediately, but he never came up to dine with my Lady after.
Q. Did they never come into Company at *Dunmaine* after?
A. They never did; my Lady sent for him the next Day to come up to Dinner, but he would not; she then sent to know if he would have something sent down, and he would not.
Q. Did he ever come to Dinner after at *Dunmaine*?
A. Not up Stairs into the Parlour.
Q. Did he ever come to *Dunmaine* after he left it while my Lady was there?——A. He never did.
Q. When was it they first met after this Quarrel?
A. When we came to *Dublin* afterwards; when we came, my Lady took a Chair to Mrs. *Vice*'s, and she met Mr. *Annesley* in *Essex-Street*: he said, Your Servant, my Lady; your Ladyship is welcome to Town; and after that he came to Mrs. *Vice*'s.
Q. Do you recollect what Month that was in?
A. It was violent hot Weather, I believe in *July*, for it could not be a Month before the Queen died.
Q. Do you know one Mr. *Hussey*?——A. I do know him.
Q. Did you see him at your House in *London*?---A. I did.
Q. Did you ever discourse with him relating to this Affair?
A. Yes; and told him several Times that my Lady had not a Child.
Q. What Mr. *Hussey* is this?
A. I know nothing but that he was an Acquaintance of an Acquaintance of mine that brought him to my House.
Q. Did not you tell Mr. *Hussey* that the Plaintiff was greatly wronged, and that you knew more of that Affair than any body?
A. No, by the Virtue of my Oath, I never did.
Q. Did not you see Mr. *Hussey* at your House, when the Report was that this Mr. *Annesley* was on board the Fleet with Admiral *Vernon*?
A. Indeed I do not know what Time.
Q. Pray recollect yourself. I ask you, was not this immediately after that Mr. *Annesley* was on board *Vernon*'s Fleet?
A. I do not know what Time.
Q. Was it a Month after you heard the Report?
A. I do not know indeed.
Q. When was it you first heard that Report?
A. The first Time I heard of it, I believe, will be three Years next *January*.
Q. Who first informed you of it?
A. The Duchess of *Buckingham* sent her Woman for me; I could not think what she could want, and I said nothing to her Woman, but went with her, and when I came, and went up Stairs, and sat down, her Woman was the first that told me of it.
Q. Was it not immediately after that, that Mr. *John Hussey* came to your Lodgings?---A. I cannot tell what Time he came.
Q. Is it three Years ago since he came to visit you?
A. I believe it is three Years and more, I cannot tell what Time.
Q. Was it not two Years ago?
A. I have seen him several Times within these two Years; he has had the Discourse about this Plaintiff several Times.
Q. Was it two Years since you saw him last?
A. Yes, it will be two Years——I cannot recollect.
Q. Was it before the Duchess of *Buckingham* sent for you?
A. No, I knew nothing of it 'till the Duchess sent for me.
Q. What State of Health was Lady *Altham* in when she came to *Dublin* from *Ross*?——A. She was lame.
Q. Was not she troubled with a Dead Palsy?
A. I cannot call it a Dead Palsy.
Q. Did not that Disorder deprive her of her Limbs?
A. She lost her Limbs by that Disorder, it came by Degrees; but when she came from *Ross*, she could go about with holding by the Hand.
Q. When she went to *London*, what State was she in?
A. She had lost the Use of her Limbs; she could not stand; when I first went to *London*, with one Hand I could lead her about the Room, and then with both Hands; and then not at all; I was forced to put her in a Chair and wheel her about.
Q. How did she come by that Disorder?—A. Indeed I cannot tell.
Q. Did not that Disorder come on her after there was a Report that she had a Child?
A. A Child! The Disorder began at *Ross*.
Q. Was there any Report, that you know, of my Lady's being with Child?
A. Yes, there was a Report before I lived with her; I heard of such a Thing.
Q. Was there any such Report after you came to live with her?
A. No, I do not know, Sir, that there was at any Time after I came to live with her.
Q. Was not she bed-ridden of this Disorder before her Death?
A. No, she never was.
Q. Was not she impaired in her Senses?
A. No, she never was; she was well in her Chair the Night before her Death, and she took a Fit, and we put her to Bed, and she died the next Night, but 'till that Time she had her Senses as perfect as any body in the Court, and could manage all her Affairs, for I never kept any Account for her.
Q. Was not that 100 *l.* a Year left her by the Duke to cease upon the Death of my Lord *Altham*?---A. Yes, it was.
Q. How was she supported then to her Death?
A. Because my Lady Duchess gave her 100 *l.* a Year, for the Interest of the 1200 *l.* after the Duke's Death.
Q. Where have you lived since the Death of Lady *Altham*?
A. In the House I now live in.
Q. What Business do you follow?
A. I take in Plain-work, and I have some Money at Interest.
Q. Are not you a Washer-woman?---A. No, I am not.
Q. What Time did the Duke of *Buckingham* die?
A. I do not know, he was dead before my Lady and I went to *England*, he was dead before we left *Ross*.
Q. What is your present Way of living?
A. I have the Interest of some Money left me, and I take in Plain-work, and Clear-starching; my Daughter and I live together, and we have the Interest of about 700 *l.* between us, but the greater Part of it is my Daughter's.

Monday, November 21.

Serjeant *Marshall.*] My Lord, the Gentlemen have by their Defence*, made it necessary for us to give some new Evidence. It has been insisted on by them, and they have endeavoured to prove, that Lady *Altham* was at the Spring Assizes 1715, at *Wexford*, without any apparent Sign of Pregnancy; that being a new Point, your Lordship will give us Leave to controvert, because the Credit of the *Lessor* of the *Plaintiff*'s Birth may, in some Measure, depend upon it. They have gone a Step farther, and have attempted to impeach the Credit of *Joan Laffan*; we apprehend it will be material to defend the Character of that Witness, and to shew that some of the Witnesses produced on their Part, have been prepared for this Trial.

The six Evidences, on the Plaintiff's Reply, were:

1. *Cæsar Colclough*, Esq. who swore, He was at *Wexford* Assizes, in *April* 1715; did not see Lady *Altham* there; and if she had been there, should have known her; believes she was not in Town that Day.

2. *John Hussey*, confronted with Mrs. *Heath*; their Evidence afterwards.

3. Mr. *Thomas Higginson*, Receiver to *Arthur* Earl of *Anglesea*, who swore he was at *Dunmaine* the Beginning of *April* 1715; that Lady *Altham* made him drink a Glass of Wine; he saw she was big with Child, and her Face lank, and he drank to her happy Delivery, and went from thence to *Wexford* Assizes.

4. *William Stephens*, to contradict *Arthur Herd*, who said to him (meaning Mr. *Annesley*) *This is the right Heir, if Right takes place.*

* Before the Evidence of the Defendant was closed, the Counsel for the Defendant offered to give in Evidence the Record of the *special Verdict in Ejectment*, in the *King's Bench*, wherein the late Lord *Anglesea* was *Lessor* of the *Plaintiff*, and *Graham*, who held under Lord *Altham*'s Title, was the *Defendant*, which special Verdict found that the late Lord *Altham* died without Issue.

Court. That *Record* cannot be Evidence against the *Plaintiff*, who was not a Party to it; nor could the Admission of either of the Parties in that Cause be Evidence against the now *Plaintiff*.

5. *William*

5. *William Houghton* ſwore, *Herd* told him Mr. *Anneſley* was the true and lawful Son, and Heir to the Eſtate.

6.* *John Ryan*, brought to contradict *Michael Downes*, who declared to him *he was to get* 200 *l. for ſwearing that Gentleman away.*——*Downes* denied this, or having any Converſation of that kind, and appealed to Colonel *Palliſer* and Colonel *Loftus*, &c. for a Character. Colonel *Loftus* being called, was aſked whether *Downes* bore a good Character, and to be believed on his Oath, replied, Yes; but being aſked whether under *that Circumſtance* he ſhould be believed, anſwered, *I cannot ſay that.*

2. JOHN HUSSEY, confronted with Mrs. *Heath.*

Q. Do you know Mrs. *Heath?—John Huſſey.* I do, Sir.

Q. Had you any Converſation with her about the Plaintiff being, or not being the Son of Lady *Altham?—A.* I had.

Q. How long ago is it ſince you had the Converſation with Mrs. *Heath?—A.* I think about two Years and a half ago.

Q. Give an Account of what paſſed between you?

A. About two Years and a half ago, I went with a Gentlewoman to Mrs. *Heath*'s to drink Tea in *Holbourn*, within thirty or forty Yards of Saint *Andrew*'s Church, and as Mr. *Annesley* was the common Converſation of the Coffee-houſes then, we began to talk about him; I do not know whether ſhe or I introduced the Diſcourſe, but ſhe ſaid, to the beſt of my Memory, *Nobody knows that* young Man's *Affairs better than I, becauſe I long lived with his Mother the Lady* Altham; and ſhe expreſſed a great deal of Concern for him, and the Circumſtances he was in: ſhe told me withal, *That the Ducheſs of* Buckingham *ſent for her three times, and that ſhe was in private with her.* And I have no more to ſay, my Lord.

Q. Did ſhe tell you the Import of the Converſation between her and the Ducheſs of *Buckingham?*

A. I do not remember ſhe did, nor I never aſked her.

Q. Did ſhe ſay concerning whom, or what the Ducheſs ſent for her?

A. To the beſt of my Remembrance, ſhe did about Mr. *Annesley.*

Q. I aſk you again, and recollect and conſider very well before you give an Anſwer, Are you ſure that Mrs. *Heath* ſaid that Lady *Altham* was the Mother of this young Man; or was it only this, *that I have long lived with Lady* Altham?—*A.* She ſaid, my Lord, that ſhe had lived a long while with his Mother, Lady *Altham.*

Q. Are you ſure ſhe called her his Mother?—*A.* Yes, I am, my Lord.

Q. Recollect whether you heard Mrs. *Heath* ſay any thing concerning any Perſon's being much wronged or injured.

A. She did ſay, *That the young Gentleman was very much injured, and that Nobody knew better than her, becauſe ſhe had lived long with the Lady* Altham *his Mother.*

Q. Pray, Sir, had this Mrs. *Heath* any Diſcourſe concerning her coming to *Ireland*, or that ſhe expected any thing?

A. She ſaid *ſhe believed ſhe ſhould come into* Ireland, but I do not remember that ſhe ſaid ſhe expected any thing; it would have been very imprudent of her to tell me ſo, if ſhe did.

Mrs MARY HEATH.

Q. Mrs. *Heath*, do you know that Gentleman that ſits down there?

Mrs. *Heath.* Yes, I have ſeen him ſeveral times.

Q. Do you remember about two Years ago, that he drank Tea at your Houſe, with one Mrs. *Simpſon?—A.* He has ſeveral times.

Q. Did he drink Tea with you after the Account came concerning Mr. *Anneſley?—A.* He has ſeveral times.

Q. I aſk you then, whether you had ever any Converſation with him in relation to the Plaintiff, and what was it you ſaid?

A. I have ſeveral times talked about it, and ſaid, *What a vile Thing it was to take away the Earl's Right, and that my Lady never was with Child*; and I cannot ſay no more if you rack me to Death.

Q. How long have you known that Mr. *Huſſey?*

A. Whether three Years or how long I can't ſay.

Q. Can you ſay any thing of his Character?

A. I can ſay no more than that ſome ſaid he was a Gentleman's Servant, and ſome ſaid he lived by Gaming.

Q. Do you believe him an honeſt Man?

A. I can ſay nothing of him; but if he ſays that I ſaid *my Lady had a Child*, I cannot ſay he is an honeſt Man.

Q. Did you ever ſay that *Nobody knew that young Man's Affairs better than you?*——*A.* No, my Lord, I never did.

Q. Did you ever give it, in his Preſence, as a Reaſon why you ſhould know the young Man's Affairs, that you had long lived with Lady *Altham*, his Mother?—*A.* No, my Lord, I never did; and if I was to be torn to Pieces, I would ſay no ſuch Thing.

To Mr. HUSSEY.

Q. Repeat the Words you heard her ſay.

Mr. *Huſſey.* She told me that *the Ducheſs of* Buckingham *had ſent for her herſelf*, and I cannot ſay who introduced the Converſation firſt; but Mrs. *Heath* ſaid, *Poor Gentleman, I am ſorry for him from my Heart; for no one has Reaſon to know his Affairs better than I do; for I lived long with Lady* Altham *his Mother.*

Mrs. Heath. *By all that is good and great, I never ſaid any ſuch Word; I never thought that you was ſuch a Man; I have heard People ſay that you were a Gameſter, and lived in an odd way, but I could never believe it 'till now, but I always took your Part, and ſaid you behaved like a Gentleman.*

Mr. Huſſey. *I am a Gentleman, I can bring ſeveral People to juſtify me to be a Gentleman, and a Man of Family; indeed I have heard you ſay it, and ſpeak it with all the Regret and Concern imaginable.*

To Mrs. HEATH.

Q. Do you remember the Time that Lady *Altham* went to *Wexford* Aſſizes?——Mrs. *Heath.* Yes.

Q. Was that for the Trial of one *Doyle?*

A. I do not know any other that was tried but Mr. *Walſh*; my Lady came home and told me how handſomely Mr. *Walſh* pleaded for himſelf.

Q. Do you remember what Day of the Week it was you went to the Aſſizes?—*A.* Indeed, my Lord, I do not.

Q. Did my Lady *Altham* lodge at Mrs. *Vice*'s more than twice?

A. No more than twice.

Q. Would you be underſtood then, that the firſt time was when ſhe came from *Dunmaine*, after ſhe went down from Mrs. *Briſcoe*'s?

A. A little before the Queen died the firſt time was, and the ſecond a little before King *George*'s Birth-day.

Q. What time of the Year was it after the King's Birth-day that you went into the Country?—*A.* Some time in the Summer.

Q. Did you ever come up to Town after the Separation?

A. Not till the Time we left *Roſs.*

Q. Was the Aſſizes begun before you went to *Wexford*, or did they begin after?—*A.* I believe they begun after, I don't know.

Q. Do you know one Mr. *Higginſon*, that was Receiver to *Arthur* Earl of *Angleſea?*——*A.* No, I do not. †

Tueſday, November 22.

The Court ordered Mrs. Henrietta Cole, *and Mrs.* Heath, *to confront each other.*

To Mrs. HEATH.

Q. Mrs. *Heath*, you ſaid, as well as I remember your Teſtimony, that *Rolph* was Butler at *Dunmaine?*

Mrs. *Heath.* Yes, when I firſt went down.

Q. Can you recollect how long he continued there?

A. No, but I remember he went away when we were in *Dublin.*

Q. When?——*A.* The laſt time that we came up.

Q. You mentioned that you ſaw the Fire-works, the firſt Birth-day of King *George* the Firſt, from Captain *Anneſley*'s Lodgings?——*A.* I did.

Q. Had you left *Rolph* in the Country then, or had you not?

A. I left him in the Country, in the Houſe.

Q. Did you find him in the Houſe when you returned?

A. No, for my Lord hired a Butler in *Dublin*, one *Charles Magher*, and ſent him down.

Q. Was he ſent before my Lady went back?

A. He was ſent while we were at Mrs. *Vice*'s, and hired there.

Q. Was there any Account that *Rolph* had quitted the Family before *Magher* was hired?

A. I cannot tell; but there was a Quarrel between *Rolph* and the Gardener, and he was ordered to quit it.

Q. What Time of the Year did you go back with my Lady to *Dunmaine?*——*A.* It was above a Year we ſtaid in Town.

Q. Did *Magher* act as Butler during that Time?---*A.* He did, my Lord.

Q. You came over with my Lady from *England?*——*A.* I did.

Q. You firſt came to the Houſe of Captain *Briſcoe?*

A. We came there to lodge.

Q. Where did you go immediately after you left Captain *Briſcoe*'s?

A. We went down to *Dunmaine*, and got there on *Chriſtmas-Eve.*

Q. Did not you go firſt into other Lodgings?

A. We did not go at all to any Houſe to lodge.

To Mrs. COLE.

Q. Do you remember the Time of Lady *Altham*'s coming to your Houſe, when the Reconciliation happened?——Mrs. *Cole.* I do.

Q. What became of my Lord and Lady afterwards?

A. To the beſt of my Knowledge, they did not ſtay in our Houſe above four or five Days, and they went and took Lodgings at Mrs. *Vice*'s.

To Mrs. HEATH.

Q. Do you know this Gentlewoman?

Mrs. *Heath.* I do remember her.

To Mrs. COLE.

Q. Did you ever viſit, after they had left your Houſe, while they remained in Town?

Mrs. *Cole.* I cannot tell, but I believe we might.

Q. Recollect yourſelf and fix, whether you are certain that they went to *Vice*'s, or any other Place from your Father's?

A. Indeed, my Lord, I believe they went to Mrs. *Vice*'s.

Q. Can you be poſitive that they lodged in any other Houſe in *Dublin* but your Father's, before they left *Dublin?*---*A.* I am poſitive.

Q. What do you found your Opinion upon?

A. I believe I have ſeen them in *Dublin.*

Q. Well, but what Reaſon have you to think they went to *Vice*'s, before they went to *Dunmaine?*

A. The Reaſon I can recollect is, that after my Lord and Lady came together, my Father was ſtill uneaſy, though they were come together, till my Lord took her to a Lodging of his own; and he thought if they went to lodge at ſome other Place, it might have a better Face or Air of a Reconciliation.

Q. Did you underſtand your Father to mean by that, that it would become more public and notorious to Mankind, that Lord and Lady *Altham* were really reconciled?

A. Yes, I did underſtand that to be his Meaning.

Q. How long was Lady *Altham* at your Houſe, in the whole?

A. A Month or ſix Weeks before my Lord came and was reconciled, and not above four or five Days after the Reconciliation, at our Houſe.

* When *John Ryan* was croſs-examined, the Counſel for the Defendant aſked him, *What Religion he was of?* He anſwered, *I am a Roman Catholick.* Then they aſked him, Do you follow any Buſineſs, or are you of *any Profeſſion?* The Court ſaid, You need not anſwer *that Queſtion*, if you think it will *criminate* yourſelf; and he refuſed anſwering it.

† After the Evidence for the Plaintiff on the Reply was cloſed,

" Mr. *Serjeant Marſhall*, of Counſel for the Plaintiff, ſtated the Title of *Arthur* Lord *Altham*, from the Wills and Codicils of *James* the firſt Earl of *Angleſea*, to ſhew that " *Arthur* Lord *Altham* was only Tenant for Life; the Counſel for the Defendant having inſiſted, that he was Tenant in Tail under the ſaid Wills and Codicils; upon which " the Wills and Codicils were in part read.——But the Court were pleaſed to interpoſe, and ſaid, That this was a Queſtion of *Law* that might require great Conſideration, " and was not neceſſary to be determined at this time; the only material Point being, what was the *Opinion* of Lord *Altham* concerning his Title; that is, at the Time " mentioned by Col. *Wall*, in his Evidence, (which was, that he never heard Lord *Altham* had a Child by my Lady; for in 1725, Counſel gave an Opinion that he had an " Eſtate Tail, in the Remainder of the *Angleſea* Eſtate. Col. *Wall* told my Lord, that he could ſell the Reverſion of the *Angleſea* Eſtate better if he had a Son, for he " could by *a Fine bar* his Iſſue; but that he could not *bar* the Remainder, not being in poſſeſſion; and that he often heard my Lord wiſh he had a legitimate Son; and " that he had an illegitimate one) therefore whether *Arthur* Lord *Altham* conſidered himſelf as *Tenant in Tail*, or only *Tenant for Life*, of the *Angleſea* Eſtate, for, according " to his Opinion, concerning his Title in that Eſtate, it was his Intereſt to own or diſown his having a lawful Son.

Q. You remember the time of your going down to *Dunmaine?*--*A.* I do.
Q. What time was it?——*A.* It was in the Winter.
Q. Do you remember any Thing concerning the Lady's being indiſpoſed there?——*A.* Yes, I do.
Q. Tell that again.
A. There was an Accident happened, which frightened and fretted my Lady, upon which ſhe became indiſpoſed, and I remember a Servant's being ſent up by my Lord to deſire my Lady to come to Supper, and my Mother was with her two or three times to call her, and yet ſhe excuſed herſelf.
Q. Do you remember any thing that happened upon that?
A My Lady miſcarried.
Q. Who gave that Notice firſt to your Mother?—*A.* Mrs. *Heath.*
Q. At what Time?—*A.* My Mother was called up in the Night.
Q. By whom?
A. By Mrs. *Heath*, who came to my Mother's Room, and ſaid, *For God's Sake, Madam, get up as ſoon as you can, for my Lady is exceeding ill.*

To Mrs. HEATH.

Q. Do you remember that Fact?
Mrs. *Heath.* No, my Lord, there was no ſuch thing happened, for my Lady never miſcarried.
Q. Do you remember that you called up Mrs *Briſcoe* in the Night?
A. No, I never did; I don't know what I ſhould call her for.
Q. Did you ever tell Mrs. *Briſcee* that your Lady had miſcarried?
A. No; for if I had, I ſhould have told a falſe Thing; and I never lay a Night in any Houſe in *Dublin* but Captain *Briſcoe*'s, till we came to *Dunmaine.*

To Mrs. COLE.

Q. Was you, after that Time, in my Lady's Bed-chamber?
Mrs. *Cole.* I was.
Q. How ſoon after?——*A.* The next Morning.

To Mrs. HEATH.

Q. Was ſhe in my Lady's Bedchamber the next Morning?
Mrs. *Heath.* I do not know but ſhe might, for my Lady always breakfaſted in her Bedchamber.

To Mrs. COLE.

Q. Who was it that ſhewed to you that, which you took to be the Abortion?
Mrs. *Cole.* My Mother, my Lord.
Q. Where was Mrs. *Heath* then?
A. Indeed I cannot tell whether ſhe was there or not.
Q. How old was you when my Lady came into *Ireland?*
A. I was either thirteen, fourteen, or fifteen, I cannot remember.
Q. How old are you now?
A I believe I am either forty-five, or forty-ſix.
Q. How old was you when at *Dunmaine?*
A. I ſay, I believe I was either thirteen, fourteen, or fifteen, I cannot recollect.
Q. Do you remember how long my Lord and Lady ſtayed in *Dublin* after they left your Father's Houſe, before they went to *Dunmaine?*
A. Not very long: I cannot exactly tell.
Q. Did you ſee them in that Time ſeldom or often?
A. I cannot tell how often.

To Mrs. HEATH.

Q. Did my Lady keep her Bed, or not, the Day after that Accident of the Saucers?
Mrs. *Heath.* No, my Lord, it never diſturbed her, for ſhe was glad they were gone.
Q. Did ſhe keep her Room the next Day?——*A.* No, my Lord.

To Mrs. COLE.

Q. Did my Lady keep her Room the Day after?
Mrs. *Cole.* She did, and for ſome Days after.
Q. Who was Butler when you was there?——*A.* One *Rolph.*

Here the Evidence on both Sides cloſed.

Friday, November 25.

The Court being met according to Adjournment, and the Jury having appeared as uſual, the Lord Chief Baron *Bowes* ſummed up the Evidence in the following Charge.

Lord Chief Baron's Charge.

Gentlemen of the Jury,

We are now come to the laſt Period of this very important Trial, and after having attended to a longer Evidence than ever was known upon a Trial at Law, You, Gentlemen, by your Verdict, muſt determine a Queſtion of as great Conſequence both as to Property and Title, as ever came before a Jury.

I did apprehend when this Trial began, that it would run out to a great Length, and therefore apprized you of what I thought muſt be the Conſequence, that the Court would not be able minutely to ſum up the Evidence upon this, as upon like Occaſions; and therefore recommended it to you to make and enter your own Obſervations, as the Evidence ſhould be laid before you: But when I conſider your exemplary Behaviour during the Courſe of this long Trial, the Attention you have given, and the Deſire you have expreſſed to do Juſtice; I think it incumbent upon the Court, as far as they can, to be aiding and aſſiſting to you, in this your Search after Truth. To this end I ſhall, though very briefly and imperfectly, lay before you what hath occurred to me; which I ſhall do in this Method. I ſhall endeavour by way of Narrative, to collect the Facts that have been ſworn to on both ſides; I ſhall next mention the Objections, as far as I have taken them, that have been made to the Credit of the reſpective Witneſſes, together with ſome Obſervations that may aſſiſt you in judging how far thoſe Objections ought to weigh with you. And as it will appear in the Courſe of this Evidence, that there have been Inconſiſtencies, and, in the moſt material Facts, direct Contradictions; I ſhall therefore take notice of thoſe Circumſtances attending this Caſe which may throw a Probability or Improbability upon the Teſtimony you have heard.

The Action to be tried is, an Ejectment brought for Lands in the County of *Meath*; and by the Admiſſion of the Counſel for the Defendant the Plaintiff's Title is brought to a ſingle Queſtion, Whether the *Leſſor*, Mr. *James Annesley*, be the legitimate Iſſue of *Arthur* late Lord *Altham?* It is admitted on both Sides, that the Plaintiff and Defendant claim the Lands in queſtion, under the Will of *James* Earl of *Angleſea*; and that by ſuch Will, the Limitation to the Heirs Male of the Body of *Arthur* late Lord *Altham*, is prior to the Remainder limited to the Defendant; and therefore if the Plaintiff can prove that he is the legitimate Iſſue of *Arthur* late Lord *Altham*, a Verdict muſt be found for the *Leſſor* of the *Plaintiff*; but if he fail, then there is an undoubted Title in the Defendant, being the Perſon next in Remainder under the Will of *James* Earl of *Angleſea*; and a Verdict muſt be found for him.

Gentlemen, The Queſtion being a *meer Matter of Fact*, the Plaintiff's Counſel have proceeded to lay their Evidence before you in the following Manner: They have given Evidence to induce a Probability, that *Mary* the Wife of *Arthur*, late Lord *Altham*, might have had a Child, and that, by examining Mrs. *Dorothy Briſcoe*, and Mrs. *Henrietta Cole*, alias *Briſcoe*, to ſhew that there was a Reconciliation between the Lord and Lady *Altham*, ſome time in the Year 1713; that they came together and cohabited at the Houſe of their Father in *Bride-Street*, from whence they went to one Mrs. *Vice*'s in *Eſſex-Street*, and from thence to *Dunmaine*; and there another Circumſtance ariſes, which is, that Mrs. *Cole* and her Mother being invited to *Dunmaine*, went thither, and while they were there, upon an Accident, which has been ſo often repeated that I ſhall not go into the Particulars of it, Lady *Altham* was frighted, and in conſequence of that Fright miſcarried; and the ſame Witneſs, Mrs. *Cole*, ſwears that ſhe ſaw an Abortion. They have alſo produced *Catharine Cormack*, to ſhew a ſecond Miſcarriage, in the ſame Summer with that mentioned by Mrs. *Cole*; the Circumſtances of that likewiſe have been ſo often repeated, that I only mention the Fact. Having done this, the Plaintiff proceeded to ſhew an actual Pregnancy in *Mary* Lady *Altham*. The Evidence for this was *Alice Bates*, the Servant of Mrs. *Briſcoe*, who was admitted to Intimacy with Lady *Altham*, and to whom it was told by Lord *Altham*, and acknowledged by Lady *Altham*; and who further ſwears the Pregnancy was ſuch that ſhe did obſerve it, and by laying her Hand upon the Belly of Lady *Altham*, ſhe took upon her to ſay that Lady *Altham* was big with Child. I do not, as I go along, take notice of the Objections to the reſpective Witneſſes, intending to conſider them together. In the next place, they have endeavoured to prove Circumſtances preparatory to the Delivery of Lady *Altham*. *Dennis Redmond* tells you, that he was ſent for the Midwife, and *Thomas Brooks*, that he was ſent for as a Surgeon to let her blood at the time of her Labour; and *Dennis Redmond* and *Philip Breen* both ſpeak to their obſerving that Lady *Altham* was pregnant before this time: And, Gentlemen, it did appear that theſe two were Servants about the Houſe, though in a very low Station; the one, I think, a Helper in the Garden, the other in the Stables.

The next Period is the actual Delivery; and for that, they have produced two poſitive Witneſſes; the one *Mary Doyle*, a Servant in the Family; the other *Eleanor Murphy*, who calls herſelf Chamber-maid; both theſe ſwear they were in the Room at the time of the Delivery; and as far as their Teſtimony ſhall avail, are poſitive Witneſſes to the Fact. The next, are the Circumſtances conſequent upon the Delivery, that were Evidences of it. The firſt is ſpoke of by *Breen* and one or two more, and that is, the Rejoicings that were made upon the Birth of this Heir. The next was the *Chriſtening*, which is ſworn to by the two Maids that I mentioned before; who alſo ſwear, that Mr. *Colclough* and Mr. *Cliff* were Godfathers, Mrs. *Pigot* Godmother, and that Mr. *Lloyd* was the Clergyman that officiated in the chriſtening of this Child. The next is *Chriſtopher Brown*, who was a Servant attending upon one Mr. *Anthony Cliff*, not the *Cliff* that was the Godfather, but an invited Gueſt; and he ſpeaks to the being there at that Time, and attending his Maſter at the Table, at the Entertainment that was made on the Occaſion. *John Scot*, a Servant, I think, of Mr. *Pigot*'s, he ſpeaks to a ſubſequent Time after the Delivery, and ſays, that after his Return with his Maſter from *England*, he was ſent a dozen Times, as he has ſworn, to this Houſe with Meſſages, and Compliments to the Lady, and to know how the Child did.

Gentlemen, it will be material for you to obſerve that the Birth to which this Evidence has been applied, has been fixed by the Witneſſes, and admitted by the Plaintiff's Counſel, to have happened in the Beginning of Summer, 1715; which the Witneſſes have alſo explained to be about the Month of *May*. There were two Witneſſes more, proper for me to take notice of, but I ſhall not give you their Evidence by way of Teſtimony, becauſe they ſeem to differ from all the reſt. The one was that of *Charles Mac Carthy*, who was brought to prove the Pregnancy of Lady *Altham*, and ſomething further, but he ſet out from a Period of Time ſo different from the other Witneſſes, that the Counſel for the Plaintiff did not think proper to proceed in the Examination of him; nor have the Counſel for the Defendant made any uſe of him. The next I ſhall lay aſide, is Major *Fitzgerald*, whoſe Evidence was to the Declaration of Lord *Altham*, the Day my Lady was in Labour, and the Invitation he had to go and tap the Groaning-drink, and his Excuſe for not going, as it was an improper Time; the Invitation he had to go the next Day; that he went, dined there, but did not lie there; that the Child was brought down to him, and that he gave the Nurſe half a Guinea; but then he fixes this in Harveſt, and therefore no Advantage has been taken of that Examination by the Plaintiff; the Defendant indeed has made uſe of it, which I ſhall take notice of in the Objections.

The next Evidence, Gentlemen, has been to ſhew the Diſpoſitions that were made relating to the Child thus brought into the World; and, indeed, I ſhould have mentioned before, the Evidence of *Matthew Furlong*, who applied for having his Wife employed as Nurſe to that Child; but, Gentlemen, the ſame Evidence for the Plaintiff that ſwore to the Chriſtening, the ſame Evidence that were about the Houſe, and preſent at the Birth, have gone farther, and told you that one *Joan Landy* was appointed the Nurſe for this Child; and they have all of them given this Account of *Joan Landy*, that ſhe was a Perſon unmarried, that was with Child, and ſuppoſed to be ſo by Lord *Altham*, that was turned away, as ſome ſay, upon my Lady's coming down; as others ſay, before my Lady came into that Country: This Perſon was choſe to be the Nurſe. She had a Place of Reſidence, the Cabbin that was built for her Father, a Quarter of a Mile from the Houſe of *Dunmaine*; which, as the Witneſſes for the Plaintiff tell you, was fitted up upon the Occaſion of receiving her and this Child. *Laffan* has told you that a Room was added; others

others, that the Cabbin was white-waſhed and beautified, but ſpeak not of the Room; but all agree that this Nurſe had the Child there, and that for the Conveniency of viſiting this Child, a Road for the Coach was made from *Dunmaine-Houſe* to this Place. They tell you that the Child remained with her 'till *Joan Laffan* comes into Play as dry Nurſe: And *Joan Laffan* ſays, ſhe came into the Family when the Child was three or four Months old, and ſhe has fixed her coming to Harveſt after the King came to the Crown; and that it was put into her Care about three Months before the Separation of Lord and Lady *Altham*, and continued in her Care ſo long as it continued at *Dunmaine*; and that the Child was carried from her to *Kinnea* in the County of *Kildare*; and that it was about three or four Years old at the Time it went to *Kinnea*. They have introduced as Evidence the Declarations of Lord and Lady *Altham*, in reſpect to Lady *Altham*'s having a Child, and in reſpect to Lord *Altham*'s acknowledging that Child. The earlieſt in point of Time is that of Alderman *Barnes* of *Kilkenny*, who ſays, that it was in the Beginning of the Summer, and by his Account not long after the Birth; he tells you the Occaſion of his going to *Roſs*, and that there he met with Lord *Altham*; that my Lord took him into an upper Room, and diſcloſed his Mind, by telling him, "Tom, *I will tell you good News, I have a Son by* Moll Sheffield;" that he went next Day to my Lord's Houſe, but that he did not ſee the Child, nor did he hear either my Lord or Lady ſpeak of it whilſt he was there; but at laſt did ſay, that he believed the Child's Health might be drank at the Table. The next Witneſs that I ſhall mention upon this Head, was *Edward Lutwitch*, and he ſpeaks to the ſeeing of a Child at *Roſs*, for whom my Lady *Altham* had beſpoke two Pair of Shoes, which he was to make, and when he brought them Home, he inquired for the young Lord, and they told him he was gone back to *Dunmaine*; upon which Lady *Altham* broke out into this Exclamation, "It had been better "for me to have been the Wife of the pooreſt Tradeſman in *Roſs* than my "Lord *Altham*'s; for then I could ſee my Child every Day, but now I can "ſee him but by Stealth." Gentlemen, the Witneſſes for the Plaintiff that were in the Houſe, and converſant in the Family, tell you, that my Lord did always acknowledge this Child to be his lawful Son; that this Child was ſhewn as ſuch to the Perſons that came to the Houſe to viſit, and ſome tell you, that they often ſaw the Child in and about the Houſe.

I mentioned, Gentlemen, the Child's being removed to *Kinnea*, in the County of *Kildare*, and this was after the Separation of Lady *Altham* from my Lord. When the Child was brought to *Kinnea*, they have gone on by Evidence, to ſhew you, that there he was treated as the Son of my Lord by Lady *Altham*. For this, they have produced Mr. *Miſſet*; who tells you, that there was a Child that he took to be about ſix Years old; that he went to a School in the Neighbourhood, and was conſidered as the Child of Lord *Altham*; that it was called the young Lord; that it was ſent to School with a Servant, and that he remembers it particularly by an open Lace upon his Hat, which he believes was the firſt and laſt that had ever been at that School. Whilſt he was at *Kinnea*, as that Witneſs ſays, the Child was treated by my Lord as his Son; and Mrs. *Annesley*, a Relation of the Family, who lives in the Neighbourhood of *Kinnea*, tells you, that her Brother Colonel *Geoffry Paul*, a Gentleman well known to moſt Perſons here, uſed to viſit my Lord, and my Lord to viſit him, and that her Brother uſed at Table to drink the Boy's Health as my Lord's Son; and ſays, that ſhe was ſure, from the Knowledge ſhe had of her Brother, that if he had ſuſpected that he was the illegitimate Son of Lord *Altham*, he would not have done him the Honour to have drank his Health; and that ſhe never heard he was the illegitimate Son, till of late that he has been called ſo, on account of this preſent Diſpute.

The next Place the Child was carried to was *Carrickduff*, in the County of *Carlow*; and there you have had ſeveral Witneſſes to prove him the legitimate Son, viz. Two *Cavenaghs*, *James Dempſie*, and Mr. *Charles Byrne*; who all ſwear to this Child's being there acknowledged as my Lord's lawful Son, and that they had no Doubt upon them, at that Period of Time, concerning his being ſo; and it appears, that *Dempſie* was taken in to teach the Child, and afterwards kept School where the Child was conſtantly ſent.

From hence, they have carried him to *Dublin*, to my Lord *Altham*'s Houſe in *Croſs-lane*; and here *Catherine O' Neil*, who was the Perſon that brought him, gives you an Account of the Identity of the Perſon, and likewiſe of his being acknowledged as the Son of Lord *Altham*. And *Nicholas Duffe*, who kept a Publick-Houſe, and was a Chairman in this Town, who was frequently with my Lord (and I think I may, once for all, obſerve, that this unhappy Nobleman did not diſtinguiſh his Company as became one of his Rank and Quality) tells you, that my Lord has mentioned this Boy to him, as one that would one Day be Lord *Altham*; and another Time, in Diſcourſe, told him, he would be Earl of *Angleſea*. From *Croſs-lane* (there is ſomething mentioned of *Stephens Green*, but I could not collect at what Period of Time he was there), the next Place he is removed to with Certainty, is *Frapper-Lane*; and there he is ſome time with his Father, is put to School to one *Carth*, and is known to ſeveral People in that Neighbourhood: To this you have the Evidence of the two *Byrnes* and *Matthew Plunket*, who ſwear that he was treated as the Son of Lord *Altham*, though the Care of him ſeems to leſſen at that Place; for in *Croſs-Lane* you hear of Miſs *Gregory*, and more of her in *Frapper-Lane*; and to her they have imputed the Neglect ſhewn to this Son. From hence my Lord moves to *Inchicore*, about the Month of *Auguſt* 1724, at which Time the Child, then about nine Years of Age, was left by his Father. The Evidence ſpeak of his being ſent immediately to the Houſe of one Mrs. *Cooper*. Here the Evidence begins to be leſs connected than before; but I ſhall mention it as given. *Michael Waldron* and *Dunn* ſay, he was put to School to the ſaid *Dunn*, who alſo ſwears to the Perſon, and that he was put to School by one *Cavenagh*, a Dancing-Maſter; that he afterwards ſaw Lord *Altham* at *Cavenagh*'s, and that Lord *Altham* promiſed to pay him for his Care of him. It was before this Period of Time, that *Byrne* junior ſpeaks of his coming to him, and the Care he took of his School-fellow, and the deſtitute Condition he was then in. After this, the firſt Account that I think is given of him, is that of Mr. *Amyas Buſhe*, who ſpeaks of him as a Boy loitering about the College, who got his Subſiſtence by running of Errands, by the Name of a Scull; that, moved by his Story, he was taken in by the Humanity of this young Gentleman, and that he had Intentions to do for him, if his Grandfather would have permitted him to keep the Lad. The next Account we have of him is from *Farrell*; he tells you, that he received him for a little while into his Houſe, and that at the Requeſt of his Father; and gives an Account how he handed him over to *Purcell*; and *Purcell* tells you the Care he and his Wife took of him, and that they both conſidered him as the lawful Son of Lord *Altham*. The Boy left *Purcell*'s ungratefully, after the Treatment he met with there; and the next News of him was at the Houſe of Mr. *Tighe*, taken in by his Son; this in Point of Time muſt have been ſoon after the Death of Lord *Altham*, which happened in *November* 1727; and in the *February* following, this Boy, about thirteen Years of Age, was miſſing, without any previous Quarrel, and, as the Witneſs ſoon after heard, was ſent to the *Weſt-Indies*.

Gentlemen, the *Plaintiff*, after this, thought it neceſſary to give ſome Evidence, to account how a Child that had been acknowledged by the Father as his lawful Son, came to be treated in this manner; and you will obſerve, that one of the Witneſſes, *Plunket*, ſays, that in *Frapper-Lane* Miſs *Gregory* lived with Lord *Altham* as a Miſtreſs, that ſhe complained of this Boy, and that he was corrected: Indeed, he does ſay, that the Boy owned the Fault that he was charged with; and a Witneſs produced for the Defendant, *Arthur Herd*, tells you what the Offences were, and the immoderate Correction that was given to this Boy. And other Witneſſes have told you, that my Lord, Miſs *Gregory* and the Boy did not agree, and that Lord *Altham* could have no Peace whilſt the Boy was in the Houſe.

Gentlemen, the next Fact that the Counſel for the Plaintiff have thought proper to apply their Evidence to, has been to ſhew that this Boy, at the Time he was taken from Mr. *Tighe*'s, was ſent out of the Kingdom by the Procurement of the now Defendant, and that by Force, about five Months after Lord *Altham*'s Death. He, as has been ſaid, died in *November* 1727, and the Boy was taken away the *February* following. And, Gentlemen, as this ſeems to be a controverted Fact, I ſhall mention the Evidence particularly. The firſt Account is that which *Purcell* gives, That after the Child had the Small-Pox, the preſent Defendant came to his Houſe, enquiring after this Boy; that he there called him the Son of Lord *Altham* his Brother; that the Boy cried, and ſaid he was afraid of his Uncle Captain *Annesley*; and that Captain *Annesley* told *Purcell* he would ſpeak to my Lord, and induce him to make him a handſome Conſideration for his Care of the Child. Some Time after this, and after my Lord *Altham*'s Death, the Boy came to *Purcell*, and told him, his Miſtreſs had ſent him, for that a Man had come to his Houſe from his Uncle, deſiring him to go to the Houſe of one *Jones* in the Market; and that ſhe deſired Mr. *Purcell* to go along with him: He tells you, that he went thither, and that he met this Captain *Annesley* there, and the Expreſſions that were made uſe of by him in order to take away this Boy; and he tells you that he reſcued and carried home the Boy. The next Account that they give you, is by one *Marks Byrne*, a Conſtable at that Time, who tells you, that he was applied to by one *John Donnelly*, who told him that he had a Jobb, for which he was to have a Guinea, which was to fett this Boy, and bring him to Lord *Altham*; that accordingly they carried him to the Houſe of this ſame *Jones*; that Lord *Altham* was there; that he accuſed him of ſtealing a Silver Spoon, and ordered them to take away the *thieving Son of a Whore*; that accordingly they took him away, and in carrying him to *George's Quay*, as they were directed, that there was a Crowd gathered; that the Boy cried; that they put him in a Hackney-Coach which they met near *Eſſex-Bridge*, and carried him to the Place appointed on *George's Quay*; that my Lord followed on Foot; and there he tells you, that he ſaw one *Reily*, a Servant of Lord *Altham*'s, and that my Lord went into the Boat with *Reily*, the Boy, and *Donnelly*; that they went off, and that he ſaw them go to the End of the Wall. The next Perſon produced was *Reily*, and he agrees in the material Circumſtances, which were, that he ſaw this Boy on *George's Quay*, that he went into the Boat with my Lord and the Boy, and that my Lord and the Boy went on Board the Ship; that the Boy was left behind in the Ship, and by the Time the Boat returned it was Night. Gentlemen, there is, to be ſure, a Difficulty to reconcile the Teſtimony of this *Reily*; but I ſhall ſpeak to that, when I ſpeak to the Objections made to the Witneſſes.

The next Evidence they produced on this Head was, to ſhew that a Ship called the *James* of *Dublin*, *Thomas Hendry* Maſter, ſailed over the *Bar* of *Dublin*, the 30th of *April* 1728; the Ship was entered in the Cuſtom-Houſe Book the 18th, and the Evidence afterwards ſhew that it ſailed the 30th. Mr. *Babe*, the proper Officer, produced the Book, and there this Entry did appear, with this Addition, that the Entry was made by Mr. *Stevenſon*, a Merchant in this Town. The next Step they took was to ſhew from the Books of Mr. *Stevenſon*, that this Boy did actually ſail on board that Ship, and produced Mr. *Cromie*, at that Time Clerk to Mr. *Stevenſon*, in order to ſhew you that this Boy did actually ſail on board this Ship: He tells you, that this Ship was partly freighted by Mr. *Stevenſon*, that it was bound to *Philadelphia*, that the principal Part of the Cargoe were Men and Maid Servants; he produced Mr. *Stevenſon*'s Book of Entries, and this Book being read as Evidence, the Title of it was, *An Account of Men and Women Servants on board the Ship* James, *which went over the* Bar *of* Dublin *the 30th of* April 1728. Gentlemen, there was a long Liſt of Names, and among the reſt was that of *James Anneſley*; and, Gentlemen, this *Cromie* was croſs-examined as to the Manner of putting Servants on board, in order to ſhew you that it was impoſſible this *James Annesley* could have been put on board without his free Conſent; for that the Way of Dealing was to have Servants indented before the Lord Mayor, and the Cuſtom was to have one Part of the Indentures delivered to the Servant, the other to the Maſter of the Ship, and the Name enrolled in the Tholſel-Books: But it appeared from his Evidence, that the Liſt produced and kept by the Merchant, was not taken from the Indentures, or the Books of the Town Clerk, but that the Method of taking ſuch Liſt was, that the Night before the Ship ſailed, the Clerk of Mr. *Stevenſon* went on board, and the Maſter gave him the Names of the Perſons on board, and from that Liſt this Entry was made in the Merchant's Books: So that from this Account, it was very poſſible for Perſons to be ſent away that had never indented. In order to ſhew that this Boy was really indented, the Counſel for the Defendant produced the original Book kept by the Town-Clerk, in which are entered, by the Town-Clerk, the Names of the Per-

sons who indent for foreign Service, before my Lord Mayor; in which was entered the Name *James Hensley*, and insisted that it was the same Person, tho' wrong spelt; and that the Plaintiff had indented in the regular Way, and was carried off, not by Force, but according to Law. But, Gentlemen, I must observe to you, that the Manner of Indenting is such, that wherever a Person of tender Years, as this Child was, being about thirteen Years old, was to indent, it is always expected that the Parent, or some body that can answer for that Child, should be there consenting to that Indenture, or that some Account should be given concerning him. I mention this, because no Evidence has been produced by the Defendant, to shew who were present; and you will consider whether it was not in the Power of Lord *Anglesea* to have produced the Town-Clerk himself who made the Entry, and is now living, and whose Knowledge of the *Anglesea* Family was such, that upon his Memory he might have given some Light into this Affair, and probably could not have mis-spelt the Name of *Annesley*, with which he was well acquainted.

But, to put this Fact out of doubt, the Plaintiff produced *Shelcross Ashe*, an Attorney of the Court of Common Pleas, who had been employed by the Defendant the Earl of *Anglesea*; who tells you, that upon the Defendant's coming to the Title of Lord *Altham*, by his Brother's Death, the Boy was mentioned to his Lordship by a Gentleman in *Ashe*'s Presence; that his Lordship complained of the Reproaches he underwent on the Boy's Account; and in particular, said that *Hawkins*, who was King at Arms, had refused to enroll his Title as Lord *Altham*, upon the Clamour made by this Boy; and thereupon called him Impostor, Vagabond, and he believes, Bastard: That *Ashe* then told his Lordship, if the Boy were a Vagabond, he might be obliged to indent before my Lord Mayor at the *Tholsel*, and be transported. And *Ashe* further says, that some Time after, he was again in Company with the Defendant at a Tavern, with others of the Defendant's Intimates, when my Lord *Anglesea*, then Lord *Altham*, told the Witness he was gone, meaning the Boy; which, coupled with the former Evidence, shews, as was insisted, that the Defendant intended to put the Plaintiff out of the Way; and gives Credit to the Witnesses, who for his Lordship executed such Intention, as before related.

The Plaintiff went further, to shew that the Defendant not only occasioned this Person's being taken away, but upon the Plaintiff's Return into *England*, a Misfortune befalling him, by the accidental killing a Man at *Staines*; that Opportunity was laid hold of to prosecute him, and under that Colour to take away his Life; for which Purpose one *John Giffard* has been produced. He appears to have been an Attorney of the Court of Common-Pleas in *England*, and Agent for the Defendant. Some Difficulty was made whether his Evidence should be received; but the Court having admitted him to be examined, with Liberty to disclose what did not come to his Knowledge as Agent for the Defendant; You, Gentlemen, will not consider whether the divulging Conversation be what is called honourable between Man and Man, or whether the ill Treatment this Person received from the Defendant has induced him to appear to give Testimony in this Cause, but whether what he has sworn be true.

This Witness speaks to the Declarations made by my Lord *Anglesea*, at the Time an Appeal was depending between him and Captain *Annesley*, before the Lords in *England*; upon which Occasion, the Defendant said, that it was better for him to throw up his Titles, which he did not value, and to give up them and the Estate, upon Terms, to *James Annesley* the Plaintiff, whose Right they were; that he would go over to *France*, and live there, where he should be much easier and happier than he was at that Time. He tells you, that this was repeated more than once; that it was not a sudden Resolution, but the Result of deliberate Consideration, accompanied with another Act, which was that of taking a Person into his House, to teach him the *French* Tongue, to qualify him to live in that Kingdom. And the Witness tells you farther, that the Reason why this Project was dropt, was the accidental Homicide committed by the Plaintiff; upon which Lord *Anglesea* changed his Purpose, and resolved to prosecute him; and frequently declared, that he would give 10,000*l.* if he could get him hanged, for then he should be easy in his Titles and Estate; and that this Prosecution cost Lord *Anglesea* Eight hundred Pounds. As I shall not touch this Part of the Evidence again, I must desire you, Gentlemen, to consider, whether the Words sworn to be spoke by Lord *Anglesea*, as to giving up his Estate, may not be accounted for as the rash Expressions of a Man distressed in his Circumstances; but, Gentlemen, if you believe the other two Facts, that is, that Lord *Altham* did spirit away this Youth, and that he did carry on this Prosecution against him, the Question will then be, what Influence they ought to have upon this Cause? And how far they ought to conclude against the Defendant as to the Fact in Question, will deserve your Consideration, that the Plaintiff may not suffer by the illegal Acts of the Defendant, nor the Defendant be injured by your relying too much upon presumptive Evidence. If the Defendant did send away the Plaintiff, that Absence must be imputed to the Defendant. The Suppressor and the Destroyer of Evidence are to be considered in the same Light the Law considers a Spoliator, as having destroyed the proper Evidence; and against him defective Proof, so far as he has occasioned such Defect, shall be received, and every thing presumed to make it effectual. Nay, I think you may by Law go farther, and if the Plaintiff has given probable Evidence of his being the legitimate Son of Lord *Altham*, the Proof may be turned on the Defendant, and you may expect Satisfaction from him, that Lord *Altham* his Brother died without Issue; and this on account of that Evidence which the Plaintiff must be supposed to have lost, by the Defendant's having so many Years put it out of the Plaintiff's Power to assert his Right. And you will also consider whether these Acts are not Evidence to satisfy you, that the Defendant, in his own Thoughts and Way of Reasoning, considered the staying of the Boy here, as what might some way prejudice his Title. But whether, as insisted upon by the Plaintiff's Counsel, you ought to take this as an Admission on the Part of the Defendant, that the Plaintiff was the lawful Son of Lord *Altham*, will deserve further Consideration. Undoubtedly, there is a violent Presumption, because no Man is supposed to be wicked without Design, and the Design in this Act must be some way or other relative to the Title; but whether or no it was the Opinion of the Trouble he might have from this Lad, that induced him to do this Act, or a Consciousness that the Lad was the Son of Lord *Altham*, must be left to your Determination; keeping in your Mind, that it, though violent, is but a Presumption, and that the Defendant has an undoubted Title, unless it be proved that there be a Son of his elder Brother now living.

Taking the Influence of these wicked Acts with you, I shall now briefly mention the Nature of the Defence; which has been, first of all, by many Witnesses to shew that the Reputation of the Country was against there being such a Child. Col. *Lostus*, who lived within eight Miles of *Dunmaine*, who was a Person of that Rank and Distinction in the Country as was likely to hear it, says, he never heard of it. Col. *Palliser*, Mr. and Mrs. *Lambert*, Mr. *Palliser*, Mrs. *Giffard*, have all gone likewise to the same Point, and say, that they never heard of a Miscarriage. But their not hearing of a Miscarriage, has little Weight, because things of that Nature are conducted with Privacy, and the Report of them seldom reaches far. In the next Place, they have produced the Persons, who, they say, were the Servants of the Family at the Time that this Birth must have been: Mrs. *Heath*, my Lady's Woman, *Rolph* the Butler, who was there during that Time, *Anthony Dyer*, who was a Gentleman to my Lord, *Martin Nief* and *Owen Cavenagh*, Servants in the Family. Gentlemen, Mrs. *Heath*, *Rolph* and *Dyer*, are all positive that there was no Child, and that there could be no Child without their Knowledge; and Mrs. *Heath* goes so far as to say, there never was so much as a Pregnancy. These are positive Evidence, that stand in direct Contradiction to the Plaintiff's Witnesses. They have also produced *William Knapper* and *William Elmes* to the same Point, both conversant at *Dunmaine*: *William Knapper* in particular tells you, he was employed by the late Earl of *Anglesea* to sell the *Ross* Estate, which came to him upon Lord *Altham*'s Death without Issue, and that though he made a hundred Articles for Leases of the *Ross* Estate to the Tenants, he never heard one Objection made that there was a Son. They then went into another Piece of Evidence, which, if true, stands in the Place of positive Evidence, because inconsistent with Lady *Altham*'s being delivered of a Child at the Time deposed; and that was, my Lord and Lady *Altham*'s going to *Wexford* at the Spring Assizes, held the 16th of *April*, 1715, and returning from thence to *Dunmaine*, and going soon after to *Dublin*: Mrs. *Giffard*'s Account is this, that there being some Men to be tried as Pretender's Men, the Curiosity of Lady *Altham* proposed a Journey to *Wexford*; that she accompanied my Lady in the Chariot; that my Lord, Mrs. *Heath* and *Rolph*, rode; she says, when they came to *Wexford*, they lodged at the House of one *Sweeny*; that they went into Court and stayed there during the Trial, and that Mr. *Cæsar Colclough* sat by them part of the Time; that they stayed a Week in *Wexford*, and then went Home; and, as appears by the Examinations of *Heath* and *Rolph*, they went to *Dublin* in a very short Time after, and stayed there all the Summer; *Heath* swears it positively, and *Rolph* that they stay'd there 'till he went away. Now, Gentlemen, if this Fact could be established, it would undoubtedly put an End to the Controversy of this Day; because, if Lady *Altham* was at the Assizes of *Wexford*, which appears to be the 16th of *April*; that she continued there a Week, and went back and stayed but two or three Weeks at *Dunmaine*, and thence went to *Dublin*, where she lived the Remainder of the Summer; and this being at the Time when she was supposed to have been delivered of the Plaintiff; you will consider if both can be true. But this Fact has been disputed, and in this Manner; first of all, *Ker*, who was Clerk to my Lord Chief Justice *Foster*, who went that Circuit, tells you, that he does not remember to have seen any Ladies there; this is not a positive Proof, but it is a circumstantial one: The next is *Cæsar Colclough*, who swears that he does not remember to have seen them, and from the Business he was engaged in, the Gentleman on Trial being his Relation, he does not believe he sat by any Woman that Day. There were also two positive Witnesses produced to prove Lady *Altham* was not there, which were *Turner* and *Higginson*. *Turner* tells you, that he was at the House of *Dunmaine*, when my Lord went to that Assizes; that he saw him get into the Coach, and that he saw my Lady in the House after my Lord was gone. *Higginson* tells you likewise, that on the *Tuesday* of this Assizes, he was at *Dunmaine*, and the Occasion that brought him thither (which makes him certain to the Time) was, to desire Lord *Altham* to send somebody to *Innisworthy* for the 28 Pounds Arrear of Rent, which his Son was to bring there. He tells you, that he saw my Lady, that she was undressed, and that he believes she was with Child, and drank to her safe Delivery. And there is one Circumstance further, which you should take with you, that Mrs. *Heath* says in her Account, the Sister of Mrs. *Giffard* went with them; tho' Mrs. *Giffard* said, No one went with them but the Persons she named, but did not name her Sister.

The Defendant has also, in order to account for what has been said by the Plaintiff's Witnesses, as to the Child taken in by Lord *Altham* after the Separation, and who was carried by him from Place to Place, and treated as his Son, examined the several Witnesses produced by them, who were acquainted with Lord *Altham* and his Family, during the Time the Boy was with him, to prove that the Boy kept by Lord *Altham* was the Son of *Joan Landy* by Lord *Altham*, as was supposed; and that he was always considered and treated by that Lord as his Bastard. And thus, Gentlemen, you see how the Witnesses produced in this Cause stand, as to the most material Circumstances, in direct Opposition to each other; so that the one or the other must speak false; which of them have done so, God only knows. You, Gentlemen, must, after taking the whole into your Consideration, say which, in your Opinion, deserves Credit. I shall now take notice of the Objections to the Witnesses on each Side.

The Objections that have been made to the Plaintiff's Witnesses, as to their Uncertainty with regard to Time and Place, and other Circumstances to which they were examined, were also made to the Witnesses for the Defendant; and if an Imputation arises from thence, you will consider whether it be not equal on both Sides. In the next Place, an Objection is made to the Condition of the Evidence for the Plaintiff, that they are Servants of the lowest Stations, and meanest Condition. You will consider how far that Objection ought to lessen, much less take away the Credit of their Testimony: Servants about the Family, tho' in the meanest Stations, were likely to know such particular Facts as they have given Evi-

dence of. But on the other Side, you will conſider that the Fact in Queſtion, is a ſingle Fact, which might be put in the Mouth of any body, and which has been affirmed and denied on Oath by the reſpective Witneſſes. You will therefore, I think, find it neceſſary, with Caution, to attend to the Objections made to the Credit of the ſeveral Witneſſes that ſtand in Oppoſition to each other: For Inſtance, if the Credit of Mrs. *Cole* can engage your Belief as to the Circumſtance of the Miſcarriage, then Mrs. *Heath* has not ſworn true; becauſe ſhe has ſworn the contrary, and that to a Fact which muſt have been obſerved by her. Again, if Mrs. *Cole* obtains Credit, Mrs. *Heath* muſt be miſtaken in another Fact, though not of that Conſequence, and that is, the Removal to *Dunmaine*: Mrs. *Cole* ſays, and Mrs. *Briſcoe* too, that my Lord and Lady *Altham* went to Lodgings in *Eſſex-Street*; Mrs. *Heath*, that they went directly from Capt. *Briſcoe*'s to *Dunmaine*. Now, Gentlemen, as to Mrs. *Cole*'s and Mrs. *Briſcoe*'s Teſtimony, there is no Imputation, other than what ariſes from their Age, at the Time to which their Teſtimony relates, when the eldeſt of them could not be above Thirteen by her own Account, and ſhe ſpeaks to a Fact, which *Mr. Prime-Serjeant* thinks was not likely to engage the Attention of ſo young a Perſon, I mean the Place to which they removed; but you will conſider, whether the Removal of my Lord and his Lady from their Family to another Place in *Dublin*, eſpecially as an Intimacy was kept up between them, be not ſufficient to anſwer that Objection. As to the Circumſtance of the Miſcarriage, there ſhe is extremely poſitive, and probably the Curioſity of Girls of her Age, in theſe Matters, exceeds that of grown Perſons. There was an Obſervation made as to the Word *Abortion*, but I think there can be no great Weight laid upon that, the Term may have been learnt ſince. There has been alſo a Witneſs produced to diſcredit Mrs. *Heath*, as to the very Subſtance of her Teſtimony; what he has ſaid muſt be freſh in your Memory, but you will remember the ſeeming Art made uſe of by him, to ſhew he was compelled to give his Teſtimony. Beſides, his Teſtimony is not ſupported by Circumſtances, but is another Inſtance of Oath againſt Oath.

Gentlemen, The next Witneſs I ſhall take Notice of, is *Rolph*: (I don't ſpeak regularly to them, intending only to take up the moſt material) He certainly delivered his Teſtimony in a very clear Manner; he gave an Account of his coming to and living in the Family, and of his Continuance in it, and Manner of leaving it; and there is one Circumſtance that gives Credit to *Rolph*, as he is the only one that can be ſaid to receive Credit from the Witneſſes on the other Side. The Plaintiff's Witneſs, *John Scott*, has ſaid, That *Rolph* was Butler before, and continued after my Lady's Delivery; which agrees with *Rolph*'s Evidence, but varies from all who have ſpoke to the Birth; who ſay, that *Rolph* was gone; that *Magher* lived there at the Time of *Doyle*'s and *Murphy*'s being there. *Dennis Redmond* does ſay, there was ſuch a Servant as *Rolph*, but that he was gone before the Delivery. But then you will conſider what Figure this *Rolph* made on his Croſs-Examination; ſuch an abſolute Uncertainty as to every Thing but what he was brought to diſcloſe, and his Readineſs to give Evidence on one Side of the Queſtion, neceſſarily induce Suſpicion; and you will conſider his Attempt to throw a Reflection on the Plaintiff, as if thoſe concerned for him would have tampered with *Rolph*: But the Story carries an Improbability in it, that a Man ſhould ſend Victuals before him, and come and offer to a Stranger what was not in his Power to give, and that in ſuch an open Manner.

[Here Mr. Baron *Mounteney* ſpoke to the Lord Chief Baron.]

Gentlemen, My Brother *Mounteney* mentions one Thing, which I am miſtaken in, if he is right; he ſays, That when Mr. *Mac Kercher* made the Offer of a Lieutenancy to *Rolph*, his own Company were only preſent; I do apprehend there was not only the Company of *Mac-Kercher*, but the Company that was with *Rolph*. Gentlemen, if I miſtake the Evidence on either Side, impute it to my Memory, for I have no Intention to miſrepreſent, and ſhould be extremely glad if any Body would ſet me right: When you come to look upon your Notes, you will ſee how this Fact ſtands. But there is one Thing I would obſerve as to the Teſtimony of *Rolph*, and that is, that Mrs. *Giffard* and he differ: *Rolph* has ſaid, that the new Road leading from the Houſe of *Dunmaine* to the Cabbin, was made for the Benefit of going to Mrs. *Giffard*'s and Colonel *Palliſer*'s, and that Mrs. *Giffard* always went that Way: Mrs. *Giffard* ſays, that ſhe never went that Way, but always by the Bridge. Theſe are ſlight Circumſtances; but however, where Witneſſes ſtand in ſuch direct Oppoſition to each other, they deſerve ſome Attention.

Anthony Dyer, Gentlemen, is another material Evidence for the Defendant. But you will conſider how far his Credit is affected by what I am going to mention. The Witneſſes on both Sides have ſaid, that after the Separation of Lord and Lady *Altham*, the Child, be it legitimate or illegitimate, came into the Houſe of *Dunmaine*. *William Elmes* fixes it to three Weeks after, and another to a Month; but this Man ſays, that he was there at the Separation, and three Quarters of a Year after; and ſwears, there was no Child in the Houſe during that Time. As to the poſitive Evidence on the Part of the Plaintiff, *Doyle* and *Murphy*, the Obſervations on them as to their coming into the Service, have been made, and are extremely ſtrong. *Murphy* did ſay, that *Doyle* came there firſt; ſhe afterwards changed, and ſaid, ſhe came there before *Doyle*: You will conſider alſo the Manner in which they give their Evidence. And in regard to Mr. *Palliſer*, Mrs. *Lambert*, and thoſe People that ſpoke to the Pregnancy on the Part of the Defendant, they have gone ſo far, that if you believe them, there could not have been a Miſcarriage. There is one Thing I forgot to mention, to ſtrengthen the Evidence of Mrs. *Cole*, and weaken that of Mrs. *Heath*, which is, that *Lambert* ſaid, that *Sutton* the Surgeon was ſent for to *Roſs*, and ſtaid at *Dunmaine* a Fortnight: Now when you come to compare the Times of his being ſent for, and the Miſcarriage, you will conſider, whether it does not tally pretty near with the Time when Mrs. *Cole* gives an Account of the Miſcarriage; and yet Mrs. *Heath* ſays, he never did attend my Lady.

There is one general Obſervation to be made on all the Evidence; and that is, that there is a Forwardneſs, an Inclination to go on to ſerve their Party, on both Sides, and that they want that Candidneſs which gives a Credit to Witneſſes; I ſay not this on either Side, but you will conſider whether it is not an Obſervation that runs thro' the whole. I ſhall not trouble you with reſpect to the Surgeon. The Objection to him ariſes from the Improbability of his own Teſtimony. As to *Chriſtopher Brown*, who was one of the Servants attending at Dinner at the Chriſtening, ſuppoſing what he ſays could be credited, you will conſider how that Man was miſtaken in the Deſcription of the Houſe. And you will permit me to obſerve, that there is a great Difference between not recollecting Circumſtances, and a Witneſs ſwearing to thoſe that are falſe; the not recollecting may conſiſt with Integrity, the ſwearing to a Falſhood never can, nor can you give any Credit to ſuch a Witneſs; becauſe you cannot ſay that he is wrong as to this, and right as to that Part of his Evidence. With regard to the ſeveral Witneſſes who ſay the Child, from firſt to laſt, was not only reputed, but called a Baſtard, and *Joan Landy*'s Child, and that the Boy knew it, and ſent his Duty to her as his Mother; you will conſider how conſiſtent that is with what *William Elmes* and others have ſaid, who would have it underſtood that my Lord would not for five hundred Pounds that the Child ſhould know his Mother; and that my Lord ordered them to ſet the Dogs upon her if ſhe came near the Houſe; and yet thoſe who ſpeak of him at *Kinnea* and *Carrickduff* ſay, that my Lord has often curſed him, for having too much of his Mother's Blood in him. How theſe different Accounts can be reconciled, you muſt conſider. There is one Witneſs more on this Head that I muſt take notice of, and that is *Elizabeth MacMullen*; and ſhe would have it underſtood, that out of the Mouth of the Boy himſelf, at the Funeral of his Father, upon being aſked by her, who was his Mother, he ſaid *Joan Landy*. Gentlemen, you will compare this with the Teſtimony of Mr. *Buſhe* and Mr. *Tighe*; the Boy, when he lived with Mr. *Buſhe*, perſiſted that he was my Lord's own Son, and the ſame at Mr. *Tighe*: Now, if the Boy had once received the Notion of his being the lawful Son of Lord *Altham*, you will obſerve the Improbability there is of his ſaying to her, a Stranger, I am the Son of *Joan Landy*. I will carry this a little farther, and that with regard to the Letter, ſhe ſays, was wrote by her, giving an Account of Lord *Altham*'s Death; if this Circumſtance be falſe, that Letter muſt have been fictitious, and of later Date.

I have now mentioned the Evidence on both Sides; and from what I have obſerved to you, it does appear, that here is ſuch a Claſhing of Witneſſes, ſuch contrary Evidence, that though ſome Circumſtances might be reconciled, yet others will remain irreconcileable; and therefore I muſt, and I think, you Gentlemen will be obliged to conſider the Circumſtances that will throw a Probability or Improbability upon the Teſtimony you have heard. The ſtrong Circumſtances which induce Probability in Favour of the Plaintiff are thoſe I have mentioned, of ſpiriting him away, and afterwards attempting, by an unjuſt Proſecution, to take away his Life; to which I have before ſpoke at large, and need not repeat. On the Part of the Defendant, the Circumſtances are of a different Kind; and thoſe are ſuch as relate to this Family, from the Beginning of the Tranſaction to the End, and ariſe from the Quality and Circumſtances of the Perſons, which, as has been urged, muſt have rendered a Fact of this Kind too notorious ever to have been doubted, eſpecially in this Kingdom: That it muſt have been known to the Relations of this Family in *England*, whoſe Eſtate and Honours were to be enjoyed by that Son; that my Lord *Altham* himſelf ought to have made it publick; and that it was the Intereſt of Lady *Altham*, that the Duke of *Buckingham*, her Father, ſhould know that ſhe was with Child. Again, you will conſider the Improbability ariſing from the Place where he was born; at *Dunmaine*, in a remote Part of the Country, attended by a Country Midwife and the Surgeon you have ſeen. Ladies, ſay they, of her Rank would not ſubmit to it, and are uſually placed, on ſuch Occaſions, where they can have the beſt Aſſiſtance; and the Conſequence of a Child to this Family particularly required it. In the next Place, you will conſider, whether there be not a farther Improbability ariſing from the Nurſe; that a poor Body ſhould be employed is no Wonder, but that an infamous poor Body, rendered infamous, as was ſuppoſed, by my Lord, and in that very Place, ſhould be taken by my Lady to nurſe her legitimate Child, is ſcarce to be accounted for. There is nothing ſaid to reconcile this, but the Teſtimony given by *Laffan*; and ſhe tells you, that this was a Secret not diſcloſed to my Lady, till after the Separation: Indeed, if you believe this, the Improbability will decreaſe; but you will find it difficult to ſuppoſe my Lady the only Perſon in the Family to whom this was a Secret. The Place where the Child was nurſed has been alſo urged; but the Difficulty is not that a Nobleman's Child was nurſed at a poor Man's Houſe, but whether that Houſe was fit to receive a Child intended to be preſerved; and therefore the Probability or Improbability in this Inſtance, will depend upon the Credit you ſhall give to the different Accounts of the *Cabbin* where this Nurſe lived. It has been further ſaid, that the Sponſors at the Chriſtening of this Child, ought to have been of high Rank, and from among the Relations of this Noble Family. Again, this Child, after the Separation, was removed from Place to Place, and we have not heard that Lady *Altham*, either by herſelf or Friends, took any Care or Notice of him, except the ſingle Inſtance at *Roſs*. Was it not Lady *Altham*'s Intereſt to have acquainted the Duke of *Buckingham* that ſhe had a Son by her Lord; that he had ſent him away, and put this Child into the Care of his Whore? And was it not probable, if this Notice had been given, that Care would have been taken of this Child by ſome of the Family? The little Care taken of his Education by my Lord, has alſo been urged. In Anſwer to which, you have been reminded of the Character and Circumſtances of Lord *Altham*. Again, my Lord's parting with this Child, or rather expoſing him, in the Manner you have heard, cannot, as it is ſaid, be accounted for, ſuppoſing him to be the real Son of Lord *Altham*: But this is alſo attempted to be anſwered, by the Influence of Miſs *Gregory*, and her repreſenting him as a Baſtard, in reſpect to my Lord, though born in Wedlock: But, ſay the Counſel for the Defendant, ſuppoſing the Plaintiff to be, what they have endeavoured to prove, a Baſtard, the whole may be reconciled. But if the Inhumanity of expoſing this Child raiſes the Objection, you, Gentlemen, will conſider, whether a Perſon capable of treating his own Baſtard in that Manner, may not be ſuppoſed capable of being worked up, by a bad Woman, to turn his legitimate Child out of Doors. The Inhumanity ſeems equal in both Caſes, as both are entitled to the Care and Protection of the Father. I had almoſt given the Preference to the natural Child, as the legitimate does not ſtand in equal Want of it; the Mother, the Family may take care of him, but the other is a Caſt-off. But, Gentlemen, though this Objection may be removed, with reſpect to the Father, it makes the Objection

tion very ſtrong when applied to the Mother: The Sufferings of the Child in this Manner, were what one would expect ſhould have excited and called for the Mother's peculiar Care: That ſhe was not ignorant of it, you will gather from the Teſtimony of *Catherine O'Neile*; and you will conſider the Manner in which the Mother is ſuppoſed to treat that Child: "*I ſhould be glad to ſee my Son, but I know it would coſt the Servant that brought him his Bread.*" It muſt be a weak Affection that could, for that Reaſon, be prevailed on not to ſee the Child. This Lady lived two Years after the Death of her Huſband, and we do not find any Evidence of her Care for this Son; which has been urged alſo to ſhew, that he was not her Son. Again, it was her Intereſt to take notice of this Child; it has been mentioned, and not denied, that there was an Eſtate of Twelve Hundred Pounds a-Year that went away on the Death of Lord *Altham*, and would have gone to this Son, if legitimate. It was inſiſted upon, that Lady *Altham* might have applied for the Guardianſhip of her Son, and have had a good Allowance made by the Lord Chancellor, for the Diſcharge of that Truſt, which ſhe wanted. I muſt alſo obſerve the additional Weight they gave to this Objection, from the Teſtimony that *Welſh* gave, of her declaring that her Heart would break, were it not that ſhe had a promiſing young Son, who would be a Support to her in her old Age. Alderman *King*, at whoſe Houſe ſhe reſided fourteen Months, a Man of Integrity and Truth, whoſe Credit cannot be controverted, ſays, he never heard her mention her having a Son, though the Intimacy of dining at one Table for that Time, muſt probably have afforded frequent Opportunities of doing ſo. And whether a Woman, under the Affliction of a Separation, and her unhappy Circumſtances, could have concealed ſuch a Fact, is worthy your Attention.

There was another Matter urged, as an Improbability, from the Teſtimony of Colonel *Wall*. I ſhall ſtate to you how that Fact ſtands. Colonel *Wall* ſaid, he had taken an Opinion for Lord *Altham*, as to the Power he had over the *Angleſea* Eſtate: That, according to that Opinion, Lord *Altham* was Tenant in Tail, and might have barred his Iſſue, and by that Means, have had it in his Power to raiſe more by the Sale of his reverſionary Intereſt, ſuppoſing he was only Tenant for Life, expectant on the Death of the then Earl. But the ſame Witneſs alſo ſaid, that he would not, upon the Credit of this Opinion, carry the Title to Market, and that, notwithſtanding this Opinion, he was very angry with his Brother, the now Defendant, for refuſing to join with him in ſelling their Reverſions. So that Lord *Altham*'s reverſionary Intereſt being certain, and his other depending on an undecided Queſtion in Law; you will conſider, whether, upon theſe Views, he was more likely to have made publick, or concealed his having a Son.

Having now gone through with what I propoſed to ſay upon the Evidence, I ſhall only in general take notice, that it will be proper for you, Gentlemen, while you are conſidering this Caſe, to take with you the Characters of the Perſons Actors in it; and thence to judge what was, or was not to be expected from them. Again, if there are, as I ſuppoſe there will be, of the Plaintiff's Witneſſes to whom you will not give Credit, you will conſider, whether the Plaintiff in juſtice ought to be affected thereby: You will conſider him as reduced, by the Defendant, to the Neceſſity of making uſe of ſuch Evidence as offered; and in ſuch Caſe, bad Witneſſes may have obtruded themſelves, or Art may have been uſed to put them in his Way; ſo that unleſs it appeared that the Plaintiff made uſe of them, knowing them to be bad, they ought not to be placed to his Account. You will alſo conſider, that though you have only the Defendant before you, yet the Remainder-men, who do not derive under the Defendant, are to be affected by your Verdict, and ought not to be poſtponed, unleſs you are ſatisfied that the Plaintiff is the legitimate Son of Lord *Altham:* Therefore you muſt conſider, (taking the Proofs, the Probability and the ſeveral Things together) whether the Plaintiff be the lawful Son or not? If he be, you muſt find for the Plaintiff; if not, for the Defendant.

Gentlemen, I forgot to mention the Evidence of my Lord *Mount-Alexander*, and of Mr. *Medlicot*, concerning Lord *Altham*'s Declarations, as to his having a Son. Lord *Mount-Alexander* told you of an Expreſſion of Lord *Altham*'s to one Mr. *Crow*, an Expreſſion not very eaſy to be underſtood: "*My Wife has got a Son, which will make that Rake my Brother's Noſe ſwell.*" Which has been applied to the Son now in queſtion: You will conſider, whether it concludes neceſſarily to that, or whether Lord *Altham* might not have, in his Imagination, ſome other Child begot on the Body of my Lady. There was an Intimation of a Son by one *Segrave*, who might be then living; how far this Rumour was in my Lord's Mind, is hard to ſay; but if this was not in his Thoughts, the Expreſſion is extraordinary: "*My Wife has got a Son.*" This might be ſaid of ſuch a Son; but you will conſider whether it was a Manner of Expreſſion for a Son of his own, born in his own Houſe. As to Mr. *Medlicot*, the Words ſworn to by him were, that my Lord ſhould ſay, "*I have no Child, nor know not that I ever ſhall, I do not care if the Devil had the Eſtate.*" If my Lord looked upon the Son by his Lady to have been begot by another Man, conſider, if the Words import more than this: I have no Son, no Son that I ſuppoſe to be my own, I do not care if the Devil had the Eſtate.

But taking each Sett of Words as contended for by each Side, all that can be ſaid is, that my Lord has at different Times varied his Manner of ſpeaking on this Subject; whether you can find out the Motives inducing him ſo to do, or can draw any Concluſion therefrom, muſt be left to your Conſideration. I ſhall think myſelf happy, if any thing collected by me can aſſiſt you in the Diſcovery of Truth.

Mr. Baron *Mounteney*.] Gentlemen of the Jury, My Lord Chief Baron hath ſummed up this Evidence in ſo full, ſo judicious, and ſo maſterly a Manner, that it would be a very improper Taſk for me to attempt to go again with you over the Evidence at large.

I ſhall therefore confine myſelf to ſome of the more capital Parts of the Caſe: and (although I am extremely ſenſible in how inaccurate and diſjointed a Manner I ſhall lay my Thoughts before you, yet) with the Hope of ſtriking out even the ſmalleſt Spark of Light, which may help to guide you through this dark Affair, I ſhall endeavour to recollect a few Remarks on thoſe Parts of the Evidence which ſtrike my Underſtanding in the moſt forcible Manner.

And, Gentlemen, I ſhall take up the Caſe where the Evidence for the Plaintiff, and the Obſervations of the Defendant's Counſel, cloſed; I mean, the *Kidnapping* of the Leſſor of the Plaintiff, and the *Proſecution for Murder* carried on againſt him by the Defendant.

The latter of theſe two Facts I ſhall conſider firſt: It is proved by *John Giffard*, the Attorney employed to carry it on; and in the Courſe of his Evidence, Gentlemen, ſeveral Things occur, which though not relative to that Proſecution, are yet extremely material for your Conſideration.

In the firſt Place, Gentlemen, he relates to you a Converſation between the Defendant and himſelf ſo long ago as the Month of *March* 1741, and the Occaſion upon which that Converſation happened. He tells you, that at that Time it was the common Topic of Diſcourſe, that Mr. *Annesley* was returned from the *Weſt-Indies* to aſſert his Right; and that the Defendant my Lord *Angleſea* was at that Time embarraſſed with a Variety of Law-Suits—that my Lord expreſſed great Uneaſineſs upon both Accounts—and thereupon told him, that "*he ſhould be very glad to ſend to* "*Mr.* Anneſley; *and if he would allow him* 2 *or* 3000 *l. a-Year, he would* "*ſurrender up to him his Titles and Eſtates, and go live in* France; *for he* "*ſhould be much happier than to be ſo tormented, and had rather his Brother's* "*Son ſhould have it than any body elſe; for if* Jemmy *had the Eſtate, he ſhould* "*live eaſy in* France, *for it was his Right, and he would ſurrender it to him;* "*---that he did not value the Title---he would go live in* France; *and that he* "*might live the eaſier there, would ſend for a* French *Maſter to converſe with* "*him in that Language.*"

The Counſel for the Defendant, Gentlemen, with great Art and Ingenuity endeavour to avoid the Force of this Evidence: And in the firſt Place, they repreſent this Declaration of my Lord with regard to a Compromiſe and his going to *France*, as an haſty, paſſionate Expreſſion, flowing from his Uneaſineſs of Mind, on account of the ill Situation of his Affairs, and his Reſentment againſt the *Anneſleys*.

But, Gentlemen, upon *Giffard*'s Evidence, this could not poſſibly be the Caſe; for he tells you, it was my Lord's Reſolution---that he continued in that Reſolution from the Time of the firſt Converſation, which was before the 10th of *March* 1741, to *May* 1742---that in purſuance of that Reſolution, he actually did (as he had declared he would) ſend for a Perſon, one *Stephen Hayes*, and had him in the Houſe, to converſe with him in *French*; and that he, the Witneſs, was preſent forty Times.

The next Thing, Gentlemen, ſuggeſted by the Defendant's Counſel was, that my Lord *Angleſea* (in his then uneaſy Situation, and ſo angry with the *Annesleys* as *Giffard* ſaid he was) might poſſibly be induced to wiſh for ſuch an Accommodation as was mentioned with the Leſſor of the Plaintiff, not through a Conſciouſneſs of his being the legitimate Son of the late Lord *Altham*, but with a View of gratifying his Reſentment by diſappointing the *Annesleys*, and at the ſame Time of promoting his own Intereſt by ſecuring to himſelf a larger Share of the Eſtate than would otherwiſe remain to him.

But, Gentlemen, when you conſider the following Part of *Giffard*'s Evidence, you will find, that neither can this Interpretation hold: Becauſe, if this had been the Scheme, my Lord muſt certainly have perſevered in it. Whereas, upon the unhappy Accident of Mr. *Annesley*'s killing a Man, this ſuppoſed Scheme is abandoned, and another (much more beneficial, as *Giffard* told you, for the Defendant, and abſolutely deſtructive of the other) is immediately embraced; which was, to carry on a Proſecution againſt Mr. *Annesley* for that Fact, and if poſſible, to get him hanged.

Conſider now, Gentlemen, the Evidence concerning that Proſecution, and the Circumſtances attending it.

The firſt of *May* is the Day on which the Murder is in the Indictment laid to be committed.---On the ſecond, Lord *Angleſea* retains *Giffard* to go down to *Staines* to collect Evidence, and to carry on the Proſecution---On the fourth, the Coroner's Inqueſt finds it Wilful Murder---Before *Giffard* returns from *Staines*, my Lord goes down to *Hounslow* to meet him, in order to learn how Things went on; and declares to him that *he did not care if it coſt him* 10,000 *l. if he could get Mr.* Anneſley *hanged:*

Quo Animo are theſe Things ſaid and done by the Defendant? Upon what Grounds was it that the noble Lord thus officiouſly interpoſed upon this Occaſion? that he ſhewed ſo much Impatience to learn how Things went on? that he actually expended ſuch large Sums of Money as *Giffard* expreſsly tells you he did (I think no leſs than 800 *l.*), and declared himſelf ready to expend much larger, in carrying on this Proſecution?---Was it for the Sake of Juſtice?---If ſo, Why all thoſe Precautions, that Contrivance, which you were told of, that my Lord might not appear to be concerned in it?---If not for the Sake of Juſtice,---then, Gentlemen, you are to conſider upon what other Principle and Motives this extraordinary Conduct can be accounted for.---And this will be the leſs difficult for you to do, when you ſhall compare theſe Facts and Circumſtances with the Reaſon given by my Lord for that remarkable Declaration of his as to the 10,000 *l.* which *Giffard* ſwears poſitively my Lord mentioned to him ---viz. *He did not care if it coſt him* 10,000 *l. if he could get him hanged*; "*for then he ſhould be eaſy in his Titles and Eſtates.*"

There is another Part of *Giffard*'s Evidence, which, as it ſtrikes me ſtrongly, I ſhall mention for your Conſideration; and that is, that my Lord told him (fifty Times, I think he ſaid, between the 7th of *December* 1741, and the 14th of *July* 1742, which was the Day of the Trial) that this Pretender, as he called him, was tranſported for ſtealing a Silver Spoon.

You will conſider, Gentlemen, what Weight this Circumſtance may have when coupled with the Complaints made againſt him by Miſs *Gregory* of thieving---with what the Witneſſes, who prove the ſeveral Attempts upon the Boy, and at laſt the actual Tranſportation of him, have told you of my Lord's repeatedly calling him a thieving *Son of a Whore*---and with the particular Charge which one of them ſwears my Lord made againſt him of having ſtolen from him a Silver Spoon.

I have endeavoured to ſtate to you, Gentlemen, the main Subſtance of *Giffard*'s Evidence: In order to avoid the Force of it, the Counſel for the Defendant have ſtrongly inſiſted upon two Objections to his Credit.

The firſt is, that underſtanding, as he owns he did, that my Lord *Angleſea* by his Declaration as to the 10,000 *l.* meant, that he intended to deſtroy Mr. *Annesley* if he could, and that he would expend that Sum in Means to have him hang'd, he did not decline being farther engaged, but ſtill continued to carry on the Proſecution.

And indeed, Gentlemen, it does to me carry with it an Imputation upon *Giffard*, that he did not immediately fling up any Concern in this, or any other

other Buſineſs of my Lord's, and publiſh this Declaration to all Mankind. But, Gentlemen, you will conſider, on the other hand, what *Giffard* hath ſaid in excuſe of himſelf. He tells you,—— "*If there was any* "*dirty Work, he had no Hand in it.*" He diſtinguiſheth between a bad Pur- "poſe and the carrying on a legal Proſecution---and he tells you, that "*the Coroner's Inqueſt having found the Fact wilful Murder, he thought that a* "*ſufficient Foundation for him to proceed.*"

The other Objection to his Credit is, that being an Attorney retained by Lord *Angleſea* to carry on this Proſecution (in any Suit between Mr. *Annesley* and my Lord, he ſwears poſitively he never was, nor ever expected to be retained), he comes here voluntarily to diſcloſe the Secrets of his Client.

Now, Gentlemen, as to the Proſecution, you will obſerve, that the original Diſcovery of my Lord's being concerned in it was not voluntarily made by the Witneſs; for he tells you, that he found himſelf under the neceſſity of ſuing my Lord for a large Sum of Money, which remained due to him upon his Bill of Coſts; and that, upon his ſo doing, my Lord filed a Bill againſt him in the Court of Exchequer in *England*, in his Anſwer and Schedule to which he was obliged to ſet forth the particular Items of his Bill of Coſts---that by this Means (as he ſuppoſeth) Mr. *MacKercher* got knowledge of it, and thereupon applied to him to give his Teſtimony in this Cauſe.

As to the Converſation between my Lord and him, I have already declared my Senſe ſo fully, when the Point was debated, whether Evidence of it ſhould be admitted or not, that I ſhall trouble you with a very few Words only upon it now.

Gentlemen, I can by no means allow it to be any Objection to the Credit of the Witneſs, that he voluntarily diſcloſeth that which the Court hath unanimouſly determined he was compellable to diſcloſe. And I muſt ſay this farther, that, in my Apprehenſion, *Giffard* could not have juſtified himſelf, either to God or Man, if he had not diſcloſed it; eſpecially, as it was a Declaration wantonly made to him, not under the Seal of Friendſhip, nor of that Confidence which is neceſſary between Client and Attorney.

Gentlemen, you are the Judges, and you will carefully conſider what Degree of Credit to give to this and every other Witneſs who hath been produced upon this Occaſion; and God forbid, that any Part of the Evidence, any Argument, or any Obſervation, ſhould have more, or leſs Weight with you than it will bear.

If you believe the Evidence of *Giffard*, you will then conſider, that you have an expreſs Acknowledgment of Right in the Leſſor of the Plaintiff from the Mouth of the Defendant;---that, independently of this, you have Declarations and Facts which ſtrongly import a Conſciouſneſs of that Right.——And laſtly, you will conſider what Strength this Evidence of *Giffard* adds (if any Strength is wanting) to the Evidence of the Kid-knapping in 1728.

That Fact, Gentlemen, ſtands poſitively and fully proved by a Multitude of Witneſſes, neither diſcredited, nor, as it was promiſed by the Defendant's Counſel, contradicted. And, indeed, if that Fact was not ſo clearly proved, the Evidence of Mr. *Shelroſs Aſhe* is, in my Apprehenſion, ſufficient to ſilence the leaſt Doubt about it.

You will then conſider, Gentlemen, if you believe that Evidence, whether there does not from thence ariſe the moſt violent Preſumption of the Defendant's Knowledge of Title in the Leſſor of the Plaintiff.

It is repreſented to you by the Defence, that it was notorious to every body converſant in that noble Family, that Lady *Altham* never had a Son in *Ireland*---that ſhe never miſcarried---that ſhe never was with Child. On the other hand, that it was equally notorious, that my Lord had a Son by *Jean Landy*—and that the Leſſor of the Plaintiff was that Son. Now, if this was the Caſe, for Heaven's ſake, Gentlemen, what Apprehenſions could the Defendant poſſibly be under from a Boy, who, if he had ſet up any Claim to the Title and Eſtate, muſt inevitably have been detected as a moſt notorious Impoſtor?

But if, on the other hand, this Boy was the legitimate Son of Lord *Altham* (and whether he was or not, muſt certainly lie in the Knowledge of the Defendant), then, Gentlemen, you will conſider whether this Kid-knapping and this Proſecution will not be eaſily and naturally accounted for; and whether any other adequate Cauſe than a Knowledge of his being ſo, can, with any Degree of Probability, be aſſigned for this extraordinary, this iniquitous Behaviour of the Defendant.

But, Gentlemen, the Counſel for the Defendant have told you, that the material Fact in this Caſe is the Birth; and unleſs that is inconteſtably proved, that the Plaintiff cannot poſſibly avail himſelf of any Preſumptions (an ingenious Gentleman choſe generally to call them Suſpicions) which ariſe in this Caſe.

Gentlemen, I differ entirely from them upon that Head.---If that, which to be ſure is the material Fact, were proved to you inconteſtably, the Plaintiff would then have no Occaſion for Preſumptions. Preſumptions then only are, or can be, of uſe, when the Fact in diſpute is not, nor can be, proved inconteſtably.

Gentlemen, as this Aſſertion hath been ſo ſtrongly inſiſted on, and hath had ſo much Streſs laid upon it, by every one of the learned Counſel, let me detain you a little to make a few Obſervations upon the Subject of Preſumptions.

Preſumptions, Gentlemen, have at all Times, and in all Laws which I have ever heard of, particularly in our own, been allowed to have great Weight in doubtful Caſes. Some are of ſo high a Nature, that the Law will not admit of any Proof to the contrary:---and theſe are called Preſumptions *Juris & de Jure*.——Again, there are Preſumptions of Law; as likewiſe what the Writers upon this Subject call Preſumptions of Man (ſuch as are collected occaſionally by Man's Underſtanding from given Facts), which, though they fall ſhort of that Strength and concluſive Force which the others have, are yet to ſtand in the Place of full Proof till the contrary is proved.

"*Violenta Præſumptio* is many times *Plena Probatio*," are the expreſs Words of my Lord *Coke*; and the Caſe which that great Oracle of the Law puts upon it, is this: "*A Man is run through the Body with a Sword, in an* "*Houſe, whereof he inſtantly died*——*A Man is ſeen to come out of that* "*Houſe with a bloody Sword, and no other Man was at that time in the Houſe.*" Upon theſe Circumſtances, Gentlemen, a violent Preſumption ariſes, and ſhall ſtand for full Proof, unleſs the contrary can be proved, that that Man was the Murderer.

Now, Gentlemen, you will obſerve, that in the Caſe put (and many others of a like, or even inferior Kind, may be put, in which great Numbers of the King's Subjects daily ſuffer capitally), the Jury from Circumſtances infer a criminal Fact committed by the Perſon accuſed.——*A fortiori* it ſhould ſeem reaſonable, from a criminal Fact proved, to infer the Circumſtances and Motives leading to that Fact.

Mr. Serjeant *Marſhall* very properly mentioned to you the Caſe of the Spoliation of a Deed.

In that Caſe, Gentlemen, it is an eſtabliſhed Maxim, "*That all things* "*are to be preſumed in Diſfavour of the Spoliator.*" And you will conſider, whether a Parity of Reaſon will not operate ſtrongly in the preſent Caſe. Mr. Serjeant's Reaſoning on this Head was entirely agreeable to what I remember to have heard laid down by one of the greateſt Men who ever ſat in a Court of Judicature, viz. *That Circumſtances were, in many Caſes, of greater Force, and more to be depended upon, than the Teſtimony of living Witneſſes.*

Witneſſes, Gentlemen, may either be miſtaken themſelves, or wickedly intend to deceive others. God knows, we have ſeen too much of this in the preſent Cauſe on both Sides! But Circumſtances, Gentlemen, and Preſumptions, naturally, and neceſſarily, ariſing out of a given Fact, cannot lie. And, Gentlemen, it muſt be left to your Conſideration, whether in this Caſe the Preſumptions ariſing from the Kid-knapping, and the Proſecution for Murder, do not ſpeak ſtronger than a thouſand Witneſſes.

The next Obſervation, Gentlemen, which naturally ariſeth from the Kid-knapping, is, that the Leſſor of the Plaintiff is thereby thrown fifteen Years back in his Evidence.——If his Caſe had come under your Conſideration, or that of any other Jury, ſoon after the Death of the late Lord *Altham*, it would not have been attended with the Difficulties it now is, but muſt have received a very eaſy and clear Determination. Mrs. *Shiells*, who is ſworn to have brought him into the World,---the Clergyman, who is ſworn to have chriſtened him---the Perſons, who are ſworn to have been Sponſors (with many other material Witneſſes) were probably all, or moſt of them then living, and might have borne their Teſtimony.——The Account which you now have of them is, that they are all dead.

In the next place, Gentlemen, you are to conſider the Dangers to which this Gentleman lies open in aſſerting his ſuppoſed Right;—on the one hand, from Witneſſes officiouſly obtruding themſelves, and on the other, from Witneſſes who may have been induſtriouſly obtruded upon him. And if you believe that theſe Difficulties have been occaſioned by the wicked Act of the Defendant, you are then to conſider whether a much ſlighter Evidence, than might otherwiſe have been required, will not ſatisfy you, in a Caſe thus circumſtanced, of the Truth and Juſtice of his Claim.

But, Gentlemen, the Counſel for the Defendant farther tell you, "that "although you might poſſibly be induced to think the Defendant capable "of committing a wicked Act, yet that ought not to influence your Judg- "ment as to the Determination of his Property."

And, Gentlemen, I muſt agree that a wicked Act, nay repeated wicked Acts, in general, ought not to influence your Judgment.——But if the Defendant hath committed a moſt wicked Act againſt the Perſon, who then aſſerted himſelf to be the Son of Lord and Lady *Altham*, and who is now conteſting with him his Title and Eſtate---if he hath done another very extraordinary, though legal, Act againſt him,---in a clandeſtine Manner,---and coupled with a Declaration highly criminal,---This, in my Opinion, may, and ought to have great Weight with you upon this Occaſion.

Another Thing, Gentlemen, inſiſted upon by the Defendant's Counſel was, that if the Caſe be doubtful, the preſent Poſſeſſion ought to turn the Scale in Favour of the Defendant.

Now here I muſt again differ from the learned Gentlemen. If indeed upon the whole Evidence the Caſe ſtands doubtful, they ſay well: But if upon the direct poſitive Evidence the Caſe is balanced, then, Gentlemen, the Kid-knapping and the Proſecution will, in my Apprehenſion, turn the Scale in favour of the Plaintiff. For a violent Preſumption is to ſtand for Truth 'till the contrary is proved.---Now if upon the poſitive Teſtimony on both Sides, the Mind remains *in Equilibrio*---then, Gentlemen, the contrary is not proved, and conſequently the Preſumption ſtands.

I cannot help ſaying, that I think it pretty extraordinary in this Caſe, that ſo many Objections ſhould be raiſed, and ſo much Streſs laid upon them, againſt your being influenced in your Judgment by Preſumptions ---by Suſpicions---by Probabilities.

Gentlemen, their whole Defence is built upon Probability and Improbability.

They firſt tell you, you are to judge not upon Probabilities, but upon poſitive Proof of the material Facts; and to that poſitive Proof, when given, they tell you, you ought to give no Credit, for it is improbable.

There was one Objection of this Sort which I forgot to mention, and that was as to the Proof of the Kid-knapping; they told you, Gentlemen, that although the Defendant could be ſuppoſed wicked enough to commit ſuch a Fact, yet it was inconceivable that he ſhould be ſo weak as to do it at Noon-day---that he ſhould carry the Boy through a public Market---nay, by the very Stall of *Purcell*, who had before protected him——(by the bye, Gentlemen, you will remember that the Boy was charged with Felony, and carried off by known Conſtables) and the ſame Objection, I think, was before made to *Giffard*'s Teſtimony, that it was utterly incredible, that any Man living ſhould be ſo weak as to put himſelf into the Power of any other Man, by making ſuch Declarations as *Giffard* ſwore my Lord made to him.

I muſt own, Gentlemen, that this Objection does not to my Underſtanding carry any great Weight with it.

Wickedneſs and Weakneſs generally go hand-in-hand together; and upon the repeated Obſervation of their doing ſo, is founded that well known Saying,

"*Quos Deus vult perdere prius dementat.*"

The next Part of the Caſe which I ſhall ſpeak to, is the Evidence of Mrs. *Heath*, as it ſtands oppoſed to that of Mrs. *Cole*; and the Evidence of *Relph*, oppoſed to that of Mrs. *Colclough*, *Turner*, and *Higginſon*.

It was my Deſire that Mrs. *Cole* and Mrs. *Heath* might be confronted, becauſe I did then, and do ſtill think, that this Caſe may receive great Light,

and may be greatly narrowed for your Determination, by a careful Consideration of *Cole*'s Evidence, as it stands in direct Contradiction to the Testimony of *Heath*, whom I look upon as a capital Witness, and one of the main Pillars of the Defence.

In other Parts of the Case, Gentlemen, you meet with many Variations between the Witnesses, as to Periods of Time, and other minute Circumstances, which will not be of much Consequence in the Cause, or tend to impeach the Credit of those Witnesses on the one Side, or the other:—But when once you come to a Fact in which two positive Witnesses flatly contradict each other---a Fact, the Truth or Falshood of which the Witnesses on each Side must with as much Certainty and Exactness know at the Time she gives her Testimony, as she did at the Time that Fact is said to have happened, let it be ever so long ago---so that one of them is, to Demonstration, perjured; then, Gentlemen, it becomes exceedingly material for you to consider which of two such Witnesses you will give Credit to; and your Determination of that Point may go a great way towards enabling you to form a Judgment upon the whole Case.

The first material Circumstance which occurs to me, in which *Cole* and *Heath* differ, is as to the going or not going away of Lord and Lady *Altham* from Captain *Briscoe*'s (at whose House the Reconciliation was brought about) to my Lord's Lodgings at *Vice*'s, in *Essex-street*.

Mrs. *Heath* swears positively, that during their Stay in *Dublin*, they never lodged one single Night out of the House of Captain *Briscoe*---Mrs. *Cole* (supported by her Sister, Mrs. *Briscoe*---by *Alice Bates*, a Servant in her Father's Family--and by *Catharine Mac Cormick*, *Vice*'s Servant) swears as positively, that after staying four or five Days at her Father's, they went to Lodgings in *Essex-street* (as to the Person's House she is not positive, but she takes it to be *Vice*'s), and there continued a considerable Time, I think about two Months, before they left *Dublin*, and went to *Dunmaine*. And, Gentlemen, you will remember that Mrs. *Cole*, when she was a second time produced, gave you a particular Reason why she could be so positive as to that Fact, which was, "that, *notwithstanding the Reconcili-* "*ation between my Lord and Lady, her Father still continued uneasy about the* "*Matter; and was very desirous and pressing, that they would leave his* "*House, and go to other Lodgings, because he thought it would have a better* "*Air of their being well together*;" which she explained afterwards, by saying, that *it would become more publick and notorious to Mankind, that my Lord and Lady were in fact reconciled.*

This Circumstance, as soon as it was mentioned, I thought, struck some Light into this Affair---it did to me explain clearly two other odd Circumstances, which I shall mention to you presently.

The next Fact, concerning which Mrs. *Cole* and Mrs. *Heath* stand in direct opposition, is, the supposed Miscarriage at *Dunmaine*. Mrs. *Cole* swears positively, that about the Middle of the Night, after the Accident of Lord *Altham*'s breaking the Sawcers, Mrs. *Heath* came into the Bed-chamber of her Mother, Mrs. *Briscoe*, with whom she lay, alarmed her with Account of my Lady's being extremely ill, and begged that she would immediately rise and go to her, which her Mother accordingly did; that the next Morning she (the Witness) was in my Lady's Bed-chamber, where were present her Mother, Mrs. *Heath* and several of the Servants---that her Mother there told her, that my Lady had miscarried, and shewed her the Abortion in the Bason.

Mrs. *Heath*, on the contrary, swears as positively, that she did not, either upon that or any other Night, call up Mrs. *Briscoe*---that she does not remember, that Mrs. *Briscoe*, or her Daughter, was in my Lady's Room the next Morning---and she swears positively that my Lady did not then miscarry, nay, that she was not, either then, or at any other Time, with Child.

It was insisted on strongly by the Defendant's Counsel, that this Evidence of *Cole* was attended with great Improbability--that it was incredibly strange, that a Mother should shew an Abortion to her Female Child of such tender Years. And, indeed, Gentlemen, I think that Fact does, *prima Facie*, appear to be extremely odd, and to carry with it a strong Air of Improbability.

There was another Fact, proved in the very Outset of the Cause, which (though it had not the same Remark made upon it by the Counsel) struck me in a very odd Light; and that was, that upon the Reconciliation of Lord and Lady *Altham*, at Captain *Briscoe*'s, Mrs. *Dorothy Briscoe*, then not above Ten, and her Sister, Mrs. *Cole*, not then above twelve Years of Age, were, with the rest of the Family, called into the Room, to see my Lord and Lady in Bed together.

But Gentlemen, you will consider, whether the Reason which Mrs. *Cole* tells you her Father had for pressing Lord and Lady *Altham* to leave his House, and lodge elsewhere in *Dublin*, viz. that their Reconciliation might become more notorious to Mankind, does not fully explain, and strongly corroborate the Proof of, those two odd, and otherwise unaccountable Facts.

Gentlemen, you will consider further, whether from these three Circumstances connected and compared together, there does not arise a strong Probability, that Captain *Briscoe* (who I think appears to have been the Person employed by the Duke of *Buckingham* to bring about the Reconciliation) had some Apprehensions, that although the Reconciliation was effected, and although, in consequence of it, Lady *Altham* should have Issue by my Lord---yet, that in some future Time, and for some Reasons or other, Lord *Altham* (whose Character and Conduct appear pretty extraordinary upon the Evidence in this Cause) might be induced to bastardize that Issue.

And, Gentlemen, you will consider further, whether such an Apprehension in *Briscoe*, as I have supposed, would have been unnatural or ill founded, when you have compared these Circumstances (which, as I have mentioned, seem to render it probable, that he had such an Apprehension) with the Evidence of *Palliser* the younger. He relates to you a very extraordinary Conversation which passed between my Lord and him, about five Days before the Separation, as they were returning from *Bourkstown* to *Dunmaine*. He tells you, that my Lord called to him in a familiar Manner, and said, "Tom, *I will tell you a Secret, as I have no Son by my* "*Wife, nor ever expect to have any*, and as my Lord *Anglesea* is very angry "with me for keeping this Woman---*I am determined to put her away*, not "to disoblige my Lord *Anglesea*." The same Witness had before sworn positively that he never had---that he never attempted to have---that he believes in his Conscience, that my Lord did not suspect he had---any criminal Commerce with Lady *Altham*; and that my Lord only made use of him as a Colour and Pretence for putting away his Lady.

Now, Gentlemen, you will observe, that upon this Testimony even of the Defendant's Witness (who, indeed, is a very material Witness for the Defendant in some other Parts of his Evidence, if you give credit to him), Lord *Altham* was a Man capable of putting away his lawful Wife, to whom he had lately been reconciled--upon a mere Pretence--and for no other real Cause than that he might not disoblige Lord *Anglesea*:---If he were so, you will then consider, whether it be at all an unnatural and strained Supposition, that he was capable of abandoning, and bastardizing his lawful Son, in order to oblige some other Person or Persons.

This Supposition, Gentlemen, will, I think, appear still less unnatural, when you recollect how Miss *Gregory*'s Behaviour to the Boy stands upon the Testimony of another Witness for the Defendant: I mean *Herd* (who, in his Account of the Boy's Treatment by my Lord before they came to *Dublin*, differs totally, as my *Lord Chief Baron* hath already observed, from all the Gentlemen of that Part of the Country who have been produced before you).

Herd tells you, that when my Lord lived in *Frapper's Lane*, great Complaints were made to my Lord against the Child, by Miss *Gregory*, of his Thieving---that he cannot tell whether the Boy was really guilty or not, but that he confessed himself so--and that upon this my Lord (whom the Witness had never once seen strike the Child upon any Occasion in the Country) corrected him more severely than ever he had seen any Child corrected in his Life.

When the Witness was asked by my *Lord Chief Baron*, what those Things were, with the Thieving of which this Boy (who is admitted on all hands to be the Son of my Lord, though his Legitimacy is disputed) was charged by this Lady, and for which he was so cruelly corrected by his Father, he tells you they were "*a Jockey Belt and a Pair of Pigeons.*"

These are Circumstances which, I must own, strike my Understanding strongly: You, Gentlemen, are the Judges, and you will well consider what Weight they carry, when connected with the rest of the Evidence; and what Light may be collected from them to guide your Judgments on this Occasion.

I forgot to mention to you one thing, which I think is very remarkable, upon *Heath*'s Evidence; and that is, that she accompanies some of the Plaintiff's Witnesses in all the preparatory Steps, and separates from them only, when they come to the critical and material Facts themselves.

She recollects distinctly with *Mac Cormick*, *Vice*'s Servant, "*That my* "*Lord came home late one Night disordered with Liquor---that he made a great* "*Noise with the Chair---that he quarrelled with her---that he jumped out of* "*Bed from my Lady, and ran towards the Window---that he called for Mrs.* "Lucas *the Midwife---swore he would send for her to see if my Lady was* "*with Child, and with another Oath declared, that if she was not with Child,* "*he would turn her away.*" All these Circumstances she recollects minutely, and exactly agrees in them with the other Witness---but as to my Lady's screaming upon this Occasion--there she separates.--She says, *my Lady would have died first.* As to her miscarrying, or to any Discourse in the Family the next Day that she had miscarried---this she positively denies.

With regard to the Miscarriage at *Dunmaine*---she agrees with *Cole* in the Fact of my Lord breaking the Saucers, that those Saucers had ugly or indecent Figures on them, and that my Lord had forbad their being brought to Table.---But that my Lady was the least disordered upon this Occasion, she denies---that she called up Mrs. *Briscoe*---that my Lady miscarried---that she kept her Chamber for several Days, or even one Day after---all this she positively denies, in direct Contradiction to what has been sworn by *Cole*. And here, Gentlemen, it will be extremely material for you to recollect that, pretty exactly to the Time at which *Cole* swears this Miscarriage happened, and my Lady kept her Chamber at least five Days, it appears from the Evidence of the Defendant's Witnesses (Mr. *Aaron Lambert*) that *Sutton* the Surgeon, whom my Lord brought over with him from *England*, but had turned out of his House, on account of some Misbehaviour which he had been guilty of in the Family, was twice sent for to *Dunmaine*; that he twice refused to go, being picqued at his having been turned out of the Family---that being sent for a third Time, and my Lord's Chariot coming for him, he went, and continued attending my Lady at *Dunmaine*, to the best of the Witness's Remembrance, for a Fortnight. This Evidence was produced in order to discredit *Brooks*, the Piece of a Surgeon (as he called himself), produced on the Part of the Plaintiff, who in my Opinion sufficiently discredited himself. You will consider, Gentlemen, whether it does not go strongly in support of the Testimony of Mrs. *Cole*, in contradiction and discredit of *Heath*; with regard to whom, an Observation was made by the Defendant's Counsel, which I was exceedingly surprized to hear from that Side of the Table. They took notice of the peculiar Excellency of our Law, especially with regard to Trials by Jury, on which Occasions the Witnesses are examined *viva voce*; that from confronting Witnesses who contradict each other, and carefully observing their Appearance, and the manner in which they give their Testimony, some Light is to be collected; and the Court and Jury may in some measure be enabled to form a Judgment upon a doubtful Case.

The Observation, Gentlemen, is undoubtedly just, but what I little expected to have heard from that Quarter.---For, Gentlemen, when you recollect and compare together the outrageous Behaviour and *vociferous Asseverations* of *Heath*, with the calm, sedate, and modest Demeanour of *Cole*---You will consider whether all the Weight which can be laid upon an Observation of that Sort does not lie entirely on the other Side.

Another Point which hath been strongly, and indeed very properly insisted upon by the Defendant's Counsel, is this:---They say it is extremely improbable, if this Person were really the Son of Lady *Altham*, that my Lady, who is proved to have lived two Years after the Death of her Lord, should make no Enquiry about him.

But, Gentlemen, if you will compare the Time of Lord *Altham*'s Death with the Time of Kid-knapping the Boy, you will find, I think, that there is very little, if any, Weight in this Observation.

Lord *Altham* died in *November*, 1727--the Letter which *Mac Mullen* swears she sent to Mrs. *Heath*, notifying my Lord's Death, (and which *Heath* swears

swears she communicated to my Lady) bears Date the 18th of that Month ——that Letter must be some Days at least going to *England*.——On the 26th of the *March* following, the Boy appears from the *Tholsel* Book to be indented to *Thomas Hendry* by the Name of *James Hensly*, and on the 30th of *April*, the next Month, it appears from *Stevenson*'s Book, that he passed over the Bar of *Dublin*—So that taking that to be Truth, (which, I think, is liable to strong Objections of Improbability, that *Mac Mullen* sent that Letter) there will be very little more than five Months between Lord *Altham*'s Death, and the Transportation of the Boy.

When *Alice Bates* appears, and gives you an Account of her joking with Lady *Altham* about her being with Child, you are told by the Defendant's Counsel, that this is highly improbable—That Lady *Altham* was a very haughty Woman——That it is incredible she should condescend to such Familiarity with a Person so much her Inferior.

Will it not appear to you equally improbable at least, that this haughty Lady should condescend to receive Visits once a Week, as *Mac Mullen* tells you she did, from her---the Daughter of an Ale-house Keeper?

It must be allowed that my Lady's living with Alderman *King* for thirteen or fourteen Months, conversing with him about her Family Affairs, and yet never mentioning to him her Son, does *primâ facie* carry with it a great Improbability of her having at that time a lawful Son.

But considering that my Lord had put her away upon a Suspicion (either real or pretended) of her Virtue, and had aspersed her Character, it might not be so prudent, nor perhaps so probable, that she should discourse with him, or any other Person, upon the subject of Child-bearing.

However, allowing this to be improbable----will it not be equally improbable, that the Care of communicating so material Intelligence as the Death of Lord *Altham*, should be intrusted, not to this Alderman *King*, or any other Person of some tolerable Figure in this Town, but to such a Woman as *Mac Mullen*?

These, Gentlemen, are Circumstances which in my Apprehension weigh strongly against the Credit of *Mac Mullen*'s Evidence. But taking that Evidence to be true, you will consider, whether the small Distance of Time between Lord *Altham*'s Death and the Transportation, does not greatly lessen the Force of this Argument, which has been so strongly insisted upon by the Defendant's Counsel,--- especially if you add to it, the Circumstances both of Health and Fortune, in which Lady *Altham* appears to have been at this time.

And here, Gentlemen, will come in very materially for your Consideration the Evidence of Mrs. *Deborah Annesley*, a near Relation of this noble Family.

She who had before told you that her Brother frequently visited my Lord at *Kinnea*---that whenever he returned from thence, and whenever my Lord visited at their House, it was their common Practice to drink the Health of my Lord's Son---that they all considered that Boy as my Lord's lawful Son, and the future Earl of *Anglesea* (so that it is not Fact, as you have been told, that none of the Relations of the Family ever heard of Lady *Altham*'s having a Son); this Lady, I say, tells you, that upon the Death of Lord *Altham* she and her Sister made frequent Enquiries after this Boy: That for some time they could learn no Account of him, and at last they concluded that he was dead. Now if it became a general Reputation that he was so, then, Gentlemen, tho' Lady *Altham* likewise might have made frequent Enquiries after this Boy (*non cònstat* upon the Evidence whether she did or not, and she might have made several, not at this Day capable of Proof), and might receive an Account, and give credit to it, that he was dead; and this might put a Stop to any further Enquiry, consistently with Lady *Altham*'s Knowledge of this Boy's being her legitimate Son.

These Parts of the Case, independant of the other, which have all been fully laid before you by my *Lord Chief Baron*, seem to me to have great Weight in them.

You, Gentlemen, will consider what Stress you will lay upon the Observations I have thrown out to you, and what Light may be collected from them.

There were several other things, Gentlemen, which I designed to have mentioned to you; but the Fatigue which we have all undergone hath been so very great, and the Time I have had for Recollection so very short, that my Thoughts are too much dissipated to proceed, and indeed I have already trespassed too much upon your Patience; considering the great Attention which you have all along given, and the careful Notes you have taken of the Evidence; I shall therefore now conclude with that which I at first set out with, the Kidnapping and the Prosecution. If the Case be doubtful, upon the other Parts of the Evidence (whether it be or not you are the proper Judges), I must then leave it to your Consideration, whether the Evidence of those two extraordinary Facts may not be sufficient to determine you what Verdict to give upon this Occasion.

Mr. Baron *Dawson*.] Gentlemen of the Jury, my *Lord Chief Baron* and my Brother *Mountney* have summed up the Evidence, and observed upon it in so judicious and clear a manner, as makes any further Observations from me unnecessary; I shall therefore only require your Patience for a few Minutes, to shew you how I would consider this Case if I was upon the Jury, and my Reasons for so doing. There are such Contradictions on both Sides of the Question, that it would not be hard to shew, that several Witnesses on each Side are not entirely to be credited. Several of the Witnesses on each Side, not only contradict the Witnesses on the other Side, but also, in some Instances, themselves, and therefore, independent of other Things proper to be consider'd, one could not tell where to settle. If I was upon the Jury, and to determine this Question, I should lay before me and consider the Story as told on each Side; I should consider how far the Story on one hand, independent of the Witnesses, exceeded the other in point of Probability: if on either hand the Story told appeared extremely improbable, I should then require from that Side, the strongest Proof imaginable; and that because Probability ought to weigh, except it be contradicted by Testimony not to be doubted of: and therefore, if on either Side, the Story should be extremely improbable, and probable on the other Side, I should give my Opinion on the Side of Probability. How far any thing of this kind appears in this Case, will come under your Consideration.

This is the longest Trial ever known at the Bar, this is the 15th Day since the Trial began; Trials at Bar are usually determin'd in one Day, and the Policy of the Law hath taken care that no Person should speak to the Jury after any Evidence given in Court; there is no Occasion, I am persuaded, Gentlemen, to remind you that any thing heard out of Court is not to govern you, you are to be governed by nothing but the Evidence laid before you.

In the first place, the first Stage is the Time of the Birth. You will take into your Consideration the Number of Witnesses and their Stations that swear to that Birth, and also the Number and Station of the Witnesses that swear in direct Contradiction to them; if you cannot determine that Question by comparing them together, you will then have recourse to the other Part of the Testimony, which is, the Reputation of the Country, and the Persons that visited constantly at that House; you will consider the Probability or Improbability that a Fact of this kind could have happened, and the People visiting not know of it. This could hardly be in a Family of less Consequence than my Lord *Altham*'s, but when you consider this Family and the Estate that was to fall to it, you will consider if there could be a Birth, and Persons visiting the Family not knowing of it. There have been Proofs on the one hand, laid before you of my Lady's being with Child, and on the other hand of her not being with Child; either of these Parties may swear false; but then you must take into your Consideration, if they that swear she had a Child swear Truth, whether it could be possible that that could be kept a Secret? There was not any Interest or Reason that it should be kept a Secret. If it was not industriously kept secret, how comes it that all those Persons that visited there should never have heard of a Child?

To go to positive Testimony, *Laffan* swears positively the Child was presented to several Gentlemen and Ladies, and often to Mrs. *Lambert*. Mrs. *Lambert* swears positively the Child never was shewn to her. Which is to be credited? There are several Circumstances you will take into your Consideration, concerning the Probability or Improbability of the Birth of this Child, whether the Preparations for my Lady's Lying-in were suitable to her Rank? Whether *Dunmaine*, a small Village, distant from any Assistance necessary on such an Occasion, was a proper Place? Whether my Lady *Altham* would be easily brought to lye-in in the Country, especially of her first Child? These are Considerations worthy your Attention.—There have been many Gentlemen who gave Evidence to there not having been a Child; they swear not only that they never saw, but that they never heard of a Child. I won't enter critically into every particular Period of Time sworn to by them; but if in three Years those Persons were three or four times a-piece at *Dunmaine*, and they swear Truth, it will be of Weight in the Question whether there was a Child or not. For admitting Colonel *Pallifer* and the other Witnesses to be there four times a-Year, you are the Judges whether it is probable that there was a Child there, and unknown to them. The Separation is agreed on all hands to have been in the Year 1716, and some little time after that, the Child was brought home to my Lord *Altham*'s House. *Dyer* swears the Child was not brought to *Dunmaine* in his Time; but the Witnesses for the Plaintiff say, either from the Separation, or soon after; and that the Child continued in the House with Lord *Altham* till about the Year 1724. You are to observe, that my Lord left *Dunmaine* about Summer 1717; the Separation was in *February* 1716-17, and Lord *Altham* came up to Parliament, and after that went to *Kinnea*; the Parliament sat down the 27th of *August* 1717; then you will consider what has been sworn to of my Lord's Behaviour to this Child all that Time. During this Period of Time at *Kinnea*, *Carrickduff*, *Cross-Lane* and *Frapper-Lane*, there are many Witnesses on both Sides that give a most contrary Testimony to one another; there are Witnesses on both Sides that I cannot say how to disbelieve, there are many of them that I cannot disbelieve, who swear to his being treated as a legitimate Son; there are many of them whom I also cannot disbelieve, who give a contrary Testimony, and say that he was treated as an illegitimate Son; and Colonel *Harman*, Doctor *Medlicott* and Colonel *Wall* give an Account of my Lord's manner of calling him his Bastard Son. And in my Apprehension, if the Witnesses deserve Credit, my Lord *Altham* did during that Time treat him to some Persons as his lawful Son, and to others, as his illegitimate Son. You will consider the Temper and Disposition of Lord *Altham*, and the Circumstances he was in; he was a Man not of Prudence, either as to the Management of his Fortune or Family; you will please to consider in what manner to account for this Behaviour of his; whether there may, or may not be any Reason for treating an illegitimate Son in some Companies as a legitimate Son, and whether there may be, at any time, any Reason for treating a legitimate as an illegitimate one. A Man comes into the Country where he was not known before, and has a Child that he had not by his Wife; perhaps he may have Reason for treating him as a legitimate Son. A Man may carry an illegitimate Child abroad, and visit with him in the Neighbourhood, and pass him for his legitimate Child; for perhaps he might be glad that that Person whom he visited, should not know him to be a Bastard; but a Man can have no Reason, in my Apprehension, for treating a lawful Son as an unlawful one. Then you will consider the several Schools the Child was put to by Lord *Altham*; you will consider whether these Schools were fit Schools for my Lord, even in indigent Circumstances, to put his lawful Son to. You will consider the Consequence of my Lord's being under the Influence of Miss *Gregory*; the Consequence was, that this unhappy Child was thrown abandoned to the World at not ten Years old: here you will consider whether a Treatment of that kind bespeaks him to be his legitimate or illegitimate Son: Had he been a legitimate Son, surely my Lord *Altham* must have had Reflection enough to have considered what a dishonourable Action he was doing publickly. On the other hand, you will consider that the Influence of Miss *Gregory* might well be carried to make him doubt whether this Child was his or not, if the Child was by an improper Woman. In the next place, you will consider the Situation and Behaviour of the Mother, that is the tender Sex, and their Tenderness to their Children is hardly to be got the better of at any rate. Lady *Altham* was three Years in *Ross*, and there is but one Testimony of her seeing him then, and that is the Man that swears he made him Shoes. From this she comes to *Dublin*, and lives near my Lord at the time this Child is with him; it seems a little odd that she made no Attempt to have this Child brought to her

but

but by *Catherine O Neile*; and I ſubmit it to you, how far what ſhe ſays can have Weight; for ſhe ſays, that my Lady declared ſhe would be glad to ſee the Child, but ſhe was afraid the Servant that brought him would loſe his Bread. Can ſuch a thing as that be put in competition with the Tenderneſs of a Mother for a Child? That, Gentlemen, is for your Conſideration, Why then, Gentlemen, my Lady comes to the Houſe of Alderman *King*, and he tells you, that for thirteen or fourteen Months ſhe frequently ſpoke to him of her Family Affairs, yet never mentions ſhe had a Child. It ſeems very ſtrange; a Woman, where ſhe fancies herſelf injured, is mighty apt to tell the Injuries done her to every body, and to aggravate her Diſtreſs by ſaying ſhe was deprived of the Comfort of ſeeing her Child. This was not to be entruſted to Alderman *King*, but communicated to Mrs. *Hodgers*, whom ſhe had never ſeen but once; you will conſider this, Gentlemen. In the Year 1727 my Lord died, and there can be no Doubt but my Lady knew it; there is not any Proof of her having made any Enquiry after the Child: It is true, my Lady might have made the Enquiry after the Child, and it might have proved ineffectual, becauſe of his being tranſported ſo ſoon after; but of this there is no Evidence; but how comes it ſhe did not make the Enquiry, eſpecially where her own Intereſt was to guide her in that Caſe? And yet here is the Force of the Mother and Intereſt joined together, and they work nothing on my Lady *Altham*. You will conſider that the Eſtate of this Family, on Failure of Iſſue, being to go to *Arthur*, late Lord *Angleſea*, it was the Intereſt of the Mother to have made a ſtrict Enquiry after him; and yet there is a Witneſs for the Defendant, *William Napper*, who tells you, that he had a Letter of Attorney from Lord *Angleſea*, to take Poſſeſſion of the *Roſs* Eſtate; and by virtue thereof made Numbers of Minutes to ſeveral Tenants, and no Objection he ever heard made, that Lord *Altham* ever had a Son. That, Gentlemen, ſeems a little extraordinary.

The next Thing that offers, and the Strength of the Caſe for the Plaintiff is, the Tranſportation of him, and the Directions the Defendant gave to Mr. *Giffard* for the Proſecution of him after his return into *England*. You will conſider, as to the Tranſportation, whether the Defendant was the Occaſion of it, or not? If you ſhould be of Opinion he was, you will conſider how far that will have an Effect upon you. He claimed to be the lawful Son of Lord *Altham*; you will conſider whether that might have been an Inducement. If you ſhould be of opinion that the Story on each hand carries an equal Degree of Probability; this of the Tranſportation ſhould, in my Apprehenſion, add great Weight to the Caſe of the Plaintiff: If, on the other hand, you ſhould not think them equally probable, you will conſider how far the Tranſportation will make you give Credit to a Fact you ſhould otherwiſe think improbable. The ſame may be ſaid in reſpect of the Attempt in *England*, in relation to the Proſecution of him there. I have mentioned before, that ſeveral of the Witneſſes on both Sides cannot be very well depended upon; and therefore I think the Probability or Improbability of the Thing may be of great Weight in determining the preſent Queſtion.

Then the Jury withdrew, and in about Half-an-hour brought in their Verdict for the PLAINTIFF.

This *James Anneſley*, Eſq. died *January* 5, 1760. He was twice married; firſt, to a Daughter of Mr. *Cheſter*, at *Staines-Bridge* in *Middleſex*; by whom he had one Son and two Daughters. The Son, *James Anneſley*, Eſq. died *November* 1763, *S. P.* and the eldeſt Daughter is married to *Charles Wheeler*, Eſq. Son of the late Captain *Wheeler* in the *Guinea* Trade: Secondly, to a Daughter of Sir *Thomas Th' Anſon* of *Bounds* near *Tunbridge* in *Kent*, Gentleman-Porter of the *Tower*, by whom he had a Daughter and a Son, who are both dead; the Son, aged about ſeven Years, died about the Beginning of 1764; and the Daughter, aged about Twelve, died in *May* 1765.

XXVII. The Trial of Mrs. Mary Heath, (a Witneſs examined on the Trial in *Ejectment* in the Court of Exchequer in *Michaelmas* Term, 1743, in the Cauſe wherein Campbell Craig, Leſſee of James Annesley, Eſq. was Plaintiff, againſt the Right Honourable Richard Earl of Anglesea, Defendant) for Perjury, at the Bar of the Court of King's-Bench in *Ireland*, on *Friday* the 8th Day of *February*, 1744.

Publiſhed by Permiſſion of the Right Honourable the Lord Chief-Juſtice *Marlay*, Mr. Juſtice *Ward*, and Mr. Juſtice *Blennerhaſſet*.

[The ſeveral Proceedings had upon the Indictment againſt *Mary Heath*, for Perjury, previous to her Trial.]

The Bill was found by the Grand-Jury of the County of *Dublin*, at a Seſſion of the Commiſſion of Oyer and Terminer, on the 24th Day of *October* 1744; and there ſhe traverſed the Indictment, and removed the Record by *Certiorari* into the Court of King's-Bench, returnable the firſt Day of laſt *Michaelmas* Term.

On the ſixth Day of *November* 1744, the Traverſer appeared in the Court of King's-Bench, and the Court appointed the Trial to be at the Bar of the Court on the Fourteenth Day of *November*, with Liberty for either Party to apply in the mean time to put off the Trial, for reaſonable Cauſe, to be made appear by Affidavit.

The Traverſer did apply to put off the Trial on the following Affidavit, ſworn the 10th of *November* 1744.

The King againſt *Mary Heath*. } THE Traverſer, *Mary Heath*, came this Day before me and made Oath, That *James Anneſley* having, as Deponent heard and believes, brought an Ejectment in the Exchequer for Recovery of the Poſſeſſion of Part of the Eſtate whereof *Arthur* late Earl of *Angleſea* died ſeized in this Kingdom; and the Right Honourable *Richard* Earl of *Angleſea* having taken Defence to ſaid Ejectment, the ſame came to be tried at the Bar of ſaid Court in laſt *Michaelmas* Term; which Trial continued and was adjourned from Day to Day for upwards of ten Days, on which Trial Deponent was produced and examined as a Witneſs on Behalf of ſaid Earl. That Deponent is well informed and verily believes, that on ſaid Trial the only Point tried was, whether ſaid *James Anneſley* was the Son of *Arthur* late Lord *Altham* by his Wife *Mary* Lady *Altham*; that ſhe is well aſſured and believes, that Examinations were laid before the Grand-Jury at laſt Commiſſion of Oyer and Terminer for the County of *Dublin* for Perjury, alledged to be committed by Deponent on ſaid Trial; and that a Bill of Indictment was found on ſaid Examinations againſt Deponent the 24th Day of *October* laſt, and not before, as ſhe is informed and verily believes. Saith, She is informed and believes, the Points in ſaid Indictment, and on which Deponent is indicted, are relative to ſaid Lady *Altham*'s having a Child by ſaid Lord *Altham*, and in ſome meaſure the ſame as that tried in the Exchequer as aforeſaid. Saith, ſhe is informed and believes, that a Suit was inſtituted in the Chancery of *England* by ſaid *James Annesley* for Recovery of the *Engliſh* Eſtate, whereof ſaid *Arthur* Earl of *Angleſea* died ſeized, or Part thereof; and has been informed and believes, ſaid *James* has alſo filed a Bill in the Chancery of *Ireland* for Recovery of the ſaid *Iriſh* Eſtate, whereof the ſaid *Arthur* died ſeized, or Part thereof; and ſaith, That a Commiſſion is now ſpeeding at *Wexford* in ſaid *Engliſh* Cauſe, and that the ſame was opened before ſaid Indictment was found; and Deponent was examined on behalf of the ſaid Earl upon ſaid Commiſſion, and the Examination of ſaid Commiſſion is ſtill going on, as Deponent believes. Saith, ſhe is informed and verily believes, that the Title of the ſeveral Eſtates is the ſame, and that the Point to be determined as to ſaid Eſtates between ſaid *James Annesley* and ſaid Earl of *Angleſea*, and the other Parties intereſted is, whether ſaid *James* is the Son of ſaid late Lord *Altham* by his ſaid Lady. Saith, ſhe is adviſed and believes, the ſame Evidence, in a great Meaſure, will be neceſſary for Deponent's Defence on the Trial of ſaid Indictment, and in the Defence of ſaid Suits, and therefore Deponent believes (being ſo adviſed) that preparing for Deponent's Defence on ſaid Indictment, will take a conſiderable Time, there being many Witneſſes neceſſary for Deponent's Defence, living in different Parts of this Kingdom as well as in *England*. Saith, there are ſeveral Perſons, whoſe Place of Reſidence is in *London* and other Places in *England*, and who are now there, as ſhe verily believes, who are material Witneſſes for Deponent's Defence on ſaid Indictment, and without whoſe

Teſtimony Deponent cannot with Safety ſtand her Trial, and whom Deponent could not poſſibly get from *England* ſince ſaid Bill of Indictment was found; and in particular, Mrs. *Mary Judd* of the County of *Eſſex*, and Mrs. *Sarah Bonner* of *London*, Mrs. *Sarah Heath* of *London*, and *Thomas Rolph* of *Marybone* in *England*, and ſeveral other Perſons who reſide in *England*, are very material Witneſſes for Deponent upon her ſaid Trial, and whom Deponent could not poſſibly get over to attend this Term, and whom Deponent believes and doubts not but ſhe can get to attend the next Term. That there are ſeveral Perſons in the Counties of *Cork*, *Wexford*, and *Galway*, who are very material Witneſſes for Deponent; ſeveral of whom are wrote to, but they cannot, as Deponent is informed and believes, attend this preſent Term. Saith, that *Sarah Weedon*, Widow of *John Weedon*, who was Coachman to Lord *Altham* (at the Time when the ſaid *James Anneſley* alledges he was born), and lived at that Time near *Dunmaine-houſe* (where ſaid *James Anneſley* alledges he was born), and was frequently at *Dunmaine-houſe*, now lives at Colonel *John Blakeney*'s at *Abbort* in the County of *Galway*, which, as Deponent is informed and believes, is ſeventy Miles from *Dublin*, and is a moſt material Witneſs for Deponent; and Deponent having cauſed Application to be made to the ſaid *Sarah*, is informed and believes, ſhe is ſo infirm, that ſhe cannot travel without a Carriage, and therefore is not come up to *Dublin*, tho' Deponent has good Reaſon to believe, and doubts not but ſhe will be able to get her to attend the next Term. Saith, ſhe is credibly informed and verily believes, that *James Anneſley* and thoſe concerned for him (who Deponent believes are the Perſons that carry on the Proſecution againſt Deponent), are ſo ſenſible that the ſaid *Sarah* is a material Witneſs for Deponent, that they, or ſome of them, have lately, by Bribes and otherwiſe, attempted to ſeduce and carry off the ſaid *Sarah* from ſaid Colonel *Blakeney*'s, and had a Horſe and Pillion for that Purpoſe at *Abbort*, but were diſcovered, and prevented by ſaid Colonel *Blakeney*'s Means. That *Anthony Dyer*, now of *Cork*, was Gentleman to the ſaid Lord *Altham* when he dwelt at *Dunmaine* aforeſaid, and is a very material Witneſs for Deponent upon ſaid Trial, who Deponent cannot get to attend this Term, but believes ſhe will be able to get him to attend next Term. Saith, that from the Number of Witneſſes, material for her to produce on ſaid Trial, and the different Parts of this Kingdom and *Great-Britain*, where they reſide, it will not be poſſible for Deponent to get them to attend this Term, nor can Deponent be in any ſort prepared to defend herſelf in a proper Manner, unleſs reaſonable Time be given her; and is ſatisfied in her Conſcience, it is not, nor was it in her Power, or in the Power of any other Perſon, to get the ſeveral Witneſſes, material for her Defence, to attend this Term; but believes and doubts not but ſhe will be able to get them to attend the next Term.

In order to oppoſe this Motion, the following Affidavit was ſworn the 13th of *November*, 1744.

The King against *Mary Heath.* } *DANIEL MAC KERCHER*, Eſq. came this Day before me and made Oath, that the Traverſer, *Mary Heath*, was, as he believes, apprehended in *Auguſt* laſt upon a Warrant, granted againſt her for wilful and corrupt Perjury; and ſaith, That in expectation of ſaid *Heath*'s Trial coming on at the laſt Sitting of the Court of *Oyer* and *Terminer* held for the County of *Dublin*, on the 24th of *October* laſt, Deponent ſent to *England* and to ſeveral Counties of this Kingdom for ſeveral Witneſſes, to be produced and examined againſt ſaid *Heath*; and ſaith, a great many of ſaid Witneſſes came to *Dublin* from *England* and ſeveral remote Counties of *Ireland*, to be examined on Behalf of his Majeſty on ſaid Trial; but the Indictment being removed by Writ of *Certiorari* to the Court of King's Bench, Deponent ſent many of ſaid Witneſſes, who live in this Kingdom, out of Town; and ſuch other of ſaid Witneſſes as are old and infirm, and live in remote Parts, and alſo the Witneſſes, who came from *England*, Deponent hath kept in *Dublin* at conſiderable Expences. Saith, he was at very conſiderable Expences in bringing ſaid Witneſſes to *Dublin*, in Expectation that ſaid *Heath*'s Trial would have come on at ſaid Sitting of the ſaid Commiſſion. Saith, that the Trial of ſaid *Heath* being appointed to come on, on *Wedneſday* the 14th of *November* Inſtant, Deponent hath, ſince the ſaid Day for Trial was appointed, ſent to ſeveral Counties of this Kingdom for ſeveral of ſaid Witneſſes that were before in *Dublin*, to give Evidence on behalf of his Majeſty againſt ſaid *Heath* upon ſaid Trial; and ſaith, ſome of ſaid Witneſſes, who are material to be examined on ſaid Trial againſt her, have a Call to *England* upon Buſineſs of great Importance; and others, who are very material Evidences againſt her, are very old and infirm; ſo that Deponent ſaith, if the Trial of ſaid *Heath* ſhould be put off from this Term to next, it will put the Proſecutors to very conſiderable Expences and Hardſhips; and not only ſo, but it will be highly inconvenient to, and almoſt impoſſible for ſeveral other Witneſſes (who are obliged as ſoon as they can to go for *England*) to attend in this Kingdom next *Hillary* Term, without neglecting Affairs of the greateſt Conſequence; and ſeveral other very material Witneſſes, who are old and infirm, may die, or become ſo weak and infirm as not to be able to attend next Term. Saith, that the Application on Behalf of ſaid *Heath* to put off her Trial to next Term is intended, as Deponent verily believes, not only to put the Proſecutors to great Expence, but alſo for other Ends and Purpoſes, and to avoid or poſtpone, as much as ſhe can, her being tried. Says, if ſaid *Heath*'s Trial ſhould be put off to the next Term, ſhe will not, nor can ſhe be ſo effectually proſecuted as ſhe would now be, in regard that ſeveral material Witneſſes againſt her will be under a Neceſſity of being next Term in *England*, and ſaid *Heath* may, for want of the Evidence of ſuch Witneſſes, be acquitted. Whereas, if ſuch Witneſſes could and did attend to give Evidence againſt her, ſhe would be found guilty of Perjury, as Deponent verily believes. And believes ſaid *Heath* had Time ſufficient to prepare for and have any Witneſſes material for her. Saith, he is credibly informed and believes, ſaid *Heath*, or any one for her, did not, ſince ſhe was apprehended for ſaid Perjury, iſſue any Summons or Subpœnas for any Witneſſes to come to attend and give Evidence on her Trial; nor has ſhe, or any other Perſon on her Behalf, as Deponent believes, ſince ſhe was taken for ſaid Perjury, uſed any Means to have any Witneſſes ready to appear for her, in expectation and upon an Aſſurance given her, as Deponent is informed and believes, by ſome of her Managers, that ſaid Trial would be put off. Doth not know or believe, that *Mary Judd*, *Sarah Bonner*, and *Sarah Heath*, mentioned in the Affidavit of ſaid *Mary Heath*, or any of them, were examined on the Trial in Ejectment, had in the Exchequer laſt *Michaelmas* Term between the Leſſee of *James Anneſley* and the Earl of *Angleſea*. Saith, he doth not know or believe that *Sarah Weedon*, mentioned in ſaid *Heath*'s Affidavit, is a material Witneſs for her; but, on the contrary, is informed, ſaid *Sarah* is a material Witneſs againſt her. Saith, Deponent being informed ſaid *Sarah Weedon* was a material Witneſs againſt ſaid *Mary*, he, for that Reaſon, and for no other Ends, ſent *Edward Weedon*, Son of ſaid *Sarah*, to the County of *Galway*, to Colonel *John Blakeney*'s, where Deponent was informed ſaid *Sarah* was, in order to bring her to *Dublin*, to give Evidence againſt ſaid *Mary*; and ſaid *Edward*, on his Return, informed Deponent, ſhe was by Force detained in the Houſe of the ſaid *Blakeney*, and that (tho' ſhe declared her Willingneſs to give her Teſtimony) ſaid *Blakeney* would not permit her to go, but forcibly kept her in his Houſe, notwithſtanding her Endeavours to come away. Whereupon, Deponent cauſed a *Subpœna* to iſſue, requiring ſaid *Sarah* to attend to give Evidence on the Trial of ſaid *Mary*, which Deponent ſent to be ſerved on ſaid *Sarah*, to oblige her to attend, purſuant to ſuch *Subpœna*. Saith, Deponent intended, before he ſent ſaid *Subpœna* to be ſerved on ſaid *Sarah*, to apply to this Court for a Writ of *Habeas Corpus* for her, ſhe being confined and detained by Force in the Houſe of ſaid *Blakeney*, as Deponent was informed; and accordingly, ſaid *Edward* and *John Weedon*, another Son of ſaid *Sarah*'s, made ſeverally an Affidavit, as Deponent believes, on the eighth of *November* Inſtant, in order to ground a Motion thereon for a Writ of *Habeas Corpus* for ſaid *Sarah*; which Motion Deponent would have made, but Deponent afterwards thought it more proper to try whether by Service of a *Subpœna*, ſaid *Sarah* would be permitted to come to *Dublin*, to give Evidence on the Trial, Deponent believing, ſaid *Blakeney* would not oppoſe an Obedience to ſaid *Subpœna*. Saith, the Perſon ſent by Deponent to ſerve ſaid *Subpœna* is not yet returned, that Deponent knows or believes: Denies, he, or ſaid *James Anneſley*, or any other concerned for him, or who carry on the Proſecution againſt ſaid *Mary Heath*, to Deponent's Knowledge or Belief, have lately, or at any Time, by Bribes, or otherwiſe, attempted to ſeduce or carry off ſaid *Sarah* from ſaid *Blakeney*'s, to prevent her from being examined on the Trial of ſaid *Mary*, as is untruly inſinuated by the Affidavit of ſaid *Heath*; nor doth Deponent know or believe, nor does ſaid *James Anneſley*, or any other Perſon concerned for him, as Deponent believes, know or believe, ſaid *Sarah* is a material Witneſs for ſaid *Heath* upon her Trial. Verily believes, ſaid *Sarah* is detained in the Houſe of ſaid *Blakeney*, merely becauſe ſhe is a material Witneſs againſt ſaid *Mary*, and to prevent her from being produced as a Witneſs; and Deponent is convinced, ſaid *Mary* could, if ſhe pleaſed, have had ſaid *Sarah Weedon* to attend on the fourteenth Inſtant upon her Trial. Saith, Deponent's Intention to ſend for and bring ſaid *Sarah* to *Dublin*, was to give Evidence againſt ſaid *Mary*, and not to prevent her giving Evidence, as is falſely inſinuated by ſaid *Mary*'s Affidavit; and denies he, by himſelf, or any other, attempted to bribe ſaid *Sarah*; nor did Deponent, ſince he embarked in the Affairs of the ſaid *James*, attempt to bribe, or by any unfair or unlawful Means, to ſeduce or prevail upon any Perſon to give Evidence in Behalf of ſaid *James*; nor doth Deponent know or believe, that any Attempts of Bribery or other unlawful or unfair Means were made uſe of (by ſaid *James Anneſley* or any Perſon concerned for him) to give Evidence for him in the Suit between him and ſaid Earl of *Angleſea*, or to ſtifle or prevent the Evidence of any Perſon who could give Evidence for ſaid Earl or for ſaid *Heath*; but, on the contrary, Deponent hath all along, ſince he engaged in the Affairs of ſaid *James Anneſley*, carried on the ſame with all legal and fair Ways and Methods, and Deponent is determined ſo to do in the Conduct of ſaid *James*'s Affairs. Believes, and is convinced by very ſufficient Proofs, that Deponent has had of the ſame, that many unfair and illegal Endeavours and Attempts have been made uſe of by Perſons concerned for ſaid Earl and ſaid *Mary Heath*, not only to bribe and corrupt Witneſſes, but alſo, by very unfair and illegal Means, to intimidate and ſeduce ſeveral Perſons from giving Teſtimony on Behalf of ſaid *James*, and to have ſaid *Mary* acquitted of the Perjury of which ſhe is indicted.

On the thirteenth of *November* the Matter was debated by Counſel, and the Court were of Opinion the Trial ought to be put off. And afterwards, by Conſent of all Parties, the Day of Trial was appointed to be *Monday* the fourth Day of *February* 1744.

On the twentieth of *November* 1744, the Counſel for the Proſecutors moved the Court for an Attachment againſt Colonel *John Blakeney*, for his Contempt of the Court, in not permitting *Sarah Weedon* to attend the Court on the fourteenth Day of *November*, in obedience to a *Subpœna*, with which ſhe was ſerved; and grounded this Motion on the following Affidavits.

Thomas Carter, Eſq. Attorney and Coroner of the Lord the King againſt *Mary Heath.* } *JAMES MAGRATH*, of the City of *Dublin*, came this Day before me and made Oath, That on the thirteenth Day of this Inſtant *November*, this Deponent accompanied *Andrew Roſs*, of *Maryſtown* in the County of *Roſcommon*, Gentleman, to *Abbort* in the County of *Galway*, where *John Blakeney*, Eſq. lives, the ſaid *Andrew Roſs* being employed to ſerve *Sarah Weedon* with a *Subpœna*, commanding her to attend in his Majeſty's Court of King's Bench on the fourteenth Day of this Inſtant *November*, to give Evidence in this Cauſe. And this Deponent ſaith, That the ſaid *Andrew Roſs* did, as this Deponent believes, on the thirteenth Day of *November* ſerve the ſaid *Sarah Weedon* with the ſaid *Subpœna*; and this Deponent having ſtood at a little Diſtance from the ſaid *John Blakeney*'s Houſe, to wait for the ſaid *Andrew Roſs*, the ſaid *Andrew Roſs*, in ſome ſhort Time after he went into the ſaid Houſe, returned to Deponent, and deſired this Deponent to get off as faſt as he could; and that when the ſaid *Andrew Roſs* turned the Corner of the Avenue he would change Horſes with Deponent. That Deponent thereupon believing the ſaid *John Blakeney* intended to have this Deponent very ill treated for coming with the ſaid *Andrew Roſs* to have the ſaid *Sarah Weedon* ſerved with the ſaid *Subpœna*, this Deponent therefore rode off, and at ſome Diſtance from the ſaid Houſe exchanged Horſes with the ſaid *Andrew*

Andrew Roſs, and, in ſome time, Deponent looking behind, perceived ſeveral Perſons on Horſeback purſuing, as this Deponent apprehended, the ſaid *Andrew Roſs* and this Deponent; and therefore this Deponent rode forward as faſt as his Horſe could carry him, and by that means Deponent eſcaped any Inſult or Danger intended him; and this Deponent verily believes the ſaid Perſons were ſent in Purſuit of this Deponent and the ſaid *Andrew Roſs* by the ſaid *John Blakeney*, with Intent to treat them very ill, and to prevent their carrying the ſaid *Sarah Weedon* to *Dublin*, to give Evidence againſt the ſaid *Mary Heath*, as this Deponent verily believes.

Thomas Carter, Eſq. Attorney and Coroner of the Lord the King, againſt *Mary Heath*.

WHEREAS there iſſued forth of his Majeſty's Court of King's-Bench in *Ireland*, and under the Seal thereof, his Majeſty's Writ of *Subpœna* in this Cauſe, bearing Date the eighth Day of *November* Inſtant, directed to *Sarah Weedon*, commanding her to be in the ſaid Court of King's-Bench on *Wedneſday* the 14th Day of *November* Inſtant, to teſtify the Truth concerning a certain Trial between *Thomas Carter*, Eſq. Attorney and Coroner of the Lord the King, and *Mary Heath*: Now, *Andrew Roſs*, of *Mary's-Town*, in the County of *Roſcommon*, Gentleman, came this Day before me and made Oath, that on the thirteenth Day of this Inſtant *November*, in the Forenoon of ſaid Day, this Deponent perſonally ſerved the ſaid *Sarah Weedon* with the ſaid *Subpœna*, by delivering unto her, at the Houſe of *John Blakeney*, Eſq. at *Abbort*, in the County of *Galway*, a true Copy of the ſaid *Subpœna*, and at the ſame Time gave the ſaid *Sarah Weedon* a *Britiſh* Shilling in Silver, and ſhewed her the ſaid original *Subpœna* under Seal as aforeſaid; and this Deponent ſaith, That before this Deponent ſerved the ſaid *Sarah Weedon* as aforeſaid, this Deponent, as he was going towards the Houſe of the ſaid *John Blakeney*, met the ſaid *John Blakeney*, with a Gun in his Hand, coming towards Deponent; and Deponent told the ſaid *John Blakeney*, that Deponent had a Meſſage to deliver, which Deponent ſaid he did not think proper to deliver until Deponent had acquainted the ſaid *John Blakeney* therewith; and upon the ſaid *John Blakeney*'s aſking what it was, Deponent told him, that Deponent had a *Subpœna* to ſerve upon *Sarah Weedon*; and Deponent having ſhewn and produced to the ſaid *John Blakeney* a Copy of the ſaid *Subpœna*, the ſaid *John Blakeney* having taken and read it, ſaid, the ſaid *Sarah Weedon* could not be there (meaning, as Deponent believes, in the ſaid Court of King's-Bench) in that Time; upon which Deponent ſaid, he had ſo provided for her, that Deponent would engage ſhe ſhould be there the next Day in Time: Whereupon, the ſaid *Blakeney* ſwearing, ſaid, he would take care the ſaid *Sarah Weedon* ſhould not be there the next Day. That Deponent thereupon begged he might ſee the ſaid *Sarah Weedon*; to which the ſaid *John Blakeney* in anſwer, ſaid, with an Oath, that Deponent might ſee her, but that he, this Deponent, ſhould not take her away; but this Deponent ſaith, That he, this Deponent, went into the ſaid *John Blakeney*'s Houſe, and there ſerved the ſaid *Sarah Weedon* with the ſaid *Subpœna*, as aforeſaid. And upon this Deponent's ſerving the ſaid *Sarah Weedon*, as aforeſaid, ſhe ſaid ſhe thought ſhe was to have been ſent for a-*Thurſday*; upon which, Deponent ſaid, ſhe, the ſaid *Sarah Weedon*, might then come, for it would be Time enough, and that Deponent would take her very ſafe to *Dublin*. That thereupon, the ſaid *John Blakeney*, who was preſent at the ſaid Service and Diſcourſe between the ſaid *Sarah Weedon* and Deponent, ſaid, That ſhe the ſaid *Sarah Weedon* ſhould go, and that he would take care to ſend her in a proper Time. And this Deponent ſaith, That the ſaid *John Blakeney* having behaved and expreſſed himſelf in a very angry Manner, and being greatly diſpleaſed, as this Deponent underſtood by him, and as this Deponent verily believes, that Deponent had come on the aforeſaid Errand to ſerve the ſaid *Subpœna*; and the ſaid *John Blakeney* having declared, with Proteſtations and Oaths, that he would ſend *James Magrath* to *Galway* Goal, and that he would let the ſaid *Magrath* know, that there were Courts in the Country as well as in *Dublin*; the ſaid *John Blakeney* having ſeen the ſaid *James Magrath* with Deponent, when Deponent firſt met the ſaid *John Blakeney*, as aforeſaid; this Deponent was greatly affrighted; and finding it to no Purpoſe to expect to bring the ſaid *Sarah Weedon* to *Dublin*, to give Evidence in purſuance of the ſaid *Subpœna*, by Means of the Obſtruction and Oppoſition of the ſaid *John Blakeney*, though this Deponent verily believes, were it not for ſuch Oppoſition of the ſaid *John Blakeney*, that the ſaid *Sarah Weedon* would readily have come with this Deponent in Obedience to the ſaid *Subpœna*; this Deponent therefore went away. And when Deponent came up to the ſaid *James Magrath*, who waited for Deponent at a little Diſtance from the ſaid *John Blakeney*'s Houſe, this Deponent apprehending from the Declarations and Threats of the ſaid *John Blakeney* towards the ſaid *James Magrath*, that it would be moſt prudent and ſafe for the ſaid *James Magrath* to get off as faſt as he could, this Deponent therefore deſired the ſaid *James Magrath* to make the beſt of his Way; and that when Deponent turned the Corner of the Avenue, Deponent would change Horſes with the ſaid *James Magrath*, Deponent believing the Horſe that Deponent rode to be better than that rode by the ſaid *Magrath*; and accordingly the ſaid *John Magrath* and Deponent rode off, and Deponent changed Horſes with the ſaid *Magrath* when they got ſome Diſtance from the ſaid *John Blakeney*'s Houſe. And Deponent ſaith, That when the ſaid *Magrath* and Deponent had gone forward for ſome Time, this Deponent, looking behind him, perceived ſeveral Perſons on Horſeback purſuing, as this Deponent apprehended, the ſaid *James Magrath* and this Deponent, which gave this Deponent the greater Reaſon to fear ſome Danger, and thereupon Deponent puſhed forward as faſt as his Horſe could carry him, and by that Means eſcaped any Danger or Inſult that might be intended by the ſaid Perſons, who, Deponent verily believes, were ſent in Purſuit of this Deponent, or of the ſaid *James Magrath*, by the ſaid *John Blakeney*. And this Deponent ſaith, That by the aforeſaid Means of ſaid *John Blakeney*, this Deponent could not carry the ſaid *Sarah Weedon* to *Dublin*, to give Evidence in purſuance of the ſaid *Subpœna*; and this Deponent verily believes, the aforeſaid Oppoſition and Behaviour of the ſaid *John Blakeney* was merely to prevent the ſaid *Sarah Weedon*'s coming to *Dublin* to give Evidence againſt the ſaid *Mary Heath*.

But the Court made no Rule.

On the twenty-firſt Day of *November* 1744, the Counſel for the Proſecutors moved the Court for a Writ of *Habeas Corpus* to be directed to Colonel *John Blakeney*, requiring him to have the Body of *Sarah Weedon* before the Court; and grounded this Motion on the following Affidavits: Sworn the 8th of *November*.

The King againſt *John Blakeney*, Eſq.

JOHN WEEDON, of the City of *Dublin*, came this Day before me and made Oath, That *Sarah Weedon*, this Deponent's Mother, is now detained againſt her Will, and without any legal Proceſs at Law or Warrant againſt her, at the Houſe of *John Blakeney*, Eſq. at *Abbort*, in the County of *Galway*. And this Deponent ſaith, That on *Tueſday* the Thirtieth Day of *October* laſt, this Deponent was at the ſaid Houſe of the ſaid *John Blakeney*, with Deponent's ſaid Mother, in order to carry her away from the ſaid *John Blakeney*, but this Deponent could not. And this Deponent further depoſeth, That in the Evening of the ſaid Thirtieth Day of *October*, this Deponent went with his Brother, *Edward Weedon*, to the ſaid Houſe of the ſaid *John Blakeney*, in order, if they poſſibly could, to carry their ſaid Mother away; but the Gates of the ſaid *John Blakeney*'s Yard, and the Doors of his Houſe having been ſhut and locked, this Deponent and his ſaid Brother knocked at the Gate, and the ſaid *Sarah Weedon* looking out of a Window up one Pair of Stairs in the ſaid Houſe, deſired this Deponent and his ſaid Brother to go off as faſt as they could, for that the Doors were locked upon her, and ſhe could not get out; and that if this Deponent and his ſaid Brother did not immediately go away, they would be knocked on the Head. Whereupon this Deponent and his ſaid Brother went away, being afraid of Danger if they ſtaid any longer; and this Deponent verily believes, the ſaid *John Blakeney* will, for ſome unlawful Ends and Purpoſes, continue to detain the ſaid *Sarah Weedon* againſt her Will, and by Force and Dureſs, and without any Authority for ſo doing.

The King againſt *John Blakeney*, Eſq.

EDWARD WEEDON, of the *Gravelly-Hill*, in the County of *Carlow*, came this Day before me and made Oath, That *Sarah Weedon*, this Deponent's Mother, is now detained againſt her Will, and without any legal Proceſs at Law or Warrant againſt her, at the Houſe of *John Blakeney*, Eſq. at *Abbort*, near *Caſtle-Blakeney*, in the County of *Galway*. And this Deponent further depoſeth, That in the Evening of the Thirtieth Day of *October* laſt, this Deponent went with his Brother, *John Weedon*, to the Houſe of the ſaid *John Blakeney*, in order, if they poſſibly could, to carry their ſaid Mother away; but the Gates of the ſaid *John Blakeney*'s Yard, and the Doors of his Houſe having been ſhut and locked, this Deponent and his ſaid Brother knocked at the Gate; and the ſaid *Sarah Weedon* looking out of the Window up one Pair of Stairs in the ſaid Houſe, deſired this Deponent and his ſaid Brother to go off as faſt as they could, for that the Doors were locked upon her, and ſhe could not get out; and that if this Deponent and his ſaid Brother did not immediately go away, they would be knocked on the Head. Whereupon, this Deponent and his ſaid Brother went away, being afraid of Danger if they ſtayed any longer. And this Deponent verily believes, the ſaid *John Blakeney* will, for ſome unlawful Ends and Purpoſes, continue to detain the ſaid *Sarah Weedon* againſt her Will, and by Force and Dureſs, and without any Authority for ſo doing.

Mr. *Thomas Blakeney*, Attorney, informed the Court, That to his Knowledge the material Facts mentioned in the foregoing Affidavits were falſe; and offered that Colonel *Blakeney* ſhould anſwer thoſe Affidavits, if thoſe concerned for the Proſecutors would agree he ſhould do ſo at Peril of Coſts, and would undertake to pay the Coſts. This Offer Mr. *Mac Kercher*, then preſent in Court, declined. Mr. *Blakeney* then deſired, that *Edward* and *John Weedon*, who made the Affidavits, ſhould be ordered to attend, and undertook to falſify their Affidavits, by Affidavits. And accordingly, the Court put off the Motion till next Day, and ordered the ſaid *Edward* and *John Weedon* to attend then, and Mr. *Blakeney* to make Affidavit in the mean time.

On the twenty-ſecond Day of *November* 1744, the above Affidavits of *John* and *Edward Weedon* were read; and the following Affidavits of Mr. *Thomas Blakeney* and *Edward Kilkelly* were produced and read.

The King againſt *John Blakeney*, Eſq.

THOMAS BLAKENEY, Gent. maketh Oath, That he very well knows *John Blakeney* of *Abbort*, in the County of *Galway*, Eſq. that he is this Deponent's near Relation, and lives within two Miles of this Deponent's Place of Reſidence in ſaid County; and that he, his Family, and this Deponent's Wife and Family frequently viſit each other. Depoſeth, That on the Day but one after a Verdict was given in the Court of Exchequer on a Trial, which was had between the Leſſee of *James Anneſley*, Eſq. and the Earl of *Angleſea*, this Deponent received a Letter from this Deponent's Wife, wherein ſhe mentioned that old Mrs. *Weedon*, who then lived at *Abbort*, ſaid, That ſhe lived for many Years with Lord and Lady *Altham*, and that ſaid Lady never had a Child while in *Ireland*; but that one *Juggy Landy* had a Child called *James Annesley*, and that Lord *Altham* was ſuppoſed or deemed to be his Father, or to that Purpoſe; which Letter Deponent ſhewed to ſeveral Gentlemen, and was the firſt Account Deponent ever had of ſaid Mrs. *Weedon*'s knowing any thing of that Matter, or of her living in ſaid Lord *Altham*'s Family. Depoſeth, that ſome time about laſt *Chriſtmas* Holidays this Deponent was at *Abbort* aforeſaid, and there ſaw the ſaid Mrs. *Weedon*, and aſked her, whether ſhe lived with Lord and Lady *Altham*, and if ſaid Lady ever had a Son? And Mrs. *Weedon* declared that ſaid Lady never had any Child whatſoever ſince her coming into *Ireland*, to the Time that ſhe and Lord *Altham* had ſeparated. That Deponent aſked ſaid Mrs. *Weedon* if ſhe knew *Jemmy Anneſley*, or whoſe Son he was; that ſaid Mrs. *Weedon* ſaid ſhe did know *Jemmy Anneſley*, and that he was the Son of *Juggy Landy*, and not of Lady *Altham*; wherefore Deponent always did and does believe, that ſaid Mrs. *Weedon* is a material Evidence for the Earl of *Angleſea*, and not for the ſaid *James Anneſley*. Deponent further depoſeth, That the ſaid Mrs. *Weedon* has been for ſeveral Years paſt Servant to the ſaid *John Blakeney*, and lived with him at *Abbort* aforeſaid; and depoſeth, That on *Saturday* the third Day of *November* Inſtant, this Deponent called upon the ſaid *John Blakeney* at *Abbort*, in this Deponent's way to *Dublin*, and there ſaw the ſaid Mrs.

Mrs. *Weedon*, and depoſeth, That ſhe was ſo far from being confined, or under any Manner of Reſtraint, that ſhe was at full Liberty; that the Doors of the Houſe were open, and that ſhe might have gone in or out, or to any Place ſhe thought proper. And depoſeth, That Deponent was at the ſame Time informed by the ſaid *John Blakeney* and his Lady, which he believes to be true, that at 12 o'Clock at Night the *Tueſday* before, ſome People came about his Houſe, and that they had taken or ſtolen away his Servant *John Weedon*, and that he alſo believed, they alſo intended to take away the ſaid Mrs. *Weedon*; for that he was informed they had a Horſe with a Pillion, and that ſaid *John Weedon* rode or travelled on the ſaid Pillion. Depoſeth, That this Deponent met ſaid Mrs. *Weedon* in the common Hall of ſaid Houſe at *Abbort* on the *Saturday* aforeſaid; and that ſhe begged of this Deponent to enquire for her Son *Jonny*, as ſhe called him, as ſoon as Deponent ſhould arrive in *Dublin*, and to ſend him Home, for that ſhe was very ſure he would return to his Service, if he got but once ſober, but that ſhe very much feared they would keep him always drunk; and ſeemed greatly troubled at his being taken away. That Deponent promiſed to enquire for him, the ſaid *John*, and to tell him what ſhe deſired. Depoſeth, That on *Thurſday*, the eighth Day of *November* inſtant, the ſaid *John Weedon*, together with Deponent's Servant, called upon this Deponent at a Houſe, where Deponent was at Dinner in *Dublin*; that Deponent told ſaid *John Weedon*, he was ſorry he had quitted his Service without his Maſter's Leave, and alſo told him what his Mother ſaid to this Deponent as aforeſaid, and that ſhe expected he would go back. Whereupon the ſaid *John* ſaid, he never would, for that he was to be much better provided for. And Deponent having aſked him by whom? he, the ſaid *Weedon*, ſaid, it was by the young Earl of *Angleſea*. Whereupon Deponent ſmiled and ſaid, he was not Earl as yet. That ſaid *John* thereupon ſaid, that whether he was to be Earl, or not, he would provide for him, and, at the ſame Time, wiſhed that his Mother would come up, for that, if ſhe did, ſhe would be much happier, and have much eaſier Bread than ſhe had where ſhe lived. Depoſeth, That he very well knows that the ſaid *John Weedon* has been for ſeveral Years paſt Servant to the ſaid *John Blakeney*, and lived with him in his Houſe at *Abbort* aforeſaid, until he quitted him in the Night of the thirtieth of *October* laſt; and Deponent verily believes, the ſaid Mrs. *Weedon* never was, nor is ſhe now, as this Deponent verily believes, under any Manner of Reſtraint, or in any Sort confined by the ſaid *John Blakeney*, or any other Perſon; but verily believes, ſhe is at full Liberty to go where ſhe thinks proper. And ſaith, he knows that the ſaid Mrs. *Weedon* has been applied to, on Behalf of the Earl of *Angleſea*, to attend at *Wexford*, there to be examined as a Witneſs on his Lordſhip's Behalf, on a Commiſſion, which Deponent believes, is, and has been ſpeeding there for ſome Time, in a Cauſe depending in the High Court of Chancery in *England*, wherein the ſaid *James Anneſley* is Plaintiff, and the ſaid Earl of *Angleſea* is Defendant.

The King againſt *John Blakeney*, Eſq. } *EDWARD KILKELLY*, of *Liſs*, in the County of *Galway*, Cooper, came this Day before me and made Oath, That on *Friday* ſevennight this Deponent was at the Defendant's Houſe at *Abbort*, in the County of *Galway*. And this Deponent ſaith, That as he was going to the ſaid Houſe he ſaw Mrs. *Sarah Weedon*, who is, and for a conſiderable Time hath been, Servant to the Defendant, and whom Deponent knows very well, without the Gates of the ſaid Defendant's Yard, as if ſhe was returning from the Place where the Cows were milking, and had, as Deponent apprehended and believed, ſome Milk in her Hands carrying into the Houſe. And this Deponent ſaith, ſhe the ſaid *Sarah Weedon* was alone, and not in any Sort of Reſtraint or Confinement; and Deponent afterwards, on the ſame Day, ſaw the ſaid *Sarah Weedon* going about her Buſineſs in the ſaid Houſe, and in no Reſtraint or Confinement; and Deponent converſed with the ſaid *Sarah* at that Time about ſeveral Matters, and ſhe did not mention any Sort of Reſtraint or Confinement, but told Deponent her Son *John Weedon* was gone away, and ſeemed much concerned at it. And this Deponent is very ſure the ſaid *Sarah* is not, nor was not at any Time put into any Sort of Reſtraint or Dureſs by the Defendant.

Court.] Call *John Weedon*.

JOHN WEEDON.

Mr. *Harward* offers to ſpeak.

Court.] We have nothing to do with the Birth of *James Anneſley*; here is Affidavit againſt Affidavit, we muſt hear which of theſe Affidavits is true. We are impoſed on by one Affidavit or other; the Honour of the Court is concerned, and therefore, before we do any Thing, we will hear what *John Weedon* has to ſay.

Mr. *Har.*] With humble Submiſſion, I conceive the hearing of us after this Perſon is examined is not a proper Time; this is now my Time to offer what I have to ſay; I ſhall have no Occaſion to ſpeak after the Examination is ended, and therefore beg leave to ſay a few Words now, which are, that if this Perſon is to be examined, I do apprehend it muſt be on the Foot of ſome ſuppoſed Tranſgreſſion that he hath committed.

Court.] No, Sir, it is to diſcover the Truth. We will have no concealing of the Truth in this Court. Swear him.

Mr. *Har.*] I do not oppoſe your Lordſhip's Right to examine this Witneſs; but———

Court.] Read the Affidavit to him.

JOHN WEEDON is ſworn.

Court.] You are now to declare the Truth, and nothing but the Truth, and you are now likewiſe to declare the whole Truth. You are not obliged to ſay any Thing to criminate yourſelf.

Q. Is your Name *John Weedon*?---*John Weedon*. Yes, my Lord.
Q. Are you the Son of *Sarah Weedon*?---*A.* Yes, I am, my Lord.
Q. Did you live with Colonel *John Blakeney*?---*A.* I did live with him.
Q. Is *Sarah Weedon* your Mother?---*A.* She is.
Q. When did you ſee her laſt?
A. I ſaw her the 30th of *October* in the Houſe of my Maſter.
Q. Have you a Diſcharge?---*A.* I have not.
Q. When did you leave your Maſter?
A. I left him the next Day, the 31ſt of *October*.
Q. Why did you leave him?
A. I was afraid to appear to him, becauſe that I was with my Brother.
Q. What Reaſon had you to fear appearing before him?
A. For Fear he ſhould uſe me ill.
Q. Did he ever uſe you ill?---*A.* He never did.
Q. How came you then to be afraid? Who perſuaded you to leave your Maſter?---*A.* Nobody at all. I came away on my own Accord.
Q. Did you deſire your Mother to leave him before you came away?
A. I did.
Q. And what did ſhe ſay to you?---*A.* She ſaid ſhe could not.
Q. For what Reaſon did ſhe ſay ſhe could not?
A. I could not find out the Reaſon.
Q. Did ſhe tell you ſhe durſt not?---*A.* She ſaid, that ſhe could not.
Q. Did ſhe tell you that her Maſter kept her there againſt her Will?
A. She did not tell me ſo.
Q. What Time of the Evening was it that you went to Colonel *Blakeney*'s the firſt Time?---*A.* It was between ſeven and eight o'Clock.
Q. Was your Brother with you?---*A.* My Brother came along with me.
Q. What Time did your Mother ſpeak to you out of the Window?
A. About half an Hour after Eight.
Q. What Time did you come away?---*A.* I came away by Day-light.
Q. What! the next Morning?---*A.* The next Morning.
Q. What Time? Was the Family up?---*A.* They were up, my Lord.
Q. Did you lye in the Houſe?
A. I did not lye in my Maſter's Houſe, becauſe I could not get in.
Q. Where did you meet your Brother?
Q. I was ſent from Home to —— for a Hound of my Maſter's. I went and got the Hound, and came to take a Mug of Ale at *Glentane*, and there I met my Brother; and my Brother ſaid, I am come for my Mother; and I ſaid, I would get her out of the Houſe; and we went together, and when we came there, we found the Doors and the Gate locked, and ſhe came to the Window, and ſaid, that ſhe could not go out: with that I was afraid of my Maſter, and a Boy came running out and ſaid, My Maſter was coming with a Whip, and I made off as faſt as I could.
Q. What Time was this?---*A.* It was about eight o'Clock.
Q. Did you find the Gate faſtened?---*A.* I did, my Lord.
Q. What did your Mother ſay to you?
A. She ſaid ſhe could not go with us: And, ſays ſhe, go away about your Buſineſs, or you will be knocked on the Head.
Q. Was your Brother there?---*A.* He was.
Q. Was he a Servant there?
A. No, but came to ſee whether my Mother was alive or not.
Q. Was your Mother a Servant there?
A. She was Servant two Years laſt *Michaelmas*.
Q. Was ſhe a Servant at this Time?---*A.* She was at that Time.
Q. She ſaid that ſhe could not go?---*A.* She did, my Lord.
Q. For what Reaſon?---*A.* I cannot tell.
Q. Did ſhe ſay, that ſhe would not go?
A. She did not ſay that ſhe would not go.
Q. Did you and your Brother deſire Mr. *Blakeney* to let her go?
A. No, I was afraid to go to him.
Q. Did your Brother?---*A.* My Brother did not.
Q. Where was it that you propoſed to carry her?
A. To *Ballynaſloe*, to one *Butkly*'s.
Q. Where further?---*A.* We propoſed to bring her to *Dublin*.
Q. Where?---*A.* To Mr. *Anneſley*'s.
Q. Are you in Mr. *Anneſley's* Service?---*A.* I am not.
Q. Are you in any body's Service?---*A.* I am in Nobody's Service.
Court.] Hear your Affidavit read.

Clerk of the Crown reads the Affidavit.

Court.] Does he write his Name?
Clerk.] No.
Court.] Did your Mother ever tell you that ſhe would come away?
A. She did not.
Q. Why did you aſk her to come away in the Night?
A. Becauſe my Brother came for her.
Q. Did ſhe ever tell you and your Brother that ſhe was compelled to ſtay where ſhe was?
A. She did not tell us that ſhe was compelled to ſtay.
Q. Do you underſtand your Affidavit? How came you to ſwear in your Affidavit that ſhe was detained againſt her Will; and now you ſay ſhe was not? What Religion are you of?---*A.* A Proteſtant.
Q. How came you to ſwear that poſitive Affidavit? Did any body read it to you?---*A.* Yes, an Attorney, *Robert Reynell*.
Q. Who is *Robert Reynell*?
Mr. *Nelſon.*] He is my Clerk, my Lord, he read it to him.
Q. Did your Mother tell you ſhe was a Priſoner?
A. No; but ſhe told me, ſhe was afraid of her Life.
Q. Are you ſure of that?---*A.* I am, my Lord.
Q. Of whom was ſhe afraid?
A. She was afraid of my Lord *Angleſea*, that ſhe would be murdered by him.
Q. Was my Lord *Angleſea* ever in that Country?---*A.* He never was.
Q. Why ſhould ſhe run from her Maſter's Houſe without Wages or Diſcharge, becauſe ſhe was afraid of Lord *Angleſea*? Is he a Perſon of ſuch Authority and Power over Colonel *Blakeney*'s Servants, as to terrify them from their Maſter's Service?
A. I cannot tell that, my Lord.
Q. Was ſhe diſcharged at that Time?---*A.* She was not.
Q. Was ſhe paid her Wages?---*A.* No.
Q. Did ſhe demand her Wages, to come away?---*A.* She did.
Q. How do you know that, was you by?
A. I was not, but ſhe told me ſhe could not get her Wages.
Q. Was ſhe afraid of Colonel *Blakeney*'s doing her any Harm?
A. She was not, my Lord.
Q. Why did ſhe apprehend any Harm from my Lord *Angleſea*, did he ſend for her?
A. There was laſt Spring a Man and a Chair came to bring her to *Wexford*, from my Lord, but ſhe was an old Woman, and would not go.
Q. Was ſhe ſummoned, or did he ſend for her of himſelf?
A. He ſerved her with a Bit of Paper.

Q. Did

Q. Did he offer to force her to go?---*A.* He did not.

Q. Did you ever hear that Colonel *Blakeney*, or any Body in the Houſe forced her to ſtay?---*A.* I never did.

More of the Affidavit is read.

Q. What Time was Mr. *Blakeney*'s outward Doors uſually lock'd in Winter-time?

A. Sometimes at Eight or Nine o'Clock, and ſometimes not at all.

Court.] Where is *Edward Weedon*?---*Crier.*] *Edward Weedon.*

Court.] Where does your Brother live?---*A.* He keeps in Town.

Q. Is he in any Service?---*A.* He is not.

Q. Does he follow any Trade?---*A.* He has no Trade at all.

Q. Did he follow nothing?---*A.* He followed a Spade.

Q. Where did you get that Horſe that you went to Mr. *Blakeney*'s on that Night, the thirtieth of *October*?

A. From my Brother.

Q. Where did your Brother get him?---*A.* He brought him with him.

Q. From whence?---*A.* From *Dublin.*

EDWARD WEEDON.

Court.] Are you the Son of *Sarah Weedon*, that lives with Mr. *Blakeney*? *Edward Weedon.*] Yes.

Q. What time in *October* laſt did you go there?---*A.* The thirtieth.

Q. What time of the Day?---*A.* In the Evening.

Q. What time?---*A.* About ſeven or eight o'Clock.

Q. Were the Gates ſhut?---*A.* They were.

Q. Was it dark?---*A.* It was dark, my Lord.

Q. Did you ſee or ſpeak to her that Night?---*A.* I did not.

Q. Did any body elſe?---*A.* My Brother did.

Q. What did ſhe ſay?

A. She deſired him to go off about his Buſineſs, and bring me with him, or elſe I'd be knocked on the Head, my Lord.

Q. Did ſhe ſay ſhe could not go?—*A.* She did, my Lord.

Q. For what Reaſon?---*A.* Becauſe the Doors were locked.

Q. Did ſhe ſay ſhe had a mind to go with you?

A. No, ſhe ſaid no more.

Q. Did you or your Brother aſk her whether ſhe would go, and what did ſhe ſay?

A. She ſaid no more than deſired him to go off, and bring me with him, for if we ſtayed there, I would be knocked on the Head.

Q. Was ſhe kept as a Priſoner?---*A.* As far as I underſtand, ſhe was.

Q. How come you to underſtand ſo?---*A.* Becauſe the Gates were ſhut.

Q. What Time was this?---*A.* About ſeven or eight o'Clock.

Q. Were the Gates open when you came there firſt?

A. No, they were not. My Brother went up firſt to bring her out, and he told her that I was there, come from her; and ſhe was coming out, and he came firſt, and he thought ſhe was following him.

Q. How do you know this?---*A.* My Brother told me this.

Q. Is it uſual for Gentlemen to ſhut their Gates at Night in the Country?

A. It is in the Country; my Mother ſaid ſhe was ſhut up.

Q. Did ſhe ſay that ſhe was ſhut up, or only that the Gates were ſhut?

A. She ſaid as this, She ſhould not come out, and deſired my Brother to go off and take me along with him, for I'd be knocked on the Head.

Q. Did you hear her ſpeak?—*A.* I heard her ſpeak.

Q. What did you hear her ſay?

A. I heard her bid my Brother go off and bring me with him, for I ſhould be knocked on the Head.

Q. Did ſhe ſay nothing more?

A. She ſaid no more, but ſhut the Window.

Court.] Read the firſt Part of his Affidavit.

Clerk of the Crown reads it.

Court.] How did your Mother know you were there?

A. My Brother knocked at the Gate.

Q. Did any Body come to the Gate?

A. Nobody; but my Mother opened the Window.

Q. Was ſhe a Servant at that time?—*A.* She was.

Q. When did you ſee her before that time?

A. I went to her before that by myſelf, about a Month or five Weeks before, and ſhe aſked me if I heard any thing concerning Mr. *Anneſley* and my Lord *Angleſea*; I told her I did; and ſhe ſaid, For your Life, do not ſpeak a Word, for you are in the midſt of your Enemies here.

Q. Did you carry a Horſe with you the 30th of *October*?

A. I did, my Lord.

Q. Did your Mother ſay any thing to you more, the time that you was with her before?

A. She ſaid, I would be very deſirous of ſeeing Mr. *Anneſley*, if I was in *Dublin.*

Q. Whoſe Horſe and Pillion was it that you were furniſhed with?

A. I hired them by the way.

Q. Who ſent you to hire them?

A. I hired them by Mr. *Anneſley*'s Orders.

Q. Who gave thoſe Orders to you?---*A.* Mr. *Annesley* himſelf.

Q. Your Mother ſaid no more the time you went by yourſelf, but that you were among your Enemies there?---*A.* No more, my Lord.

Q. Was ſhe a Servant in the Houſe?

A She was a Servant-Maid in the Houſe, and, as far as I underſtand, ſhe was forced.

Q. Who told you ſhe was forced?---*A.* The Doors were all locked.

Q. Were they locked when your Brother went there?

A. They were open when my Brother came, my Brother went in.

Q. Where did you meet your Brother that Evening?

A. At a Place called *Glentane.*

Q. How long did your Brother ſtay before he came to you again?

A. He came out to me again in about three Quarters of an Hour.

Q. How ſoon after that did you return?

A. He told me that his Maſter followed him out with a Whip for to kill him.

Q. Did he tell you ſo?---*A.* He told me ſo.

Q. Did he venture to go back afterwards?

A. When he went back the Gates were ſhut, and he went round to the Backſide of the Houſe, where there was a Door, and knocked at it; my Mother looked out of the Window, and ſaid ſhe could not go: And, ſays ſhe, go your way and bring your Brother with you, for he will be knocked on the Head.

Q. Did ſhe tell you that ſhe was confined or impriſoned?---*A.* She did not.

Q. Are you or your Brother in any body's Service?

A. We are in Nobody's Service.

Court.] Read the Affidavit.

Clerk of the Crown reads it.

Court.] How long is it ſince you lived at *Gravelly-Hill*?

A. I left it about two Months ago.

Q. Were you a Houſe-keeper there?

A. I lived there with a Friend of mine.

Q. Can you write?---*A.* No, my Lord.

Q. Nor read?---*A.* No.

Q. How came you to make this Affidavit?

A. Them that examined me, drew it.

Q. Who were they?---*A.* Mr. *Geoſtrey.*

Q. Is he here?---*A.* No.

Q. Did you tell him that your Mother was detained?

Q. I told him as thus, that the Doors were locked, and ſhe ſaid ſhe could not come.

Q. Did you tell him theſe Words that are in your Affidavit?

A. I told him no more or leſs than what I have given on my Oath here.

To JOHN WEEDON.

Q. Did your Mother tell you that ſhe was confined?

A. She did not tell me that ſhe was confined.

Q. Nor you do not know it?---*A.* No, my Lord.

To EDWARD WEEDON.

Q. Did your Mother tell you ſhe was confined?

A. She did not tell me ſhe was confined.

The Matter was then debated by Counſel, after which the Court delivered their Opinion, as follows.

LORD CHIEF JUSTICE MARLAY.

WE are of Opinion, in the firſt place, That no *Habeas Corpus* can be granted in this Caſe. A *Habeas Corpus* for the Liberty of the Subject is a Writ of Right, and may be applied for without an Affidavit of the Party, and was done in the Caſes of my Lord *Leigh*, Sir *Robert Viner*, and Sir *Robert Howard.* In the Caſe of Sir *Robert Viner*, an *Habeas Corpus* was ſued for, to obtain the Liberty of a Woman confined in his Houſe; the Woman ſaid ſhe was not confined by him, but choſe to ſtay with him. But this does not appear to us at all to be the Caſe here, that there is the leaſt Reſtraint upon *Sarah Weedon*; but, on the contrary, that ſhe is at her full Liberty; for notwithſtanding theſe Affidavits of theſe Men, it does appear ſo. *Edward Weedon* of the *Gravelly-Hill* in the County of *Carlow* maketh Oath, that *Sarah Weedon* is now detained (ſworn the 8th of *November*) by Colonel *John Blakeney* at *Abbort*, near *Caſtle-Blakeney*, in the County of *Galway*. *John Weedon* of the City of *Dublin* maketh Oath, that *Sarah Weedon* is now detained at the Houſe of *John Blakeney*, Eſq. at *Abbort*, in the County of *Galway*; *in Terminis terminantibus* the ſame; both illiterate Perſons, and yet both make theſe poſitive Affidavits of her being under Reſtraint, when it appears ſhe was at her full Liberty, not only before, but after theſe Affidavits were made. Theſe Affidavits were made by Markſmen, and therefore the Court ſent for the Perſon that drew the Affidavits, to know why he drew them in the Manner they appear to us; for, upon the Table, theſe Men have declared that they do not know, nay, they cannot ſay they believe, that ſhe is reſtrained of her Liberty. Can we then, when they have declared that their Affidavits are not true, grant the *Habeas Corpus*? By no means. Conſider the Conſequence of theſe things: By taking a Horſe in a Replevin, a Man may be guilty of Felony, if a Perſon has a mind to knock down every body that ſtands in his way, and procures others to impoſe upon the Court by Affidavits in order to prevent all Oppoſition; in that Caſe the Court will exert their Authority, and puniſh the Perſons that impoſed upon them. We are of Opinion, there is not the leaſt Colour of granting the *Habeas Corpus*; for, to whom muſt it be directed but to Mr. *Blakeney*? If Mr. *Blakeney* does not obey the *Habeas Corpus*, he muſt be attached: If he does, he muſt come to *Dublin*; and the Proſecutor has declined to pay the Expence of all this.

The next Point to be conſidered is, whether theſe Men could be attached for falſifying their Affidavits? I am amazed to hear it ſaid, there are no Precedents of Perſons being attached for Prevarication and impoſing on the Court: May be not in this Caſe, but in moſt great Cauſes, that have been long depending, ſuch things have happened. Suppoſe a Man in an Affidavit to put off a Trial, ſhould ſwear, that ſuch a Bond was perfected, and he explains himſelf, when he comes to be examined, that he heard ſuch a one ſay ſo; is not he guilty in Conſcience of Perjury, and ought he not to be puniſhed for Prevarication and for the Impoſition? I can give Inſtances, where Perſons have endeavoured by artful Affidavits to extort exorbitant Bail, for which they have been committed by the Court.

Now as to theſe two Perſons, they have ſworn in the moſt expreſs Terms in their Affidavits, every thing which is neceſſary to induce the Court to grant an *Habeas Corpus.* I muſt own, if there was an Inducement to do this from filial Piety, I ſhould be very tender how I committed them; but it is plain they are not induced by that Motive; what they did, they did it, that they might be employed, as well as others, by Mr. *Anneſley*, not out of filial Piety to free their Mother, whom they knew to be at Liberty, nor is there the leaſt Appearance that they had ſuch a Motive. Therefore, as they have endeavoured to impoſe upon the Court, and injure an innocent Perſon, Mr. *Blakeney*, I think they ought to be committed.

Mr. Juſtice WARD.

THE only thing to excuſe them is their Ignorance. But as the Matter now ſtands, it is plain that the Perſon who drew the Affidavits, knew they were falſe, knew that theſe Men ſwore to a Fact they did not know to be true. Really, a Man of Buſineſs muſt know the Practice in drawing Affidavits, and what kind of Affidavits will ſerve the End propoſed by them; but theſe Men ſwear further, and ſay, that they told him the ſame Story they did now: If that be true, he drew theſe Affidavits moſt falſely;

falsely; he led them into Perjury, and is as guilty as they are, and should as certainly be punished, if we had him; but I find on Inquiry, he is not here; therefore, as we have Nobody else to punish, we must punish these Men, who have thus prevaricated and imposed upon the Court.

LORD CHIEF JUSTICE.

IT is a most wicked, profligate Thing in an Agent, to make an illiterate Man swear an Affidavit he knows to be false: Whether that be *Goostrey*'s Case or no I will not say, because he is not here to clear himself, but it looks very like it.

Monday, the 4th of *February*.

Motions in Behalf of the Crown for putting off the Trial till next Term *.

[Mr. Solicitor General, *for the Crown*.

" MY Lord, the High Sheriff has been applied to several Times to " give a Copy of the Pannel, according to Custom, to the Agent " for the Prosecutors; but he has not hitherto been able to procure one, " though the other Party has."

" *Lord Chief Justice.*] The Sheriff could not give it without Leave of " the Court."

" *Mr. Solliciter General.*] The Court is seldom or never applied to on " that Account, the Sheriff usually gives Copies of the Pannel to the " Parties, without any Application to the Court, two or three Days be- " fore the Trial; but supposing an Application to the Court necessary, " why should he give it to one Party, and refuse it to the other?"

" Mr. *Spring*, for the Traverser.] The Gentlemen concerned for the " Prosecution have served us with Notice of a Motion to put off the " Trial, and therefore we hope they will make their Motion."]

And desired the Notice might be read.

Clerk of the Crown reads the Notice, as follows, *viz.*

Counsel in Behalf of his Majesty will move the Court on *Monday* Morning next, to put off the Defendant's Trial 'till *Friday* next; which Motion will be grounded upon Affidavits this Day filed in the proper Office, and upon the Affidavits of *Mary Heath* and of *Daniel Mac Kercher*, Esq. made in this Cause in the last *Michaelmas* Term, and the Nature of the Case and Reasons to be offered.

Dated this second of *February*, 1744.

[" *Mr. Solliciter General.* We desire first to see if there be a Jury; we " have a Right also to know if the Jury have been rightly summoned."

" *The Bailiffs being called to prove the summoning the Gentlemen mentioned* " *in the Pannel, they appeared, were sworn, and the Pannel was called* " *over.*"

" *Mr. Solliciter General.*] I observe, my Lord, that several of the Gen- " tlemen mentioned in this Pannel are out of the Kingdom, and well " known by all of us to be out of the Kingdom; several others live in " distant Counties, out of the County of *Dublin*; some are old and in- " firm, and uncapable of serving on Juries for several Years past; others " have been dead several Years; and some are Six-clerks in Chancery, " and Officers in the Custom-house, who neither can or are obliged to " attend."

" *Lord Chief Justice.*] All Persons summoned ought to appear, and then " shew Cause why they should be exempted from serving."

" *The Jury being called over twice, eight of their Number only appeared.*"

" *Mr. Solliciter General.*] My Lord, I see only eight Gentlemen of " the Jury attend, and if eight more of these in the Pannel had been in " the Kingdom they would not have attended. Members of Parliament " are exempted, and so are Officers in the Court of Chancery, and Cu- " stom-house. Others are disabled from attending by Absence, the Infir- " mities of old Age, and Death; so that if both Sides were prepared, as " there is no Jury, there can be no Trial this Day; for Talesmen are " not admitted on Trials of this Kind: Therefore we are under no Ne- " cessity of making our Motion for putting it off to *Friday* next."

" *Court.*] We had some Thoughts of bringing on the Trial next *Wed-* " *nesday*, but there is a Sitting of *Nisi prius* that Day, and other Suitors " are not to be injured. Let the Trial therefore be put off 'till *Thurs-* " *day*, if it should be put off longer there would not be Time for Judg- " ment that Term; but the Attornies should consent. Mrs. *Heath*, do " you consent it should be put off?

" *Mary Heath.*] Yes, my Lord.

" *The Agent for the Prosecutors was asked whether he would consent to* " *bring it on a* Thursday; *but he said he would not come into any such* " *Consent, nor had he any Authority so to do.*"]

The Counsel for the Traverser informed the Court, that their Witnesses were in Town at great Expence, and hoped the Counsel for the Prosecutor would agree to prosecute at the Day prefixed, and not then move to put it off longer.

[" *Lord Chief Justice.* The Reasons given To-day for putting off the " Trial, I can tell you, will not be sufficient next *Thursday* for putting " it off any further; if the great Expences attending the Trial are to be " saved, the sooner the Trial comes on the better."

" *Mr. Solliciter General.*] We intended to have tried this Question To- " day; but Mr. *Mac Kercher*, who conducts this Affair, and is the only " Person that thoroughly knows the Evidence proper to be produced to " prove the Indictment, is on the other Side of the Water, detained by " contrary Winds; and so likewise are some of our most material Wit- " nesses, who are daily expected: There are seven Packets due. If Mr. " *Mac Kercher* and our Witnesses come, we will immediately go to Trial; " if not, we cannot."

" Mr. *Bradstreet*, for the Traverser.] I hope, my Lord, that both " Parties shall be confined to particular Hours to examine their Wit- " nesses in; for if the Prosecutors, who examine first, should take up a " long Time, the Traverser might be thereby stinted in Time for the " Examination of her Witnesses: I humbly conceive both Parties should " examine an equal Number of Hours in Turn."

" Mr. *Harward.*] Such a Rule was never made, my Lord, I am pretty " certain, on Trials of this Kind."

" Mr. Justice *Ward.*] I have had the Honour of being a considerable " Time on the Bench; I cannot now pretend to bear Fatigue as well as " formerly; but I hope I shall take care that the Jurors, or myself, " shall not be in Danger of being destroyed."

" *Lord Chief Justice.*] Examining by Hours is not so unprecedented. " It was the old Custom among the *Romans*, to examine by the Hour- " glass. Gentlemen, I think proper to mention to you, *That no Witness* " *shall be examined, unless his Evidence be previously opened to the Court, and* " *that one Counsel of a Side only is to examine.*"]

Thursday Morning, *February* 7th.

[The Court being sat,

" MR. *Sollicitor General*, for the Crown.] My Lord, I mentioned to " your Lordship last *Monday*, that Mr. *Mac Kercher* and several of " our most material Witnesses were on the other Side of the Water wait- " ing for a Passage; if they had arrived, we should willingly have tried " this Traverse To-day; but it has so happened contrary to our Expecta- " tion that they are not yet arrived, and therefore as we are not yet fur- " nished with our material Evidences, or with any Person acquainted " with the Evidence proper to be applied to prove the Facts in the Indict- " ment, we cannot with Safety go to Trial. Colonel *Weldon*, my Lord, " who is known to be a Gentleman of great Worth and Reputation, has " been served with a *Subpœna*, but is extremely ill of the Gout in his " Bed, and though a very material Witness and willing to give his Evi- " dence, he is not able to travel to Town without endangering his Life, " and the Prosecutors, without the Benefit of his Testimony, cannot pro- " perly proceed to Trial. I therefore only move your Lordship that this " Trial may be put off 'till the first Day of next *Easter* Term."

" Mr. Serjeant *Marshall*, for the Crown.] The Traverser, my Lord, re- " moved this Indictment in *October* last by *Certiorari* from the Commission " of *Oyer* and *Terminer* into this Court on the very Day it was to have " been tried, after she had put the Gentlemen for the Prosecution to all " the Expence of a Trial, for Want of giving them previous Notice of " her Intentions to put it off. And on the 7th of *November* when she ap- " peared on her Traverse in this Court, on her bare Allegation that she " was not prepared to take her Trial, she was farther indulged, and had " 'till the 14th given her, to prepare herself for it, though the Gentle- " men were then also ready for Trial.

" On the 13th, the Day immediately preceding this last Day appointed " by the Court for her Trial, the Counsel for the Traverser again moved " to put off her Trial on her single Affidavit, that she had some material " Witnesses in *England*, and in remote Places of this Kingdom, and upon " that Foundation alone her Trial was put off 'till this Term. We, my " Lord, have given regular and timely Notice to the Agent for the Tra- " verser, that we would apply to your Lordship to put off the Trial. " Affidavits we have to shew that we are not prepared to come to Trial, " and therefore we hope we shall have the like Indulgence with the Tra- " verser to put it off 'till next Term, especially as this is the first Appli- " cation of that Kind we have made, and as we have formerly been put " to so great Inconveniences and Charges by the Traverser's affected " Delays.

" If your Lordship pleases that Mr. *Mac Kercher*'s Affidavit sworn the " 13th of *November* last, which was read upon the Traverser's Motion " to put off her Trial last Term, may be now read."

" *Court.* Let Mr. *Mac Kercher*'s Affidavit be read."]

The King against *Mary Heath*. } *Daniel Mac Kercher*, Esq. as Page 433.

Mr. *Marshall.*] I pray, my Lord, that Mr. *Nelson*'s Affidavit may be read.

Court.] Read his Affidavit.

The King against *Mary Heath*. } *RICHARD NELSON*, of the City of *Dublin*, Gent. maketh Oath, That he, this Deponent, being employed as Agent on Behalf of the Prosecutors, he prepared Briefs for Counsel, and sent several *Subpœnas* for Witnesses to several Parts of this Kingdom, to give Evidence on Behalf of his Majesty against the Traverser on her Trial, which was, as Deponent believes, appointed to be had on the 4th Day of *February* Instant. Saith, That by a Letter, which this Deponent lately received by Post from Mr. *Mac Kercher*, dated *London*, the 10th of *January* last, this Deponent verily believes said Mr. *Mac Kercher* did on or about the 17th Day of *January* last leave *London*, in order to come to this Kingdom, to carry on the Prosecution against the Traverser, the said *Mac Kercher* being one of the principal Persons concerned in carrying on said Prosecution; and verily believes, the said *Mac Kercher* is, and has been, at *Park-gate* or *Holyhead* for some Days past, and would have been here before this Time, if the Wind had served for a Passage; and this Deponent expects him in this Kingdom as soon as the Wind becomes fair for a Passage from *Holyhead* or *Park-gate*. Says, He believes that *William Goostrey* is a material Witness to be produced against Defendant, and believes said *Goostrey* and others, who are Witnesses, as Deponent believes, to be produced against the Traverser, are waiting with said *Mac Kercher* at *Park-gate* or *Holyhead* for a Passage, and believes, that an effectual Prosecution cannot be carried on against said *Heath* until said *Mac Kercher* comes to this Kingdom.

Sworn the 2d of *February*, 1744.

Mr. *Marshall.*] I pray, my Lord, that the Affidavit of *Robert Kennedy* may be likewise read, which will inform your Lordship of Colonel *Weldon*'s State of Health.

Court.] Read his Affidavit.

The King against *Mary Heath*. } *ROBERT KENNEDY*, of the City of *Dublin*, maketh Oath, That on the 27th Day of *January* last he, this Deponent, served *Arthur Weldon*, Esq. with a *Subpœna*, issued out of and under the Seal of this Court, dated the 28th Day of *November* last, by delivering unto the said *Arthur Weldon*, at his House in *Raheen*, in the *Queen's County*, a Copy of said *Subpœna*, and at same Time shewed him the Original, and offered him a *British* Shilling in Silver, which he refused to take. By which *Subpœna*, said *Weldon*, and others therein named, were required to be in this Court on *Monday*, the 4th Day of *February* then next, between the Hours of seven and eight of the Clock in the Forenoon, to testify on Behalf of his Majesty concerning a certain Perjury, whereof *Mary Heath* stands indicted. And saith, That at the Time this

Deponent

* In the Motions for putting off the Trial, what is printed in Crotchets [], and marked with ("), are not in the Trial printed by Permission of the Judges, but taken from two other Copies of the Trial printed at that Time (one in Folio and the other in Octavo), in order to render it more complete.

Deponent ſerved ſaid *Weldon*, he told Deponent he would moſt willingly attend in purſuance of ſaid *Subpœna*, but that he was ſo ill of the Gout, that he could not ſtand, or ſcarce ſtir, and that he would not venture his Life; and that the Week before he had the Gout in his Stomach. And ſaith, ſaid *Weldon* then appeared to this Deponent to be very weak and ill, and was not, as Deponent believes, able to walk one Step, nor was he, as he believes, able to travel in a Coach or Carriage from his Houſe to *Dublin* without great Danger and Hazard of his Life; and verily believes, ſaid *Weldon* is not, nor has ſince been able, without the greateſt Danger to his Life, to travel in a Carriage or otherwiſe to *Dublin*; and verily believes, ſaid *Weldon* is a material Witneſs to be produced on behalf of his Majeſty againſt the Traverſer, on the Indictment for Perjury againſt her; and verily believes the ſaid *Mary Heath* cannot be effectually proſecuted upon ſaid Indictment without the Teſtimony of ſaid *Weldon*; and believes ſaid *Weldon* would readily attend to give Evidence on the Trial of ſaid *Mary Heath*, if he could do it without endangering his Life; and verily believes, and doubts not but ſaid *Weldon* will attend to give Evidence on behalf of his Majeſty on the Trial of ſaid *Heath*, in caſe the Trial be put off to next Term, and that ſaid *Weldon* will be then able to travel with Safety to his Life.

Sworn the 6th of *February* 1744.

[" Mr. *Tiſdal.* My Lord, it is the Intereſt of Society to bring Of-
" fenders to Juſtice: The Gentlemen who conduct this Proſecution
" were fully prepared for a Trial before this Affair was removed by *Cer-*
" *tiorari*, and ſince it was removed into this Court there was a Day
" appointed for Trial laſt Term; the Witneſſes came to Town from
" ſeveral Parts, at great Expences, and in regard the Traverſer was not
" then ready, the Trial was put off, which put the Proſecutors to great
" Hardſhips in preparing at different times for the expected Trial. The
" Affidavits which have been read have mentioned that ſome of our
" Witneſſes are at the other Side of the Water, and that Col. *Weldon*
" has been ſerved with a Subpœna, and would attend if poſſible. And
" for theſe Reaſons we hope your Lordſhips will put off the Trial 'till
" next Term.

" *Court.*] Was Mr. *Weldon* bound over?

" Mr. *Nelſon.*] No.

" Mr. *Daly*, for the Traverſer.] I would humbly inform your Lord-
" ſhips, that when the Proſecutors applied to puſh on this Trial laſt
" Term, there was no Pretence then offered, that Col. *Weldon* was a
" material Witneſs for them. I pray that *Mary Heath*'s Affidavit may
" be read."]

Which was accordingly read, as likewiſe the others to oppoſe the ſaid Motion.

The Traverſer *Mary Heath*, as Page 432.

The King against *Mary Heath.* } THE Traverſer, *Mary Heath*, maketh Oath; That her Place of Abode is in *London*, in the Kingdom of *Great Britain*, and Deponent having lived for ſeveral Years with *Mary* Lady *Altham*, wife of *Arthur* late Lord *Altham*, was prevailed upon to come to this Kingdom in the Month of *October* 1743, in order to be examined as a Witneſs upon a Trial, that was had at the Bar of the Exchequer in this Kingdom in *Michaelmas* Term 1743, between *Campbell Craig*, Leſſee of *James Annesley*, and the Right Honourable *Richard* Earl of *Angleſea*; and Deponent was examined on ſaid Trial on behalf of ſaid Earl. And ſaith, That after ſaid Trial was over, Deponent was prevailed upon to continue in this Kingdom, in order to be examined as a Witneſs on behalf of ſaid Earl in a Cauſe depending in the Chancery in *England* between ſaid *James Annesley* and ſaid Earl of *Angleſea*; and Deponent was examined as a Witneſs in ſaid Cauſe in or about *October* laſt, by virtue of a Commiſſion from *England*, which was then ſpeeding at *Wexford*; but ſome time before Deponent was ſo examined, ſhe was arreſted upon a Warrant for Perjury, alledged to be committed by her in her Evidence on ſaid Trial; and the Doors of the Houſe, in which Deponent lodged in *Latten's-Court*, *Dublin*, or Liberties thereof, were broke open when Deponent was ſo arreſted by a Parcel of Bailiffs or Setters, ſome of whom declared they had waited for an Opportunity to find Deponent alone. And when Deponent was ſo arreſted, ſhe was brought from her ſaid Lodgings to *Henry-Street*, and from thence towards ſaid *James Annesley*'s Houſe or Lodgings in *College-Green*; and in the Road, ſome of the Perſons that arreſted Deponent, or attended them, directed that Deponent ſhould be brought to *Caſtle-Street*; and Deponent was accordingly brought to a Tavern in *Caſtle-Street*, and from thence to a Publick Houſe, as Deponent believes it to be, in *Chriſt-Church-Yard*; where the Perſon, before whom Deponent was brought, declared, he believed it was not a bailable Offence; and ſeveral Perſons that appeared as Agents for ſaid *James Annesley*, ſeemed to doubt whether Bail could be taken for Deponent; but at length ſaid Perſon bound Deponent in Recognizance of one Thouſand Pounds, and each of the Securities in five Hundred Pounds, to the beſt of Deponent's Remembrance, and bound Deponent to appear at the Seſſions of *Kilmainham*, and refuſed to bind Deponent to appear at any other Place. And Deponent is informed and believes, that there were not any Examinations returned to *Kilmainham* againſt Deponent, but Deponent was bound over to appear at the Commiſſion of *Oyer* and *Terminer* held in or about *October* laſt, and was obliged to give Security for Deponent's Appearance there. And depoſeth, That Deponent's Buſineſs and Affairs require her Attendance in *London*, and her being obliged to ſtay longer in this Kingdom will be very inconvenient and prejudicial to her; and ſaith, that the Attempt to put off Deponent's Trial is made, as ſhe verily believes, with Intent to harraſs and diſtreſs Deponent, and the ſaid Earl of *Angleſea* and *Charles Annesley*. And Deponent is informed, and verily believes, there are at this time in this City at leaſt fourſcore Perſons that have been *Subpœna'd* and brought hither from different Parts of this Kingdom at great Coſts and Expences to attend and be examined as Witneſſes on behalf of Deponent upon her Trial. Saith, That ſeveral of ſaid Witneſſes are old and infirm, and believes in her Conſcience, that if her Trial ſhould be put off to another Term, ſeveral of her moſt material Witneſſes may die; and verily believes it will not be poſſible at a future time to get her ſaid Witneſſes together, if they are once diſperſed, or go to their reſpective Places of Abode. And ſaith, there are two Perſons lately dead, that were very material Witneſſes for Deponent.

Sworn the 6th of *February* 1744.

The King against *Mary Heath.* } *MICHAEL LACY*, of *Camolin*, in the County of *Wexford*, Gent. maketh Oath, That he, this Deponent, has been employed by the Right Honourable *Richard* Earl of *Angleſea* in bringing ſeveral Witneſſes to this City from ſeveral Parts of the Country, to give Evidence on behalf of the Traverſer upon her Trial in this Cauſe; and ſaith, there are now, and for ſome Days paſt have been, in this City upwards of eighty Witneſſes, who have been brought from different Parts of this Kingdom, in order to give Teſtimony on behalf of Defendant on her Trial, many of whom are Perſons of Figure and Fortune, and have been brought and kept here at the Expence of ſaid Earl and *Charles Annesley*, Eſq. And ſaith, he hath made the exacteſt Computation he poſſibly could of the Expences of bringing ſaid Witneſſes and keeping them in this City, and the neceſſary Expence that muſt attend their being ſent to their reſpective Places of Abode; and ſaith, the ſame, upon the moſt moderate Computation, will amount at leaſt to ſeven hundred Pounds.

Sworn the 6th of *February* 1744.

The King against *Mary Heath.* } *MARK WHYTE*, of the City of *Dublin*, Gent. one of the Attornies of this Honourable Court, maketh Oath, That he, this Deponent, is employed as Agent on behalf of the Traverſer in this Cauſe, and was ſo employed by the Right Honourable *Richard* Earl of *Angleſea* and *Charles Annesley*, Eſq; and ſaith, he hath laid out and expended to Lawyers, and other neceſſary Preparations for the Trial of the ſaid Defendant, over and above the Expences of Witneſſes, Attorney or Agents Fees, or preparing or copying Briefs, the Sum of three hundred Pounds Sterling and upwards, and alſo paid a Draft of fifty Pounds *Engliſh* Money, which was drawn on Deponent, to defray the Expences of ſome Witneſſes that live and reſide in *England*.

Sworn the 6th of *February* 1744.

The King against *Mary Heath.* } *EDMOND BOURK*, of *Collumkill*, in the County of *Kilkenny*, Farmer, maketh Oath, That ſince the Beginning of *December* laſt he, this Deponent, has been employed to ſerve Subpœnas to teſtify and give Notices to Witneſſes to attend and give Evidence on behalf of the Traverſer, on the Trial appointed to be this Day; and that he attended ſeveral of ſaid Witneſſes to *Dublin* for that Purpoſe. And Deponent knows there now are in and about the City of *Dublin* upwards of thirty Perſons, and believes there are upwards of ſixty Perſons attending as Witneſſes on the Part of the Traverſer, ſeveral of whom are Perſons of Diſtinction and Fortune, and have brought with them ſeveral Servants and other Perſons and Horſes. And ſaith, he verily believes, and is ſatisfied in his Conſcience, that Two Hundred Guineas will not defray the Expences of the Witneſſes ſo in Town, their Lodgings, Servants, Horſes and other Attendants for the Space of four Days. And ſaith, he attended the Execution of the Commiſſion for the Examination of Witneſſes at *Wexford*, in the Months of *September* and *October* laſt paſt, between the Earl of *Angleſea* and *James Annesley*, and was himſelf examined as a Witneſs on that Commiſſion, relative to the Parentage and Birth of ſaid *James Annesley*, and the Iſſue or ſuppoſed Iſſue of *Arthur* late Lord *Altham* by his Lady; and ſaith, he was credibly informed and believes, that *Dean Hughes*, late of *Eniſcorthy*, Gent. and *Henry Giffard*, late of *Roſs*, Gent. and the Reverend *William Hervey*, of *Bargybridge*, Clerk, were examined on ſaid Commiſſion, on behalf of ſaid Earl, and believes ſaid *Dean Hughes*, and *Henry Giffard* are ſince dead, and that the ſaid Mr. *Hervey* was about *Michaelmas* laſt taken ill and his Life deſpaired of; and ſaith, that ſeveral of ſaid Witneſſes now in *Dublin* attending ſaid Trial, are antient and infirm Perſons, and live diſperſed in ſeveral Parts of this Kingdom.

Sworn the 4th of *February* 1744.

The King against *Mary Heath.* } *JOHN CAMPBELL*, of maketh Oath, That on the thirtieth Day of *January* laſt this Deponent left *Park-gate*, where he had been waiting for a Wind eight Days, and during his ſtay at *Park-gate* aforeſaid, he heard nothing of *Daniel Mac-Kercher* or Mr. *Gooſtrey*'s being there, and believes, if they had been there, he could not but have heard of them. That Deponent went from *Park-gate* aforeſaid, acroſs Land to *Holyhead*, where he ſtaid but one Night, and got his Paſſage in the Packet, and arrived at *Skerries* the fourth Inſtant in the Evening; and that Deponent heard nothing of them at *Holyhead*; and believes they were neither at *Park-gate* or *Holyhead* at the time aforeſaid.

Sworn the 6th of *February* 1774.

The King against *Mary Heath.* } *ROBERT KENNEDY*, of the City of *Dublin*, maketh Oath, That he, this Deponent, having received from Mr. *Richard Nelſon* ſeveral Subpœnas for Witneſſes to appear on the fourth Day of *February* Inſtant, to give Evidence on behalf of his Majeſty againſt the Defendant upon her Trial, this Deponent accordingly ſerved a great many of ſaid Witneſſes with ſaid Subpœnas reſpectively in the ſeveral Counties in this Kingdom, in which they live, and ſaith, a great many of ſuch Witneſſes are come to this City in order to give Evidence againſt ſaid *Heath* on her Trial.

Sworn the 2d of *February* 1744.

[" Mr. *Recorder*, for the Traverſer.] The Bill was found in *October* by
" the Commiſſion of *Oyer* and *Terminer*; and the Reaſon of moving the
" Indictment by *Certiorari* was, that it was impoſſible for the Traverſer,
" in ſo ſhort a Warning, to prepare for her Trial; and it ſo happening,
" that *Michaelmas* Term was ſo cloſe on the Heels of finding the Indict-
" ment, ſhe could not, notwithſtanding all her Efforts, collect all her
" Witneſſes from the remote Parts of this Kingdom, and from *England*,
" to prepare for this Trial. And therefore could it be imagined that it
" was to delay Juſtice, when the Traverſer was only endeavouring to
" have an Opportunity of Defence? The Proſecutors then ſaid they were
" ready; and pray why not the ſame Reaſon now of being prepared? I
" they put themſelves to unneceſſary Expences laſt Term in preparing
" for Trial, the Fault of that is to be imputed to themſelves; they had
" notice given them that Application would be made to poſtpone the
" Trial."

" *Counſel for the Crown.*] It clearly appeared to the Court laſt Term,
" that the Traverſer had not made the leaſt Effort, or taken one Step to
" prepare for her Trial; and that we had very ſhort Notice of her

" Intentions,

" Intentions, and that only after they knew all our Witneſſes were ſent " for and come to Town."

" *Mr. Recorder*, for the Traverſer.] The Traverſer is at great Expen- " ces, her Witneſſes being now in *Dublin*; and the Reaſon that was of- " fered laſt Term for putting off the Trial, cannot ſubſiſt now, becauſe " both Parties have had ſufficient Time to make the neceſſary Preparations " for Trial. Pray, my Lord, what Foundation have they now to put off " this Trial?"

" As to Mr. *MacKercher*'s Affidavit, wherein he ſays, that Mrs. *Weed-* " *en* is a material Witneſs for the Proſecutor; he never ſaw her, yet he " ventures to ſay this; ſhe is here to be examined, and will clear up that " Matter, and obviate the Objection."

" *Counſel for the Crown.*] Mr. *MacKercher* was informed of it by her Sons, " and by many others to whom ſhe had declared herſelf on that head."

" *Mr. Recorder.*] The next thing to be conſidered, my Lord, is the Affi- " davit of *Robert Kennedy*, who ſwears, That Mr. *Weldon* is a material Wit- " neſs, without giving any Account that he knows him to be ſo; this " Perſon, who is only a Server of Subpœnas, ventures, from his own " Knowledge, to know what is or what is not material. If the Agent in " the Cauſe would ſwear it, there might be ſome Reliance on it. If this " Trial is put off, my Lord, another Witneſs may be found next Term, " which might be thought as equally material; ſo that this Gentlewoman, " before ſhe can have an Opportunity of juſtifying herſelf, may die in the " mean time, under the Imputation of the Indictment.

" If they had produced the Affidavit of any Phyſician who attended " Mr *Weldon*, to certify his Illneſs and his Inability to come to Town, it " would be more proper than the Aſſertion of the Server of Subpœnas: " Beſides, my Lord, a Man in the Gout, though he cannot walk, might " be able to travel. But how a Perſon who is neither Attorney or Agent in " the Cauſe, and who is not to be preſumed to be in the Secrets of the " Proſecutor, can ſwear Mr. *Weldon* a material Witneſs, is ſomewhat very " extraordinary; beſides, my Lord, ſince the Time of Service of the Sub- " pœnas, which was the 27th of *January*, he may have ſo recovered as to " be able to come to Town, though indiſpoſed then. But why was not " this Gentleman thought of laſt Term, when the Proſecutors ſaid they " were ready? Therefore, conſidering the Circumſtances of this Caſe, I " hope your Lordſhips will not put off the Trial."

" *Mr. Sol. Gen.*] My Lord, it appears that the Bill of Indictment was " found againſt this Woman the 24th of *October*, yet Application was " made on the 13th of *November* laſt to put off her Trial; ſhe had that " Interval of three Weeks time to prepare; but becauſe ſhe ſwore ſhe had " ſome material Witneſſes who were wanting on her Trial, it was put " off. I hope, my Lord, the Reaſons which we offer will have the ſame " Weight, 'till we can be properly prepared. Mr. *MacKercher*, who is " one of the principal Managers of this Proſecution, and without whoſe " Preſence it cannot be carried on effectually, is detained on the other Side " of the Water by contrary Winds, and if this Cauſe ſhould be put off " 'till the next Term, he may and probably will be here then; ſo that I " hope we ſhall have the ſame Indulgence that the Traverſer had, and that " this Trial may be put off 'till the next Term."

" *L. C. J.*] In the Affidavit of *Robert Kennedy*, there is no Addition to " his Name, which is not very common in Affidavits."

" *Mr. Sol. Gen.*] The identical Perſon is in Court, to be produced if " required."]

Robert Kennedy *was called and ſworn.*

Mr. *Daly.*] Do you know Colonel *Arthur Weldon?*

Robert Kennedy.] Yes, I do, Sir.

Q. How do you know that he is a material Witneſs in this Cauſe? Who told you ſo?---*A.* I ſaw him ſworn to what he could ſay.

Q. Where?---*A.* Before a Maſter in *Chancery*.

Q. Have you any other Reaſon?---*A.* I have not.

Court.] Did you read his Affidavit?---*A.* I read his Affidavit, my Lord.

Mr. *Daly.*] What Affidavit did you read?---*A.* An Affidavit ſworn before a Maſter in *Chancery* at *Maryborough* Aſſizes.

Q. Was you preſent?---*A.* I was.

Court.] In what Cauſe was it?

A In the Cauſe of *Richard* Earl of *Angleſea* and *James Anneſley*, Eſq.

Mr. *Daly.*] Was there any Cauſe depending at *Maryborough?*

A. No, I went there, and met him there and the Maſter in *Chancery*; Mr. *Morton* was preſent, and his Teſtimony was wrote; he ſwore to it, and I witneſſed it.

Court.] In what Cauſe?

A. They ſay, it was to be laid before the Attorney General of *England.*

Q. Are you uſed to Buſineſs?—*A.* I am not bred to the Law Buſineſs.

Q. Do you underſtand what is material in a Proſecution for Perjury, and what not?

A. I think, what appeared in that Teſtimony was very material.

Q. Did you ſhew that Affidavit to any of the Agents of Mr. *Anneſley?*

A. Mr. *Morton* read it.

Q. Did you ſhew it to any Agent of Mr. *Anneſley?*

A. I brought it to *Dublin*, and gave it to Mr. *MacKercher.*

Q. Do you know what is material Evidence in a Trial for Perjury, and what is in another Cauſe?

A. As far as my Reaſon directs me, I do.

Q. What Employment do you follow?—*A.* I keep a Beer-houſe and Shop, my Lord. I do import a great deal of Beer, my Lord.

Mr. *Daly.*] I am ſorry for it. Are not you a Peruke-maker by Trade?

A. No, I am not.

Q. Did you ever ſee Mr. *Welden* before that Day you ſaw him at *Maryborough?*—*A.* I did.

Q. Where?——*A.* In *Dublin*, often.

[" *Lord Chief Juſtice.*] He is not a proper Perſon to diſtinguiſh materi- " al Evidence, and I obſerve that no Affidavit was made 'till Yeſterday, " that Mr. *Weldon* was a material Witneſs."

" Mr. *Tiſdall.*] The Public is concerned in this Proſecution; Trials are " put off frequently in behalf of the Crown, on Affidavits of Witneſſes " not being able to attend: We hope the Crown and the Publick are at " leaſt intitled to the ſame Indulgence as was given laſt Term to the Tra- " verſer on her Application to the Court; why ſhould ſhe, my Lord, " who by affected Delays put off her Trial ſo often before, be ſuffered to " take advantage of our Weakneſs at preſent?"

" Mr. *Daly.*] I would obſerve to your Lordſhips, that Mr. *Levingſtone*, " on the 11th of *November* laſt, ſwore an Affidavit before a Maſter in " *Chancery*, in the Suit of Mr. *Anneſley* againſt Lord *Angleſea*, that Colonel " *Weldon* was in ſo bad a State of Health, that it was feared the Plaintiff " would loſe the Benefit of his Teſtimony, unleſs he was examined *de bene* " *eſſe*; yet on the 13th, two Days after this Affidavit, Mr. *MacKercher* " puſhed to have the Trial brought on; ſo that it is plain they then thought " they might proceed without Mr. *Weldon*'s Evidence. My Lord, we " have the Copy of Mr. *Levingſtone*'s Affidavit, which we beg leave may " be read."

" Mr. *Harward* objects to the reading of Mr. *Levingſtone*'s Affidavit, " which was made in the Court of Chancery, and ſays it is not an Affida- " vit in the Cauſe of his Majeſty againſt *Mary Heath*; therefore he hopes " it won't be admitted to be read. Beſides, this is only a Copy of an Affi- " davit."

" *Court.*] You do not object then to the reading the Affidavit, but a Co- " py of the Affidavit. Pray is not the Affidavit of Record, and ought not " the Copy of a Record to be admitted to be read? Pray in the Exchequer " Chamber would not the Copy of a Record be admitted to be read?"

" Mr. *Daly.*] Suppoſe an Affidavit charging Perjury was made in the " Court of Chancery, could it not be laid before the Grand-Jury?"

" *Court.*] Gentlemen for the Proſecutor, ſhew us ſome Precedents why " a Copy of Mr. *Levingſtone*'s Affidavit ſhould not be read."

" Mr. *Harward* mentioned the Caſe of *Edworth* againſt *Edgeworth* " againſt reading the Affidavit: And moreover, my Lord, tho' Col. *Wel-* " *don* was in ſuch a State of Health, as made it prudent to examine him to " preſerve his Teſtimony; yet he might have been well enough to attend " the Trial laſt Term."

" *Lord Chief Juſtice.*] Are not Affidavits in the Spiritual Court read here " on Prohibitions? There are no Precedents ſhewn why the Copy of Mr. " *Levingſtone*'s Affidavit ſhould not be read."

" *Arthur MacGuire* ſworn to prove he compared the Copy which he had " in his Hand with Mr. *Levingſtone*'s Affidavit on Record, and that it was " a true Copy thereof, which was read."]

The King against *Mary Heath.* } *ARTHUR MAGWIRE*, of the City of *Dublin*, Gent. came this Day before me and made Oath, That he compared the above Copy of an Affidavit with the Original Affidavit in the *Uſher*'s Office of his Majeſty's High Court of Chancery in *Ireland*, and ſaith, the ſame is a true Copy, and that he ſaw *Hugh Swiney*, the Clerk in the ſaid Office, ſign the Name *Ste. Sibthorp*, Uſher, thereto; and ſaith, the ſaid *Hugh Swiney* uſually atteſts Copies of Affidavits, and believes he has a Power ſo to do.

Sworn this 7th of *February* 1744.

James Anneſley, Eſq. Plaintiff, *Richard Anneſley*, called Earl of *Angleſea*, and others Defendants. } *WILLIAM LEVINGSTONE*, Eſq. came this Day before me and made Oath, That on *Sunday* the eleventh Day of this Inſtant *November*, this Deponent ſaw *Arthur Weldon*, Eſq. at his Houſe in the *Queen's County*, and that the ſaid *Arthur Weldon* was then in a weak State of Body, inſomuch that he then ſeemed to Deponent to be in danger of dying; and this Deponent ſaith, the ſaid *Arthur Weldon* is a very material Witneſs on behalf of the Plaintiff *James Anneſley* in this Cauſe; and Deponent ſaith, if the ſaid *Arthur Welden* be not ſhortly examined in this Cauſe, the Plaintiff will in all Probability loſe the Benefit of his Teſtimony.

Sworn before me this 21ſt Day of *November*, 1744.

William Levingſtone. THOMAS STOPFORD.

True Copy,
Ex. by *Bowden.*

STE. SIBTHORP, Uſher.

[" Mr. *Walſh*, for the Crown.] My Lord, if there was no other Founda- " tion to put off this Trial but the Affidavit that has been made of Mr. " *Welden*'s being a material Witneſs, I humbly apprehend, it would be a " ſufficient Reaſon. The Perſon who made the Affidavit was examined " before your Lordſhips. He has mentioned why he was a material Wit- " neſs; and though he is not a Perſon of great Diſtinction, as *Mr. Re-* " *corder* would have him, he is a very creditable, honeſt Man, and has a " Right to be believed on his Oath, as well as any other Man.

" My Lord, there are ſeveral other Witneſſes who are very material to " attend on this Trial, who cannot poſſibly attend if it comes on now, " and not proper to diſcloſe who they are, or whether they are or are not " material, it is ſufficient that they are ſworn to be material. We were " ready to come to Trial laſt Term, and tho' we ſhould not then have " had the Attendance of Mr. *Weldon* there, we might have had other " Witneſſes to prove the Point for which we now want his Evidence. " Thoſe Witneſſes we have not at preſent, therefore conſidering the Diſ- " abilities we are under at this Time, we hope we ſhall be indulged for " once, as well as the Traverſer has been before."

" *Lord Chief Juſtice.*] Gentlemen, did you ever know of a Trial under " theſe Circumſtances to be put off without paying Coſt?"

" *Counſel for the Proſecutors.*] There was the ſame and ſtronger Reaſon " laſt Term for the Traverſer's paying Coſt, and yet it was denied us."

" Mr. *Harward.*] My Lord, this Bill of Indictment comes here as well " ſupported as any Indictment that was ever brought into this " Court. I ſay it is ſupported by a Verdict found by twelve Gentlemen " of as great Repute and Character as ever were upon any Jury, who had " it for fifteen Days under their Conſideration. There is no Imputation, " my Lord, of its being an idle or wanton Proſecution. This Indictment " was removed by *Certiorari*. It is no Writ of Right that the Subject " has, but in reality it is an Indulgence to the Subject. The repeated

" Indulgence

" Indulgence given to the Traverſer in not bringing on her Trial laſt " Term, has been mentioned already, and as this Proſecution is in behalf " of the Crown, we hope an equal Hand will be carried between his Ma- " jeſty and the Subject. Mr. *Mac Kercher* has ſworn in his Affidavit, " that ſome material Witneſſes to be examined in this Cauſe had neceſſary " Calls to *England*; and that if the Traverſer's Trial ſhould be put off to " this Term, that it would be almoſt impoſſible for them to attend, nay " it was plainly told the Court they could not attend: We find he is not " here, and other material Witneſſes are at the other Side of the Water " waiting for Wind; which I ſay adds more Credit to Mr. *Mac Kercher's* " former Affidavit, for it is fallen out as he ſaid, that if the Trial was " poſtponed, it was next to an Impoſſibility that they could attend.

" Mr. *Nelſon* has mentioned a Letter he received from Mr. *Mac Ker-* " *cher*, that he expected him with the firſt fair Wind. *Kennedy* has men- " tioned in his Affidavit the ill State of Health of Colonel *Weldon*, and " that he was a material Witneſs.

" As to the Objections that *Kennedy* was not Agent, and therefore " cannot know whether he was a material Evidence, I humbly rely " on it, my Lord, that it can have no manner of Weight; for *Kennedy* " has told your Lordſhips, that he was preſent when Mr. *Weldon* " ſwore his Affidavit, and had the Cuſtody of it, and therefore muſt " know the Purport thereof, and how far his Teſtimony might be " relative to this Trial. I beg leave to ſay, that the ſingle Teſtimony of " Mr. *Weldon*, as he is a Gentleman of an unexceptionable Character, " might be put in the Scale againſt many Witneſſes, not ſo well eſtabliſh- " ed in point of Reputation; and the Want of his Evidence is a ſufficient " Motive to poſtpone the Trial.

" I muſt further obſerve to your Lordſhips, that laſt *Monday* there ap- " peared in the Box only eight of the Jury mentioned in the Pannel; ſo " that if both Parties were prepared, the Trial could not have come on " that Day; and as this Day's Application is the firſt and only one on " our Part for putting off the Trial till next Term, I hope your Lord- " ſhips will indulge us in it."]

[" Mr. *Robbins* mentioned, that the ſame Cauſe of putting off the Trial " laſt *Monday* ſtill ſubſiſts, and urged very ſtrongly ſome of the Reaſons " offered by the other Counſel for putting off the Trial."

" Mr. *Mac Manus.*] My Lord, it fully appears from the ſeveral Pro- " ceedings, the affected Delays given by the Traverſer to poſtpone her " Trial to this Term.

" The Bill of Indictment (as has been already obſerved) was found " in *October* laſt; and the Traverſer, to poſtpone her being tried at the " then Commiſſion of *Oyer* and *Terminer*, brought a *Certiorari*; ſo that I " beſeech your Lordſhips to conſider, that the Indictment comes into this " Court at the Prayer of the Traverſer. The Court were bound of right " to avoid it at the Inſtance of the King; becauſe every Indictment be- " ing at the Suit of the Crown, he has a Prerogative of ſuing in what " Court he pleaſes; but at the Requeſt of the Defendant a *Certiorari* is " ſeldom grantable for the Removal of an Indictment before the Juſtices " of Goal Delivery, and very rarely if ever for removing an Indictment " for Perjury, Forgery, and other heinous Miſdemeanours, where the " Publick is ſo nearly intereſted, in regard ſuch Crimes deſerve all poſſi- " ble Diſcountenance; and the *Certiorari* might delay, if not wholly diſ- " countenance the Proſecution, and ſo delivered in 1ſt *Syder*. 54.

" It is likewiſe delivered there as Law, if a Cauſe be moved out of an " inferior Court, it ought to be tried the ſame Term that it is removed, " that the Party may not be delay'd by *Certiorari*. My Lord, after it " was removed, and the Traverſer appeared on her Traverſe in this " Honourable Court, the 7th of *November*, ſhe had Time given her 'till " the 14th; when the 14th came, ſhe again moved to put it further off " 'till this Term.

" The Proſecutors very juſtly oppoſed the Motion laſt Term, of delay- " ing this Trial any further, 'till this Term, in regard they were at great " Expences, and had ſeveral times prepared for it; yet on the Affidavit " of Mrs. *Heath*, that ſhe had not ſome of her material Witneſſes ready, " it was poſtponed: ſo that I ſay, my Lord, this Trial was put off, at " her Inſtance, at a Time when by Law ſhe ſhould and ought to have " been tried, and thoſe Gentlemen had a Right to demand a Trial.

" There have been Affidavits read to your Lordſhips how material Mr. " *Weldon*'s Evidence is, and that he cannot now attend, but that the " next Term it is hoped he will be able to give his Attendance, which is " a ſtrong Motive to put off this Trial in behalf of the Crown. I beg " leave, my Lord, to ſay, that the Caſe of an Indictment is not like that " of an Information. The Promoters of an Information may be guilty of " a Default, but no Latches or Default can be imputed to the Crown, " at whoſe Inſtance all Indictments are ſuppoſed to be.

" My Lord, it is equally odious to puniſh the Innocent as to let the " Guilty go free: your Lordſhip put off the Trial laſt Term, leſt the " Innocent ſhould be puniſhed, upon a Preſumption of Innocence till the " contrary appeared; and I am ſure, my Lord, you will be equally care- " ful this Day not to let the Guilty go free, which may be the Caſe if " the Proſecution be now hurry'd on, in the Abſence of ſeveral material " Witneſſes, who by Sickneſs and other Accidents are now prevented at- " tending at this Trial, and in the Abſence of the Perſon who conducts " it. From theſe Circumſtances I hope your Lordſhip will put this " Trial off 'till next Term."

" Mr. *Callaghan.*] In all Caſes, my Lord, where any Indulgence is to " be ſhewn, it is granted to the Crown; yet I do not ſay but publick " Juſtice ſhould be properly and equally adminiſtered: The Accuſation " founded on this Indictment carries a great Degree of Preſumption, tho' " not Conviction; the Objection of *Kennedy*'s not knowing whether Mr. " *Weldon* is a material Witneſs or not, with great Submiſſion, can have " no Force; other Perſons may ſometimes know who are material Wit- " neſſes as well as Men of Buſineſs. If a Perſon ſtands unimpeached in " his Character, there can be no Objection to his Teſtimony. It is every " Day's Experience to put off Trials, if it appears that a material Wit- " neſs is viſited with a Diſorder, and can't attend; in the preſent Caſe " it appears ſeveral are abſent.

" As to what is offered on the other Side, that this may be a Foundation " for finding out other material Witneſſes that cannot be preſent next " Term; That, my Lord, will have no great Weight, for by the ſame " Reaſon no Trial could ever be put off for want of material Evidence. " Moreover, my Lord, if the Trial be put off 'till next Term, and the " Traverſer ſhould then happen to be acquitted, it will be ſo much the " more to her Honour; but if ſhe eſcapes for want of due, proper, or " effectual Proſecution, ſhe will not ſtand as unimpeached from publick " Cenſure as otherwiſe ſhe would.

" It has been already mentioned what Expences we have been put to " laſt Term, which might have been ſaved if we had known in time that " her Trial was to be delayed; but Care was taken that it ſhould not be " known, 'till the Proſecutors had been put to as great Charges as if the " Trial had come on: And as great Miſchiefs muſt ariſe if this Trial " ſhould not be poſtponed, I hope, my Lord, it will not be brought on " 'till next Term."

" Mr. *Harding.*] All Queſtions are to be determined by the Import- " ance of Evidence: I ſay, my Lord, in a Caſe of this kind, that on the " Weight of material Evidence all Queſtions muſt ultimately depend. If " it appears that we have material Witneſſes, who cannot attend at pre- " ſent, and if it ſo happen that we muſt loſe the Benefit of their Teſti- " mony if this Trial comes on, this Matter muſt ſtill remain in the dark; " and if the Traverſer ſhould be acquitted for want of ſuch important " Evidence, ſhe will in that reſpect ſtand under an Imputation. And I " muſt beg leave to ſay, that I admire why Gentlemen from ſuch Cir- " cumſtances ſhould be fond of trying this Traverſe now, ſince the Pro- " ſecutors are not prepared; and that Mrs. *Heath*'s preſſing on the Trial " this Day, when ſhe knows the Proſecutor is not ready, is an Argu- " ment that ſhe knows herſelf guilty. My Lord, the Gentlemen of the " other Side have laid great Streſs upon the Objection that *Robert Kennedy* " could not know that Colonel *Weldon* was a material Witneſs. The " Charge in the Indictment is, that Lady *Altham* was not with Child, " nor never had a Child at *Dunmaine*. Surely, my Lord, he may know " how far this Charge may be collected from the Affidavit of Mr. *Weldon*, " which he had ſeen, and had in his Cuſtody, and which muſt be relative " to this Matter. Beſides, my Lord, from the Converſation that *Kennedy* " had with Mr. *Weldon*, that he would willingly attend, but that he was " ſo ill that he could not then venture his Life to travel; I ſay, with " humble Submiſſion, from this very Declaration he might know he was " a material Witneſs. Pray, my Lord, if Mr. *Weldon* was not a mate- " rial Evidence, would not he have told *Kennedy* at that time that there " was no occaſion for his Teſtimony?

" This is a Matter of very great Conſequence; and if the Proſecution " cannot be effectually carried on, the Traverſer muſt be acquitted. The " Public have a Right to a fair, impartial Enquiry into this Affair; and " as it can be of no Inconvenience to Mrs. *Heath* that this Trial ſhould " be poſtponed, but will be of the greateſt Service to her if ſhe be ac- " quitted with Honour on an effectual Enquiry, but not ſo much to her " Honour if ſhe be now acquitted; therefore we hope her Trial will be " poſtponed 'till next Term."]

[" It was further obſerved by the Counſel for the Proſecution, that the " Traverſer had put her Trial off three ſeveral Times; that theſe affected " Delays on her Part, were by ſo much the greater Hardſhip on the " Gentlemen who carry on the Proſecution in behalf of the Crown, as " they had not only poſtponed Buſineſs of the higheſt Conſequence to " them in *England*, in order to attend it; but as the Traverſer's In- " tention of moving for Delay has always been induſtriouſly concealed " from them until the very Day that her Trial ſhould have taken place, " or the Day immediately preceding it; by which means they were each " of theſe three Times put to the ſame Trouble and Expence as if they " had actually tried her with Effect. This Proceeding, my Lord, to all " diſintereſted Perſons, muſt appear not only vexatious, but calculated " to promote the oppreſſive Syſtem of this unfortunate Gentleman Mr. " *Anneſley*'s too powerful Enemies, of worrying him and his Friends out " by unneceſſary Expence and Delay. This Woman muſt have known " her own Intention of putting off her Trial to this Term, early enough " to have given Notice of it to thoſe Gentlemen, ſo as to have prevented " the great Expence of Money and Time, and the great Trouble that " they and their Witneſſes have been at in preparing ſo often for her " Trial; while ſhe remained in a ſupine Security of having her Trial " delayed, and relied on the Indulgence of this Court, without taking " one Step to prepare for it. We therefore hope, my Lord, that for " theſe and many other Reaſons already mentioned, we ſhall this Day, for " once, meet with the ſame Indulgence of putting off this Trial till next " Term, eſpecially as this is the firſt Application of that kind we have " made, and as we have ſo good a Right to expect it."]

After which the Court deliverd their Opinion as follows.

Mr. Juſtice BLENNERHASSET.

The Proſecutor has moved on two Affidavits to put off this Trial till next Term.

On *Monday* laſt he moved to poſtpone the Trial till *Friday*, which Motion was granted.

The Affidavits now moved on are, one of *Kennedy*, an Ale-ſeller and a Server of Proceſſes.

And the Affidavit of Mr. *Nelſon*, who is the Agent and Attorney for the Proſecutor.

The Strength of *Kennedy*'s Affidavit conſiſts in this, that one Mr. *Weldon* is a material Evidence.

I muſt obſerve, that upon the Motion to poſtpone the Trial 'till *Friday* only, there was no Affidavit made concerning Mr. *Weldon*; for *Kennedy*'s Affidavit, in which only Mr. *Weldon*'s Name is mentioned, appears to have been ſworn Yeſterday.

There was an Affidavit of Mr. *Mac Kercher*'s, which he made the laſt Term, in oppoſition to the Motion to put off the Trial then made by the Traverſer.

This Affidavit has been this Day read.

There Mr. *Mac Kercher* ſwears, that he had a great number of Witneſſes attending, and that he was ready to proſecute.

At this time Mr. *Weldon* was not thought of; he has been ſummoned ſince, but to this Hour he is not bound over to proſecute.

Nor was he examined on the Trial in the Court of Exchequer.

Now, as to the Affidavit of *Kennedy*, though it has all the Parts which generally make up Affidavits to put off Trials; for he ſwears to the Sum-

moning

moning of Mr. *Weldon*, and to his being a material Witneſs, and that he was not well when he was ſummoned; yet he goes, in my Opinion, ſo far, that he cannot well receive Credit.

For he takes upon him to ſwear alſo, that the Traverſer cannot be convicted without his Teſtimony.

So that Mr. *Weldon* is the only Perſon who can give Evidence to convict this Woman, if we believe *Kennedy*.

But if we believe Mr. *MacKercher*, he ſwears he had a Number of Witneſſes ready to proſecute the Traverſer to Conviction, the Term before Mr. *Weldon* was thought of.

As to Mr. *Nelſon*'s Affidavit, it relates to Mr. *Gooſtrey* only, that he has given Examinations in this Cauſe, and that he is in *England*; and to Mr. *MacKercher*.

I need not remark on this Affidavit, it is made by a Man of Credit in his Profeſſion, and I believe it to be true.

But the Force of this Affidavit is taken away by an Offer made by the Traverſer, who ſays, ſhe will conſent to have *Gooſtrey*'s Examinations read in Evidence againſt her upon the Trial, and that ſhe will waive any Benefit which ſhe might have by a Croſs-Examination.

As to that Part of Mr. *Nelſon*'s Affidavit which is relative to Mr. *MacKercher*, it has no Weight with me; he ſays Mr. *MacKercher* is abſent, and is a Manager in this Cauſe; he does not ſay he is a Witneſs, ſo that there is no Pretence to put off the Trial on that Account.

But the Counſel for the Proſecutor object that there is no Equality kept, if this Trial be not put off; ſay they,

The Traverſer put it off laſt Term, and we ſhould have the ſame Indulgence now.

The Caſe on the Traverſer's Motion widely differs from the Caſe made by the Proſecutor on this Motion.

The Bill of Indictment was not found 'till the twenty-fourth Day of *October*, at the Commiſſion of *Oyer* and *Terminer*.

The Traverſer afterwards obtained a *Certiorari* to remove it to the King's Bench, which was not returnable 'till the firſt Day of Term. She then appeared, and immediately informed the Proſecutor, that ſhe could not be ready for her Trial; ſhe afterwards moved on Affidavits to put it off, and ſuggeſted that a Number of Witneſſes were in *England*, and many diſperſed in remote Parts of this Kingdom; ſhe named many of them by Name; ſhe ſwore they were material, and that it was not poſſible to have them that Term, but that ſhe hoped to have them by this.

Upon theſe Affidavits the Trial was put off, and a Day of Trial appointed for this Term.

The Proſecutors oppoſed this warmly, made Affidavits that they were ready to proſecute, that their Witneſſes were all in Town at great Expence to them, and they do not ſay now, by any thing they have ſworn, but that they have every Witneſs now which they then had, except *Gooſtrey*.

This was ſufficient Notice to them to be prepared; they were not hurried as the Traverſer muſt have been, if her Trial had been brought on before ſhe could, from the Circumſtances of her Caſe, have been prepared.

The Court, in my Opinion, ſhould conſider the prodigious Expence the Party is put to; I think it is ſworn, that no leſs than fourſcore Witneſſes are now attending to give their Evidence in behalf of the Traverſer, and that the preparing for this Trial has coſt her already above ſeven hundred Pounds.

I conſider alſo the heavy Imputation which lies on her Character, which ſhe ought to have an Opportunity of clearing up, if ſhe can.

And for theſe Reaſons think ſhe ought to have her Trial; but I ſubmit to the Opinion of the Lord Chief Juſtice and Mr. Juſtice *Ward*.

Mr. Juſtice WARD.

The Progreſs of this Cauſe is eaſily recollected. The Bill of Indictment was found the twenty-fourth of *October*, at the Commiſſion of *Oyer* and *Terminer* for the County of *Dublin*, againſt the Traverſer for wilful and corrupt Perjury; notwithſtanding which, and although the Verdict in the Exchequer was contrary to her Evidence, I ſhall ſuſpend my Opinion until the preſent Jury have found her guilty, or acquitted her. Juſtice and the publick Good require, that Witneſſes upon their Oaths ſhould always ſpeak Truth; yet I am apt to believe, were not private Perſons affected in the Event of this Proſecution, every Circumſtance, whether material or not, would not be ſo ſtrenuouſly contended for.

Many Reaſons made it improper to try this Indictment at the Commiſſion; therefore my Lord Chief Juſtice granted a *Certiorari* to remove it into this Court; it is owing to that I ſee many Gentlemen upon this Jury, who could not have been ſo there, being Judges; it was fit the beſt Gentlemen for Fortune and Character in the County ſhould be had to try a Cauſe of this Conſequence; it was incumbent on the Sheriff to return ſuch, and I believe he hath done his Duty.

The ſeventh of *November* the Traverſer, called upon her Recogniſance, appeared, and the Court appointed the fourteenth for her Trial; but on the tenth ſhe moved the Court to put it off to this Term, on her Affidavit of ſeveral material Witneſſes, naming them, being in ſeveral Parts of *England*, and remote Parts in *Ireland*, whom ſhe could not poſſibly have in Time to make her Defence. This Motion was ſtrongly oppoſed; but her Affidavit was ſo full, that it could not be refuſed her; and I muſt ſay, that in a common Caſe it would have required no longer Time than to read the Affidavit; and the Court appointed the fourth of *February* for the Trial. On this Motion Mr. *MacKercher* made an Affidavit, which now is become neceſſary to be conſidered; he ſwears that he is embarked in this Cauſe, and, as I underſtand him, an Agent; that he was then ready to proſecute and go on with the Trial of the Traverſer. As it was obvious to object, if he was then ready, why ſhould he not be ſo this Term? to anſwer which he goes on and ſwears, that ſeveral Perſons intereſted, and Witneſſes, were going to *England*, whom he apprehended he could not have next Term, and could not bring on the Trial without them. This looks like giving Notice he could not be ready this Term, and I confeſs if he, or the viſible Agent on this Side the Water, had applied the Beginning of Term, and made the Neceſſity of their Witneſſes going to *England* appear, and that they were not returned, and if the Traverſer had been at no Expence, I ſhould have gone as far as the Practice of the Court would allow to delay the Trial. But inſtead of this, Mr. *MacKercher*, in his Affidavit, did not mention the Name of any one of his Witneſſes that were going to *England*, which renders it impoſſible to examine whether they did or did not go there, or were ſince returned, or ever would; beſides, they ſeemed to acquieſce, and continued ſilent until the ſecond of *February*, when Notice was given, the Proſecutors would move on the fourth to put off the Trial to *Friday* following. No other Notice hath been ſince given; nor did the Proſecutors move to put off the Trial on *Monday*, until the Jury was called; and only eight appearing, it muſt go off on Courſe to the next Day, on which they only preſſed that it ſhould be put off to *Friday*, without aſſigning any Reaſon from Mr. *Weldon*'s Diſability to attend, or indeed any Reaſon at all that I know of. However, through much Importunity, the Counſel on both Sides agreed to put it off to this Day, when a full Jury appearing, they now move on new Affidavits to put it off to next Term, and aſſign for Reaſons the Abſence of Mr. *MacKercher* the Agent, and alſo of Mr. *Gooſtrey* and Colonel *Weldon*, two Witneſſes. As to Mr. *MacKercher*, he was here laſt Term, and might have been here now; for though Mr. *Nelſon* ſwears he acquainted him by Letter that he would be here, yet *Campbell* ſwears he came laſt Week from *Parkgate* and *Holyhead*, and heard nothing of Mr. *MacKercher* at thoſe Places; beſides, Mr. *Nelſon* has always appeared to us as the known Agent, and is of known Abilities and Sufficiency to conduct any Cauſe. As to Mr. *Gooſtrey*, the Counſel for the Proſecutors ſay he was here laſt Term about the End of it, when *Edward Weedon* and his Brother, being examined in Court, charged him on Oath with drawing Affidavits for them, being illiterate, to ſwear to their Mother *Sarah Weedon*'s Impriſonment by Colonel *Blakeney*, when they only told him, as they, with great Simplicity, ſwore in Court, that Mr. *Blakeney*'s Gates were locked at the uſual Hour of the Night, and they never looked on their Mother as a Priſoner there; and when the Court required Mr. *Gooſtrey*'s Attendance, they were told he was then in *England*; he is bound over to proſecute, and ought to have attended: However, the Traverſer hath abſolutely removed this Objection, by conſenting his Examinations ſhould be read againſt her. But the main Objection reſts upon Colonel *Weldon*'s Abſence, who, as *Kennedy* ſwears, was ſerved with a Subpœna the twenty-ſeventh of *January*, and was then ſo ill of the Gout, that he could not attend, and that the Traverſer cannot be convicted without him. *Kennedy* appearing in Court, acknowledged himſelf to be a Beer-Seller, and, by his Appearance, he is a Man of low Station and little Knowledge. I think him very ſufficient to ſwear to what he ſees and hears; but I muſt ſay I do not think his Judgment or Belief any way ſufficient to ground mine on. An Attorney or Agent is the proper Perſon to ſwear a Witneſs to be a material one to convict the Traverſer, but the Agent and Attorney, who certainly muſt be informed of the Witneſſes for their Clients, have declined this. *Kennedy*, indeed, told us on the Table, he read an Affidavit of Colonel *Weldon*'s at *Maryborough*, and thought it material; but to obviate this, the Traverſer's Counſel have conſented this Affidavit be read in Evidence againſt her, ſo that if it be material, it will have its Weight. In the next Place, how comes Colonel *Weldon* to be now ſo material a Witneſs, when laſt Term Mr. *MacKercher* preſſed to go on to Trial without him? and I preſume he knew what he could ſay, the Affidavit he made being, I think, at the Summer Aſſizes preceding.

Beſides, though Colonel *Weldon* was ſubpœna'd the twenty-ſeventh of *January*, and *Kennedy* made an Affidavit the ſecond of *February*, in that he is ſilent as to Mr. *Weldon*'s Illneſs, nor was it mentioned by the Counſel on *Monday*; but when nothing elſe would do, on the ſixth of *February* he ſwears to his Illneſs, and ſomething like his being a material Witneſs; this I have conſidered already: But I muſt obſerve, what has miſſed the Counſel, that though Colonel *Weldon* ſhould be ill of the Gout on the twenty-ſeventh of *January*, it no ways appears but he may be now on the ſeventh of *February* well recovered, or at leaſt able to travel; 'tis admitted he lives but one Day's Journey from *Dublin*, why then was not a Meſſenger ſent down to bring us an Account in what State of Health he was a Day or two paſt? Since they have neglected this, I ſhall not look upon him as a neceſſary Witneſs. The Counſel for the Proſecutors alledge they have above ſixty Witneſſes, and the Traverſer's eighty in Town; I think it is full Time to go on with the Trial, and I ſee no Reaſon for putting it off. I ſhould not have been ſo tedious, but for the great Earneſtneſs with which the Counſel have preſſed this Motion.

Lord Chief Juſtice MARLAY.

I am of their Opinion, that we muſt not put off this Trial. I will mention the ſeveral Steps taken in this Proceeding. It appears here by Affidavit, That on the tenth of *Auguſt* Mrs. *Heath* was arreſted on a Warrant, grounded upon Examinations of Perjury committed by her in her Evidence on the Trial in the Court of Exchequer; fifteen Witneſſes are firſt bound over to proſecute at the Seſſions of *Kilmainham*, and afterwards at the Commiſſion of *Oyer* and *Terminer*. The Commiſſion ſat on the 23d of *October*, and a Bill of Indictment was found againſt her the next Day, which ſhe traverſed, and the Traverſer moved for a *Certiorari* to take her Trial in the King's-Bench, upon Affidavits ſo full, that it was not to be refuſed without the greateſt Injuſtice; there being an Eſtate depending of ſix thouſand Pounds a Year, and that there were Examinations carrying on in the Chancery here, and in *England*. I do believe that neither Side can ſhew, where the Teſtimony of Witneſſes has been anticipated by an Indictment of Perjury, but ſomething like that Step was taken in this Cauſe. The *Certiorari* was granted by the Court upon an Affidavit of the Traverſer, and the Trial put off upon her Affidavit of the tenth of *November*. The Affidavit of Mr. *MacKercher* is ſworn afterwards on the 13th of *November*, ſhewing Cauſe for bringing on the Trial the next Day, but no Court could poſſibly bring on the Trial when that Affidavit was offered. The Traverſer ſwore that ſeveral Witneſſes, whom ſhe named, were in *England*; and that Mrs. *Weedon* in particular, was a material Witneſs, and lived in a remote Part of this Kingdom. Mr. *MacKercher* ſwears, that Mrs. *Weedon* was a material Evidence for the Proſecutor, that ſhe was detained by Force, and moved for an *Habeas Corpus* to bring her hither. That Motion was brought on, and Examinations were taken after the Day appointed for the Trial, and a Motion made to attach Mr. *Blakeney* for detaining this Mrs. *Weedon*. It appears, that ſhe was ſummoned to attend here on Behalf of the Proſecutor on the 14th of *November*, juſt the Day before; and that the Place ſhe then lived at is above 70 Miles from *Dublin*. There came two Witneſſes upon the Table, who had ſworn Affidavits,

in order to found an *Habeas Corpus* and an Attachment againſt Mr. *Blakeney*, and they having ſworn falſe, they were both committed. Both thoſe illiterate Witneſſes ſwore her, in their Affidavits, to be under a Reſtraint, when it appeared ſhe was at Liberty. This they confeſſed, and alſo, that thoſe Affidavits were prepared by *Gooſtrey*, the Perſon now ſaid to be in *England*. This is a very extraordinary Proceeding, and a Sort of Indictment not uſually brought into this Court. The firſt Trial was put off, on the Affidavit of the Traverſer, that ſhe was not prepared for her Defence: The Queſtion now is, whether the Reaſons offered for putting off this Trial to *Eaſter* Term be of equal Force. It appeared then by the Affidavit of Mrs. *Heath*, that ſeveral Witneſſes, neceſſary for her Defence, could not poſſibly attend at the Day prefixed for Trial; the Bill of Indictment was found the twenty-fourth of *October*; the Trial was to be on the fourteenth of *November*; how could Witneſſes in *England* be brought by that Time to appear here? But Mr. *Mac Kercher* ſwears that Mrs. *Weeden* was a material Evidence for the Proſecutor, and not for the Traverſer, as ſhe inſinuated. She is now here, you have no want of her, if ſhe be that material Witneſs; and then the Queſtion is, whether the Affidavits made now can put off this Trial. The Affidavit of Mr. *Nelſon* is general, and only ſays, that he had a Letter from Mr. *Mac Kercher*, dated the tenth of *January*, acquainting him that he would leave *London* on the ſeventeenth of that Month. There are ſeveral Affidavits made on the Side of the Traverſer, and one in particular, that there was no ſuch Perſon upon the Road from *London* to this Place; but however, as he is no Evidence in the Cauſe, there can be no Colour for his Abſence to put off the Trial. Then the whole Matter is reduced to the Affidavit of *Kennedy*. He ſwears thoſe three Things that are material to put off a Trial; but I muſt obſerve that this Affidavit is in fact contradicted by the Affidavit of Mr. *Mac Kercher*, who ſwears on the thirteenth of *November*, he was ready to bring on the Trial the next Day, and yet Mr. *Weldon* is not one of the Witneſſes for that Trial, and he is not bound over to proſecute; Mr. *Mac Kercher* knew his Evidence, for he had then his Affidavit in Chancery; therefore that Part which is neceſſary to put off the Trial, that a material Witneſs to be produced cannot attend, is wanting in *Kennedy*'s Affidavit, for it appears that it is not well grounded by *Mac Kercher*'s Affidavit. There's another Objection againſt *Kennedy*'s Affidavit: He ſwears, he does believe Mr. *Weldon* is to be had the next Term, and that he believes he is a material Witneſs. Conſider, that though this be proper if it comes from the Agent, yet it is not proper, when an Ale-ſeller makes this Affidavit, and a Man that confeſſes he was never bred to Buſineſs. You know, that if a Perſon be accuſed for a violent Aſſault, in caſe there be no Danger of Death, there is Bail taken; but if inſtead of ſending for a Surgeon, the Perſon who applies for Bail, ſends for a Cobler, and the Cobler ſwears he had ſearched the Wound and found it not dangerous, Nobody can ſay, but the Court would refuſe Bail upon the Affidavit of this Cobler. Therefore *Kennedy*'s Affidavit is of no Conſequence. As to *Gooſtrey*, his Examinations are here, the Counſel for the Traverſer deſire they may be read againſt her. But I muſt tell you, that his Examinations are no more, than that Mrs. *Heath* did ſay ſuch and ſuch Words on the Trial in the Exchequer. I have the Trial here, and Mr. *Gooſtrey* can prove no more than what all preſent at that Trial can prove; and therefore, Gentlemen, upon account of Mr. *Gooſtrey*, I think not proper to put off the Trial. But what makes me think it improper to put it off is, the great Expence on the Side of the Traverſer. It appears by the Affidavits on account of the Traverſer, that they have been at a vaſt Expence; one Perſon ſwears to 700*l.* another ſwears to 300*l.* beſides a 50*l.* Bill. Now, if you can delay Trials, and put Traverſers to this Expence, you will ſoon have what you deſire in carrying on this Cauſe, for Nobody will dare to appear as a Witneſs, when they know it is ſo dangerous and expenſive. But it has been urged by Mr. *Harward*, that ſhe ſhould have a full and fair Trial; and let me tell you, it is as much for the Credit of the Proſecutors that there ſhould be a full and fair Proſecution, and that where Witneſſes bound over may be had to appear, and do not, it creates a Suſpicion of the Juſtice of the Proſecution; People will be apt to ſay, that Jugglers cannot play ſo well the ſame Trick twice. There is no doubt but a Verdict was found for the Proſecutor by a Jury of undoubted Credit; but it does not follow that the Traverſer is guilty, and the beſt and the wiſeſt Jury may be deceived. This Matter can be delayed no longer, becauſe by this Delay there can never be any Time fixed for a Trial; but as this Motion has taken up a great deal of Time, ſo it would be impoſſible to go through it this Day, therefore we will defer it till To-morrow Morning.

The Jury prefixed over to *Friday* the eighth of *February* at eight o'Clock.

Mr. Serjeant *Marſhall.*] I beg leave to obſerve, that the Examination of Mr. *Gooſtrey* does not go to all Parts of this Indictment.

Court.] To every one of them.——You do in effect confeſs her innocent, if you do not proſecute her.

Counſel for the Traverſer.] We conſent Mr. *Gooſtrey*'s Examination may be read in Evidence, and wave our Right of croſs-examining.

THE TRIAL of Mrs. MARY HEATH, for Perjury.

Counſel for the Proſecutor.

Warden Flood, Eſq. his Majeſty's Solicitor-General.
Robert Marſhall, Eſq. ſecond Serjeant at Law.
Philip Tiſdall, Eſq. third Serjeant at Law.
Philip Walſh, Eſq. one of his Majeſty's Counſel at Law.
William Harward, Eſq.
Joſeph Robbins, Eſq.
James Mac Manus, Eſq.
Cornelius O Callaghan, Eſq.
Ambroſe Harding, Eſq.
John Morton, Eſq.
Thomas Fitz-Gerald, Eſq.

Counſel for the Traverſer.

Eaton Stannard, Eſq. one of his Majeſty's Counſel at Law, and Recorder of the City of *Dublin*.
John Smith, Eſq. one of his Majeſty's Counſel at Law.
Anthony Marlay, Eſq. one of his Majeſty's Counſel at Law.
Peter Daly, Eſq.
Simon Bradſtreet, Eſq.
Thomas Le Hunte, Eſq.
Thomas Spring, Eſq.
Thomas Morgan, Eſq.
Richard Malone, Eſq.
Edmond Malone, Eſq.
Edward Lee, Eſq.
James Maddox, Eſq.
Thomas Cooley, Eſq.
Robert Hamilton, Eſq.
Robert Ford, Eſq.

Friday, *February* the 8th 1744.

THE Court being ſat before nine o'Clock, the Jury were called over, when Fourteen appearing, and no Challenges being made, the following Twelve were ſworn to try the Iſſue of Traverſe.

Sir *Samuel Cooke*, of St. *Catherine's*, Bart.
John Rochfort, of *Newpark*, Eſq.
Eyre Evans, of *Portrane*, Eſq.
Nicholas Archdale, of *Mount Eccles*, Eſq.
David Chaigneau, of *Corka*, Eſq.
Quaile Somerville, of *Cookſtown*, Eſq.
Edward Ford, of *Davidſtown*, Eſq.
Mark Synnot, of *Drunconder*, Eſq.
Thomas Baker, of *Newtown*, Eſq.
George Evans, of *Newport*, Eſq.
Narciſſus Charles Proby, of *Dameſtown*, Eſq.
Charles Burton, of *Dubber*, Eſq.

The Indictment on which this Trial was had is as follows, *viz.*

The King againſt *Mary Heath*, County of *Dublin*, to wit. } THE Jurors for our Lord the King upon their Oaths ſay and preſent, That in a certain Bill of a Plea of Treſpaſs and Ejectment of a Farm depending as of the Term of the Holy Trinity, in the Sixteenth and Seventeenth Years of the Reign of our ſaid Lord, the now King *George* the Second, of *Great-Britain*, and ſo forth, and in the Year of our Lord, one thouſand ſeven hundred and forty-three, in our ſaid Lord the King's Court of Exchequer in *Ireland*, then being at the King's Courts in the ſaid County of *Dublin*, before the Barons of our ſaid Lord the King, of the ſaid Court, and brought into the ſaid Court, and proſecuted by *Campbell Craig*, Gent. Debtor of the ſaid Lord the King, Plaintiff, againſt the Right Honourable *Richard* Earl of *Angleſea*, Defendant; who was preſent then in the ſaid Court, by his Attorney, *Thomas Burroughs*, for thirty Meſſuages, thirty Tofts, fifty Cottages, two Mills, fifty Gardens, eight hundred Acres of Arable Land, three hundred Acres of Meadow, ſix hundred Acres of Paſture, fifty Acres of Furze and heathy Ground, fifty Acres of moory Ground, with the Appurtenances, in *Great Stramine*, otherwiſe *Stameen*, *Little Stramine*, otherwiſe *Stameen*, *Little Donacarney*, *Shallon*, *Killcarvan*, otherwiſe *Killſharvan*, *Cruffey*, *Annager*, otherwiſe *Annager*, and *Little Gaffney*, ſituate, lying and being in the County of *Meath*; all which ſaid Premiſſes were formerly the Eſtate of the Right Honourable *James* Earl of *Angleſea*, deceaſed; and lately the Eſtate of the Right Honourable *Arthur* Earl of *Angleſea*, alſo deceaſed; and which had been demiſed to him, the ſaid *Campbell Craig*, by *James Annesley*, Eſq. and had been alſo demiſed to him the ſaid *Campbell Craig*, by the Right Honourable *James* Earl of *Angleſea*, and had been alſo demiſed to him, the ſaid *Campbell Craig*, by the Honourable *James Annesley*, only Son and Heir of *Arthur* late Baron *Altham* of *Altham*, deceaſed, otherwiſe the Right Honourable *James* Baron *Altham* of *Altham*, on the firſt Day of *May*, one thouſand ſeven hundred and forty-two, at *Trim* in the County of *Meath* aforeſaid, for the ſeveral Terms of twenty-one Years, to commence from thence in Manner and Form as in and by the Declaration of the ſaid *Campbell Craig*, in the ſaid Bill of the ſaid Plea of Treſpaſs and Ejectment of a Farm, is mentioned and ſet forth; in and to which ſaid Bill of a Plea of Treſpaſs and Ejectment of a Farm, he the ſaid *Richard* Earl of *Angleſea*, by his ſaid Attorney, took Defence in due Form of Law, and for Plea thereto, ſaid that he was not guilty of the Treſpaſs and Ejectment aforeſaid, in Manner and Form as the ſaid *Campbell Craig* complained; and of that he put himſelf on the Country, and the ſaid *Campbell Craig* likewiſe; and Iſſue being ſo joined in ſaid Plea of Treſpaſs and Ejectment, in due Form of Law, by and between the ſaid Parties, it was afterwards ſo proceeded upon thereon that the ſaid Iſſue afterwards, to-

to-wit, on the Second *Friday* after the Morrow of All Souls, in the Term of St. *Michael* the Arch-angel then next, that is to say, on the 11th Day of *November*, in the seventeenth Year of the Reign of our said Lord, the now King, in the Court of Exchequer aforesaid, before the said Barons of the said Court, at the King's Court aforesaid, in the County of *Dublin* aforesaid, was tried by a certain Jury of the Country, for that Purpose, in due Form of Law, then and there elected, tried and sworn in said Court, to try the said Issue; and on the said Trial, it was then and there admitted, as well by, for and on behalf of the said *Campbell Craig*, as by, for and on behalf of the said *Richard* Earl of *Anglesea*, that the said Lands and Premisses, mentioned in the said Plea of Trespass and Ejectment and Declaration of the said *Campbell Craig*, were the Estate of Inheritance of *Arthur* Lord Baron *Altham* of *Altham*, late deceased, and that he died seized of the said Lands and Premisses; and the said *Campbell Craig*, then and there, upon said Trial, produced Witnesses on his Part, who being then and there duly sworn on God's Holy Evangelists, by the said Barons of the said Court of Exchequer, to testify the Truth, the whole Truth, and nothing but the Truth, in the said Plea of Trespass and Ejectment so depending, the said Barons having sufficient Power and Authority to administer the said Oath to them on that behalf, gave in Evidence, and then and there swore, and deposed upon their Oaths aforesaid, to the Jurors of the Jury aforesaid, before the Barons aforesaid, that *James Annesley* aforesaid, the Lessor of the said Plaintiff, *Campbell Craig*, was the only Son and Heir of the said *Arthur* late Lord Baron *Altham* of *Altham*, by his Wife, *Mary* the late Lady *Altham*; and that the said *James Annesley* was born and christened at *Dunmaine*, in the County of *Wexford*, in the Kingdom of *Ireland*. And the said now Jurors so sworn for our said Lord the King, upon their Oaths, further say and present, that *Mary Heath*, of the City of *Dublin*, in the County of the said City, Widow, upon the Trial aforesaid, in the Court of Exchequer aforesaid, before the Barons aforesaid, at the King's Court aforesaid, in the County of *Dublin* aforesaid, being then and there produced as a Witness, by and on behalf of the said *Richard* Earl of *Anglesea*, on the said Trial of the said Issue, she the said *Mary Heath* was then and there sworn, upon God's Holy Evangelists, in due Form of Law, by the said Barons of the said Court of Exchequer, to testify the Truth, the whole Truth, and nothing but the Truth, in the said Plea of Trespass and Ejectment, the said Barons of the said Court of Exchequer having sufficient Power and Authority to administer the said Oath to the said *Mary Heath* in that behalf; and the said *Mary Heath* being then and there so sworn, then and there falsly, voluntarily, knowingly, wilfully, maliciously, corruptly and illicitly swore and deposed upon her Oath aforesaid, to the said Barons and to the Jurors of the said Jury, who then and there were in due Form of Law elected, tried, and sworn as aforesaid, to try the said Issue as aforesaid, that Lady *Altham*, that is to say, the aforesaid *Mary* Lady *Altham*, who was Wife of the said *Arthur* late Lord Baron *Altham* of *Altham*, never was with Child, while she the said *Mary Heath* lived with the said *Mary* Lady *Altham*. And,

Further, the said *Mary Heath* then and there, before the said Barons of the said Court, gave in Evidence and swore upon her Oath aforesaid, to the said Barons and to the Jurors of the said Jury, that the said *Mary* Lady *Altham* never had a Child at *Dunmaine*, that is to say, *Dunmaine* aforesaid, in the said County of *Wexford*, in the Kingdom of *Ireland*. And,

Further, the said *Mary Heath* then and there, before the said Barons of the said Court, gave in Evidence and swore upon her Oath aforesaid, to the said Barons and to the Jurors of the said Jury, that there never was a Child, as the Child of that Family, that is to say, of the said *Arthur* late Lord Baron *Altham* of *Altham*, and the said *Mary* Lady *Altham* his Wife, either christened or living at *Dunmaine* House, that is to say, the aforesaid *Dunmaine* House, in the said County of *Wexford*, while she, that is to say, the said *Mary Heath*, was at *Dunmaine* aforesaid. And,

Further, the said *Mary Heath* then and there, before the said Barons of the said Court, gave in Evidence and swore upon her Oath aforesaid, to the said Barons and to the said Jurors of the said Jury, that she, that is to say, the said *Mary Heath*, never saw a Child in the Hands or Care of *Joan Laffan*, while she, that is to say, the said *Joan Laffan*, was at *Dunmaine* House aforesaid. And,

Further, the said *Mary Heath* then and there, before the said Barons of the said Court, gave in Evidence and swore upon her Oath aforesaid, to the said Barons and to the Jurors of said Jury, that the said *Mary* Lady *Altham* did not miscarry of a Child at *Dunmaine* aforesaid. Whereas really and in fact, the said *Mary* late Lady *Altham*, who was Wife of the said *Arthur* late Lord Baron *Altham* of *Altham*, was with Child while she the said *Mary Heath* lived with the said *Mary* Lady *Altham*. And whereas also really and in fact, the said *Mary* Lady *Altham* had a Child at *Dunmaine*, that is to say, *Dunmaine* aforesaid, in the said County of *Wexford* in the Kingdom of *Ireland*. And whereas really and in fact, there was a Child, as the Child of that Family, that is to say, of the said *Arthur* late Lord Baron *Altham* of *Altham*, and the said *Mary* Lady *Altham* his Wife, christened and living at *Dunmaine* House aforesaid, in the said County of *Wexford*, while she the said *Mary Heath* was at *Dunmaine* House aforesaid. And whereas also really and in fact, the said *Mary Heath* did see a Child in the Hands and Care of *Joan Laffan*, while she, that is to say, the said *Joan Laffan*, was at *Dunmaine* House aforesaid. And whereas also really and in fact, the said *Mary* Lady *Altham* miscarried of a Child at *Dunmaine* aforesaid. And so the now Jurors sworn for our Lord the King as aforesaid, upon their said Oaths say and present, that the said *Mary Heath* on the said Trial of the Issue aforesaid, upon her Oath aforesaid, before the Barons aforesaid and Jurors of the said Jury, elected, tried and sworn to try the said Issue between the Parties aforesaid, in the said Court of Exchequer at the King's Courts aforesaid, in the County of *Dublin* aforesaid, in Manner and Form aforesaid, did falsly, voluntarily, knowingly, wilfully, maliciously, corruptly and illicitly, commit wilful, voluntary, malicious and corrupt Perjury, in great Contempt of the said now King and of his Laws, and contrary to his Majesty's Crown and Dignity.

Court.] You, Gentlemen of Counsel for the Traverser, offered Yesterday that Mr. *Goostrey*'s Examination should be read in Evidence against the Traverser, and that you would waive her Right to cross-examine him; you must admit it now.

Mr. *Daly.*] Admitted.

Court.] (On Motion for separating the Witnesses.) The Witnesses were ordered to be separated, and not to come into Court till they are sent for; Nobody is to be admitted to them, but each to have a Guard on the other's Witnesses.

Court.] Gentlemen, for the Ease of the Jury, and Necessity of finishing the Trial, I must tell you, that we will not, on either Side, have a Multiplicity of Witnesses; the Meaning of the Law is, that the Trial should be had in one Day, and we won't sit here to hear any Evidence that is immaterial. Whoever protracts a Trial, is by the Law supposed to dare not to stand it.

Mr. *Recorder.*] My Lord, we shall endeavour to make the Trial as short as we can, but there are many Cases that depend upon Circumstances, which must be made appear, and wherever your Lordships find that it is a necessary Defence, you cannot think it is too long.

Mr. Justice *Ward.*] It is in the Power of the Gentlemen of the Bar to shorten this Trial, and I hope you will observe the Rule laid down Yesterday, for one Gentleman to confine himself to each Witness.

L. C. J.] I make no doubt of laying that down as a Rule.

Mr. Sol. Gen.] Our Resolution is to observe it; and we will shorten the Trial, in all respects, as much as we can.

The Lists of the Witnesses are given in to the Court, that they may be separated, and the Clerk of the Crown numbering them, there were 80 on the Side of the Traverser, and 86 on the Side of the Prosecutor.

Court.] Do you imagine, that the Law supposed that any body should produce fourscore Witnesses? Two Witnesses are enough to prove any Fact, if it be a good one, *for by the Mouth of two Witnesses shall a thing be established*; and 200 will not prove any Fact, if it be a bad one.

The Officer of the Court charged the Jury with the Indictment in the usual Form, and was directed by the Court to take out the five Points or Assignments of Perjury, and give them to the Jury; which was done.

1. That *Mary*, Wife of the late Lord *Altham*, never had a Child, while the Traverser lived with the Lady *Altham*.

2. That Lady *Altham* never had a Child at *Dunmaine*.

3. That there never was a Child christened, or living at *Dunmaine*, as the Child of Lord and Lady *Altham*, while the Traverser was at *Dunmaine*.

4. That the Traverser never saw a Child in the Hands or Care of *Joan Laffan*, while the said *Laffan* was at *Dunmaine*.

5. That Lady *Altham* did not miscarry of a Child at *Dunmaine*.

["*Mr. Sol. Gen.* (Counsel for the Crown.) May it please your Lordships, and you Gentlemen of the Jury, I am of Counsel in this Case for the Crown, against the Traverser *Mary Heath*, who stands indicted for wilful and corrupt Perjury, a Crime of the deepest Dye, on the Discountenance and due Punishment whereof the Lives, Liberties and Properties of all Men, nay the very Being of Society depend; for no Man's Life, Liberty, or Property can ever be safe, if such are either countenanced, or escape for want of due Prosecution. And before I proceed to state the Case, I must beg leave, my Lord, first to mention, that by hurrying on this Trial so prematurely, in the Absence of our principal Witnesses, in the Absence of the Gentlemen who carry on the Prosecution, particularly of Mr. *Mac Kercher*, who has the conducting of it, who alone is acquainted with the Nature and Strength of the Evidence, and the due Application thereof, and is now detained on the other Side of the Water by contrary Winds, we proceed to it under manifold and great Disadvantages: Yet under these Circumstances, I make little doubt but we shall be able to convict the Traverser, to the Satisfaction of all unprejudiced Persons, if the Witnesses to be produced are able to prove the Matters contained in my Instructions. I shall therefore proceed to state the Case as briefly as I can.

"*Arthur Annesley*, first Earl of *Anglesea*, (so created by King *Charles* the Second, with a Limitation to the Heirs Male of his Body) had Issue five Sons, *James* his eldest, *Altham* his second, *Richard* his third, *Arthur* his fourth, and *Charles* his fifth Son.

"The first Earl having made very large Acquisitions, sufficient to support two distinct Families, procured the Baronage of *Altham* for his second Son *Altham*, and his Issue Male, with a Remainder over to his third Son *Richard*.

"As to the *Altham* Title, *Altham*, the first Lord *Altham*, died without Issue Male, whereupon that Dignity became vested in his Brother *Richard*, who had Issue *Arthur*, afterwards Lord *Altham*, and *Richard* now in Possession of the *Anglesea* Titles and Estates.

"With regard to the eldest Branch, *James*, eldest Son of the first Earl, was, in his Father's Lifetime, married to a Daughter of the Earl of *Rutland*, on which Marriage, a Settlement was made in common Form, and the Estates limited to Lord *James* for Life, Remainder to his first and other Sons in Tail Male, Remainder to the other Sons of the said first Earl in Tail Male, Remainder to his right Heirs.

"The said first Earl was accordingly succeeded, both in the Title and Estate, by his said eldest Son *James*, who afterwards also died, and left Issue three Sons, *James*, *John* and *Arthur*.

"*James*, the eldest of these, and third Earl of *Anglesea*, levied Fines and suffered common Recoveries of his Estates, and thereby docked the Entail created by his Father's Marriage-settlement, and made himself absolute Tenant in Fee-simple; afterwards he made several Wills and Codicils, and having no Issue Male of his own, he thereby limited his Estates, upon the Failure of Issue Male of his Brother *Arthur*, to go to the *Altham* Branch.

"Accordingly it happened that the said *Arthur*, who was afterwards Earl of *Anglesea*, died in 1737, without Issue; so that if *Arthur* Lord *Altham* had been then living, he would undoubtedly have succeeded to the *Anglesea* Honours and Estates: But as he happened to die in *November* 1727, it is indisputable, that if he had left a Son, such Son would have been entitled to those Honours and Estates.

"The principal Question therefore at the late Trial at Bar, and the single Question now is, Whether the said Lord *Altham* left a Son or

"not?

" not? We that are concerned for the Crown, did then maintain the " Affirmative, and this we shall now endeavour to prove, though a Fact " already established by the solemn Verdict given at that Trial, by twelve " Gentlemen of the greatest Characters for Integrity, Capacity and For- " tunes in this Kingdom. A Verdict not precipitately given, but after " fourteen Days Attention and Deliberation, and which therefore ought " to carry the greatest Weight.

" Had the Person, who claims to be the Son of *Arthur* Lord *Altham*, " been in the Kingdom, when *Arthur* Earl of *Anglesea* died, he might " have asserted his Right, while many of his Witnesses were living, and " the Facts recent. But he had the Misfortune, Gentlemen, not only " to be out of the Kingdom, but out of *Europe*.

" But as we are not at Liberty to lay that Fact before you, I shall not " presume to observe upon it any further."

" *Lord Chief-Justice.*] No such Evidence ought to be opened here.— " Prove that the Lord *Altham* had a Son."

" Mr. *Daly.*] The Evidence offered by *Mr. Sollicitor* is quite illegal, " and I will shew it to be so."

" *Mr. Recorder.*] I have a great Regard for whatever *Mr. Sollicitor General* says, but no Fact should be opened to the Jury, but what pro- " perly relates to the Matter of the Indictment."

" *Court.*] The Matter of Perjury contained in the Indictment, is the " single Question before us; what *Mr. Sollicitor* mentions might be pro- " per to be shewn in the Court of Exchequer, in an Action for the Re- " covery of the Estate: But we are not now to try the Right to an Estate, " but a single Fact: If Lady *Altham* had a Child, *Mary Heath* is per- " jured, and this the Jury are to try."

" Mr. *Archdale.*] (one of the Jury) I apprehend the Question before us " is, whether *Mary Heath* is perjured or not?"

" *Court.*] Yes, that is the Point, Gentlemen."

" *Mr. Sollicitor General.*] Mr. *Annesley* brought an Ejectment in the " Court of Exchequer, in order to try his Title to an Estate in the County " of *Meath*, which Action was accordingly tried in *Michaelmas* Term, " 1742. The sole Question on that Trial was, by the Admission of all " Parties, Whether Mr. *James Annesley* was the lawful Son of *Arthur* " Lord *Altham?* and the Jury, who were Gentlemen of undoubted Cre- " dit and Fortune, after fifteen Days Trial and Deliberation, found " upon their Oaths, that Mr. *Annesley* was the legitimate Son of *Arthur* " Lord *Altham*: Upon this Trial, Gentlemen, Mrs. *Heath*, the Tra- " verser, was examined, as a principal Witness, on the Part of the De- " fendant the Earl of *Anglesea*, and it is for the Evidence she then gave, " that she now stands indicted for Perjury, in the five following Parti- " culars:

" *First*, That she swore, that *Mary* Lady *Altham*, who was Wife of " *Arthur* late Lord *Altham*, never was with Child, while she *Mary Heath* " lived with the said *Mary* Lady *Altham*.

" *Secondly*, That she swore, that the said Lady *Altham* never had a " Child at *Dunmaine* in the County of *Wexford*.

" *Thirdly*, That she swore, that there never was a Child, as the Child " of the Family of Lord and Lady *Altham*, either christened or living at " *Dunmaine* House in the said County of *Wexford*, while she *Heath* was " at *Dunmaine*.

" *Fourthly*, That she swore, she never saw a Child in the Hands or Care " of *Jean Laffan*, while the said *Jean Laffan* was at *Dunmaine* House.

" *Fifthly*, That she swore, that the said Lady *Altham* never miscarried " of a Child at *Dunmaine* aforesaid.

" And although it will be enough for us to prove Mrs. *Heath* guilty of " Perjury, in any one of the said Points, yet notwithstanding the great " and many Advantages gained against us by our being surprised, and " hurried on to Trial at this Juncture, I doubt not of our being able to " convict her of the whole. We shall begin, by proving, that Mrs. " *Heath*, at the Trial at Bar, swore the several Particulars mentioned in " the Indictment, and then shall proceed to shew, that those Particulars " are false."]

Court.] The first Assignment of Perjury is, that Lady *Altham* never was with Child while the Traverser lived with her.

Mr. Serjeant *Marshall.*] My Lord, we shall first produce the Record. Upon the Trial in the Court of Exchequer the single Point was, Whether the Lessor of the Plaintiff was the Son of Lady *Altham*, Wife of *Arthur* late Lord *Altham?* and there was a Verdict found for him.

Mr. *Daly.*] We admit the Record, and we admit *Mary Heath* was produced as a Witness upon that Trial, and that she swore that Lady *Altham* had not a Child, whilst she the Traverser lived with her.

Mr. Serj. *Marshall.*] Do you admit the several Assignments of Perjury?

Mr. *Daly.*] We do.

Mr. Serj. *Marshall.*] My Lord, the next Thing that we shall lay before your Lordship is a Person [Mrs. *Cole*] to prove, that after Lady *Altham*'s Arrival in this Kingdom, in the Year 1713, she came to the House of Mr. *Briscoe*, in *Bride-street*, in this City; that after staying there some short Time, she removed to the House of one Mrs. *Vice*, in *Essex-street*; that from thence she went to the late Lord *Altham*'s House at *Dunmaine*, in the County of *Wexford*; and it will appear to your Lordship and to the Gentlemen of the Jury, that at the late Lord *Altham*'s House at *Dunmaine* she was with Child, and did miscarry of a Child.

Mr. *Daly.*] We admit, if you please, that Mrs. *Heath* came over with my Lady *Altham* in *October* 1713, and lived with her to her Death in the Year 1729.

Court.] Gentlemen, call your Witnesses.

1. Mrs. Henrietta Cole.

Mr. Serj. *Marshall.*] Mrs. *Cole*, did you know *Arthur* late Lord *Altham?*

Mrs. *Cole.*] Yes, Sir.

Q. Did you know *Mary* Lady *Altham*, his Lady.---*A.* Yes.

Q. At what Time did you first become acquainted with her?

A. In the Year 1713.

Q. Do you know any Place in the County of *Wexford*, where they lived?---*A.* Yes, at *Dunmaine*.

Q. Were you at any Time at that House, and when?---*A.* I was, Sir.

Q. Can you recollect about what Time, Madam?

A. I believe it might be about *February* that my Mother and I went there.

Q. In what Year?---*A.* In the Year 1713.

Q. Do you know of any remarkable Accident that happened while your Mother and you were there?---*A.* Yes, I do.

Q. Give an Account to the Court and the Jury, what that Accident was.

A. My Lord was in a very great Passion one Day, at some Sawcers being brought to the Table; his Passion was very great, and he had ordered them never to come upon the Table on any Score, for they were not fit for modest People to see; and all on a sudden he threw them between my Lady and me, and put my Lady into a violent Fright.

Court.] What were they?---*A.* China Sawcers, my Lord.

Mr. Serj. *Marshall.*] Pray, Madam, what happened upon that Occasion?

A. My Lady fell a-trembling; into a violent Fit of Trembling and Tears.

Q. Was there any, and what Consequence from this Accident?

A. My Lady was exceedingly ill in the Night.

Mr. *Edm. Malone.*] My Lord, before she goes on any further, I hope she will say what she knows of her own Knowledge, and nothing more.

Mr. Serj. *Marshall.*] Whatever may be an Inducement to the material Point is necessary for her to say.

Court.] Go on.

Mrs. *Cole.*] I say it from Mrs. *Heath* the Person coming to my Mother, and I in Bed with my Mother.

Court.] Then you heard Mrs. *Heath* tell your Mother my Lady was very ill?---*A.* I heard her, my Lord.

Mr. Serj. *Marshall.*] Did any and what Consequence happen from that Illness?---*A.* My Mother told me in the Morning——

Court.] Stop you there. You must only tell what you know yourself did happen.

Mr. Serj. *Marshall.*] Well, tell what did happen of your own Knowledge.

A. My Lady miscarried, as I understand.

Q. From whom were you informed that my Lady was so sick?

A. From Mrs. *Heath*.

Q. Where was you at that Time that you was informed of it?

A. In Bed with my Mother.

Q. What did she say to your Mother then?

A. She came to the Door, and said, *For God's Sake, Madam, get up, my Lady is exceedingly ill, make haste and get up.*

Q. Pray, Madam, do you know what was the Consequence of that Illness?---*A.* My Lady miscarried, as I take it.

Q. Why do you apprehend that she miscarried?

A. I saw an Abortion in the Bason the next Day.

Q. Where did you see it, Madam?---*A.* In my Lady's Closet.

Q. Who shewed it to you?

A. I believe, my Mother; as to that Particular I cannot be positive.

Q. Where was Mrs. *Heath* at that Time?

A. Indeed, I cannot be positive as to that; but she was ever at my Lady's Elbow whenever she was ill.

Q. How was she in that Family, a Servant or Relation?

A. She was a Servant, I think; I cannot tell whether she was a Relation or not.

Q. Was she my Lady's Woman?---*A.* She was deemed as such.

Q. Had you any and what Discourse with the Traverser concerning my Lady's Sickness at that Time?

A. Indeed, I cannot charge my Memory with having any; we might have had Discourse about it, but I cannot charge my Memory.

Q. How long was Lady *Altham* confined afterwards to her Chamber?

A. That is a Question I cannot exactly tell you.

Q. Was she confined to her Chamber after that Accident of the Sawcers?

A. She was confined to her Chamber; my Lord wanted her down to Supper that Night, and sent for her several Times; and my Mother went up for her, and she was too ill to come down.

Mr. Recorder.] What Night?

A. The Night of the Day that the Sawcers were thrown.

Mr. Serj. *Marshall.*] You say, Madam, that my Lady was confined, pray how long was she confined?

A. Whether it might be a Fortnight or Three Weeks, I cannot positively say, but she was confined to her Chamber.

Q. In what Manner was she confined, in Bed, or up, or how?

A. She kept her Bed for some Time, and sat up in her Chamber at other Times.

Q. Did you give an Account of this Affair to any Body whatsoever since the Time this Accident happened?

A. I have spoke of it frequently, and my Mother has spoke of it.

Q. To whom, Madam, can you recollect?

A. Indeed, I believe there is Mr. *Monck*'s Family, that I believe may remember it perfectly well; there is in *Gorey* several that may remember it from my speaking of it before ever this Affair happened.

Q. Where was Mrs. *Heath* during the Time that Lady *Altham* was confined in her Chamber?

Mr. Recorder.] Oh! she said already, that she was about her.

Q. Pray, Madam, did Mrs. *Heath* know any Thing of that Matter, or not?

A. She was in the House, she was immediately at her Elbow, she was the Person that came to my Mother.

Court.] Did you go into my Lady's Room when she called your Mother?

A. I did not, my Lord, I lay in my Bed.

Mr. Serj. *Marshall.*] But she desired your Mother to make haste, for that my Lady was exceedingly ill?---*A.* She did, Sir.

Jury.] What Time of the Night was it that *Mary Heath* came to your Apartment?---*A.* I really cannot recollect.

Q. When was it that you went into the Closet, and saw this Abortion you mention?

A. The next Morning about 9 or 10 o'Clock, I believe; to be certain I cannot.

Q. Do you take upon you to say, that at the Time when your Mother shewed you the Abortion, that the Traverser was in the Closet?

A. I cannot say, she might or might not.

Q. Did Mrs. *Heath* constantly attend Lady *Altham?*

A. She did constantly.

Q. Did you ever see her attend her?

A. I have seen her, and was often sent to call her.

Mr. Serj. *Marshall.*] When she called your Mother up, did she express any and what Apprehension concerning my Lady's Illness?

A. I cannot say that she expressed any at all, only that she said, *For God's Sake, Madam, get up, my Lady is exceedingly ill.*

Q. Do

Q. Do you know how it was underſtood in that Family, what the Occaſion of that Sickneſs was?---*Court.* Suppoſition or Hearſay is nothing.

Croſs-Examination.

Mr. Recorder. Pray, Madam, do you remember the Time that my Lady *Altham* came to *Ireland*, the Month I mean?---Mrs. *Cole.* About *October.*

Q. Where did ſhe lodge when ſhe came to *Dublin?* Did not ſhe come to your Father's Houſe?---*A.* She came to my Father's Houſe.

Q. How long did ſhe continue in your Father's Houſe before Lord *Altham* came?---*A.* Whether a Month or ſix Weeks in Town, before he came to Town, I cannot tell.

Q. Pray, Madam, where was it that my Lord and ſhe firſt met?

A. At my Father's Houſe.

Q. Can you recollect the Month that was in?

A. I cannot be very certain; but I think that it muſt have been in *November*, the latter-end of *November*, or in the Beginning of *December*, which I cannot tell.

Q. Do you fix it in *November?*

A. I cannot fix it more than what I ſay.

Q. I aſk you now, Madam, did my Lord and Lady *Altham* lodge at your Houſe 'till they went to *Dunmaine?*---*A.* I do not believe they did.

Q. I aſk you, upon your Oath, did they lodge in your Father's Houſe 'till they left Town?---*A.* I think they did not.

Q. It is a material Queſtion, and you muſt anſwer it; I aſk you, did they or did they not? for you that remember things ſo well, muſt know whether they did or no. Did not they lie there the Night they were reconciled?---*A.* They did, and ſome Nights after.

Q. Did not they till they left Town?

A. No, Sir, I do not believe they did.

Q. Cannot you ſay whether they did or not?---*A.* I cannot ſay poſitively.

Q. Can you ſay they did not lodge there while they ſtaid in Town? You that know they were reconciled by your Father's Means, cannot you recollect whether they left your Father's Houſe before they left Town?

A. I do not think that they ſtaid there while they lived in Town.

Q. You do not think; but can you ſay whether they did or not?

A. I tell you, Sir, my Father was uneaſy at their being in his Houſe; my Lord was a Man that had a great many Freaks, and my Father prevailed on him to take Lodgings.

Q. And did he take Lodgings?

A. I think I may ſay it, I am not certain; but I think I may be poſitive that they did not lodge at my Father's Houſe 'till they went to the Country.

Q. Well, then, Madam, do you recollect their going away from Town? Did the Coach come to your Father's Houſe to carry them away?

A. I do not remember.

Q. Were they at your Father's Houſe when they went away?

A. I do not believe they were.

Q. Did the Coach come for them?---*A.* I remember no Coach coming for them. Indeed I do not remember any Equipage.

Q. Now, Madam, you ſay that your Mother and you went to *Dunmaine*; what Time was it that Lord and Lady *Altham* left this City?

A. I cannot aſcertain the Time of their going.

Q. You did not go with them?---*A.* I did not.

Q. I think you ſaid your Mother and you went to *Dunmaine* in *February?*---*A.* I believe it was.

Q. Pray, Madam, when my Lady was at your Houſe, did ſhe hire any Servants to go down with her?---*A.* I do not remember one.

Q. Do not you remember that ſhe hired one Mrs. *Setwright?*

A. I remember Mrs. *Setwright* at *Dunmaine*, but do not remember my Lady's hiring a Servant in the Houſe.

Q. Were you a Goſſip to Mrs. *Setwright* at *Dunmaine?*

A. I know ſhe was brought to Bed.

Q. Did you ſtand to the Child?---*A.* Indeed I do not remember I did; if I did, it is more than I know, or can remember.

Q. Was your Mother ſick while you were at *Dunmaine?*

A. Not to my Knowledge.

Q. You do not remember that neither?---*A.* Indeed I do not.

Q. Was ſhe ſo ill as to take Vomits there?

A. I do not remember any Vomit ſhe took, nor do I remember her to have taken two Vomits in all her Life.

Q. Did not you lie with your Mother at *Dunmaine?*

A. Part of the Time I was Bed-fellow to Mrs. *Heath*, and part to my Mother; for my Father was there for a while, and as ſoon as he went, I lay with my Mother.

Q. Pray, Madam, did your Father go with you there?

A. No, he did not.

Q. Was your Father in the Houſe when theſe Sawcers were thrown down?

A. He was not.

Q. Did that happen before or after he was there?

A. It was after he was there.

Q. How long was you there before your Father came?--*A.* I cannot tell.

Q. How long, a Fortnight?

A. I believe we might; more or leſs I cannot tell.

Q. Was it the Beginning of *February*, or the latter-end, that you went down?---*A.* I believe towards the Beginning; I cannot tell.

Q. I ſee you can tell nothing but one Point. Was it the Beginning, the Middle, or the latter-end of *February* that you went there?

A. I cannot ſay; but I believe it was in *February.*

Q. Well, but I aſk you now, what Time was it that this Accident of the Sawcers happened?---*A.* I cannot tell whether in *March* or *April.*

Q. Which Month was it?----*A.* If I could remember the Day, the Hour, or the Minute, I would tell you.

Q. How long was it before your Father came?---*A.* I think it was after.

Q. How long did he ſtay there?---*A.* He ſtayed but a very ſhort Time.

Q. Can you ſay how long he ſtayed?

A. Whether a Week or ten Days I cannot ſay.

Q. How long after he went away did it happen?

A. I cannot tell how long.

Q. Were not you examined in this Cauſe once before; can you recollect what Time you fixed then for your going to *Dunmaine?*---*A.* I cannot tell.

Q. Did not you ſay it was in *March* or *April?*

A. I do not know whether I did or not.

Court.] Did you ſay in *February* or *March* then, or when?

A. I cannot tell, my Lord, whether I did or not.

Mr. *Recorder.*] When you were examined on the Trial in the Exchequer, did you ſay, you went in *February*, *March* or *April?*

A. I ſaid that my Lady miſcarried in *March* or *April.*

Q. Did not you ſwear that it was in *March* or *April* that you went down?

A. Not to my Knowledge.

Q. Why, had not you as good a Knowledge then as now?

A. I might; if I ſaid it I miſtook.

Q. Pray, Madam, I'd aſk you another Queſtion; you ſay, you miſtook if you ſaid ſo; upon your Oath, how long after you went down was it that this Accident happened?

A. It was ſome Time after; it either was in *March* or *April*, but I believe rather it was in *April.*

Court.] You do remember you were examined in the Court of Exchequer; by Virtue of your Oath, did you ſwear then, it was in the Beginning of Spring that you went to *Dunmaine?*

A. I do ſay, that I believe I ſaid that it was the Spring.

Q. Do you call the Month of *February* Spring?

A. I might miſtake in that.

Mr. *Mac Manus.*] My Lord, I apprehend it is an improper Queſtion to aſk a Woman now, what ſhe ſaid another Day; to examine her at this Time to what ſhe ſwore then.

Court.] I aſk your Pardon, Mr. *Mac Manus*, it is very proper.

Mr. *Recorder.*] Recollect the Time; how ſoon after you got down did this Accident happen, for it is a moſt remarkable one, in a Fortnight, or three Weeks, or a Month, or how long?

A. It was more than a Fortnight, three Weeks, or a Month; as I take it, it was about two Months after we got down.

Q. Can you recollect the Month?

A. It might be ſomething more than two Months, I cannot be poſitive.

Q. And might not it be ſomething leſs?

A. No, I do not think it was.

Q. Can you recollect the Company there at the Time of this Accident?

A. I have endeavoured my Recollection as much as I could. There were four Gentlemen at the Table beſides my Lord, my Lady, my Mother and I; but to tell one of their Names I cannot, and whether dead or alive, I do not know.

Court.] Was your Father there?--*A.* No, he was not at the Table.

Mr. *Recorder.*] Was there any Quarrel between my Lord and my Lady at this Time?---*A.* There was none that I know of, for it was the Sawcers that occaſioned the Quarrel.

Q. How were the Company placed at the Table; I ſuppoſe my Lord ſat at the lower End of the Table?

A. My Lady ſat at the upper End, my Mother ſat by her, and I on the other Side, and I do believe, as well as my Recollection can ſerve, I believe my Lord ſat the very next Perſon to me; I am not poſitive, but I think he did.

Q. Were theſe four Gentlemen that were at Dinner, People of any Faſhion?---*A.* I ſuppoſe ſome were, and ſome were not

Q. Can you be poſitive whether my Lord ſat next you?

A. Upon Recollection, I think he did ſit next me.

Court.] Where did my Lady ſit?

A. At the upper End of the Table, and the Chimney was behind me.

Mr. *Recorder.*] Did you ſit the next to her?

A. I ſat the very next to her.

Q. On which Hand?---*A.* The Right Hand.

Q. Was your Mother there?---*A.* My Mother was there.

Q. And did you ſit on the Right Hand of my Lady?

A. I can give you a very good Reaſon for it.

Q. Tell it.——*A.* It is, that my Mother had got ſome Cold, and her Eyes were weak, and ſhe did not care to face the Light.

Q. What Room was it you dined in? Deſcribe *Dunmaine.*

A. I have not been at *Dunmaine* lately; but however, the Room, as you come in at the Street-door, was on the Right Hand; there was a Bed in the other Room oppoſite to it.

Q. What was the Uſe of thoſe Sawcers?

A. There was ſomething upon every one of them.

Q. How were they brought to the Table?---*A.* They were brought in on a Diſh, a Deſert, and thoſe Sawcers were intermixed with other Things.

Q. What had they upon them?

A. I believe there were Sweet-meats upon them.

Q. Were you daubed with them when my Lord threw them by you?

A. He took them in this Manner, and emptied them all; and as he emptied them he threw them between my Lady and me, he would empty a Sawcer and throw it, and ſo one after another till he had thrown them all.

Q. Where did he empty them into?

A. In the Diſh that they were ſtanding on.

Q. Did he know that my Lady was with Child?

A. I believe he did; and I am pretty ſure he did.

Q. And yet he threw thoſe Sawcers directly between you?

A. Sir, my Lord was unaccountable in his Temper.

Court.] Do you ſay that my Lord knew my Lady was with Child?

A. I do believe he did know it.

Q. What is your Reaſon for that Belief?

A. I have no Reaſon, only becauſe of the Abortion.

Q. But had you any Reaſon to believe he knew it before that Time?

A. I do ſay thus far, that the very firſt Words that Mrs. *Heath* ſaid to my Mother——

Court.] You are only to ſay what you know yourſelf.

Mrs. *Cole.*] I heard my Lord ſay that my Lady was with Child before the Accident.

Mr. *Recorder.*] Did you hear him ſay ſo?---*A.* I did hear him ſay ſo.

Q. And yet he threw the Sawcers in this Manner; how did he throw them?---*A.* My Lady put her Head one Way, and I put my Head the other, as they were throwing.

Q. Now, Madam, you ſay you went into the Cloſet the next Morning, your Mother carried you there?----*A.* No, ſhe did not.

Q. Who carried you there?---*A.* I went of myſelf.

Q. Was your Mother there?---*A.* She was in the Cloſet.

Q. And your Mother ſhewed you this Abortion?——*A.* She did.

Q. Now, how old were you at that Time?

A. I believe this will ſhew (holding a Bit of Paper in her Hand); when I was here before I was quite uncertain as to my Age.

Q. You then ſaid you were twelve or thirteen?

A. There is a Fault in that Trial, for I was aſk'd my Age, and I could not be certain; I was aſked why I could not, and I ſaid I could not, becauſe there was always———

Q. What did you ſay your Age was then? Did you ſay how old you was?———*A.* Forty-five or thereabouts.

Q. Did not you ſay you were then twelve years old?

A. I was led into it; I ſaid I was, and could not tell how much more; I was aſked how old then was I, ten, twelve, fourteen, or ſixteen; and ſaid I might be ten, twelve, fourteen, or ſixteen, which I cannot determine.

Q. How old was you at the Time of the Trial; did you not ſay forty-five or thereabouts?

A. Here is my Age (ſhewing the Paper); I have now got it, and it is vaſtly more.

Q. When was you born?

A. I was born in the year 1691, but then I did not know.

Court.] What is your Reaſon for ſaying you were born in the year 1691?——*A.* I got my Age out of the Regiſtry.

Q. What Regiſtry?———*A.* Of St. *Nicholas*.

Q. What Pariſh of St. *Nicholas*?——*A.* St. *Nicholas*, *Dublin*.

Q. Which, there are two Pariſhes called St. *Nicholas*?

A. This St. *Nicholas* next us here.

Q. Whereabouts is the Church, in what Street?

A. St. *Nicholas* hereabouts, I do not remember the Street.

Court.] That is St. *Nicholas* Within.

Mr. *Recorder.*] Why then you were twenty-two at that Time?

Court.] There is ten Years difference, and that is a great while to be miſtaken in.

Mrs. *Cole.*] I tell you, that here was the Thing juſt as I was aſked; when they aſked me my Age, I ſaid I cannot tell, take ſo many out of ſo many, and then you will know; there was ſome of the Lawyers immediately talking, ſhe's perjured, and that ſtruck me to the Heart, that I did not know what I ſaid.

Court.] Were you aſked that Queſtion but once on the Trial, or twice, or thrice?

A. I know I was aſked it once, and when I was on the Table the laſt Time, that was the ſecond Time, I had then recollected myſelf.

Mr. *Recorder.*] Was not you aſked how it came that your Mother ſhewed you the Abortion when ſo very young?

A. I do not know indeed.

Q. Do you remember when you came to the Age of one-and-twenty? Did you never reckon your Years?—*A.* I did not, and there was a conſtant Diſpute and Debate what Year I was born.

Q. Were you of Age when you went to *Dunmaine*?

A. To be ſure I find by this Regiſtry I was.

Q. That is no Evidence; were you one-and-twenty when you went to *Dunmaine*?———*A.* I was to be ſure.

Q. You ſay it poſitive?———*A* I do ſay it poſitive.

Q. How came you to miſtake ſo prodigiouſly?

A. I do believe every one of you may remember that I ſaid, take ſo many out of ſo many, and then you may know.

Q. Well, Madam, when your Mother ſhewed you this in the Baſon, had it any Figure or Shape?———*A.* It ſeemed to me to have it.

Q. What Figure had it?—*A.* It had Head and Limbs, Sir.

Q. Could you diſtinguiſh them plainly?—*A.* It was but very little.

Q. Did you take and examine it?

A. I do believe my Mother ſhewed me the Limbs, I did not take it to examine it; I looked at it as it lay there.

Q. Did your Mother do any more than ſhew it to you as it lay?

A. I do not know but ſhe might, to ſhew the Limbs.

Q. Did ſhe take it in her Hand?—*A.* I do not remember that ſhe did.

Q. Did ſhe ſtir it in the Baſon?

A. She might ſtir it with a Feather.

Q. Did ſhe, or did ſhe *not*?——*A.* I cannot ſay.

Q. Had ſhe a Feather in her Hand?—*A.* I cannot ſay that ſhe had.

Q. Had it all its Limbs?

A. I might ſee the Limbs and the large Eyes.

Q. What did you take it to be when you ſaw it firſt?

A. My Mother told me it was an Abortion.

Q. That was in the Cloſet?——*A.* In the Cloſet.

Q. Is there a Window in the Cloſet?—*A.* There are three Windows.

Q. Did your Mother ſpeak to you about it before you went into the Cloſet?

A. Before I went into my Lady's Room my Mother told me ſhe had miſcarried.

Q. Was that all ſhe told you?———*A.* That is all, Sir.

Q. Did your Mother or you go into the Cloſet firſt?

A. When I went into the Cloſet my Mother was there; we went into the Room together, and I believe my Mother went into the Cloſet before I did.

Q. Did your Mother ſpeak before ſhe went into the Cloſet about the Abortion?

A. I don't recollect; my Mother told me my Lady had miſcarried.

Q. But did ſhe tell you of the Abortion before ſhe went in; did ſhe ſay that there was one in the Cloſet?—*A.* No, ſhe did not.

Q. You are ſure it was not before ſhe went in?

A. Indeed I really do not know, Sir, ſhe told me there was one, but whether before or after I cannot be poſitive.

Q. Did you, when you were formerly examined, ſay it was before or after, or that you could not tell.

A. My Confuſion was ſo great, I did not know what I ſaid.

Q. Did ſhe, or did ſhe not tell you before ſhe went into the Cloſet?

A. She told me my Lady had miſcarried before I went in, and when I went in I ſaw the Abortion.

Q. What carried you into the Cloſet if you did not know it was there?

A. My Mother and I went in; my Mother was there, and I might go to her; when ſhe had made her Compliments to my Lady, ſhe went in, and I followed her.

Q. When you were aſked before how you came to go into the Cloſet, did you not anſwer this, That your Mother told you the Abortion was there, before you went in?

A. I believe I did ſay it, I might miſtake in the Term.

Q. Did you, or did you not ſay ſo?—*A.* I believe I did ſay it. I know my Mother told me my Lady had miſcarried.

Q. Pray, Madam, when did you leave *Dunmaine*?

A. We left it, I believe, the latter-end of *May*, or Beginning of *June*, which I cannot tell, and went to *Burton-Hall*.

Q. Did not you ſwear upon the former Trial, that my Lord ſat at the lower End of the Table, oppoſite to my Lady, for now you place him next yourſelf?

A. I believe I did ſay it. But I ſay that I was in that Confuſion when I was here before, that I might; I might miſtake in that, for not a Mortal had ſpoke to me what I was to be examined about; but when I came on the Table, I was in the greateſt Confuſion that any body could poſſibly be. If I did ſay it, it was owing to downright Confuſion.

Court.] What time did you leave *Dunmaine*?

A. We left it the latter-end of *May*, or Beginning of *June*, I cannot be poſitive which.

Q. That was in the Year 1714?

A. In 1714, my Lord.

Mr. *Recorder.*] When did you come to Town?

A. We did not come 'till the latter-end of *July*, for we ſtayed at *Burton-Hall*.

Q. How long did you ſtay there?

A. I cannot tell whether Six Weeks, or how long.

Q. Recollect as near as you can.

A. I believe till quite the latter-end of *July*.

Q. And you came to Town when?

A. The latter-end of *July*, as near as I can recollect it.

Q. When did my Lady come to Town? Was ſhe in Town when you came?———*A.* I do not know whether ſhe was or not.

Q. Did not my Lady and you viſit after?

A. When I came to Town a Siſter of mine was in the Small-pox, I never had it, and my Mother ſent me out of the Houſe directly, which makes me as to any thing after that quite uncertain; and I was not at home after in my Father's Houſe 'till the Year 1718, but with one Relation or other.

Q. Pray, Madam, when you came to Town, was not the firſt News you had of the Death of the Queen?

A. I know I was not at my Father's Houſe at the Death of the Queen.

Q. Where was you then?

A. At Mr. *Monck*'s in *Dawſon-Street*.

Q. Was not it ſoon after you came to Town that you heard of the Queen's Death?—*A.* It was ſoon after; I believe it was.

Q. How ſoon after was it that you heard that News?

A. Indeed I will not be certain, nor cannot.

Q. Was not it the firſt Publick News you heard?—*A.* It might.

Q. Do you believe it was?———*A.* I do believe it was.

Q. Did not you aſcertain your time of coming to Town by that?

A. I believe I did; I do not know whether I did or not, but I know by my Siſter's being in the Small-pox.

Q. Was Lady *Altham* in Town then?

A. Indeed I cannot ſay whether ſhe was or no, for I tell you I left the Houſe; my Lady might be in Town and I not know it, for I left the Houſe on my Siſter's being ill.

Q. Can you ſay whether ſhe was in Town when you heard of the Queen's Death?

A. I cannot tell; but I believe ſhe was not in Town.

Q. Pray, Madam, when my Lady came to Town, where did ſhe lodge the ſecond time? Did ſhe come ſoon after you?

A. I ſaw her in Town to be ſure, but what time of the Year I cannot be certain; but I think it was at Mrs. *Vice*'s.

Q. Did not you ſwear upon the laſt Trial that you were poſitive that my Lady went to *Vice*'s after the Reconciliation?

A. I do not know whether it is poſitive or not, or whether I ſwore it poſitive or not.

Q. Did not you ſwear it, that they went to *Vice*'s before they went to *Dunmaine*?——*A.* I believe I did.

Q. Can you now be poſitive?

A. I can ſo far, that they ſtayed but a few Days at our Houſe, and did not go from our Houſe to *Dunmaine*.

Q. How many Days did they ſtay in your Houſe; was it three, or ten, or how many?—*A.* I believe about four or five Days after the Reconciliation, indeed I cannot tell.

Q. But you are ſure my Lady went to Mrs. *Vice*'s?

A. She went to my Lord's Lodgings, wherever that was.

Q. Did you viſit there before ſhe went out of Town?

A. I did ſee my Lady once.

Q. Was it before or after *Chriſtmas* that they went to the Country?

A. I believe it was before; I cannot tell.

Court.] Did you ever ſee my Lord and Lady at my Lord's Lodgings?

A. I did, my Lord.

Q. Did you go there?—*A.* I went.

Q. Where was it they lodged?—*A.* It was a Houſe, as near as I can remember, next to the *Slip*, at *Temple-Bar*.

Q. When was it that you ſaw them there?

A. It was after the Reconciliation, before they went to the Country.

Q. Did you viſit them a ſecond time?—*A.* I did.

Q. Was it at the ſame Houſe?—*A.* To the beſt of my Knowledge it was.

Q. Whoſe Houſe was that?

A. They call it *Vice*'s Houſe, to the beſt of my Knowledge.

Mr. *Recorder.*] Now, Madam, what time of the Year was it you ſaw them the ſecond time at *Vice*'s, in what Month? Pray recollect, for it is very material.—*A.* Indeed I cannot tell.

Q. You came to Town you ſay in *July*, and the firſt News you heard was the Death of the Queen; was it before or after that you ſaw her there?

A. It was after that I ſaw her.

Q. How

Q. How long after?—*A.* I cannot ſay.
Q. Was it that Year?
A. I believe it was that Year, but I cannot aſcertain the Month.
Q. Are you ſure it was that Year? See and recollect the Month, if you can.—*A.* It was that Year, but I cannot aſcertain what Month.
Q. Was Mrs. *Setwright* at *Dunmaine* when you were there?
A. She was.
Q. What was ſhe there?—*A.* She was Houſe-keeper.
Q. Did you know *Sarah Weedon* there?
A. I knew nothing of *Sarah Weedon* at all.
Q. Did not you know *John Weedon* the Coachman's Wife?—*A.* I never knew that *John Weedon* the Coachman was married 'till of late.
Q. Was *John Weedon* the Coachman there at that time?
A. He was there.
Q. Who was Houſe-maid there then?—*A.* I do not know.
Q. Do not you remember *Nelly Thomas*?---*A.* No, I do not.
Q. Do you know *Bourk* the Poſtillion?---*A.* I do not know him.
Q. Did not you go abroad and ſtay a Fortnight at Mr. *Boyde*'s Houſe, and *Bourk* carry you?
A. I went abroad, but how long I ſtayed I cannot tell.
Q. Where did you go?——*A.* To Mr. *Boyde*'s.
Q. And did not *Bourk* carry you there?
A. I do not know who carried me there.
Q. Was not it one of my Lord's Servants?
A. It was, but which I cannot tell.
Q. How ſoon after your being at *Dunmaine* was it, that you went to Mr. *Boyde*'s Houſe?
A. I cannot tell; but it was while I was at *Dunmaine*.
Q. How long did you ſtay at Mr. *Boyde*'s?
A. I cannot tell that neither; but I believe a very ſhort Time.
Q. What *Boyde* was it?——*A. Boyde* of *Roſlar*.
Q. Pray, Madam, who was Butler at *Dunmaine* when you were there?
A. Rolph.
Q. Did you know *Anthony Dyer*?---*A.* No, I did not.
Q. Who was my Lord's Gentleman?---*A.* Indeed I cannot tell.
Q. Had my Lady a Page?—*A.* Indeed I do not know that I ever ſaw any thing in the Equipage that was a Page.
Q. Had my Lady a Page or not?
A. She might have a Page for aught I know, but I do not remember.
Q. Was this Viſit to *Boyde*'s before or after you ſaw the Abortion?
A. Indeed, I cannot tell.
Q. Were you at *Dunmaine* in the Month of *April*?---*A.* I was there.
Q. On St. *George*'s Day?---*A.* I cannot tell.
Q. Were there any Races while you were there?
A. There might be, but I cannot tell.
Q. Was you at any Races with Lady *Altham*?
A. Indeed I do not remember.
Q. Did any Girls run for a Smock there? Was there a Smock-Race?
A. To my Knowledge, I never ſaw any ſuch thing in the Country.
Q. Do you know Mr. *Mark Whyte*?---*A.* Yes, I have ſeen him.
Q. Had you any Diſcourſe with him at any time?---*A.* Yes, he was at *Gorey*, and we had ſome Diſcourſe, I cannot particularly tell what.
Q. Cannot you remember what you ſaid to him?
A. I told him ſome Servants Names that were at *Dunmaine*; and he aſked me if I remembered my Lady to be ever with Child; I told him I did, and that ſhe miſcarried; and his Anſwer was, as to her Miſcarriage we do not go upon that, for we do not ſuppoſe my Lady a barren Woman.
Q. Was that all that paſſed between you?
A. Mr. *Mark Whyte* aſked me, if I remembered any of the Servants of the Family; I told him I did, and named all I knew.
Q. Did not you tell him that you'd ſwear for my Lord *Angleſea* if he would renew your Huſband's Leaſe?---*A.* Indeed I deny it abſolutely.
Q. Did you aſk the Renewal of the Leaſe?
A. Yes; I'll tell you how it was aſked. Mr. *Cole* had been employed for Captain *Anneſley* for a long time, and had a Promiſe for a Leaſe from him long before that; and when Mr. *Whyte* was ſpoke to upon this former Promiſe of this Leaſe, I deſired the Captain would make good his Promiſe.
Q. Do you know Mr. *Frank Anneſley* of *Ballyſax*?
A. I have very little Acquaintance with him.
Q. Did not you tell Mr. *Whyte* that you could be a very material Witneſs for my Lord, but that you would not tell him what you could ſay 'till your Leaſe was renewed?
A. I did not, unleſs in this Manner; if the proving a Miſcarriage can prove of any Service to my Lord, I can prove the Miſcarriage.
Court.] And did you ſay no more?
A. No indeed, I cannot ſay that I did.
Mr. Recorder.] Had you any Diſcourſe with Mr. *Frank Anneſley*?
A. He came one Day to Siſter *Briſcoe*'s Houſe, and wanted to ſpeak to her, and ſhe was not ready for going down, and deſired that I would; and I went down Stairs to him, and a little while after ſhe came down, and I ſhewed him the *Subpœna* that I was ſerved with.
Jury.] Madam, do you recollect the Night that Mrs. *Heath* awakened your Mother in order to ſee my Lady?—*A.* I do not, Sir.
Q. Do you remember that ſhe came to awaken her?
A. I do remember that ſhe came.
Q. Was there a Light in the Room?---*A.* There was not.
Q. Had Mrs. *Heath* a Light with her?
A. She might have a Candle in her Hand.
Q. Was there Light or not?
A. There was not, I believe there might be a Fire.
Q. Had ſhe a Candle in her Hand?
A. Indeed I cannot tell, I had been aſleep and ſhe awakened me, and I cannot tell.
Q. Was there Light of any Kind in the Room?
A. There might be a Candle, and there might not.
The Reaſon of the Queſtion is this; look at that Woman.
The Witneſs looks at Mrs. Heath.
Q. Will you ſwear poſitively, that that is the Woman that came into the Room to call your Mother?
A. Mrs. *Heath* was the Perſon, and I believe that is the ſame.
Q. How can you tell it was her, when there was no Light?
A. I knew her Voice.
Mr. Recorder.] Did you ſee Lady *Altham* in *Dublin* in the Year 1715?
A. I don't think I did; I do not know that I did at all; if ſhe was in Town I ſaw her; but I cannot tell whether ſhe was or not.
Court.] Did your Mother ſhew you the Abortion?
A. I went into the Cloſet and ſaw it.
Q. Did your Mother call you to ſee it?
A. I do not know that ſhe did.
Q. Did ſhe deſire you to look at the Abortion?
A. I do not know that ſhe did.
Q. When was you married?---*A.* I was married in the Year——— I ſhall be next *March* 14 Years married.
Q. Can you recollect your Age when you were married?
A. Indeed I cannot, except I count.
Court.] I only aſk, becauſe young Women generally keep Account of their Age.
Mrs. *Cole.* Well, I never did, and I tell you the Reaſon, there was a conſtant Debate about my Age, the Leaf was torn out of the Bible.
Q. Did you ever ſee an Abortion before that time?
A. No, nor for ſome time after.
Mr. Recorder.] Did any body attend my Lady on this Miſcarriage?
A. I cannot remember one.
Mr. Solicitor.] My Lord, I only beg Leave to make one Obſervation on the Examination of this Witneſs; it ſeemed to be apprehended by the Court, that we concerned for the Crown had a mind to lengthen out this Trial unneceſſarily; you will pleaſe to recollect what little time we took in the original Examination, and how much the Recorder has ſpent in croſs-examining her, and I beg leave to ſay, that he did not aſk one improper Queſtion.
Court.] Since you acknowledge he did not aſk one improper Queſtion, you cannot think the time has been taken up unneceſſarily.
Mr. Solicitor.] I only mention this, to ſhew how neceſſary it is for us to take up as much time in our Examinations, if we find it material.
Court.] You ſhall have all the time you can deſire, to examine any Witneſſes that are material.
N. B. The Examination of Mrs. *Cole* held from 6 Minutes before Nine, to 20 Minutes after Eleven.
Court.] Call your next Witneſs.
Cryer.] Doctor *Jemmat.*
Mr. *Spring.* My Lord, I deſire, before Doctor *Jemmat* comes upon the Table, what he is to be examined to may be opened.
Mr. Serj. *Tiſdal.*] My Lord, the next Witneſs we ſhall produce is Doctor *Jemmat*, a Doctor of Phyſic, who attended Lady *Altham* in the Year 1714, at Mrs. *Vice*'s, at the time ſhe was with Child.

Doctor SAMUEL JEMMAT.*

Mr. *Daly.*] I deſire to aſk a previous Queſtion, which is this; Did not you make an Affidavit of the Teſtimony you could give in this Cauſe?
Dr. *Samuel Jemmat.*] Do you mean in this Court, or any other?
Court.] Before any Perſon?
A. Before a Maſter in Chancery I gave in an Examination.
Mr. *Daly.*] Upon what Occaſion, Doctor?
A. They aſked me what I had to ſay in this Affair, and I told them.
Q. Who aſked you?---*A.* One Mr. *Cooper*, a Maſter in Chancery.
Court.] What *Cooper* do you mean, Doctor *Cooper*?
A. He was a Stranger to me.
Q. Where was it that you were examined?
A. It was in the *Queen's County*, my Lord.
Q. What time was this?
A. I cannot tell whether in *Auguſt*, or *September*, or *July* the laſt Year.
Mr. Serj. *Tiſdal.*] Did you know the late Lord and Lady *Altham*?
A. I did.
Q. Was you employed in that Family in any Capacity, and what?
A. I was employed by *Arthur* Lord *Altham*, as his Phyſician for ſome Years.
Q. Pray, Sir, did you ever attend Lady *Altham* as a Phyſician?
A. I did attend her Ladyſhip.
Court.] Do you remember when ſhe came from *England* into this Kingdom?
A. I did not know when ſhe came firſt, but I think about the latter End of *November* 1714, Lord *Altham* came to my Houſe in *Angleſea* Street in a Chariot, and deſired I would go with him to ſee my Lady, for he was afraid ſhe had a Fever.
Q. And did you go?
A. I went in the Chariot with *Arthur* Lord *Altham*, to one Mrs. *Vice*'s in *Eſſex* Street, where they then lodged.
Mr. Serj. *Tiſdal.*] And did you viſit my Lady then?
A. I did, and found her very hot and feveriſh, and I aſked how long ſhe had been ſo; and my Lord told me, (for only he, and ſhe and I were in the Room) he told me that they had been out late at Night, whether at a Ball, or Play, or Muſic-meeting I do not remember, and he was apprehenſive my Lady had got cold that way; but I forget whether he ſaid it was at a Play, or Concert of Muſic, or any other Diverſion.
Q. Pray, Sir, did you preſcribe for her?
A. I did; I told her, I thought a little Blood taken away would be proper, and a gentle Puke neceſſary; but her Ladyſhip calling for a Baſon,

* This Doctor *Jemmat* was a Gentleman of a *Suſſex* Family, and in his younger Years, practiſed as a Phyſician in *England*; but ſome private Affairs calling him over to *Ireland*, he met with ſuch Encouragement, as induced him to continue there, and was long ſettled at *Dublin*, where he was choſen an Honorary Fellow and Preſident of the College of Phyſicians, and attended Lady *Altham* in the Winter 1714, when her Ladyſhip was ſuppoſed to be with Child, and preſcribed for her; and would have been a material Witneſs for Mr. *Anneſley*, in the remarkable Trial 1743, had he been known to him, or Mr. *MacKercher*, who, in ſome meaſure, conducted the Cauſe; but they not knowing of him at that time, were deprived of his Teſtimony; but the Doctor being afterwards found out, came over in 1752, with ſeveral others to *England*, to be examined in relation to the *Angleſea* Title and Eſtate. He for many years had a Complication of Diſeaſes, and was troubled ſo violently with the Gravel, that he rarely quitted his Bed, or could be moved without exquiſite Torture; nevertheleſs, when he was acquainted with the Conſequence his Teſtimony would be of, he determined, though at that Seaſon of the Year, and ſo late in Life, to undertake the Journey. But he died at *Briſtol* the ſecond Night after his Landing, in the 78th year of his Age, *November* 1752, and retained his Senſes to the laſt. [In a Letter from *Briſtol*, dated 21 *November* 1752, printed in the public Papers at that time.]

I thought

I thought she had an Inclination to vomit; but instead of that, she made what the understanding Women call, *Long Spits*, as if she was with Child. I asked her Ladyship then if she was with Child; she told me she had all the Reason in the World to believe that she was so: I then asked how long, and she said three Months. I asked her Ladyship upon that, if she had been regular; she told me that she had as any Woman living, 'till about three Months before that Time my Lord came for me. Upon which, I altered the Prescription I had before given, and ordered such mild Medicines, to mitigate the Fever, as might not endanger her Ladyship, or the Infant within her.

Q. Do you remember whether Mrs. *Heath* lived there with my Lady?

A. My Lords and Gentlemen, whenever I was sent for to any Noble Family, or Gentleman's House, my Business was to attend what I was sent for about, and I never took Notice of any Servant.

Q. Do you know whether Lady *Altham* was with Child then, or not; have you any other Reasons?

A. Upon her telling me this and examining of her, I had Reason to believe she was; I had breakfasted with them before, but I found her Countenance change, and she had yellow Spots and livid Spots came out upon her; and I felt her Breasts, and found they began to grow turgid; upon which, I found that she was with Child, and that made me alter the Prescriptions, that they might not hurt the one or the other.

Q. Do you know whether she went on in her Pregnancy?

A. I gave her Directions how to manage herself; but her Disorder being what we call a *Febris Ephemera*, which lasted but three Days, my Wife and I dined with them at a third Place, and after Dinner, my Wife, who saw her Condition, went out with her, and returned again in a few Minutes; and my Lady told my Wife——

Court.] You are not to say what my Lady told your Wife, but only what you know yourself of her being with Child.

Doctor *Jemmat.*] But I say, I gave her Directions how to manage herself, and my Lord told me——

Court.] You are not to say what Lord or Lady or any Body told you. Do you believe her to have been then with Child?—*A.* I do.

Mr. Serj. *Marshall.*] My Lord, I must insist that we have by Law a Right to ask that Question; in the very Chapter of Perjury in *Hawkins* you will see it laid down as a Rule, that Hearsay-evidence, that serves to illustrate what is the proper Evidence to be given before the Court, shall be admitted.

Court.] Hearsay-evidence may be made use of to introduce material Evidence, but when a Witness has said all that is material, we shall not admit that.

Cross-Examination.

Mr. *Spring.*] As well as I recollect, you said, Sir, that Lord *Altham* carried you to see his Lady?

A. He called upon me, and I went into the Chariot with him; he did not carry me in, I assure you.

Q. Well, Sir, if he did not carry you, you went with him?---*A.* I did.

Q. You said, I think, that you made an Affidavit before Mr. *Cooper*, to what Purpose did you make that Affidavit?

A. I had given in an Examination; I do not know to what Purpose.

Q. Do you recollect what you have said there with respect to the Manner and Time of attending my Lady *Altham*?---*A.* I believe I might.

Q. Did not you say there that it was in *November*?---*A.* I say so now.

Q. Did not you say that the Chariot was sent for you?

A. I believe not; if the Master in Chancery put it down that I was sent for he mistook me, for I remember that my Lord came for me himself; and I will tell you why I remember it. I was then in Mourning for Queen *Anne*, and I had only one Weeper on when he came; and he came into the Parlour and sat by the Fire 'till the other was put on.

Q. Would you have this understood, that if it was mentioned in the Affidavit that the Chariot was sent for you, it was a Mistake?

Court.] He says the Master was mistaken.

Mr. *Spring.*] Did not you read it before you swore it?

A. I believe I might.

Mr. *Walsh.*] Pray, Sir, how long have you been a Physician?

A. I took my Degree of Doctor of Physic in the Year 1711, and I think that is about 33 Years; I have been 27 Years a Fellow of the College of Physicians, and an Honorary Fellow above four Years.

Mr. *Spring.*] Upon your Oath, Sir, are there any Rules in your Profession, by which a Pregnancy can be discerned from a Tympany, or any the like Disorder?

A. By Virtue of my Oath, that Question would puzzle not only the Colleges of Physicians of *England* and *Ireland*, but the Royal Society too.

Jury.] Is there such a Thing as a false Conception?

A. Very often, a *Mola* there is.

Q. There is such a Thing?---*A.* No Doubt of it.

Q. Are the Symptoms the same? Have Women grown big with a false Conception?---*A.* They have done it.

Mr. *Walsh.*] The next Witness that we shall produce to your Lordship is one *Hellena Moncrieffe*. We produce this Witness, to shew that in the Year 1714, she was recommended by Sir *Chamberlaine Walker*, a famous Man-Midwife of this City, to my Lady *Altham*, whilst she lodged at Mrs. *Vice*'s, for a Nurse; that she was hired and agreed with her Ladyship; had been several Times with her on that Occasion; and will give your Lordship an Account that my Lady was then with Child, and the Reasons of her Knowledge.

3. Hellena Moncrieffe.

Mr. *Walsh.*] Pray, what Business do you follow?

Hel. Moncrieffe.] My Business is to attend Ladies that lye-in.

Q. How long have you followed that Business?

A. Twenty-seven Years next *March*.

Q. Tell what Ladies you have attended that Way.

A. The Honourable Mrs. *Mary Moore*; Mrs. *Ludlow*, Counsellor *Ludlow*'s Lady, of eight Children; Lady *Mountjoy*; Lady *Antrim*; Lord *Bristborough*'s Family entirely.

Q. Well, did you know Sir *Chamberlaine Walker*?---*A.* Very well.

Q. What Profession did he follow?---*A.* Midwifery.

Q. Do you remember to have met him in the Year 1714 any where?

A. I did, Sir.

Q. Where?---*A.* In *Stafford-street*.

Q. When did you meet him there?

Q. To the best of my Knowledge, in and about *November*, or Beginning of *December*, 1714.

Q. Where did you meet him?

A. In *Stafford-street*, at a Jew's House, one *Solomon*.

Q. Had you any Discourse with him there?

Mr. *Malone.*] My Lord, I object to that as an illegal Question.

Mr. *Walsh.*] I insist upon it to be a legal Question according to the Evidence opened, that she was recommended to my Lady by him; is not it proper to ask what Discourse he had with her on that Occasion?

Mr. *Malone.*] It is proper to examine her to that Fact, but they have opened it a great deal further.

Mr. *Walsh.*] Did you see Lady *Altham*?

A. I had the Honour of seeing Lady *Altham*.

Q. Where did you see her?

A. I saw her first at Doctor *Walker*'s at that Time, he was Doctor *Walker* then, and was after knighted in the Duke of *Grafton*'s Time, and he spoke to me, and recommended me to her Ladyship; and said if I had a Mind to nurse, he would recommend me to a very good one. I made very little of it then; I was giving Suck in *January* to a Child of six Months old.

Q. Did you go to my Lady *Altham*?

A. I was three different Times with her; the last Time she talked to me a good deal about her being with Child, and what Time she reckoned. Says she, I am at a Loss, as I have had some Illness, how to reckon; and then she lifted up her Night-gown, it was of Sattin, with Green Flowers in it, and shewed me her Belly: Your Ladyship, says I, seems to be as big as any Woman gone seven Months.

Q. And did she say she was?---*A.* She said, she believed not.

Jury.] What Time was this?---*A.* In *January* 1714-15.

Court.] How many Times were you with my Lady?

A. Three different Times I was with her.

Q. Did she lift up only her Night-gown, or all her Cloaths?

A. Only her Night-gown.

Q. What was it you said to her then?

A. I told her that I thought she was as big with Child as any Lady that was six or seven Months gone; and she said herself that she was not so long with Child as seven Months.

Q. What were you recommended for to her?---*A.* A Nurse.

Q. By whom?---*A.* By Doctor *Walker*.

Q. A wet Nurse or dry Nurse?---*A.* A wet Nurse, Sir.

Q. How came you not to accept of that Nursing?

A. As I went there the last Time I met two or three Friends, and they asked me where I was going; I told them where; says one, *Moncrieffe*, take my Advice, Lord *Altham* is a bad Man, you have no Necessity, and do not engage; and for that Reason I went unto her no more, but heard she went out of Town.

Q. What Reason had you to believe she was with Child?

A. By her Appearance and Conversation, and the laying my Hand upon her Belly, I had Reason to believe she was with Child.

Q. From these Circumstances, as you are now a Woman of Skill, can you positively say she was with Child?

A. Upon my Word, I do not know either of the Gentlemen, it was Mr. *Arthur Hill* brought me into this by telling it by Accident above two Years ago; but upon the Word of a Christian, both by the Judgment that I have had since and before, my Lady *Altham* was as much with Child as ever I was, and I have had one-and-twenty Children.

Mr. *Walsh.*] Do you know Mrs. *Heath*?

A. So far I have recollected, that the last Time I breakfasted with my Lady, there came in a Gentlewoman they called my Lady's Woman, she looked opposite to me, and she was a thin-faced black Woman at that Time; and there came Mrs. *Tilby*, a Mantua-maker, an eminent Mantua-maker at that Time, and brought a Gown with her, but whether my Lady's or no I cannot tell; but she staid at the Dining-room Door, and asked me what I was doing there.——

Q. Tell the Discourse you had with Mrs. *Heath*.--*A.* I had none at all.

Q. Did you see her there?

A. I saw her come to tell the Mantua-maker was come to her Ladyship.

Q. Do you remember what Lady *Altham* called her?

A. I do not remember upon my Word, I know she was a thin black Woman, very swarthy, and had black Hair.

Mr. *Daly.*] We admit that Mrs. *Heath* was my Lady's Woman.

Mr. *Walsh.*] Do you remember on what Occasion Mrs. *Tilby* came?

A. To alter a Suit of black Silk.

Q. To let them out, or take them in?

A. I cannot tell that; it was the Queen's Mourning.

Q. How do you know it was Mourning for the Queen?

A. The Child I was giving suck to was born the 20th of *July*, I have it in my Bible, and the Queen died in *August* following.

Q. How many Times did you go to visit my Lady?

A. Three different Times in *Essex-street*; the first Time she was indisposed.

Q. Every Time that you came there did you see this Lady?

A. Never to my Knowledge but once; I had no Reason to retain it.

Cross-Examination.

Mr. *Daly.*] You waited of Lady *Altham*, had you ever seen her before that Time?

A. I had, as I had been Woman to Lady *Louth*, they were intimate, and I had seen her.

Q. Where did you wait on her first?

A. First I waited on her in Dr. *Walker*'s House, in *Capel-street*.

Q. Where did you wait on her at the Time you conversed with her and handled her Belly?

A. At Mrs. *Vice*'s, in *Essex-street*.

Q. What Year was that in?

A. In the Year 1714.

Q. What Time?

A. Between

A. Between the Beginning and 23d of *January*, becauſe I put out my own Child to Nurſe the 22d, and it was my ſecond Child.

Q. Who ſhewed you into my Lady's Room the firſt Time?

A. To the beſt of my Knowledge a Man Servant.

Q. Name him.

A. Indeed I cannot. I go very often to Ladies now, and do not know their Servants.

Q. What Sort of Man was he?

A. He was an elderly Man, I have ſeen him afterwards.

Q. What Time was it that Lady *Altham* and Lady *Louth* were intimate, and you ſaw her there?

A. It was when they were in *Dublin*.

Q. Where did Lady *Louth* lodge?

A. She lodged at one *Farrel*'s upon the Quay.

Q. Did you ſee Lady *Altham* there?——*A.* I did.

Q. At what Time?——*A.* I cannot recollect my Lady's Viſitors.

Q. What Year was it?--*A.* To the beſt of my Knowledge, it was 1713.

Q. Pray, how often did you ſee her there?

A. I believe three or four or five Times, I know they were very intimate.

Q. Was there any Servant of my Lady's preſent, when you were in the Room and handled her Belly?

A. I cannot tell; there was no Servant, it is not common now, and let alone at that Time: Yes, there was a Woman that went with me, and ſhe was by.

Q. Was ſhe preſent?——*A.* She was.

Q. Had ſhe any Trade or Calling?

A. She was a creditable Man's Wife.

Q. Did ſhe underſtand Midwifery?——*A.* She did not.

Q. And though it is not common for a Servant to ſee her Lady's Belly handled, yet a Lady that went with you was preſent, you ſay?

A. Yes, ſhe was.

Q. Can you recollect what Time of the Year 1713 it was you ſaw my Lady *Altham* at Lady *Louth*'s?——*A.* I cannot indeed.

Q. Was it in Summer?

A. I believe it might be in Summer; I am not poſitive as to that.

Q. What was the Woman's Name that was preſent with you when you handled my Lady's Belly?——*A.* Her Name was *Claſſon*.

Q. But you do not know the Servant that ſhewed you up Stairs?

A. Indeed I do not.

Q. And none were preſent?——*A.* None that I ſaw.

Q. Do you know any Perſon in the Houſe that has ſeen you there?

A. Mrs. *Vice*'s Servant ſaw me there.

Q. What was her Name?——*A.* Her Name was *Peggy*.

Q. Did Mrs. *Vice* ſee you there?

A. She did; I ſat half an Hour in her Room.

Q. Had ſhe any Children?——*A.* I think a Girl or two.

Q. You ſaw her Daughter?

A. I believe ſo; they were little, and her Children.

Q. Upon your Oath, did you ſee Lady *Altham* before *Michaelmas* 1713?

A. I cannot tell, becauſe it was no way material to me to recollect that.

Q. When did you leave Lady *Louth*?——*A.* In the Year 1713.

Q. About what Time?

A. I believe it might be *February*, for I lay-in of my firſt Child in *February*.

Q. Did you make any Affidavit concerning this Affair?---*A.* Yes, Sir.

Q. Before whom?

A. I was brought by a Gentleman to *Eſſex-Street* to a Commiſſion, I think it was, for I know nothing about it: I think about two Years laſt Summer Mr. *Arthur Hill* began a Diſcourſe about this Mr. *Annesley*. He aſked me if ever I ſaw my Lady *Altham*; I told him I did, and ſaw her with Child, and he told it to ſomebody that ſent for me.

Q. What Age were you in 1713?

A. I was born the 12th of *March* 1688.

Q. Was not it in Summer before that that you left my Lady *Louth*?

A. No, Sir, it was in *February*.

Q. Did not you ſay it was in Summer?

A. I ſay, that it was in Summer that my Lady *Altham* viſited Lady *Louth*.

Court.] You have attended a great many Women, pray, can you tell the Difference between a falſe Conception and a real one?

A. Yes, Sir, by the Converſation of the Woman.

Q. But can you any otherwiſe?

A. No, really, but by Diſcourſe.

Q. Did you feel the Child ſtir?

A. No, really, my Lord, I did not; but I remember my Lady, when I ſaid, ſhe ſeemed to be ſeven Months with Child, ſaid, No, ſhe was not.

Q. What Child was you nurſing at that Time?

A. My ſecond Child I nurſed then.

Jury.] You ſay, Madam, that when you waited upon Lady *Altham*, ſhe told you ſhe was gone about ſeven Months?——*A.* I told her ſo.

Q. How came you to tell her ſo?

A. Becauſe ſhe aſked me the Queſtion; ſhe told me ſhe had ſome Illneſs, and could not tell how to reckon, but ſaid ſhe found herſelf very big and uneaſy; I ſaid ſhe ſeemed about ſix or ſeven Months gone with Child.

Q. But why ſhould ſhe aſk you, if ſhe could not tell herſelf?

A. There are a great many Queſtions aſked by Ladies, when they are with Child.

Q. You were unexperienced then. Was your Hand upon her naked Belly?——*A.* No, above her under-Petticoat.

Q. I think you ſaid you felt nothing ſtir?—*A.* I never ſaid I did.

Q. What was the Occaſion of putting your Hand upon her Cloaths?

A. To judge by her Bulk; it is a mighty common Thing.

Q. You were at Mrs. *Vice*'s?——*A.* I was.

Q. You ſay you ſat there above an Hour?—*A.* I ſaid half an Hour.

Q. Did you ſee any of her Children?—*A.* I think I ſaw Children.

Q. What were they?——*A.* It was a Girl.

Q. How old might it be?

A. Why indeed very little, about five or ſix Years old; I do not know whether they were hers or the Neighbours Children, but they came into her Room.

Mr. *Daly.*] How long have you been a Nurſe?

A. Seven-and-twenty Years very near, not all out till *March* next.

Court.] Do you know whether you would know my Lady's Woman now?

Witneſs looks at Mrs. *Heath*, and ſays, I cannot ſay that I have any Knowledge of the Gentlewoman's Face at all; the Woman then was a thin, ſwarthy Woman with black Hair.

4. Mrs. MARGARET BUSHE.

Mr *Harward.*] We call this Witneſs, my Lord, to the ſame Purpoſe; ſhe was an intimate Acquaintance of my Lady *Altham*, and will prove that ſhe was with Child, and afterwards was delivered of a Child.

Q. Pray, Madam, did you know my Lady *Altham*?

Mrs. *Margaret Buſhe.*] I did; I was acquainted with her.

Q. Pray, Madam, did you ever ſee her at *New Roſs*?—*A.* I did.

Q. When you ſaw her at *New-Roſs*, in what Condition was ſhe?

A. She ſeemed to be with Child, pretty big.

Q. Was this, Madam, at *New-Roſs*?——*A.* At *New-Roſs*.

Q. Pray, Madam, did you ſee her but once there, or more frequently?

A. I ſaw Lady *Altham* three Times at *New-Roſs*, to the beſt of my Memory.

Q. Pray, Madam, in what Year, or about what Time was it that you ſaw her there?

A. To the beſt of my Recollection and Memory, it was *February*, in the Year 1714-15.

Q. Have you any particular Reaſons that induce you to recollect that it was about that Time?

A. Yes; I was at that Side of the Country 'till a little before *Chriſtmas* that Year. It was about half a Year after the Death of Queen *Anne*, they were all in Mourning when I viſited her, except one or two that went out, and I do not know whether they were in Mourning or no; and I do believe it was for Queen *Anne*.

Q. Pray, Madam, did this Lady ſtay for any Time at *Roſs*, or go any where elſe?

A. The Day I viſited her I ſaw her twice then, firſt at Captain *Butler*'s; there Mrs. *Butler* introduced me to Lady *Altham*.

Q. Where did Captain *Butler* live?——*A.* He lived in *Roſs*.

Q. Where did you ſee my Lady next?

A. A Day or two after I viſited my Lady at her own Lodgings in *Roſs*.

Q. Pray, Madam, did ſhe continue for any Time there, or did ſhe leave it ſoon after?

A. The Day I viſited her, ſhe talked of going out of Town next Morning.

Court.] Did ſhe go?

A. I do not know, I left the Town in a few Days myſelf, and did not ſee her in *Roſs* after.

Mr. *Harward.*] How ſoon did you return to *New-Roſs*?

A. I was frequently there to and fro, for I lived at my Father's within three Miles of it, and I cannot tell how ſoon; but I am ſure towards the latter end of the Month of *April*, and to the beſt of my Memory, either the *Saturday* in *Eaſter* Week, or early the next Week it was, that I went there.

Q. Pray, Madam, recollect whether this Lady was a Lady far gone with Child, or was early in her Pregnancy.

A. She looked big, and that is all the Memory I know of it, and I aſked her no Queſtions.

Q. Did not you inquire about her being with Child?

A. Several Gentlemen were by, and I did not think it proper.

Q. Do you know of her being delivered of that big Belly?

A. I was at my Father's, and ſome of his Servants went to Town——

Court.] You muſt only ſpeak from your own Knowledge, Madam, not what you heard from any body.

Mrs. *Buſhe.*] I wiſhed my Lord Joy of that Child on the Quay of *Roſs*.

Mr. Recorder.] That is nothing.

Mrs. *Buſhe.*] I know nothing more of myſelf, but they both told me ſo.

Court.] Madam, you come here to declare the Truth, the whole Truth, and nothing but the Truth; and if you ſwear to what you heard from other People, you may ſwear falſe, for they might deceive you.

Mrs. *Buſhe.*] I may be deceived, but I will ſwear the Truth, and nothing but what I know.

Mr. *Harward.*] I ſhall put to her a legal Queſtion. Pray, Madam, you ſay you ſaw her big-bellied, did you ever ſee her afterwards when ſhe wanted that big Belly?——*A.* I did.

Court.] How ſoon after?

A. To the beſt of my Recollection, I will not be poſitive, I ſaw her here in *Dublin* towards the latter end of the Month of *June* that Year.

Q. What Year?——*A.* In *June* 1715.

Q. In *June* 1715?

A. To the beſt of my Recollection, about the latter end of *June*, in the Year 1715.

Mr. *Harward.*] How did ſhe appear then, was ſhe with Child or not?

A. She was very ſlender, and looked pale when I ſaw her.

Q. Give an Account of what happened when you ſaw her in *Dublin*?

A. I went to viſit her; I was juſt upon leaving Town, and thought proper to viſit her before I went; I found her undreſſed, and ſhe told me ſhe had been buſy packing up into the Country, and was going to *Dunmaine*. It is to no Purpoſe, I find, to tell you what ſhe told me.

Mr. *Harward.*] The Nature of all Evidence muſt be to diſcover the Truth, and there is no Way of coming at the Truth but by the eſſential and circumſtantial Parts of every Fact; ſhe now ſays ſhe viſited my Lady *Altham* in *Dublin*.

Court.] That is material.

Mr. *Harward.*] I aſk her then, my Lord, whether Lady *Altham* gave any Account of what became of that big Belly of her's? I have a Right, I think, to know that; or otherwiſe our Ears are to be ſhut againſt the Truth.

Court.] If you were upon a Trial of who was Heir to the Eſtate, your Queſtion would be proper; but in a Caſe of Perjury, your Queſtion is not proper, for what Lady *Altham* ſays is no Evidence for or againſt the Traverſer.

Mr. *Harward.*] I would always be in your Lordſhip's Judgment about the Legality of any Queſtion, but I beg Leave to mention what I underſtand I have a Right to inſiſt on; I humbly apprehend I have a Right to introduce the material Part of Evidence by every Thing that precedes it and is relative to it.

Court.] You have the material Part of your Evidence already; the Witneſs ſays ſhe ſaw Lady *Altham* big-bellied at *Roſs*, and ſoon after in *Dublin* without a big Belly; that is all ſhe knows, or has to ſay that is material; if Lady *Altham* told a thouſand People ſhe had a Child, that's no Evidence againſt Mrs. *Heath*.

Mr. *Harward.*] What do you apprehend became of that big Belly?

Mr. *Daly*] My Lord, I muſt inſiſt upon it, that the Witneſs's Apprehenſions are no Evidence.

Mr. *Howard.*] I am pretty confident I cannot be miſtaken in this Point, I have a Right to have the Apprehenſions of every body, on Oath.

Court.] I beg your Pardon, Mr. *Harward*, ſhew your Authority.

Mr. *Harward.*] I will, my Lord: I beg leave to lay it down as an eſtabliſhed Rule, ſince I am called upon, and I hope they will indulge me to give Account of myſelf. My Lord, I lay down this as a Rule of Evidence, that in all Crimes whatever, the Apprehenſions of a Witneſs are admitted as Evidence; ſuppoſe if a Man was indicted for Murder, and a Witneſs againſt him gave account of Facts that he had ſeen concerning that Murder, it is every Day's Experience to aſk that Witneſs what he apprehended upon thoſe Facts. This is the Law, and I muſt humbly ſubmit it to be ſo, that when a Witneſs gives account of particular Facts, he is aſked what he apprehended upon thoſe Facts; but he cannot tell what he apprehended, unleſs he lays Facts before you, which are the Ground of that Apprehenſion.

Mr. *Recorder.*] It is the firſt time that ever I heard that a Man is ſaid in a Court of Law to be examined to his Apprehenſion of Facts by the Proſecutors of a criminal Cauſe; the Plaintiff can never aſk Belief or Apprehenſion; I may, but you cannot.

Court.] I ſee the Doctrine, and whither it tends; I tell you how I apprehend the Law to be, and to be very clear in the Point. The Apprehenſion of a Witneſs is aſked, where no other Evidence can be had in capital Caſes; as where a Witneſs is produced to prove a Wound given, he is aſked whether he apprehends that Wound was the Cauſe of Death. That muſt be aſked, for he cannot tell otherwiſe. It is the beſt Evidence that can be had in that Caſe. But as to a Fact, if you make the Apprehenſion of a Witneſs neceſſary, it takes away all Proof of Fact.

Mr. *Harward.*] Then I underſtand I am not to aſk her any thing concerning this big Belly.

Court.] Yes, if ſhe knows any thing of it, you may aſk her.

Mr. *Harward.*] Aye, but not from Lady *Altham*.

Court.] No, not as to that.

Mr. *Harward.*] Since I am debarred of aſking that Queſtion, I hope I ſhall have better Luck in the next.

Q. Pray, Madam, what was the common Reputation of the Country concerning Lady *Altham*'s being brought-to-bed?

Mr. *Smith.*] I object to that Queſtion, my Lord.

Court.] You have much more Reaſon to object to that, after what I have juſt now ſaid.

Mr. *Harward.*] I acquieſce alſo in that, becauſe that will ſettle what hereafter will be a very great Debate, when theſe Gentlemen come to produce their Witneſſes.

Court.] The Reputation of the Country is not Evidence here. You lay down your Rules too large, Mr. *Harward*.

Court.] Pray, Madam, where in *Dublin* did you viſit Lady *Altham?*

A. At whoſe Houſe I do not know, for I never was there but once; the Chairmen knew where ſhe lodged, and carried me there; and I did not know the Name of the People where they lodged; it was in *Eſſex-Street* I know, a little beyond the Poſt-Office; between that and *Fleet-ſtreet*, to the beſt of my Knowledge.

Mr. *Harward.*] Do you know, Madam, whether there were any Preparations made for her Lying-in?

A. I know, when I was in *Roſs*, the Midwife that was ſaid to lay Lady *Altham*, came to the Houſe where ſhe lodged, and ſent out ſome Wines to my Lady.

Court.] Do you know that theſe Wines went out to Lady *Altham?*

A. Indeed I did not ſend out the Wines myſelf.

Croſs-Examination.

Mr. *Spring.*] Pray, Madam, you ſaid you ſaw my Lady *Altham* at *Roſs?*

A. I did, Sir.

Q. I think you ſay it was in the Year 1714 or 1715?

A. In 1714-15, in *February* I firſt ſaw her.

Q. Where did ſhe lodge then?---At Mr. *Samuel Stephens*'s.

Q. How long did ſhe remain in that Town during that Time?

A. I cannot tell, for I do not know whether ſhe or I went away firſt.

Q. Do you know one Mrs. *Butler*, that lives on the *Quay* in this Town?

A. I do.

Q. Had you any Converſation with her?

Mr. *Serjeant Marſhall.*] My Lord, I muſt object to that Queſtion.

Court.] What the Witneſs has ſaid to any body is Evidence againſt her on Croſs-examination; but not what others have told her.

Mrs. *Buſhe.*] There was ſome Converſation.

Q. What did you tell this Miſs *Butler* in relation to Lady *Altham*'s having or not having a Child?

A. I tell you what I ſaid on that Head. I told her that upon Inquiry after this Child, ſome Years after my Lord and Lady parted, I was told it was dead, and never hearing any thing to the contrary that could convince me, I always thought he was dead.

Q. Did you never tell her, upon your Oath, that Lady *Altham* had had no Child?

A. I never did; but I told her that I was a good while before I could think, after Mr. *Anneſley*'s coming over, that he was my Lady *Altham*'s Child.

Court.] Gentlemen, call your next Witneſs.

Mr. *Robins.*] My Lord, the next Witneſs we produce is *Alice Betts*, to prove Lady *Altham* was with Child, and the Traverſer's whole Account to her of her being with Child.

5. Alice Betts.

Court.] Was you examined on the former Trial?

Alice Betts.] Yes, I was.

Mr. *Robins.*] Did you know *Arthur* Lord *Altham?*---*A.* Yes, I did.

Q. And Lady *Altham* his Wife?---*A.* Yes, Sir.

Q. Do you know any thing of my Lady's being with Child?

A. Yes, Sir, I did.

Q. Tell what you know of your own Knowledge.

A. Why, I went to ſee my Lady at Mrs. *Vice*'s in *Eſſex-ſtreet*, and my Lord met me and clapp'd me on my Back, and ſaid, *By G—d*, Alley, Moll *is with Child.*

Q. What do you know of your own Knowledge concerning her being with Child?

A. I know, by ſeeing of her with Child, and that is all I can tell, by ſeeing of her big, and joked with her, and wiſhed her much Joy, and ſhe did not deny it.

Q. Do you know Mrs. *Heath?*

A. I knew Mrs. *Heath* that waited on my Lady, but I cannot tell at this Diſtance whether it be her; I am near-ſighted. [The Witneſs goes nearer to her, and ſays] I think it is her, to the beſt of my Knowledge.

Q. Had you any Diſcourſe with her about my Lady? Tell when and where.

A. I uſed to joke with her about my Lady's being with Child at Mrs. *Vice*'s.

Q. When?——*A.* In *November*, and after.

Q. In what Year?——*A.* In the Year 1714.

Q. Was it before or after Queen *Anne* died?---*A.* After the Queen died.

Q. What did ſhe ſay?

A. We uſed to be talking and joking that Way, we were glad my Lady was with Child; but I never uſed to aſk Mrs. *Heath* ſeriouſly about it. It is no more than Jeſt.

Q. Do you know any thing more of this Matter?

A. My Lady came one Day to our Houſe.

Q. Whoſe Houſe was that?---*A.* Captain *Briſcoe*'s.

Q. Was you Servant there?

A. I waited on Mrs. *Briſcoe*. And my Lord and Lady had a little Falling-out, and ſhe came in a little Pet to our Houſe, and went into Mrs. *Briſcoe*'s Room and cried; ſhe cried moſt terribly; and a little after Mrs. *Heath* came in with a blue Box in her Hand with my Lady's Head-cloaths, for my Lady came undreſſed in a long ſcarlet Cloak; and I helped Mrs. *Heath* to dreſs and undreſs her, and ſhe had a long Silk Coat upon her.

Q. What were the Words Mrs. *Heath* ſaid about my Lady's being with Child?

A. I cannot remember the particular Words, any more than that we were jeſting in a little way.

Q. How?

A. Why, we were pleaſed to ſee that my Lady was with Child; Mrs. *Heath* knows it herſelf; Mrs. *Heath* knew me mighty well, we were intimately acquainted, and always in my Lady's Room together, dreſſing and undreſſing her together, and I attended my Lady with her very often.

Q. Did Mrs. *Heath* ever tell you that my Lady was not with Child?

A. No, ſhe did not, for I never asked her ſuch a Queſtion.

Q. What did ſhe, from her Diſcourſe to you, appear to think of my Lady?

The Queſtion objected to.

Court.] Had you any other Diſcourſe with her, about my Lady's being with Child?

A. No, indeed.

Mr. *Robins.*] Can you remember the Words Mrs. *Heath* ſpoke to you?

A. I cannot remember the Words; but we uſed to joke with my Lady; little common way of talking that way with my Lady; and Mrs. *Heath* and I went once to the Change to buy Muſlin together, and there we were talking of my Lady; and Mrs. *Heath* knows very well of an Affair that happened to her and me there.

Q. What do you know of Mrs. *Heath*'s Knowledge about my Lady's being with Child?

A. I have no more to ſay than that.

Q. What is that?

A. That ſhe did know that my Lady was with Child.

Q. How do you know ſhe knew it?

A. Becauſe we joked about it, and we were praiſing my Lady, as it is the way of Waiting-maids to pleaſe their Ladies oftentimes: indeed it is.

Court.] My Lady, you ſay, was in *Bride-ſtreet*, at Mr. *Briſcoe*'s, when you dreſſed her?

A. It was there my Lady was dreſſed.

Q. You ſay that ſhe was dreſſed there; did ſhe lodge there then?

A. No, at Mrs. *Vice*'s, ſhe came there in a Pet, becauſe ſhe had a Falling-out with my Lord; ſhe called Mr. *Briſcoe* Father, and came to him with all her Grievances.

Q. How did ſhe come there?

A. In a long Velvet Hood and ſcarlet Cloak, Mrs. *Heath* came with the Box, a little blue Band-box.

Q. And was it there that this Jeſting with her was?

A. There and at Mrs. *Vice*'s too.

Mr. *Robins.*] Did you make any Obſervations about my Lady's Size?

A. She was a middling Woman, full-breaſted here, and ſwarthy.

Q. How did her Belly appear?

A. As a Woman with Child, and it was very eaſily ſeen.

Q. That was in *November* you ſaw her?

A. It was, when my Lord told me ſhe was with Child; I ſaw it then, and I ſaw her all the time ſhe was in *Dublin*.

Court.] Was ſhe a broad Woman?

A. She was a full-made Woman, very full-breaſted and high-hipp'd.

Mr. *Robins.*] Did her Belly alter?

A. I never obſerved any way, but that ſhe was growing big.

Court.] How ſoon did you ſee her again after ſhe went from *Dublin?*

A. Never again.

Q. How long did ſhe ſtay in Town from the firſt time you ſaw her?

A. I believe juſt before *Chriſtmas*, or after, ſhe went out of Town.

Q. Can you tell how long after you firſt ſaw her, it was that ſhe ſtaid in Town?——*A.* I cannot indeed.

Q. Can you name the particular Times you ſaw her?—*A.* I cannot.

Mr. *Robins.*] Did you ever ſee my Lady undreſs'd?

A. Twenty times, dreſſed and undreſſed.

Q. Who uſed to dreſs and undreſs her?

A. Mrs. *Heath*, and I with her, when ſhe lodged at Captain *Briſcoe*'s firſt.

Q. How did my Lady's Belly increaſe?

A. That is a thing impoſſible for me to tell.

Q. Did

Q. Did you observe a Difference?
A. Yes, I did, that she rather grew bigger than otherwise.

Cross-Examination.

Mr. Recorder.] When did my Lady come to Captain *Briscoe*'s first?
A. In the Year 1713, I believe in *October*.
Q. When did she go away from *Briscoe*'s?
A. I think she went to the Country with my Lord just before or just after *Christmas*, I cannot tell exactly, in the Year 1713.
Q. Now I ask you, did she go from *Briscoe*'s to the Country?
A. No, she did not; they went from Captain *Briscoe*'s to Mrs. *Vice*'s, for our House was too little, and my Lord had a vast Number of People after him.
Q. How long did they stay at Captain *Briscoe*'s after their Reconciliation?
A. I do not know whether they staid four or five Days, I cannot tell that itself.
Q. Did they stay two or three Days?--*A.* Two or three to be sure they did.
Q. And they went from your House to *Vice*'s?
A. They went to Mrs. *Vice*'s.
Q. When did my Lady return again to *Dublin?*
A. She came up the latter end of the Summer.
Q. What do you call the latter end of the Summer?
A. My Lady was in *Dublin* at *August* 1714, when the Queen died.
Q. Did you ever dress my Lady but at Captain *Briscoe*'s?
A. I never did at Mrs. *Vice*'s.
Q. But at *Briscoe*'s you did?
A. I dressed her after she left Captain *Briscoe*'s.
Q. When?---*A.* That Day that she came to our House that my Lord and she had a Pique.
Q. Never but that time?---*A.* That was the time.
Q. And you did not undress her at *Vice*'s?
A. I was then but a Stranger; when I went to Mrs. *Vice*'s it was only to visit her.
Q. Did you ever dress or undress her at Mrs. *Vice*'s?---*A.* I never did.
Court.] I thought you said you dressed her twenty times at Captain *Briscoe*'s?---*A.* Yes, and so I did.
Q. When was that?---*A.* That was some time before *Christmas*, in short dirty Days; for before we had done Dinner it would be Night.
Mr. Recorder.] So that the time you dressed and undressed her was about *Christmas?*--*A.* I cannot justly tell the Month; it was in the short dirty Days.
Q. But was it in *December?*
A. I cannot tell the Month. Is not it a long time to remember 30 Years?
Q. Was it after the Quarrel that my Lady came to Mr. *Briscoe*'s House?
A. It was.
Q. When did that happen?
A. Before or after *Christmas*, I cannot tell the time.
Q. Do you know the Reason of that Quarrel?
A. My Lord gave her a Slap on the Face; Mrs. *Heath* knows.
Q. Was you by?---*A.* No; but my Lady said so.
Q. How long then did my Lady stay in Town?
A. She went out of Town in the Year 1713, before *Christmas*.
Q. When did she leave Town the second time?
A. Either just before or after *Christmas* she went from Mrs. *Vice*'s to *Dunmaine*, and I never heard of her since till now lately.
Q. Did you ever speak to Mrs. *Heath* about this big Belly?
A. Nothing but what I told you, I never asked her seriously.
Q. Did you ever put the Question to her, whether my Lady was with Child or not?---*A.* No, I did not ask her seriously about it.
Q. Had you no other Discourse about it?
A. We had none but what I told you, and that was joking; telling and pleasing my Lady that she was with Child; and Mrs. *Heath* and I laughing, and pleased it was so.
Court.] Did you ever see my Lady after she went into the Country the second time?---*A.* Never after; and that was the Year 1714.
Mr. Recorder.] You say my Lady came to Town in *August?*
A. She was in Town in *August*.
Q. Did you see her in *August?*---*A.* I cannot be positive to the Month.
Q. When you saw her in *November* was her Belly big?--*A.* Not very big.
Court.] Had you had a Child at that time?
A. No, but I was with Child, for I was married the 24th of *August*, and quicken'd at that very time, and that makes me remember *November*.
Mr. Recorder.] Was my Lady's being with Child so visible in *November*, that any body might know she was with Child?
A. Indeed I believe so; I saw it, I know.
Q. Did Miss *Henrietta Briscoe* visit my Lady at this time, in *November?*
A. I believe so, I know she came home before then, and the Small-pox was at our House, and she left the House.
Q. What sort of Girl was Mrs. *Cole* then?
A. A pretty young Lady of a good Size.
Q. What Size?---*A.* Not so big or tall as she is now.
Q. Did she grow much afterwards?---*A.* To be sure she did.
Q. I ask you again, did not she grow much after?---*A.* She did.
Court.] Was you a Servant in the same House with her?---*A.* I was.
Mr. Recorder.] What Age might she be then?
A. I cannot justly tell you, she was not at her full Growth.
Q. About what Age do you think she was?
A. I cannot tell. How can I tell?
Q. Was she thirteen, or fourteen, or twenty?
A. Twenty! no, she was not twenty.
Q. Was she fourteen?---*A.* Yes, to be sure she was.
Q. Did Mrs. *Cole* visit my Lady at that time?
A. They all visited her, and my Lady came constantly to our House; but she was at her Aunt *Monck*'s at the *Green*, because of the Small-pox.
Q. Did she stay there all the time my Lady was in Town?
A. She used to come now and then.
Q. Was my Lord *Altham* in Town in *August* 1714?
A. Yes, he was along with my Lady.
Q. And was he here in *November?*
A. Yes, he was in *November*; it was in *November* I saw him.
Q. Was it in *November* he told you that my Lady was with Child?
A. It was in *November*, after the Queen's Death, that he told me my Lady was with Child.
Q. I ask you, upon your Oath again, was my Lord in Town in *August?*
A. Yes, he was. He was in Town all the while that my Lady was in Town.
Court.] They came to Town together?
A. Yes, they did, as well as I can remember.
Q. Now, you say my Lord came to Town in *August*; did not you swear upon the former Trial, that my Lord never was in Town from the time he went into the Country after the Reconciliation, 'till *November* 1714?
A. I assure you the Trial is not right, it is wrongly, falsely printed.
Jury.] Did you ever find the Lady out of Order, as Women commonly are, when they are with Child, when you were dressing and undressing her at Captain *Briscoe*'s?—*A.* I never did.
Q. You say you thought she was with Child?—*A.* I did.
Q. Did you see her out of Order?—*A.* Yes, Sir, I saw her big Belly.
Q. Did you put on her Shift?
A. I helped to put it on, and her Stays too.
Court.] Call your next Witness.

6. Mary Sutton.

Mr. *Mac Manus.*] The next Witness produced to your Lordship, is to the same Point, to prove my Lady *Altham*'s being with Child.
Mr. *Mac Manus.*] Did you know the late Lord *Altham?*
Mary Sutton.] I did indeed.
Q. And the Lady *Altham?*—*A.* I did, upon my Word.
Q. Where do you live now?—*A.* In the County of *Kilkenny*.
Q. Where there?—*A.* In a Place called the *Rowree*.
Q. Pray, Madam, were you ever at *Dunmaine?*—*A.* I was indeed once.
Q. Where did you live then?—*A.* In a Place called ————
Q. When did you first know Lady *Altham?*
A. I knew her when first she came to *Dunmaine*.
Q. What Year was that in?---*A.* I cannot exactly tell the Year, but I knew her with Child, and saw her with Child.
Q. What were you at that time?
A. I was a Farmer's Wife, living in the Neighbourhood.
Q. How came you to go to *Dunmaine?*
A. My Lord frequented my House, and often invited me there.
Q. How far distant was your House from *Dunmaine?*
A. About two Miles.
Q. Did you ever dine there?---*A.* I dined there that Day.
Q. What Day?---*A.* That one Day that I visited my Lady.
Q. Did any thing particular happen that Day?
A. When I went in first, there was none but my Lord and Lady in the Room; I was glad of it, as I was but a Farmer's Wife, that there was no more Company; and after Dinner the Glasses were laid round, and a Bottle of Wine brought upon the Table. They called for my Lady's Toast first; and she toasted Church and King. They then called for mine, and I toasted the Boy in the Basket, meaning my Lady *Altham*'s being with Child.
Q. Pray, can you recollect what Year this was in?
A. I cannot well tell, but as well as I can remember, it was after the Queen died, for I was in Mourning for the Queen.
Q. Do you know of any Inquiry made by my Lady about hiring a Nurse?
A. After Dinner, as we were drinking the Wine, I sat by my Lady; and she said, Mrs. *Sutton*, as you are acquainted with the Country, can you recommend me to a good Nurse. I told her————
Mr. *Daly.*] What she told my Lady *Altham* is no Evidence.
Mr. *Mac Manus.*] My Lord, this is very full Evidence; she is telling of a Conversation that passed between my Lady and herself concerning my Lady's being with Child, and her Inquiry after a Nurse.
Court.] Did you see Lady *Altham* at that time?---*A.* I did.
Q. What did you observe about her?
A. I observed her to be big with Child.
Q. When was this?---*A.* It was the *Monday* or *Tuesday* before *Shrovetide*.
Q. In what Year?---*A.* I cannot exactly tell the Year, but it was one of them two Days.
Mr. *Mac Manus.*] My Lord, I apprehend this Question to be a proper and material one.
Court.] The Question is, whether I will examine the Witness to what my Lady said, whether she was with Child or not?
Mr. Serjeant *Tisdall.*] My Lord, any Circumstance of my Lady's making Baby-cloaths, or Inquiry about a Nurse, is Evidence to prove that she was with Child.
Court.] Not at all, in this Case.
Mr. *Mac Manus.*] I apprehend that presumptive and circumstantial Evidence is the strongest Evidence that can be given in this Case.
Court.] You say that you have positive Witnesses to this Point; if you have, we shall readily hear them. Have you any other that are positive Testimony to Lady *Altham*'s having a Child, or that she miscarried? The first Assignment of Perjury is, whether Lady *Altham* ever was with Child while the Traverser lived with her? The Question then is, whether my Lady's saying she was with Child is Evidence upon that Point? If you will argue the Question, I will hear you.
Court.] Might not the Woman appear to you to be with Child, and might not be so?---*A.* To all Appearance she appeared to me to be so.
Q. And might not she be not with Child?
A. I cannot tell, Sir, she appeared to me to be big with Child.
Q. Was it certain that she was?
A. There was so much Certainty of it, if one can believe their Eyes.
Q. Do you know that she hired a Nurse?
A. Indeed I do not know it; I cannot say that.
Mr. Serjeant *Tisdall.*] My Lord, we apprehend we have a Right to have this Question answered. The Question proposed is, Whether she knows any Inquiry to be made by Lady *Altham* to hire a Nurse?
Mr. *Daly.*] Indeed if you had asked whether Mrs. *Heath* made such an Inquiry, there would be something legal in it, but Inquiries of a third Person are most illegal Evidence.

Court.]

Court.] We are not trying the Filiation of this Family, who is Heir to the Eſtate of it, but whether Mrs. *Heath* is guilty of Perjury. There is much more Reaſon to keep to the ſtrict Rules of Evidence in this Court than ever was; the Time of Trial is ſhort, and we cannot adjourn. Have you any real, poſitive Evidence?

Mr. *MacManus.*] We have produced poſitive Evidence that my Lady appeared to be with Child.

Q. Pray, Madam, in what Degree did ſhe appear to be with Child?

A. Very big with Child.

Mr. *MacManus.*] Why then the next natural Queſtion is, whether there was an Inquiry about a Nurſe?

Mr. *Daly.*] My Lord, is this a legal Queſtion in this Caſe? I have not an Opportunity to croſs-examine what a third Perſon ſays, and ſhall that be Evidence to deprive me of my Eſtate? Aſk if Mrs. *Heath* made any Inquiry about a Nurſe.

Mr. Serj. *Tiſdall.*] The Queſtion propoſed is, whether ſhe knows of any Inquiry made by Lady *Altham* for hiring of a Nurſe, of her own Knowledge?

Jury.] Do you, of your own Knowledge, know any thing of the hiring a Nurſe?

A. No, Gentlemen, I do not.

Mr. *MacManus.*] Did my Lord and Lady ever viſit you?

A. They did, upon my Word, and had the Child with them.

Q. What Child?---*A.* A Boy, Maſter *James* we called him.

Q. Pray, whoſe Child was it?

A. It was their Child in all Appearance, for my Lady was very fond of the Child as any Mother could be.

Q. Give an Account of what paſſed about that Child, as to any particular Inſtances of Fondneſs.

Mr. *Daly.*] You cannot aſk that Queſtion; it is *Res inter alios acta*, and foreign to this Woman's Proſecution.

Mr. *MacManus.*] Pray, how old was he?

A. I believe a Year and half, and if a Month more I cannot exactly tell.

Q. When was this Viſit made you?

A. I cannot exactly tell, it was a very fine Day.

Q. What Time of the Year was it?

A. In Harveſt, the latter-end of Harveſt.

Q. How long was it between the Time you ſaw my Lady with Child, and the Time you ſaw him at your Houſe?---*A.* It was more than a Year.

Q. How old was the Child when you ſaw it?

A. It was a Year and half old when I ſaw it.

Court.] How did my Lord and Lady treat that Child?

A. As a Father and Mother would treat their Child; and my Lady was as fond of him as a Mother could be of a Child, kiſſing and embracing him, and calling him Dear.

Q. In what Year was that?—*A.* Nay, faith, it is hard to tell.

Q. You muſt tell.---*A.* I believe the Child was born in the Year 1715, I think he was, as well as I can remember.

Q. What Reaſon have you for thinking ſo?

A. By the latter end of *April* after I was to viſit her, I heard next Day that ſhe was brought-to-bed of a Son.

Q. Was you by at his Birth?

A. I was not. I heard there was great Joy and Bonfires.

Q. Did you ſee the Bonfires?—*A.* No, I was not there.

Mr. *MacManus.*] How came they to bring ſo young a Child to your Houſe?

A. When my Lady came, ſhe ſaid, Mrs. *Sutton*, ſince you would not bring your Daughter to ſee my Son, I brought my Son to ſee your Daughter.

Mr. Recorder.] I inſiſt that the Declaration of my Lady is no Evidence at all.

Court.] Gentlemen, we are of Opinion that the Declaration of Lady *Altham* is not Evidence againſt Mrs. *Heath*, and therefore do not let us waſte our Time ſo to no Purpoſe.

Mr. Soliciter.] We are miſtaken if we would put the Declaration of Lady *Altham* as Evidence, but we have a Right to know the Witneſs's Apprehenſion of her Declaration.

Mr. *MacManus.*] This Witneſs has ſpoke very materially, that my Lady had a big Belly, and was with Child; I hope the Jury will take notice of it, that being one of the Aſſignments of the Perjury.

Croſs-Examination.

Mr. *R. Malone.*] I think you have ſaid that Lord *Altham* frequently invited you to *Dunmaine*?—*A.* He did.

Q. And you were never there but once?——*A.* Never but once.

Q. You ſaid that Nobody was there in the Room but them two?

A. Yes.

Q. And that you were glad of it?——*A.* Yes.

Q. And that a Bottle of Wine and Glaſſes were brought, and my Lady toaſted Church and King?—*A.* I did.

Q. You gave a Toaſt after of the Boy in the Baſket?—*A.* I did.

Q. Now I aſk you, before your giving that Toaſt, was there any Converſation about her being with Child, or any thing ſaid about it?

A. Not at all.

Q. Was you told in the Parlour that ſhe was with Child?

A. Not at all; there was no Diſcourſe of it but after.

Q. What Condition of Life was you in?

A. My Huſband was a Farmer indeed.

Q. Who did he derive his Intereſt under?---*A.* Madam *Pigot*.

Q. How much Land did he hold?

A. He paid 10*l.* a Year to Madam *Pigot* at that Time.

Q. How much Land had you?

A. It was an old Leaſe, we held above 200 Acres.

Q. What was the Land worth an Acre?

A. Why, really, at that time it might be worth four Shillings an Acre.

Q. You ſay that they frequently viſited you?

A. My Lord did, but my Lady never was there but once.

Q. When they viſited you, what Time of the Year was it?

A. As well as I can remember, the latter-end of Harveſt.

Q. Do you know the Year?---*A.* I cannot tell.

Q. Was it the Harveſt after you viſited them?---*A.* No, not at all.

Q. Was it more than one?---*A.* It was more than one.

Q. Or two, three, or four after?

A. O dear! it was not ſo much; the Child was about a Year and half old, or within a Month or two, I cannot exactly tell.

Q. Can you ſay in what Reign it was?

A. Really, I believe it was after Queen *Anne* died.

Q. In what manner did they go to your Houſe?

A. My Lady rode in the Chariot, and had a Maid that carried the Child, and my Lord rode with Servants.

Q. What was the Servant's Name in the Chariot?

A. She was a good tight, clean, well-dreſſed Girl, and that is all I know.

Q. In what manner was the Child dreſſed?

A. He had a red Coat, and Cambrick Frock, and fine quarter'd Cap, and I think, a red Ribband in it.

Q. Was it a Coat and Breeches?

A. Not a Coat and Breeches; a Frock.

Q. Where do you live now?---*A.* I live now in the County of *Kilkenny*.

Q. Where there?---*A.* In the Pariſh of *Rowree*, at *Ballyvally*.

Q. Is your Huſband living?---*A.* My Huſband is not living.

Q. Do you live by yourſelf there?

A. I live with my Daughter, and we live under my Lord *Mountgarret*.

Q. What Harveſt is this you ſpeak of when my Lord and Lady went to your Houſe?---*A.* It is ſo long ago, it is hard to know, I muſt ſtudy a while to think of it.

Q. How can you recollect to the being at *Dunmaine* to a Day, and not now recollect the Year they went to ſee you?

A. As it did not meddle with me, I did not mind it.

Jury.] Do you know any thing of Mrs. *Heath*?---*A.* I never had any Acquaintance with her, I heard my Lady had ſuch a Woman.

Court.] Who do you call next?

Mr. *Callaghan.*] My Lord, we will now produce one *Evan Thomas*; he is a *Boſket-maker*; he ſaw my Lady with Child, ſaw her increaſe in her Pregnancy, and made the Cradle after ſhe was brought-to-bed, and was paid for it.

7. Evan Thomas.

Mr. *Callaghan.*] Pray, did you know the late Lord *Altham*?

Evan Thomas.] Yes, and pleaſe you.

Q. Did you know my Lady?---*A.* I knew her very well.

Q. Where did you live in the Year 1713?

A. In that Year I lived in *Roſs*.

Q. Where did you live in 1714?

A. I worked in *Roſs* the moſt of the Year 1714.

Q. Did you ſee my Lady in thoſe two Years?

A. I have ſeen her at our Church ſome ſeveral times; in the Year 1714 I have ſeen her there, to the beſt of my Knowledge.

Q. How often did you ſee her there?

A. I ſeen her two or three times, to the beſt of my Knowledge; but ſhe might be there oftener, for any Thing I know.

Q. Did ſhe appear to be a ſlender Woman, or with Child?

A. She appeared to me as if with Child, to the beſt of my Knowledge.

Q. Did ſhe appear to be big with Child?

A. Not ſo very big becauſe of their Hoops; I ſaw her handed into the Coach, or the Chariot, or one of them.

Q. What Trade do you follow?---*A.* I am one that makes all Sorts of Baſket-work that are made in the Kingdom.

Mr. *Daly.*] What, all Sorts of Baſket-work?

A. I do not ſay the beſt of all Sorts.

Mr. *Callaghan.*] Did you ever do any Work for Lady *Altham*?---*A.* I did,

Q. Tell what it was.---*A.* She ſent a Servant to me.

Court.] How do you know ſhe ſent him?---*A.* He told me——

Q. Did you carry any Work to her Houſe?——*A.* I did not.

Q. What was it you made?

A. I made in the Year 1715, to the beſt of my Knowledge, a Cradle.

Q. Did you carry it to Lord *Altham*'s Houſe?

A. No, pleaſe your Lordſhip, I did not.

Q. Who did you deliver it to?---*A.* I delivered it to a Man.

Q. Name him.

A. They told me he was one *Rowley*, a Houſe Steward.

Q. Did you know him?

A. I was nothing acquainted with the Man, but he told me——

Q. Do you make the ſame kind of Cradles for poor People as for People of Faſhion; what Sort of Cradle was it?

A. A good Cradle, I delivered it to the Servant, as I ſuppoſe, his Name was *Rowley*, I was told ſo.

Q. Did you ſee the Cradle carried to any particular Place?

A. No, he took it from me out of the Houſe, and gave me two Crowns for it.

Jury.] What became of the Cradle?

A. I do not know, but he took it away.

Court.] Where is *Rowley*?---*A.* I do not know.

Mr. *Callaghan.*] For whom did you make that Cradle?

A. Why, the Man came to me——

Q. Do you know who you made it for?

A. He beſpoke it for my Lady *Altham*.

Mr. *Harward.*] It is ſtrange to my Imagination, my Lord, that it ſhould be ſuſpected, that a Man employed 30 Years ago, to make a Cradle, could be guilty of any Contrivance.

Court.] But this Contrivance may be within theſe four Months, theſe ſix Months, or theſe twelve Months, and if Hearſay-evidence will convict a Perſon of any Crime, it may of Treaſon, and who is or can be ſafe?

Mr. Juſt. *Blennerhaſſet.*] If you have *Rowley*, there would be ſomething.

Mr. *Harward.*] With Submiſſion, my Lord, the Court cannot know whether we are out of the way or not; whatever Secrets are in this Caſe are only revealed to us by the Managers of it, and we adviſe them in the beſt manner we can to proſecute it.

Court.] As the Time is far ſpent, we only beg of you to go on in your own way. Call your next Witneſs.

8. Martha Tenant.

Mr. *Harding.*] My Lord, I am inſtructed that this Witneſs was in Company with Lord and Lady *Altham* the Winter after the Queen's Death, and ſaw my Lady with child, and that ſhe was quick with Child at that Time.

Court.]

Court.] I never heard that there was Safety in a Multitude of Witneſſes; I have heard it, read it, and you know it, that in a Multitude of Counſellors there was Safety, but never in a Multiplicity of Witneſſes.

Mr. *Solicitor.*] For my Part, my Lord, I think we have eſtabliſhed very fully the firſt Part of this Indictment, not to take up any more Time; but Curioſity makes People glad to ſee the Bottom of it.

Mr. *Harding.*] Pray, did you know *Arthur* late Lord *Altham?*

Martha Tenant.] I did not know him, I ſaw him once, and to my Knowledge never ſince, nor before.

Q. Did you know his Wife?---*A.* I ſaw her at the ſame Time at Dinner.

Q. Where did you ſee them, and when?---*A.* I ſaw them at one *Arthur French*'s in *Fleet-ſtreet*, they lodged in *Fleet-ſtreet*.

Q. When was it you ſaw them there?

A. I will tell you how I came to viſit there——

Q. What Year was it you ſaw them there?

A. Well! I cannot juſtly tell the Year, but it was about the Time that they were *Whig* and *Tory*, and that way.

Q. Pray, recollect yourſelf.----*A.* I believe it was about——I cannot exactly tell; I believe the Year Queen *Anne* died, there or thereabouts.

Q. Was it before or after the Queen's Death?

A. And that I cannot tell you neither; but I'll tell you the Time of the Year, it was about *Chriſtmas*, but I cannot tell whether 1714, or 1715.

Q. Did you obſerve whether my Lady was or was not with Child?

A. I will tell you what brought me there; the whole Truth is this: Mr. *French*, every one knew, married my Lady *Davis*'s Daughter, and ſhe was a Relation of mine; and upon the Marriage I entruſted him Money, and went to dunn him, and when I came there I ſaw a great Dinner and Preparations making, and aſked the Reaſon of it. Says I, what is the Meaning of all theſe Doings, and you have not got your Wife's Fortune into your Hands yet? It is very ill done of you——

Q. Tell what you know of Lady *Altham* there. Tell what you know yourſelf.

A. I will tell you all I know myſelf. I ſtaid there, and when Dinner was over I ſaw in the Drawing-room my Lady *Altham*, as they ſaid ſhe was.

Q. Did you know her?---*A.* Not I indeed.

Q. Can you ſay it was her?---*A.* They ſaid it was.

Q. But you muſt only ſay what you know?

A. Well, I cannot tell you any more then.

Q. Did any remarkable Incident happen while you were at Dinner there?

Court.] Did ſhe take the Title of Lady *Altham?*

A. She did, and my Lord was there.

Q. Did you ever ſee them before?---*A.* I never ſaw them before or after, nor knew none of thoſe Lords or Ladies.

Mr. *Harding.*] What ſort of a Woman was ſhe?

A. A luſty Woman, but my Lord had two Eyes at that Time, and they ſay he had but one after.

Q. What did you obſerve of my Lady that Day?

A. She came out after Dinner and was ſick; ſhe came into the Drawing-room, and they unlaced her.

Q. Who?---*A.* My Lady *Altham*, ſhe was called ſo.

Mr. *Harding.*] Inform the Court and the Jury, whether any remarkable Incident happened while you were at Dinner there.

A. She was taken ſick after Dinner, and came out into the Drawing-room, and we unlaced her, and my Lord ſaid, Mrs. *French*, it will be your Turn ſoon to be in the ſame Condition; and that is all I had to ſay.

Q. What was the Occaſion of his ſaying ſo?

A. The Occaſion was, that Mrs. *French* was a new-married Woman.

Mr. *Recorder.*] She ſays ſhe did not know either Lord or Lady.

Martha Tenant.] Nor the young Man, nor the old Man.

Mr. *Harding.*] Inform the Court, whether any Body fainted away, and whether any Account was given of that.

A. My Lady was ſick, and unlaced, and my Lord ſaid, Mrs. *French*, it will be your Turn next; and that is all I know.

9. Anastace Toole.

Mr. *Morton.*] We produce this Witneſs, my Lord, who is a Mantua-maker by Trade, to prove that ſhe made a Silk Gown for Lady *Altham*, and fitted it on in the Preſence of the Traverſer, and that my Lady was then with Child.

Mr. *Morton.*] Did you know my Lady *Altham?*

Anaſtace Toole.] I did, Sir.

Q. What Buſineſs did you follow?---*A.* Mantua-making.

Q. Were you at any Time, and when employed by her to do any Work for her?

A. I lived with Mrs. *Wright* the Year that Queen *Anne* died, for my Huſband went to live in the County of *Carlow*; I went to her the latter-end of the Year 1714, Queen *Anne* died in *Auguſt*, and the *Candlemas* following—

Q. What Year?---*A.* The *Candlemas* after Queen *Anne* died. And my Miſtreſs ſent me with the Coat.

Q. To what Place?---*A.* To *Dunmaine*.

Q. What did you obſerve, when you went there?

A. That her Ladyſhip was big-bellied.

Q. Did you ever fit any Gown upon her?---*A.* I did.

Q. Who was preſent when you fitted the Gown?

A. Her own Maid, Mrs. *Heath*.

Q. Would you know her, if you ſaw her?---*A.* Yes, that is ſhe, I believe.

Q. Now, pray, what Condition did my Lady appear to be in then?

A. Her Ladyſhip ſeemed to be in her laſt Quarter, or pretty nigh it, for ſhe was a tall Woman, and carried her Belly very well.

Court.] You obſerved that ſhe was big-bellied?---*A.* I did.

Q. Had you had a Child at that Time?

A. I had had a Child and had buried it.

Q. Was you an Apprentice Girl then?---*A.* No, my Huſband was gone to Mr. *Wall*'s in the County of *Carlow*, and I worked with Mrs. *Wright*.

Mr. *Morton.*] Was you married at that Time?---*A.* Yes, Sir, I was.

Q. You were not an Apprentice?---*A.* I was not.

Q. Do you know any more of my Lady's being with Child?

A. I ſaw my Lady in *Roſs* with the Child, and made a Coat for the Child.

Q. How long was it after that you ſaw the Child in *Roſs?*

A. I cannot tell how long.

Q. Who gave you the Stuff to make the Coat for the Child?

A. My Lord himſelf, he bought it at Mr. *Harvey*'s.

Q. What Stuff was it?

A. One Side was a blue Sattin, and the other a Yellow.

Q. How long after you fitted the Gown on my Lady was it that you ſaw this Child at *Roſs?*

A. After my Lady came to my Miſtreſs to lodge in *Roſs*.

Q. Was it three Months, or four Months, or ſix Months?

A. Oh! it was more to be ſure.

Q. Can you tell how long?---*A.* I cannot tell more than what I know.

Q. Was it a Year after you fitted the Gown that you ſaw the Child at *Roſs?*---*A.* It was.

Q. Was it any more?

A. Indeed I cannot juſtly tell you as to that Part of the Story.

Q. Was Mrs. *Heath* preſent when you fitted on the Gown?

A. She was by, and gave me a Piece of white Ribband to tye the Shoulders of it.

Q. Had my Lady left my Lord at this Time when you made the Gown for the Child?---*A.* She had.

Q. Was it a new Gown you made for my Lady, or did you alter an old one?---*A.* It was a new one, a new white Damaſk.

Q. How often did you ſee the Child, and where?---*A.* Never but once.

Q. Where was that?---*A.* At my Miſtreſs, *Wright*'s.

Q. Where is that?---*A.* At her own Houſe in *Roſs*.

Q. Was that before or after the Coat was made for him?

A. It was after.

Q. Did you never ſee him before?

A. I never ſaw him before, but that one time.

Court.] Did you ſee the Child at the Time my Lord gave you the Silk to make the Coat?---*A.* No, my Lord, I did not.

Croſs-Examination.

Mr. Recorder.] How long after you made the Gown was it you ſaw a Child?---*A.* I cannot juſtly tell how long.

Q. Did you not ſay it was a Year?---*A.* I believe it was.

Q. Was it more, a Year and half, or two Years?

A. I cannot tell whether a Year and half, or two Years.

Q. Was the Child weaned?---*A.* He was at that Time.

Q. I aſk you, upon your Oath, was it two Years after you made the Gown?

A. I cannot juſtly tell you how long; it was two Months after my Lord gave me the Silk.

Q. But I muſt know how long after you made the Gown for my Lady?

A. I cannot tell that.

Q. When was it that my Lord gave you the Gown for the Child?

A. After my Lady came to *Roſs*.

Q. When did ſhe come to *Roſs?*---*A.* I do not know when ſhe came to it; I know ſhe came on a *Sunday* Evening.

Q. Where did ſhe lodge when you ſaw the Child?

A. She lodged at *Roſs* then.

Q. Where there?---*A.* At Mrs. *Wright*'s.

Q. Did you hear of the Separation of my Lord and Lady?---*A.* I did.

Q. Was it before or after they parted that you ſaw this Child at Mrs. *Wright*'s?---*A.* It was after they parted.

Q. Who brought him to *Wright*'s?---*A.* I cannot tell who brought him.

Q. Did my Lady lodge at any other Place before ſhe went to *Wright*'s?

A. Yes.

Q. Where, and how long?

A. At Captain *Butler*'s, I believe ſix Weeks or two Months.

Q. Where did ſhe go from Captain *Butler*'s?

A. She then came to my Miſtreſs's.

Q. How long did ſhe ſtay there?

A. To the beſt of my Knowledge, a Twelvemonth.

Q. When was it that this Child came?

A. After ſhe had been a conſiderable Time at Mrs. *Wright*'s.

Q. How long?---*A.* I cannot tell how long.

Q. How old was he?---*A.* About two Years old.

Q. Was it half a Year after my Lady came to *Wright*'s that you ſaw the Child?---*A.* I cannot juſtly tell you.

Q. Do you know Mrs. *Heath?*

A. I have ſeen her before; yes, I know her.

Q. Where was the firſt Time you ſaw her?

A. The firſt Time I ſaw her was at *Dunmaine*, and every Day after ſhe came to lodge at my Miſtreſs's.

Jury.] You ſay you ſaw a Child at *Wright*'s about two Years old?

A. I did.

Q. Whoſe Child was it you ſaw there?---*A.* My Lady's, Sir.

Q. Who told you it was my Lady's Child?

A. My Miſtreſs, Mrs. *Wright*.

Q. Did my Lady herſelf tell you it was her Child?

A. I had no Converſation with my Lady. I was working at Doctor *Elliot*'s on the other Side of the Way—

Court.] Are you going, Gentlemen, to the ſame Point?

Mr. *Mac Manus.*] I believe, my Lord, every Evidence that goes to the firſt Point, will go to the ſecond.

Mr. Serj. *Marſhall.*] The next Evidence that we ſhall produce is *Anne Bennet*; ſhe was a Servant to Mrs *Giffard* of *Ballyſop*, a Lady who appeared at a former Trial; ſhe lived with her ſome Years, and often ſaw my Lady with Child, and heard her Miſtreſs talk of her being big-bellied.

10. Anne Bennet.

Mr. Serj. *Marſhall.*] Did you know my Lord and Lady *Altham?*

Anne Bennet.] Yes, I did.

Q. When did you know them?---*A.* The latter End of the Year 1714.

Q. Where did they live when you knew them?---*A.* In *Dunmaine*.

Q. And where did you live then?

A. I lived at *Ballyſop.*

Q. With whom there?---*A.* Mrs. *Giffard.*

Q. Can you ſay in what Circumſtances Lady *Altham* was, in reſpect to her Health, when you knew her?

A. When I ſaw her firſt of all, Gentlemen, it was about *Chriſtmas* Time, whether before or after I cannot tell; and the next Time it was after *Chriſtmas*, and ſhe looked pretty round; and I ſaid to my Miſtreſs, Had my Lord and Lady never a Child? No, ſays ſhe, ſhe never had.——

Court.] Did you ſee my Lady with Child?

A. I thought ſhe looked very round, my Lord.

Q. Can you ſay whether ſhe was with Child or not?

A. Indeed I believe in my Heart ſhe was.

Q. For what Reaſon did you think ſo?

A. Becauſe I was the Mother of a Child myſelf, and knew how ſhe was, ſhe took a Diſtaſte to Victuals at the Table.

Q. How old was you then?

A. Twenty Years of Age, I was the Mother of a Child, and a married Woman too.

Q. You do not appear now to have been that Age at that Time?

A. Indeed then I am fifty-two Years of Age.

Q. Do you know any more than that?---*A.* No.

Croſs-Examination.

Mr. *Le Hunte.*] You ſay you lived with Mrs. *Giffard?*---*A.* I did.

Q. How often did my Lady *Altham* viſit Mrs. *Giffard?*

A. She viſited three Times while I was there.

Q. And how often did your Miſtreſs viſit my Lady?

A. She viſited my Lady twice.

Q. Was there any great Intimacy between them?

A. There was no great Intimacy, more than that.

Q. Did your Miſtreſs lie-in while you were in the Service?

A. She never did, nor I do not believe ſhe had a Child after I left her.

Q. When did you leave her?---*A.* I left her in *February*, 1714.

Q. And how long before had ſhe had a Child?

A. I cannot tell, the Child was running about.

Q. Was ſhe with Child in your Time?

A. I cannot tell whether ſhe was with Child, for I did not waſh for her.

Mr. Serj. *Marſhall.*] What Reaſon had you to induce you to believe Lady *Altham* was with Child?

A. Becauſe ſhe took a Diſtaſte againſt Victuals, and was very round.

Q. Did you ſee her after in any Place?

A. Never ſaw her before or after.

Court.] Who do you call next?

Mr. Soliciter.] I have taken up a Witneſs, one *Edmond Howletts*, who brings the Matter directly Home to the Traverſer. My Lord, he is a Pedlar, a Man that ſells Diaper, and other Cloths about the Country, and he will ſhew that ſhe bought Diaper for the Child's Uſe juſt before the Birth.

Mr. *Edmond Malone.*] Every one knows that the material Perjury is the Birth, and if they had not a Mind to raiſe a Duſt, they would go to that directly.

11. Edmond Howletts.

Mr. Solicitor General.] Did you know my Lord and Lady *Altham?*

Edmond Howletts.] Yes, I did, Sir.

Q. Do you know any Thing of a Child that they had?

A. Yes, I did, Sir.

Q. Give an Account of what you know about it.

A. The firſt Time I was reſorting that Houſe with Goods on my Back, and the firſt I ſold there, there was a Woman there, a Waiting-maid, they called Mrs. *Heath.*

Q. Do you know her?---*A.* I do not know whether I would or no.

Q. Well, go on and tell your Story.

A. And ſhe bought a Piece of Diaper from me for my Lady's Service againſt her lying-in. There is a Brogue upon my Tongue, Sir, I cannot ſpeak very proper.

Q. What did ſhe buy the Diaper for?

A. The Diaper was provided for lying-in, for Clouts.

Q. For whoſe lying-in?---*A.* Lady *Altham*'s.

Q. Who told you ſo?---*A.* The Woman they called Mrs. *Heath.*

Q. Would you know her if you were to ſee her?

A. I did not ſee her theſe many Years.

Q. Do you know that Gentlewoman there?

A. She is fatter now than ſhe was at that Time.

Q. Is that ſhe?---*A.* Why, Sir, I could not ſwear.

Q. Is that Woman like her?

A. Why then, ſhe is like her ſure enough, to the beſt of my Knowledge.

Q. How often did you ſee her before that Time?

A. Several Times after that.

Q. What Time was that? Recollect as near as you can.

A. Why then, Sir, it was a little after *Chriſtmas.*

Q. What Year?

A. I believe it is thirty Years now, to the beſt of my Knowledge.

Q. Do you keep any Book of your Buſineſs?

A. I do not keep a Book, nor I do not know how.

Q. What Goods did you carry to ſell?

A. I carried Linen Cloths, and Cambricks, and Holland, and Handkerchiefs.

Q. Do you follow that Trade now?

A. I left off that Trade about ſeven Years ago.

Q. How long did you follow it?---*A.* I followed it five-and-thirty Years, and I was a Cuſtomer at that Houſe that time.

Q. Did you ſee any thing relating to this Child at any time after that?

A. After that, I was there, Sir, and my Lady *Altham*, and her Maid, and the Nurſe, and the Child were coming out of the Pleaſure-Garden, and when they ſaw me they went back, and they bade me come in and open my Pack there; and my Lady bid the Nurſe aſk what ſhe would have; and ſaid, Mrs. *Heath*, we will ſee if he has a white ſilk Hood or Handkerchief, and ſhe bought a white Silk Handkerchief, and red Border about it.

Q. Was it bought for the Nurſe?---*A.* It was.

Q. Who bought it?---*A.* Mrs. *Heath* cut it off of my Piece, and paid me the Money that my Lady gave to her.

Q. And who gave it to the Nurſe?

A. Mrs. *Heath* gave it to the Nurſe before my Face, and my Lady bought a Ribband, and Mrs. *Heath* put it on the Child.

Q. Pray, give an Account, do you know any thing elſe about the Child? Do you remember that my Lord and Lady parted?

A. They parted to my Sorrow, Sir.

Q. How ſo?

A. There was four Pounds two Shillings due to me: my Lady bought a Piece of Holland for five Pounds five Shillings, and ſhe gave me a Guinea in part; and the Day the Diſpute came between them I was going that Way about ſome Affair of my own, and I heard of it within half a Mile of *Dunmaine.*

Q. How far did you live from *Dunmaine?*

A. About two Miles I lived from them; and I was going about my Buſineſs, and I heard the Noiſe, there was a great deal to do; and on account of my Money due to me, I went to the Houſe to ſee after it, if I could get it; and when I came near the Houſe, all the Servants were going to and fro, and I was looking on them, and I ſaw my Lady in a Coach or Chariot, I do not know which it was. God forbid I ſhould wrong my own Soul.

Court.] Take care that you do not; have a care what you ſay.

E. Howletts.] I ſtood there, and ſaw my Lady, and Mrs. *Heath*, and the Child in the Coach. My Lord came down Stairs in a great Paſſion, and aſked *Where was the Child?* And ſome of the Servants ſaid, *My Lady has it in the Coach*; and juſt as he was going to throw down every thing about him, he took the Child from her. And my Lady ſaid, *Pray, my Lord, did not you give me your Word and Honour that you would let the Child go with me wherefoever I would go?* ſays ſhe; and took her white Silk Handkerchief out of the Place where it was, and wiped her Face, and kiſſed the Child at parting.

Q. Did you ſee Mrs. *Heath* there; was ſhe preſent at this Tranſaction, or was ſhe not?

A. She was the ſame Perſon that was with my Lady *Altham* that Day.

Court.] Did the Child go in the Coach?---*A.* Not at all, Sir.

Jury.] What Day was it that this happened?

A. To the beſt of my Knowledge, it was *Sunday.*

Q. I aſk you the Day of the Month?

A. I do not keep the Month at all, I am no Scholar.

Q. What Time of the Day was it?---*A.* To the beſt of my Knowledge, about Ten or Eleven o'Clock in the Morning.

Q. Was it a Coach or a Chariot?---*A.* I cannot tell.

Croſs-Examination.

Mr. *Spring.*] How long have you been a Dealer in the Linen Trade?

E. Howletts.] I believe theſe five-and-thirty Years.

Q. How old are you?---*A.* I am five-and-fifty Years old.

Q. Where did you live at the time you ſaw this Child?

A. At *Ballyteſkin*, within three Miles of *Roſs.*

Q. Where in 1713 did you live?---*A.* I cannot tell; I am no Scholar.

Q. Where in the Year 1718?

A. I cannot tell that Year; I do not underſtand your Years that way.

Q. Where did you live twenty Years ago?---*A.* In the Town of *Roſs.*

Q. Do you know one *Eleanor Murphy?*---*A.* I did, Sir.

Q. What Relation is ſhe to you?

A. I have one *Nelly Murphy* a Siſter of mine.

Q. How long has ſhe been married?

A. I believe ſhe is married theſe twenty Years, or near it.

Q. Is not ſhe married thirty Years?

A. I cannot tell whether ſhe be or no.

Q. Is ſhe married nine-and-twenty Years?

A. Indeed I cannot tell, Sir, whether ſhe be or no; I was not by when ſhe was married; ſhe married in the County of *Dublin* here.

Q. What Name did ſhe go by thirty Years ago?

A. Only her own Name.

Q. What was that?---*A. Howletts.*

Q. What Name did ſhe go by nine-and-twenty Years ago?

A. I believe *Howletts.*

Q. Can you write or read?---*A.* No, I cannot, Sir, and I am ſorry for it.

Q. Was you ever Agent to any Gentleman in the County of *Wexford?*

A. I am after looking after ſome Land belonging to Mr. *Baily.*

Q. Was you ever Agent to him?—*A.* No.

Q. Did you ever make an Affidavit by the Name of Agent to Mr. *Benjamin Baily?*—*A.* Hah!

Q. Did you ever call yourſelf Agent?

A. My Lord, it was a Miſtake if I called myſelf ſo.

Q. Who drew that Affidavit for you?

A. I cannot tell any ſuch thing.

Court.] Now tell me truly, who wrote that Affidavit? Did you make an Affidavit?—*A.* Only what I ſwore before the Commiſſioners.

Q. Who were they?—*A.* Upon my Word, I cannot tell.

Mr. *Spring.*] Was there a Paper wrote for you to ſwear, or put your Mark to it?——*A.* Hah!

Q. Did not you ſwear an Affidavit before Dr. *Stopford* in *Auguſt* laſt?

A. Yes, I do not know but I did.

Q. But you know whether you did or not?—*A.* Why, I believe I did.

Q. Was it read to you before you ſwore it?

A. It was read to me ſure enough.

Q. Who read it?—*A.* There was a Gentleman there.

Q. What is his Name?—*A.* Somebody belonging to Mr. *Anneſley.*

Q. What is his Name, Man?—*A.* Upon my Word, I cannot tell.

Q. Upon your Oath, who was he?

A. Upon my Word, I cannot tell the Perſon.

Court.] Gentlemen, this Man was aſked whether he made an Affidavit by the Name of Agent to one Mr. *Baily*, he would not anſwer for a great while, but ſeemed to prevaricate, and at laſt ſaid it was a Miſtake if he called himſelf an Agent. He then was aſked if the Affidavit was read to him, and after ſome Heſitation owned it was read, but does not ſay by whom, but ſays he was ſworn by Dr. *Stopford*, in *Auguſt* laſt.

Mr. *Spring.*] Upon your Oath, Sir, who was it that read the Affidavit to you?—*A.* I cannot tell you, upon my Oath.

Q. Was it drawn in *Dublin*, or the County of *Wexford?*

A. To the beſt of my Knowledge, in *Dublin.*

Q. Where was it drawn?—*A.* I told you all I had to ſay.

Q. Who wrote it for you?

A. If I knew that, I would tell you. There was a Clerk there.

Q. Who was he?—*A.* Somebody that was belonging to Mr. *Anneſley.*

Q. Did

Q. Did you tell all you knew in the County of *Wexford*, or City of *Dublin?*——*A.* In *Dublin.*

Q. Did you likewiſe tell it in the County of *Wexford?*

A. I did not till I told it here.

Q. Was your Affidavit read to you?——*A.* Yes, it was.

Q. Who read it?——*A.* I cannot tell.

Q. Were you there called Agent to any Body, and whom?

A. It was a Miſtake, if I was.

Q. Was you called ſo, or not?

A. I told them I minded ſome Land belonging to Mr. *Baily.*

Court.] Did they call you Agent, or not?

A. To the beſt of my Knowledge, they did not call me ſo. All the World knows I was no fit Man to be an Agent to a Gentleman.

Mr. *Spring.*] Had the Coach two Wheels, or four Wheels, you ſaw my Lady go away in?——*A.* There was four Wheels.

Q. Was it open like a Chair, or cloſe?——*A.* It was cloſe.

Q. Do you know the Difference between a Coach and a Chariot?

A. I cannot tell the Difference.

Q. You ſay it was not open?——*A.* I know it was not open.

Q. How many Horſes were there?

A. I cannot tell, I think there were four or two, I cannot tell which.

Q. Was it four, or two, or ſix?

A. Two or four, I cannot tell which.

Q. Who was Coachman?——*A.* One *Dennis Caunton.*

Q. How many Brothers and Siſters have you that are Witneſſes in this Cauſe? Have you ever a Siſter that lived with one *Macnamee?*

A. I cannot tell whether it was or not.

Q. Did your Siſter *Eleanor Murphy* live with *Macnamee?*

A. I cannot tell whether it was or no.

Q. Do you know any Body ſhe lived with?——*A.* It was from Captain *Butler*'s at *Roſs* that ſhe went to Lord *Altham*'s.

Q. Do you know the Time that ſhe went there?—*A.* Indeed, if I had known this Trouble, I would know a great deal more of it.

Q. Was it before or after you ſold the Linen that your Siſter went to the Service?——*A.* She was not there the firſt Time I ſold the Clouts, and ſhe went there a little after.

Court.] Did you travel the Kingdom round with your Linens?

A. Only the County of *Wexford.*

Court.] I am ſurprized then, that you do not know the Difference between a Coach and a Chariot.

Mr. *Spring.*] Do you know the great Eclipſe of the Sun?—*A.* I do.

Q. Where did you live then?

A. I lived then at *Ballyteſkin.* I do not know but I was in the Houſe of *Dunmaine* that Day, and coming home within Half a Mile of my own Houſe when the Eclipſe came upon me.

Q. Was not you in *Dunmaine* Houſe that Day?

A. I am not ſure I was there, I was very near them I am ſure in the Road home.

Q. Say upon your Oath, whether you were not in the Houſe of *Dunmaine* the Day of that Eclipſe?—*A.* I cannot tell whether I was or not.

Q. Was it before or after that Eclipſe that your Siſter went to live there?——*A.* Why, it is about *May* the Eclipſe came, or the latter End of *April*; it was before that ſhe went to live there; it was before.

Q. Where did ſhe go to live after ſhe left Lord *Altham*'s?

A. I think to one *Frank White.*

Q. And where from thence?

A. The Time ſhe left Lord *Altham*'s ſhe went to her own Father's.

Court.] This Witneſs has ſworn very materially, if he has ſworn true.

Mr. Serjeant *Marſhall.*] The next Witneſs I am inſtructed to produce, is one *Newton Ricketts*, a Coach-maker, and he will prove to your Lordſhip that Lady *Altham* was very big with Child; that he after was at *Dunmaine*, and employed by Lord *Altham* to make a four-wheeled Chaiſe, and at the ſame time my Lady employed him to make a little Chair for the Child.

12. Newton Ricketts.

Mr. Serjeant *Marſhall.*] Did you know *Arthur* late Lord *Altham?*

Newton Ricketts.] I did.

Q. Did you know his Lady?

A. I did ſee her, Sir, and was acquainted with her by Name.

Q. Where did you ſee Lady *Altham?*—*A.* I ſaw her at *Dunmaine.*

Q. Can you recollect at what Time you ſaw her there?

A. About two-and-thirty or one-and-thirty Years ago.

Q. Which was it?—*A.* It is two-and-thirty Years ago.

Q. How long was you acquainted with her at *Dunmaine?*

A. I was acquainted with her for three Years.

Q. Recollect as near as you can, how long ago it is.

A. It was three-and-thirty, or two-and-thirty Years ago.

Q. Do you recollect when Queen *Anne* died?

A. I do not know how long ago it is.

Q. Can you be ſure how long ago it is ſince you knew my Lady at *Dunmaine?*——*A.* I think it is one-and-thirty Years, I cannot remember the Years, or Months, or Weeks.

Q. What Trade do you profeſs, Friend?

A. I profeſs to be Wheel-wright and Coach-maker.

Q. Were you ever employed by Lord *Altham*, and when?

A. Oftentimes, for two or three Years, working at the Houſe from Time to Time.

Q. Did you do any particular Piece of Work for him?

A. I made a little Toy-Chair for a Child that was there, that was called Maſter *James Anneſley* that Time in the Houſe.

Q. Who beſpoke that Chair?—*A.* The Lord *Altham* deſired I ſhould make it; and my Lady and he both came to the Coach-houſe where I uſed to work, and deſired me to make it.

Q. Where was my Lady at that Time?——*A.* At *Dunmaine.*

Q. Was it he or ſhe that ordered you to make the Chair for the Child?

A. My Lord directed me to make it at the Time my Lady was at *Dunmaine.*

Jury.] Did my Lord ſpeak to you himſelf?

A. He ſpoke to me himſelf.

Court.] Did he tell you whoſe Child this was?

A. I never aſk Queſtions when I go to Gentlemen's Houſes; when I ſee Maſters and Miſſes, I gueſs they are their own.

Mr. Serjeant *Marſhall.*] Whoſe Child did you take it to be?

A. The Lord and Lady *Altham*'s Child.

Q. What did my Lord *Altham* call him?

A. He called him *Jemmy Anneſley.*

Q. How was the Child dreſſed?——*A.* Dreſſed as a Gentleman's Son, or young Maſter ſhould be dreſſed.

Q. Did you ſee the Child frequently?

A. I ſaw him very often at *Dunmaine*, and at ſeveral Places beſides.

Q. How did my Lady behave to the Child?

A. I think as a Mother behaves to a Child.

Mr. *Smith.*] Her Behaviour is not more material than her Words. Words are expreſſive, but Behaviour doubtful.

Croſs-Examination.

Mr. *Daly.*] How many Years ago is it ſince this Chair was beſpoke?

A. I believe about eight-and-twenty and a Half; eight-and-twenty and ſix Months, or nine-and-twenty, I cannot tell indeed which.

Q. Did you ſee the Child at that Time for whom it was to be made?

A. I ſeen the Child; I did, Sir.

Q. Could he walk?——*A.* He juſt began to walk that Time, about two Years and Half, or Quarter old.

Q. In whoſe Care was he?

A. One *Joan Loffan* took care of him, I believe.

Q. You will conſider at the Time this Chair was beſpoke from you, the Child was in the Care of *Joan Loffan?*

A. Yes, *Joan Loffan* took care of it, I think.

Q. Pray, will you tell me another Thing, can you name any Servant in the Houſe at that Time?

A. I believe there was one *Martin Nieff*, and *Anthony Dyer*, and ſome other Servants that are dead and gone.

Q. Was *Nieff* preſent?——*A.* I believe he was, and *Charles Magher.*

Mr. Serjeant *Marſhall.*] Are you ſure of that?

A. I am ſure, I think they were.

Q. And *Joan Loffan* was the Perſon that took care of the Child?

A. I think ſhe did.

Mr. *Daly.*] Do you know one Mr. *George Nixon* of *Newton*, in the County of *Wexford?*——*A.* I do.

Q. Now I aſk you upon your Oath, had you any Diſcourſe with him concerning the Birth of this Child?

A. Upon my Oath, I do not remember it.

Q. Had you with Mr. *Henry Miller?*—*A.* I do not remember I had.

Q. What Age are you?—*A.* I am four-and-fifty and odds.

Q. What Age was you at the Time of making the Chair?

A. I was twenty-four Years of Age.

Q. Did you work for yourſelf then?—*A.* Aye, and for my Father.

Q. Where have you lived ever ſince?

A. Within four Miles of *Wexford.*

Q. The Name of the Place?——*A. Bretherty.*

13. Elizabeth Doyle.

Mr. Serjeant *Tiſdall.*] Did you know Lady *Altham?*

Elizabeth Doyle.] Yes.

Q. Where did you ſee her?——*A.* At *Dunmaine.*

Q. Did you obſerve any thing particular about her?

A. I obſerved that ſhe was with Child.

Q. How do you know that?——*A.* By her big Belly.

Q. What Time was this?——*A.* In *March.*

Q. What Year?——*A.* About the Time of the Queen's Death.

Q. Was it before or after the Queen died?——*A.* After.

Q. Have you no other Reaſon to know my Lady was with Child?

A. Yes, ſhe hired my Mother to nurſe the Child.

Q. Was you by?——*A.* Yes, I was.

Q. Did your Mother nurſe the Child?

A. No, ſhe took a Fever, and could not nurſe the Child.

Q. Where was it that my Lady agreed with her?—*A.* At *Dunmaine.*

Q. Who nurſed the Child after, do you know?

A. I cannot tell, Sir, of my own Knowledge.

Q. Do you know Mrs. *Heath?*

A. I do not know Mrs. *Heath*; my Lady deſired one *Mary* to bring a Glaſs of Wine to my Mother, and that is all that I know.

Q. Was any Body preſent but you when your Mother was hired?

A. I remember Nobody but my Lord and Lady.

Q. Was my Lord by?——*A.* Yes, Sir; he was.

Q. What was your Mother's Name?——*A.* My Mother's Name was *Elizabeth Richardſon*, and my Father's *William.*

Q. What was your Father?

A. He made Bricks for my Lord, and for 'Squire *Loftus*, and a great many Gentlemen.

Q. Where was you born?——*A.* I was born in *Waterford.*

Jury.] How near did you live to *Dunmaine?*

A. I lived no nearer *Dunmaine* than *Waterford.*

Croſs-Examination.

Mr. *Le Hunte.*] How old are you?—*A.* About ſix-and-forty.

Mr. *Smith.*] You ſay, I think, that you ſaw Lady *Altham* at *Dunmaine* and with Child?——*A.* Yes, Sir.

Q. Can you recollect the particular Time?——*A.* In *March.*

Q. What Year was it?—*A.* Indeed, Sir, I cannot tell.

Q. How many Years ago is it?——*A.* About thirty Years ago.

Q. How old were you at that Time?

A. I do not know, but I know how old I am now.

Q. How old are you now?——*A.* Six-and-forty.

Q. Where did you live at the Time you ſaw my Lady at *Dunmaine?*

A. In *Camolin.*

Q. How far from *Dunmaine* is that?

A. I believe about twenty Miles.

Q. Upon

Q. Upon what Occaſion did you come to *Dunmaine?*
A. My Father was making Bricks; he was digging the Clay that time.
Q. How came you to come ſo far to ſee your Father?
A. Becauſe my Friends were in *Waterford*, and they were going to leave me there.
Q. Who were preſent at the hiring your Mother for Nurſe?
A. None preſent at the hiring my Mother but my Lord and Lady, and only the Woman that my Lady called *Mary*.
Q. Who was ſhe?—*A.* I cannot tell, except her own Maid.
Q. Pray, then, what Part of the Houſe was this in?
A. In the left-hand Parlour.
Q. How came you to be in that Parlour?
A. By reaſon my Lady deſired my Mother to come in.
Q. Was that any Buſineſs of your's?—*A.* I was along with her.
Q. What do you call the left-hand Parlour?
A. The left-hand Parlour, as you come from the big Door.
Q. When did you ſee the Houſe of *Dunmaine?*
A. I have ſeen it oftener than once.
Q. How long is it ſince you were there laſt?—*A.* I forget, Sir.
Q. Pray recollect, was it in *July*, *Auguſt*, *September*, or *October* laſt, or not?
A. Why then indeed I cannot tell.
Q. Was it laſt *Summer?*——*A.* It was.
Q. Was you carried there?——*A.* I was.
Q. By whom?——*A.* I rode there upon a Horſe.
Q. What Company occaſioned you to go there; who deſired you to go there or ſent for you?
A. I went there by the reaſon that I was deſired, if I knew any thing of Mr. *Annesley*, and I went there to give an Account to Mr. *Annesley* what I could tell.
Q. Who took you there?——*A.* A Man I hired took me there.
Q. Who ſent for you?
A. Madam *Coles* deſired me to go along with her.
Q. Was Madam *Coles* there?—*A.* She and Mr. *Coles* too were there.
Q. Who was it you ſpoke to there concerning this Affair?
A. I ſpoke to the Gentlemen in the Room.
Q. What Gentlemen were there?
A. Counſellor *Fitz-Gerald*, and Mr. *Annesley*, and Mr. *Mac Kercher*, and Mr. *Coles*, and Mr. *Kennedy*.
Q. How long had you been abſent from *Dunmaine?*
A. I believe about Twelve Years or Thirteen.
Q. Did you take particular Notice the laſt Time you were there of the Houſe?——*A.* Indeed I did not.
Q. I aſk you, whether you did not make an Affidavit touching this Matter in *Auguſt* laſt?——*A.* Indeed, Sir, I did not.
Q. Did you tell Mr. *Lambert*, that you had great Diſcoveries to make to Lord *Angleſea?*——*A.* No, Sir, I did not.
Mr. *Walſh.*] My Lord, we ſhall produce one that lived in the Neighbourhood of *Dunmaine*, and who often viſited Lord and Lady *Altham*, when my Lady was big with Child, and juſt before her Lying-in, who will give your Lordſhip Satisfaction that ſhe was with Child, and that he ſaw the Child often after at the Houſe.

14. James Sinnot.

Mr. *Walſh.*] Pray, Sir, did you know Lord *Altham?*
James Sinnot.] Yes, Sir, that lived in *Dunmaine.*
Q. Did you know him when he lived there?——*A.* Yes, Sir, I did.
Q. Were you acquainted with him?—*A.* I was acquainted with him.
Q. How near did you live to *Dunmaine?*
A. I lived within ſix or ſeven Miles.
Q. Were you acquainted with my Lady *Altham?*
A. No, I was not acquainted with my Lady, but ſaw her once.
Q. Where?—*A.* Standing at her own Door.
Q. Can you recollect the Time you ſaw her?
A. I believe I ſaw her, for I rode with a Gentleman there, *Anthony Colclough*, ſhe came to the Door to ſpeak to Mr. *Colclough.*
Q. How did Mr. *Colclough* addreſs her?—*A.* The Lady *Altham*, Sir.
Q. When was this?
A. It was in *February* or *March*, I cannot exactly tell.
Q. In what Year?——*A.* This Time thirty Years will be ſoon, to the beſt of my Remembrance.
Q. Where was it you ſaw her?——*A.* I ſaw her at the Door.
Q. Did you take any particular Notice of her?
A. I took Notice of her that ſhe was with Child.
Q. What Reaſon have you for ſaying that?
A. Becauſe ſhe ſeemed big-bellied to me, that is all the Knowledge I have in them Sort of Things.
Q. Did you ſee my Lord *Altham* after?
A. I ſaw Lord *Altham* after at my Father's Houſe, and at his own Houſe; he dined and ſupped at my Father's.
Q. Did you know the Perſon you ſaw was Lady *Altham?*
A. I did not know her, but as Mr. *Colclough* told me it was Lady *Altham.*
Q. Was you ever at Lord *Altham*'s after?—*A.* I was.
Q. Did you ſee ever a Child there?—*A.* I ſaw a Child there.
Q. What brought you there?—*A.* I went with a Gentleman there.
Q. Did you ſee Lord *Altham* then?—*A.* I ſaw Lord *Altham*, Sir.
Q. And you ſaw a Child there?—*A.* I ſaw a Child, Sir.
Q. Whoſe was it?
A. Lord *Altham* ordered that he ſhould be brought up to the Table to us.
Q. Who was it that was with you?
A. To the Gentleman who was with me, that he might ſee his Son and Heir.
Q. Who was he?——*A.* Mr. *Ivory.*
Q. How was that Child dreſſed?---*A.* I cannot recollect.
Q. Do you know where my Lady was at this Time that you ſaw the Child?
A. I do not know; I did not ſee her that Day.
Q. How long was this after you firſt ſaw her?
A. The Summer following, *May* or *June*, I do not know which.
Court.] Was you ever examined in the Court of Exchequer?
A. No, Sir.
Q. Was you at *Dunmaine* after this?
A. I was at *Dunmaine* with Mr. *Anthony Colclough* afterwards.
Q. Did you never ſee my Lady but once?
A. Never ſaw her but once.
Q. Nor the Child but the one Time?---*A.* No.
Q. How old was the Child then?---*A.* I cannot tell.
Q. Could it walk?---*A.* It could not walk.
Q. How often were you at *Dunmaine* after?
A. I was there but the one Time after with *Anthony Colclough.*
Q. How often were you there in all?---*A.* Never but three Times in Lord *Altham*'s Time.

Croſs-Examination.

Mr. *Bradſtreet.*] I think you ſay you never ſaw my Lady but that one Time?---*A.* Never ſaw her before or after.
Q. What Sort of Woman was ſhe?
A. I did not take Notice what Sort of Woman.
Q. But you took Notice that ſhe appeared big?---*A.* Yes, Sir.
Q. Had ſhe large Breaſts?---*A.* I did not mind that.
Q. Was ſhe a tall Woman?---*A.* She was neither tall nor ſhort.
Q. What did you follow then?---*A.* I followed Farming then.
Q. How came you to go with *Anthony Colclough* there?
A. Becauſe I always kept him Company when he thought it was proper.
Q. Did you hear of any Quarrel there was between my Lord and Mr. *Colclough?*---*A.* I heard of no Quarrel between them.
Q. Who knocked at the Door, when you and Mr. *Colclough* went there?
A. Some Girl or Maid was at it.
Q. Who did Mr. *Colclough* aſk for?
A. He aſked for Lord *Altham*, and they told him he was gone abroad.
Q. Did he go into the Houſe?---*A.* He did not go in.
Q. Did he aſk to ſee my Lady?
A. He did not aſk to ſee my Lady, he was wheeling off, when ſhe came out and ſtopped him.
Q. Do you remember to ſee any Body at any Door ſeven-and-twenty Years ago?---*A.* Indeed I do.
Q. Who? Name them.
A. They were no People of Note, worth remarking.
Q. Were you ever before a Jury before?---*A.* Never.
Jury.] Do not you ſay that Lord *Altham* went to your Father's Houſe, and dined and ſupped there?
A. He did, and ſtaid all Night.
Q. Was that before or after my Lady was brought-to-bed?
A. It was before.
Q. What Time of the Year was it?
A. It was in *March* or *April*; he was there two or three Nights.
Q. Was it before that that you ſaw her with Child?---*A.* It was.
Q. Was ſhe brought-to-bed then?---*A.* No, Sir.
Q. How ſoon after was it?
A. I do not know, it may be the *May* following.
Q. And it was in *March* or *April* he was at your Houſe?---*A.* It was.
Court.] Gentlemen, have you any other Witneſſes?
Mr. Serj. *Tiſdall.*] We have, my Lord.
Court.] Pray then ſend for them.

15. James Fitz-Patrick.

Mr. *Harward.*] Were you acquainted with Lord and Lady *Altham?*
James Fitz-Patrick.] I knew them particularly well, Sir.
Q. Pray, Sir, did you know them at *Dunmaine?*---*A.* I did, Sir.
Q. Did you live in that Country?
A. Within five or ſix Miles of them, Sir.
Q. Were you frequently at *Dunmaine?*—*A.* I was pretty often there.
Q. Did you know one Mrs. *Mary Heath?*——*A.* I have ſeen her at *Dunmaine.* I cannot tell whether I ſhould know her again.
Q. Do you think if you ſaw her you ſhould know her again?
A. I do not think I ſhould know her again.
Q. Do you remember the Name *Mary Heath?*
A. I do remember *Mary Heath* very well, Sir.
Q. Now you that were intimately acquainted with my Lord and Lady, as you ſay, did you obſerve any Child in the Family?
A. Why really, Gentlemen, I ſaw the Child very often after my Lady parted *Dunmaine*, and to the beſt of my Memory, I ſaw the Child there one Day in the Forenoon while my Lady was there, and Mrs. *Mary Heath*, I ſaw her; and Lord *Altham* was pleaſed to be towzing and kiſſing her, and ſhe told him, if he would not give over, ſhe would call to my Lady; and I ſaw a clean dreſſed Woman with a Child in her Arms come to the Place where I was, to the beſt of my Memory, I cannot ſay poſitively.
Q. Whoſe Child was it?—*A.* I cannot tell, I took it to be my Lord's.
Q. What Reaſons had you to take it to be his?
A. Becauſe my Lord had introduced the Child to me ſome time before.
Q. Introduced him! How? What did my Lord ſay?
A. I cannot tell the Words, but he introduced him to me after a friendly Manner.
Q. How did my Lord behave to that Child?
A. He was very fond of him, as fond as of his Eyes, and kept him like a Gentleman's Child.
Court.] Did you ſee him in my Lady's Time?
A. I cannot ſay poſitively that I ſaw him in my Lady's Time; the greateſt Freedom I had with my Lord *Altham* was after my Lady's Departure.
Q. Can you take upon you to ſay that the Child you ſaw was my Lord's Child?

A. I

A. I took him to be Lord *Altham*'s, and my Lord had that Regard for me, that he would not introduce an illegitimate Child to me.

Q. When you firſt ſaw this Child, did you ſee it before the Separation?

A. To the beſt of my Memory, I did once.

Q. Can you ſwear poſitively you did?

A. I cannot ſwear poſitively.

Q. Now, at the Time that you ſaw this Child to the beſt of your Memory before the Separation, did you ſee Mrs. *Heath?*——*A.* I did, Sir.

Q. Had ſhe the Care of any body upon her at that Time?

A. Not as I know of.

Q. Did ſhe take Notice of any Child?

A. I cannot tell whether ſhe did or not.

Q. Did you ever ſee this Child in my Lady's Company?

A. I never did, Sir.

Q. How did my Lord treat this Child, did he uſe him with any particular Fondneſs?—*A.* I know my Lord was very fond of him.

Mr. *Harward.*] There can be no legal Evidence, I find, but one that was actually preſent at his Birth.

Court.] You miſtake the Court, Mr. *Harward.*

Mr. *Harward.*] My Lord, I am ſure I would not willingly miſtake the Court, but what I contend for is, that I have a Right to aſk this Queſtion; I humbly apprehend I have, for it is a Point of the Perjury, that there was a Child taken to be my Lady *Altham*'s Child at *Dunmaine.* And this being the Caſe, I would aſk him whether there was any Child in the Family as the Child of the Family?

Mr. *Smith.*] My Lord, this is not the Point, the Point is——

Court.] Aſk him in the very Words of the Indictment, if you will aſk him.

Court.] Was there a Child of Lord and Lady *Altham*'s living at *Dunmaine* while Mrs. *Heath* was there, to your Knowledge, as the Child of that Family, while my Lady was at *Dunmaine?*

A. Really, my Lord, there was no doubt upon me but there was ſuch a Child.

Q. Can you ſay poſitively you ſaw a Child there while my Lady was there?

A. To the beſt of my Memory, I did ſee the Child while my Lady was there.

Croſs-Examination.

Mr. *Le Hunte.*] Where do you live?---*A.* At *Cloughleagh.*

Q. How long have you lived there?--*A.* Theſe four-and-thirty Years.

Q. Was you examined on the late Trial in the Court of Exchequer?

A. No.

Q. Did you know of that Trial?---*A.* I did hear of it.

Q. When was it you firſt diſcovered your Knowledge of this Tranſaction?---*A.* I cannot tell.

Q. Was it before the Trial? How came you to be a Witneſs now and not then?

A. Becauſe I was *ſubpœna'd* now, and was not then.

Q. Did you ever ſee Mr. *MacKercher?*

A. I have ſeen him very often.

Q. Did you ſee him before the Trial in Ejectment in the Exchequer?

A. I never did.

Q. When did you firſt ſee him?

A. I cannot exactly tell you when I ſaw him.

Q. You know you are a ſkilful Man at the Aſſizes, why did you not diſcloſe this Matter before?

A. It was ſore againſt my Will that I was brought in at all.

Q. Do you know Mr. *William Sutton?*---*A.* I do.

Q. Is he a Man of Honour?---*A.* He is, I believe.

Q. Had you any, and what Diſcourſe with him about this Matter?

A. I never had any Diſcourſe with him.

Jury.] You ſay you never ſaw my Lady *Altham* take Notice of the Child?---*A.* I never ſaw them together.

Q. Did not you ſay that you were at the Houſe before my Lord and Lady parted, and ſaw that Child then?---*A.* I did, Sir.

Q. Did you know whoſe Child it was?

A. I believed it was Lord *Altham*'s.

Q. Was you told ſo?---*A.* I do not know whether I was or no.

Q. How did you know then that it was their Child?

A. I took it for granted.

Q. How old was the Child when you ſaw it firſt?

A. Really, I cannot tell; about eighteen Months, or thereabouts.

Q. Pray, Sir, was it running about?

A. It was in the Arms of a Maid or Woman.

Q. Was ſhe in the Habit or Dreſs of a Servant of the Family?

A. She was very clean.

Q. How was the Child dreſſed?---*A.* Oh, the Child was very clean.

Q. So you know no more of this than that you took it to be their Child of your own Accord?---*A.* I was not, nor did not doubt it at all.

Mr. *Le Hunte.*] Are you ſure my Lady was at *Dunmaine* when you ſaw the Child there?

A. I ſaw it at *Dunmaine* after the Separation I know, my Lady I believe was not there.

Q. Was my Lord fond of it at that Time?

A. Aye, and introduced him to me.

Q. Did he mention the Mother of the Child?

A. He did not mention the Mother.

Q. Who was Butler then?

A. I cannot tell any of the Servants, nor what Servants I kept myſelf at that Time. I ſaw *Taylor* and *Sutton.*

16. Jane Murphy.

Mr. *Robins.*] My Lord, this Witneſs was ſent for by my Lady *Altham* to be a Nurſe, and in the Preſence of my Lady gave the Child ſuck, and would have been hired to nurſe the Child, but her Huſband would not let her ſtay in the Houſe, and my Lady would not let the Child go out.

Mr. *Robins.*] Did you know my Lady *Altham?*

Jane Murphy.] I ſaw her but once in my Life.

Q. When was that?

A. It is about nine-and-twenty or thirty Years this *May* coming, there or thereabouts.

Q. What was the Occaſion of your going to ſee her?

A. My Lord ſpoke to me two or three Times to go nurſe this Boy.

Q. Did you ſee ever a Child there?---*A.* I did, Sir.

Q. How old was that Child then?

A. About a Month or three Weeks; there or thereabouts.

Q. Who was preſent when you ſaw the Child?

A. My Lady, and the Woman that brought the Child into my Lady's Room.

Q. Do you know who that Woman was?

A. I do not know who ſhe was, I knew no Servant but *Bryan MacCormack.*

Q. Where did you live then?

A. I lived then at the Salt Mills of *Tyntern,* by the Sea-ſide.

Q. How far is that from *Dunmaine?*

A. Four Miles from *Dunmaine,* never reckoned but four.

Q. What was it you did or ſaid to my Lady?

A. I told my Lady that my Lord ſent a Meſſenger for me to nurſe the Child.

Q. And did you nurſe the Child?---*A.* Indeed I did not nurſe him.

Q. What was the Reaſon you did not?

A. My Lady would not let me have the Child out, and I would not ſtay in the Houſe.

Court.] Did you ever ſee my Lady before?---*A.* I never did.

Q. Nor ſince?---*A.* No.

Q. Would you know the Woman, if you ſaw her, that brought the Child into the Room?

A. I cannot tell whether I would know her or no.

Q. Did you ever ſee her ſince?---*A.* I never ſaw her ſince.

Jury.] Who nurſed the Child the firſt three Weeks?

A. I did not examine, nor cannot tell.

Mr. *Daly.*] Whoſe Cloak is that?---*A.* It is my own.

Mr. *Daly.*] I do not believe you.

Jane Murphy.] Faith, and you may, and I've wore a better before now.

Mr. *MacManus.*] The next Witneſs is *Dennis Redmond.* This Witneſs will prove to your Lordſhip that Lady *Altham* was with Child, and brought-to-bed of a Child; that he was the Perſon ſent for the Midwife on that Occaſion; that he brought one Mrs. *Shiel,* a Midwife of *Roſs,* to *Dunmaine*; and that my Lady was delivered of a Child.

17. Dennis Redmond.

Mr. *MacManus.*] Did you know the late Lord and Lady *Altham?*

Dennis Redmond.] I did, I knew them both.

Q. How came you to know them?---*A.* Becauſe I was a Servant.

Q. Where did they live then?---*A.* At *Dunmaine.*

Q. Did you frequently ſee my Lady *Altham?*---*A.* I did.

Q. Was ſhe, or was ſhe not with Child during the Time of your Service?

A. She was, and all the Servants round ſaid that ſhe was, ſhe looked big.

Q. Was there any young Child in that Family?---*A.* There was.

Q. Whoſe was it?---*A.* It was reputed to be Lord and Lady *Altham*'s.

Q. Was you ſent to *Roſs* on any, and what Occaſion?

A. I was, for a Midwife.

Q. Who ſent you?---*A.* Mrs. *Heath.*

Q. Do you know her?---*A.* I ought to know her.

Q. Look about and ſee if you know her.

A. Upon my Word, I cannot ſwear directly that that is Mrs. *Heath,* but that was my Lady's Maid.

Q. Who ſent you of that Errand?---*A.* My Lady's Maid did.

Q. Did you go for the Midwife?---*A.* I went for her.

Q. And did you bring her?---*A.* I got the Midwife.

Q. Who was ſhe?---*A.* One Mrs. *Shiels.*

Q. What did you then do?---*A.* I fetched her home to *Dunmaine.*

Q. What happened after ſhe came to the Houſe of *Dunmaine?*

A. Why, after I brought her home, that Night it was a Noiſe with them all, every one, that my Lady was brought-to-bed of a Son.

Q. Did you ſee the Child?---*A.* I ſeen him afterwards.

Q. How ſoon after the Midwife left the Houſe?

A. I cannot tell how ſoon.

Q. Did you ſee him the next Day?---*A.* Not the next Day.

Q. Did you in five Days, or ten Days?---*A.* No, I believe not.

Q. Did you in a Month?---*A.* I did in a Month.

Q. In whoſe Care was it?

A. I cannot tell, I ſeen it among the Girls, among the Servants as they were.

Q. Did you know *Joan Laffan?*---*A.* I did.

Q. And Mrs. *Heath?*---*A.* Yes.

Q. In whoſe Care did you ſee it? Name them particularly.

A. I ſeen the Child with both one and the other ſeveral Times.

Q. Name them.

A. Mrs. *Heath* and *Joan Laffan,* and with other Girls that I cannot remember.

Q. Were there any Rejoicings the Night you brought the Midwife?

A. There was the Night after.

Q. What was the Nature of that Rejoicing?

A. There was a Fire there up in the Avenue among the Trees.

Croſs-Examination.

Mr. *Daly.*] Did you know one Mrs. *Heſther* that lived in this Family?

A. I did, very well.

Q. Did not they call her my Lady ſometimes?

A. I never heard her called ſo in my Life.

Q. Was not ſhe with Child while you were a Servant, upon your Oath?

A. Upon my Oath, I cannot tell whether ſhe was or not.

Q. Did not you go, upon your Oath, for a Midwife to lay her?

A. Upon my Oath, I never did.

Q. Do you know one Mr. *William Sutton* of *Longrainge?*---*A.* I do.

Q. What was he?---*A.* He is a Gentleman.

Q. Had you ever any Diſcourſe with him concerning your going for a Midwife, and for whom?

A. Upon my Oath, I never had with Mr. *Sutten* concerning going for a Midwife for any Perſon, not that I know of, Sir.

Q. Do you know Captain *Orfeur?*---*A.* I do.

Q. Had you any Diſcourſe with him?

A. I had Diſcourſe with him.

Q. Who is he?---*A.* He is Colonel *Palliſer*'s Son-in-law; I was there one Night after riding a Horſe for him.

Q. What Servants lived at *Dunmaine* at this Time? Name them; who was the Butler?---*A.* It is hard for me to remember at this Time.

Q. Upon your Oath, who was the Butler?---*A.* One *Magher*, to the beſt of my Knowledge, and there was one *Dyer* there.

Q. Was his Name *Anthony?*---*A. Anthony.*

Q. Was he or you in the Service firſt?

A. I was in the Service before he came there.

Q. What other Servants can you recollect; do you know Mrs. *Setwright?*

A. If ſhe was there I knew her; ſhe may be there for me, it is out of my Mind.

Q. Who was the Houſe-keeper?

A. I do not know as for that, becauſe there was a Cook there ſtill.

Q. Do you remember the Name of *Setwright?*

A. I think I remember to hear talk of her.

Q. Who was Coachman?---*A. John Weedon.*

Q. Was his Wife there?

A. His Wife was living at the Bridge below at this Time.

Q. Did *Joan Laffan* live in the Houſe at this Time that you brought the Midwife?---*A.* Upon my Oath, I cannot tell now.

Q. What do you believe?---*A.* I do not know whether ſhe was or not, for there were ſeveral Servants there, and a great many that I do not know now.

Q. Pray, did you ever ſee this Child in the Hands or Care of *Joan Laffan?*---*A.* I did, Sir.

Q. Was not that after my Lord and Lady parted?

A. It was after they parted.

Q. Was he ever in her Care before they parted? In her Care or Hands?

A. How could I mind all theſe Things?

Q. You muſt recollect.---*A.* Upon my Word, I cannot tell.

Q. What Service were you in?---*A.* After the Hounds and the Hunters.

Q. After them?---*A.* Aye, taking care of them, and hunt them too, and would to this Day, and ride a Horſe too.

Q. When was it my Lord and Lady parted?---*A.* I cannot be exact.

Q. When did you bring the Midwife there?

A. I cannot keep a Memory of what Year, nor I am no Scholar to keep that in my Head.

Q. Do not you remember the Separation?-----*A.* I remember the Time they parted, but cannot tell what Day of the Week, but I think a *Holyday.*

Q. What Time of the Day was it? Was it in the Morning?

A. I cannot remember whether it was or not now.

Q. Did my Lady go in a Coach, or on Horſeback?

A. In a Coach or Chariot.

Q. How long did you continue in the Service after they parted?

A. I did not ſtay long there after.

Q. How long?

A. I cannot tell how long, becauſe my Father and Mother were in the Town of *Dunmaine*, and I went to them; upon my Word I cannot tell how long.

Q. Where did my Lady go?---*A.* To *Roſs.*

Q. How long did you live in the Service in all?---*A.* About three Years, or full three Years, or ſomething better, to the beſt of my Knowledge.

Q. Had not *Joan Landy* a Child a-nurſing at her Houſe?

A. She had my Lord's Child a-nurſing.

Q. Was not that Child brought into the Houſe of *Dunmaine* after my Lord and Lady parted?---*A.* He uſed to come in before and after.

Q. But did not he come in for good and all after they parted?

A. He did come for good and all, and was put into the Care of *Joan Laffan.*

Q. How came he to be taken from *Joan Landy?*

A. I cannot tell, without he had done nurſing.

Q. How long did you live at *Dunmaine* before my Lady came there?

A. I was there before either of them came.

Q. How long was you in the Service?---*A.* About three Years or better.

Q. What Time did my Lord and Lady come down?

A. I cannot remember.

Q. How long had you been a Servant before my Lady firſt came down?

A. I cannot tell how long, but it is three Years I ſerved in all.

Q. How long was you in the Service before ſhe came, and how long after?---*A.* Let me never go but I cannot remember.

Q. Did not you ſwear when you were examined on the former Trial that you were two Years in the Service before my Lady came to *Dunmaine?*

A. I was there; I cannot be exactly how long.

Q. And how long of that three Years was you there after they came down?

A. Why, I believe, to the beſt of my Knowledge, a Year or ſomething better, I cannot be exact.

Q. Will you tell me how ſoon after they came down my Lady was delivered of this Child?---*A.* Indeed, I cannot remember.

Q. Was it a Year, or half a Year, or what Time?---*A.* I cannot tell.

Q. Was you a Servant when ſhe was delivered?---*A.* I was.

Q. Were you there when *Sarah Weedon* came down?

A. I was there before ſhe came into the Place at all.

Q. Did you and Mrs. *Shiel* diſcourſe as you were coming to *Dunmaine?*

A. How can I remember?

Q. Could ſhe ſpeak *Engliſh?*---*A.* She could, indeed.

Q. Is ſhe alive?---*A.* I cannot tell whether ſhe is or not.

Q. Was ſhe an *Iriſh* Woman?---*A.* I cannot tell whether ſhe was or not.

Jury.] You ſay, Sir, that you ſaw *Joan Landy*'s Child in the Houſe of *Dunmaine* before the Separation?

A. In the Houſe I did backwards and forwards.

Q. Did any body take Notice of it?---*A.* Every one of the Family, one from another uſed to handle and play with it.

Q. Did you obſerve my Lord to play with it?

A. I did, and was as fond of him as could be.

Q. Now, you ſay that after my Lady was turned away, that Child was actually brought home to *Dunmaine* Houſe?---*A.* He was that very Time.

Q. And you ſaw my Lord fond of him then?

A. I ſaw him fond of him then and after.

Q. What became of my Lady's Child?

A. Why, I believe, this was my Lady's Child; they all ſaid ſo.

Q. Did not you ſay it was *Joan Landy*'s Child that was brought to the Houſe?---*A.* He did come in, the Child ſhe nurſed.

Mr. *Daly.*] Had not *Joan Landy* a Child?---*A.* She had, ſure enough.

Mr. *Daly.*] Had not *Joan Landy* a Child?---*A.* She had, ſure enough.

Q. Was not he got by my Lord?---*A.* They ſaid it was.

Q. Who nurſed her Child?

A. I cannot tell, except herſelf nurſed her Child.

Jury.] Mr. *Daly* aſked him, my Lord, who was the Father of *Joan Landy*'s Child, and he ſays my Lord was, and that ſhe nurſed that Child.

Mr. Sol. Gen.] This is a Matter ought to be well underſtood. The Jury apprehended the Child this Man meant, was the Baſtard-child of my Lord *Altham* by *Joan Landy*; I deſire to know which Child you meant?

Dennis Redmond.] I ſay, there was a Child that *Joan Landy* had by a Sailor, or my Lord, or ſomebody, but this Child did not come to *Dunmaine.*

Jury.] Had *Joan Landy* a Child?

A. I cannot tell whether ſhe had of her own Body.

Q. Was ſhe with Child at *Dunmaine* while you were a Servant there?

A. She was with Child in the Town.

Mr. *Daly.*] By the Virtue of your Oath, was ſhe or was ſhe not a Servant in the Houſe when my Lady came down firſt?

A. By virtue of my Oath, I cannot tell.

Q. Did ſhe live there?---*A.* She was in the Town, to be ſure.

Q. Where was *Joan Landy* when you went for the Midwife?

A. In her Father's Houſe.

Q. How near was that to my Lord's Houſe?

A. It was juſt below the Dog-kennel.

Jury.] Was not *Joan Landy* a Servant in the Houſe when my Lady came home?---*A.* I cannot tell whether ſhe was or not.

Mr. *Daly.*] Did not you ſwear on the Trial in the Exchequer, that ſhe was in the Houſe when my Lady came down?

A. She may come in and out, and I am not full ſure whether ſhe was or not.

Mr. *Smith.*] I hope the *Jury* will take notice that he refuſes to anſwer the Queſtion.

Mr. *Daly.*] Do you remember *Eleanor Murphy* and *Mary Doyle?*

A. Mary Doyle I remember; there were ſo many they went out of my Mind.

Q. Do you remember *Nelly Murphy?*

A. I cannot tell whether I do remember *Nelly Murphy* or not.

Q. Cannot you ſay whether you do or no?

A. It is impoſſible to remember, when there were ſo many of them.

Mr. *Callaghan.*] We ſhall now produce *Eleanor Murphy.*

Mr. *Smith.*] My Lord, this Witneſs has been here while *Redmond* was examined, and has heard what he ſaid upon the Table; and it was a Rule made by your Lordſhip, that they ſhould not examine any Witneſs that came into Court before they were called.

Mr. *Nelſon.*] My Lord, I ſent for her to have her ready, thinking the Croſs-Examination of *Redmond* would not hold long, and ſhe is but juſt come.

18. Eleanor Murphy.

Mr. *Callaghan.*] Did you know Lord and Lady *Altham?*

A. Eleanor Murphy.] Yes.

Q. Pray, was you ever at *Dunmaine?*---*A.* Yes.

Q. Did you live there as a Servant?---*A.* I did.

Q. With whom there?---*A.* With Lord and Lady *Altham.*

Q. Can you tell whether my Lady was with Child at any Time, or when?

A. I know ſhe was delivered of a Child.

Q. How do you know that?

A. Becauſe I ſeen her the Night ſhe was delivered.

Q. Give an Account of all you know of that Matter.

A. Mrs. *Heath* called me up, and deſired me to bring up a Saucepan of Water, and have it warmed.

Court.] Do you know that Mrs. *Heath?*---*A.* I cannot tell.

Q. What was ſhe?---*A.* She was my Lady's Woman, Waiting-maid.

Q. Well, go on.

A. I brought up the Water in the Saucepan, and ſet it upon the big Parlour Fire. Mrs. *Heath* called me a little while after to bring it up to the Room in a brown Pan, and I went to my Lady's Room with it, where my Lady was upon her Knees, and ſhe put her Finger in it to ſee whether it was too hot or cold; and ſhe teamed ſome Brandy in it to ſtrengthen the Water, as I ſuppoſe, to waſh the Child.

Mr. *Callaghan.*] Where was Mrs. *Heath?*

A. She was attending my Lady.

Q. Do you know of what my Lady was delivered?

A. It was a Boy, for I ſaw it waſhed, and Mrs. *Shiels* put her Hand in her Right-hand Pocket, and brought out her Sciſſars and cut his Navel-ſtring.

Q. Who were preſent at this Birth?

A. There were a great many Gentlewomen in the Room that I did not know; but I knew one of them, Madam *Butler* from *Roſs* was there.

Q. Were there any publick Rejoicings at *Dunmaine* on this Occaſion?

A. Yes, the ſecond Night after the Child was born there was a Bonfire alighted by Mr. *Taylor*'s Order and Mrs. *Heath.*

Q. Do you remember the Chriſtening of this Child?

A. I knew the Day appointed for it to be chriſtened; about a Month or five Weeks after there was a great Gathering for it of many Things.

Q. Was it chriſtened?

A. Doctor *Lloyd* came there I ſuppoſe to chriſten the Child.

Q. Who was he?

A. He was the Miniſter of *Roſs*, Sir; I knew him before and after.

Q. Was it Mr. *Lloyd* that chriſtened it?

A. It was he that chriſtened the Child.

Q. What Name was given to it?

A. Mrs. *Heath* came down to the Hall and told among the Servants, he was called *James Anneſley.*

Jury.] That was his Chriſtian Name?

A. Yes, *James Anneſley* was his Chriſtian Name.

Mr. *Callaghan.*] What Name was he chriſtened by?

A. He was chriſtened *James Anneſley.*

Q. Do you mean that he was chriſtened *James* or *James Anneſley?*

A. James Anneſley.

Q. Was that his Chriſtian Name only, or his Chriſtian and Sirname?

A. That was the Chriſtian Name and Sirname and all, and they [illegible]

Court.]

Court.] What was he called when he was chriſtened?
A. James Anneſley he was called indeed.
Q. Was he chriſtened *James Anneſley?*
A. He was chriſtened *James Anneſley.*
Mr. *Callaghan.*] Did you ſee the Child after at *Dunmaine?*
A. Yes, I did.
Q. How often, once or twice?
A. Several times, with Mrs. *Heath* a-dreſſing of him, when he would be ſent for; and there never was a Woman loved a Child better than ſhe did *James Anneſley.*
Mr. *Le Hunte.*] The Jury want to know if he was chriſtened *James Anneſley?*---*Eleanor Murphy.*] He was chriſtened *James Anneſley.*
Jury.] How do you know that?
A. This was what I heard Mrs. *Heath* tell to all the Servants in the Hall.
Mr. *Callaghan.*] Pray, how long did you continue after this Chriſtening at *Dunmaine?*——*A.* A good while.
Q. How long?——*A.* I believe a Quarter of a Year.
Q. Where was that Child during that Time?
A. He was ſent to *Joan Landy*'s out to nurſe, ſhe took him with her.
Q. Do you remember the Time of my Lord and Lady's parting?
A. I was not there then.
Q. But do you remember the Time?---*A.* I do not remember the Time.
Q. Was it before or after that, that *Joan Landy* got the Nurſing?
A. She got the Nurſing the Day that he was chriſtened; ſhe came to nurſe him the Day before.
Q. Where did you go when you left *Dunmaine?*
A I went to *Roſs*, after I left *Dunmaine.*
Q. Did you ſee the Child after?—*A.* I never ſaw the Child after, only once that he came to *Roſs* with my Lord in the Coach.
Q. Do you underſtand what a Chriſtian Name and what a Sirname is?
A Yes.
Q. What was the Child's Sirname?---*A.* His Sirname is *Anneſley.*
Q. And what his Chriſtian Name?---*A.* His Chriſtian Name is *James.*
Q. Was *Anneſley* his Sirname or Chriſtian Name when he was chriſtened?---*A.* It was a Sirname, *Anneſley.*

Croſs-Examination.

Mr. *Spring.*] Tell me, recollect who were preſent when the Child was born beſides you?---*A.* There were ſeveral.
Q. Name them.——*A.* Madam *Butler.*
Q. Who elſe?---*A.* I do not know it is ſo long ago, I ſhould have a good Head to remember them.
Q. Do you remember were any of the Servants by?
A. I remember ſome of the Servants, *Mary Doyle* was by.
Q. Was *Mary Doyle* in the Room?
A. She was in the Room, and Mrs. *Heath.*
Q. And who elſe?
A. Why, ſome Gentlewomen, I cannot tell who they were.
Q. Have not you as good a Memory now as a Year ago?
A. I have not.
Q. Is not it as good now as laſt Year?---*A.* I do not know but it is.
Q. Was not *Mary Doyle* there and Madam *Butler?*---*A.* Yes, they were.
Q. Do you remember any more?---*A.* I do not remember any more.
Q. How long had *Mary Doyle* been in the Service before the Birth?
A. I cannot tell indeed that.
Q. What Name did ſhe go by then?——*A.* By *Mary Doyle.*
Q. She was not married then?---*A* I never heard ſhe was.
Q. Which of you was in the Service firſt?---*A.* I was firſt.
Q. How long, pray?
A. Why, a good while; I do not remember how long.
Q. How long was you there after the Child was born?
A. I was there half a Year almoſt, not half a Year.
Q. And how long was you there before?
A. Near hand a Quarter before.
Q. What was you in the Family?---*A.* I was Laundry-Maid.
Q. Was you the head Laundry-Maid?---*A.* No.
Q. What was the Name of the upper one?
A. I cannot remember her Name.
Q. Recollect.
A. It was a ſtrange ſort of a Name, I cannot recollect it now.
Q. How long do you ſay you lived in the Service before the Birth?
A. Near hand a Quarter of a Year.
Q. And how long after?---*A.* About half a Year.
Q. Where was you at the Time of the great Eclipſe?
A. I do not know.
Q. Do you remember it?---*A.* I do not remember it, but I remember there was great Thunder and Rain.
Q. Do not you remember the great Eclipſe ſeveral Years ago?
A. I do not remember it now, but I remember Thunder and Rain.
Q. How came you to remember laſt Year what you do not remember now?
A. Why, what did I remember then?
Mr. *Spring.*] The Eclipſe.
Q I aſk you, upon your Oath, where you were at the Time of the Eclipſe?
A. I was at Captain *Butler*'s at this Time of the Thunder and Rain.
Q. Was there any Darkneſs of the Sun in the Morning at the time of that Thunder and Rain?---*A.* I do not remember it.
Q. Were you not a Servant at Captain *Butler*'s at the Time of the Eclipſe?---*A.* I was there when this Thunder and Rain was, the Eclipſe was in the Evening.
Q. By virtue of your Oath, do not you remember the great Eclipſe of the Sun?---*A.* By the virtue of my Oath, I do not remember any other.
Q. Was that Thunder before or after the Child was born?
A. The Thunder was ſince he was born.
Q. Was not you in Captain *Butler*'s Service then?
A. I was in Captain *Butler*'s Houſe, but not in the Service.
Q. Was not you a Servant at *Dunmaine* before Lady *Altham* came to *Dunmaine?*
A. I was not in it when ſhe came there, it was Mrs. *Heath* hired me.
Court.] How long did you live at *Dunmaine* before my Lady came?
A. She was there before I went there.
Q. How long were you in the Service before my Lady was brought-to-Bed?---*A.* Near a Quarter of a Year.
Q. And how long after?---*A.* Half a Year.
Q. Do you remember the great Darkneſs?---*A.* I do not, my Lord.
Q. But you were aſked whether you remembered it when you were examined on the Trial in the Exchequer, and you ſaid you did.
A. Why, they only aſked me then if I remembered the Eclipſe, and I ſaid I remember that there was ſuch a Thing.
Q. By virtue of your Oath, did you never ſay that you remembered the Eclipſe?—*A.* I do remember that Darkneſs.
Q. What Darkneſs was it?—*A.* It was a Thunder and Rain.
Q. Was that while you lived at *Dunmaine?*
A. It was after I left *Dunmaine.*
Q. What time of the Day was it?
A. It was in the Evening; in the Afternoon.
Q. How long did it continue?
A. The Rain held a Quarter of an Hour.
Q. Did you mention any Thunder and Rain when you was examined before?—*A.* I was not aſked any, my Lord.
Q. Do you remember an Eclipſe that happened about the time of the Birth?
A. I do not remember any but that Eclipſe that was in the Evening, that there was Thunder and Rain along with it.
Mr. *Spring.*] Were you not at *Dunmaine* Houſe when my Lady came down?——*A.* No, I was not.
Q. Did you ever ſee her before you ſaw her at *Dunmaine?*
A. No indeed, I never did.
Q. Did ſhe go to *Dublin* while you were in the Service?
A. Not that I know of.
Q. Could ſhe be abſent a Month or two and you not know of it?
A. No, ſhe was not, in my Service at all, without ſhe'd go to Church.
Q. Did not you ſwear formerly that you were in the Houſe when my Lady came firſt?—*A.* Indeed, I did not.
Q. Where was you hired?——*A.* By Mrs. *Heath.*
Q. Where?—*A.* In the Parlour at *Dunmaine.*
Q. And you never ſaw Lady *Altham* before?—*A.* Indeed, I never did.
Q. Did not you ſay, when you were examined before, that you had ſeen her at *Roſs?*
A. Indeed I did not, without they took me up wrong.
Court.] Did not you ſwear upon that Trial, that you were in the Service a good while before my Lady came down?
A. No, upon my Word I did not, my Lord.
Mr. *Spring.*] Did you not ſay, that the firſt Time you ſaw my Lady was at Captain *Butler*'s before you were a Servant at *Dunmaine?*
A. Upon my Oath, I did not, that I remember.
Q. Now, I aſk you who were the Godfathers and Godmother to this Child?
A. Mr. *Colclough*, Mr. *Cliff*, and Mrs. *Pigot* were Goſſips.
Q. What *Colclough?*—*A.* Of *Roſſgarland.*
Q. What was his Chriſtian Name?—*A. Anthony Colclough.*
Q. Who were the other Goſſips?
A. Counſellor *Cliff*, and Madam *Pigot* of *Tyntern.*
Q. Whoſe Wife was ſhe?
A. Why, was not ſhe Captain *Pigot*'s of *Tyntern?*
Q. I aſk you whoſe Wife ſhe was?
A. She was called Madam *Pigot* of *Tyntern.*
Q. Was not ſhe Captain *Pigot*'s Wife?
A. I cannot tell, but ſhe went by that Name.
Q. By what Name did you paſs yourſelf at that time?
A. Eleanor Howlett, and my Huſband's Name is *Murphy.*
Q. Do you know one *Bridget Howlett?*—*A.* Yes.
Q. Was ſhe a Servant to my Lord *Altham?*
A. We lived there at the ſame time.
Q. Who was Butler then?—*A. Charles Magher* was Butler.
Q. Did you know one *Rolph* that was Butler?
A. Rolph was not there in my Time.
Q. Did you know Mrs. *Weedon?* Was ſhe in the Houſe?
A. I heard talk of her; ſhe was not in the Houſe becauſe ſhe was under an ill Character.
Q. Where did ſhe live then?—*A.* She was at the Bridge below.
Q. How near was that to *Dunmaine?*—*A.* To the beſt of my Knowledge near half a Mile, I cannot tell how long.
Q. Do you remember Mrs. *Setwright?*—*A.* I do not remember her.
Q. Who was Houſe-keeper?
A. I think, *Mary Doyle*, that had the Name of Houſe-keeper.
Q. Where did you live before you came to Captain *Butler*'s?
A. At *Frank White*'s, in *Roſs.*
Q. Where did you live after you left Lord *Altham*'s?
A. At no Place, I was with my own People.
Q. Did you ever live with one *Macnamee?*—*A.* I did indeed.
Q. Did you live with him before or after you left Lord *Altham*'s?
A. That was after I left Lord *Altham*'s.
Jury.] Name the Goſſips over again; how many were there?
A. Three.
Q. Name them.
A. Counſellor *Cliff*, *Anthony Colclough* from *Roſſgarland*, and Mrs. *Pigot* of *Tyntern.*
Court.] This is a poſitive Witneſs to the Birth, if you can poſſibly believe, Gentlemen, that ſhe is a Woman that deſerves your Credit.
Mr. Serj. *Marſhall.*] I hope your Lordſhip won't make any Remarks upon the Witneſſes till we come to the Cloſe; if we are to ſupport the Credit of our Witneſſes, as they appear, we ſhall never have done.
Court.] I ſay, if ſhe be a Perſon of Credit; you would not have me ſay, ſhe is a Perſon of undoubted Credit.

19. Mary Doyle.

Mr. *Harding.*] The next Witneſs we produce is *Mary Doyle*; ſhe, my Lord, is a Witneſs to the Birth.

Q. Did you know *Arthur* late Lord *Altham?*

Mary Doyle.] Yes, Sir, I did.

Q. Did you know his Lady?---*A.* Yes, Sir.

Q. How came you to know them?---*A.* Becauſe I was their Servant, Sir.

Q. When was you in their Service?---*A.* That is a good while ago, it is hard for me to remember it now.

Q. How long do you think it is?---*A.* I believe, to the beſt of my Knowledge, nine or ten-and-thirty Years this *May* next.

Q. How long do you ſay it is?---*A.* It is nine-and-thirty this *May.*

Q. Recollect, Woman, how many Years is it ſince you lived there; is it nine-and-twenty, or thirty, or how many?

A. It is thirty this *May*, ſince you will have it ſo.

Q. During your Knowledge of Lady *Altham* was ſhe with Child?

A. She was with Child.

Q. Was ſhe delivered?---*A.* She was indeed.

Q. Where?---*A.* In her own Houſe at *Dunmaine*, Sir.

Q. How do you know that?---*A.* I was by, Sir.

Q. Was you preſent? --*A.* I was indeed.

Q. Was any body elſe preſent?---*A.* There was.

Q. Who?---*A.* Three or four Servants.

Q. Who were they?---*A.* One *Nell Murphy*, and Mrs. *Heath* firſt, and *Eleanor Murphy.*

Q. Were there any Gentlewomen there?---*A.* There was Madam *Butler*, and ſome others I do not know.

Q. Was the Child chriſtened?---*A.* He was.

Q. By whom?---*A.* By one *Lloyd* out of *Roſs.*

Q. Who was he?---*A.* A Miniſter and Curate.

Q. Of what Place?---*A.* Of *Roſs.*

Q. Who were the Godfathers and Godmother?

A. To the beſt of my Knowledge, Mr. *Colclough*, Mrs. *Piget* of *Tyntern*, and Mr. *Cliff* from *Roſs.*

Q. Were there any Rejoicings upon that Account?--*A.* A great deal, Sir.

Q. When and where?---*A.* In the Houſe.

Q. Tell what Rejoicings there were.---*A.* There were the beſt of Liquors, and the beſt of Eating and Rejoicing every way.

Q. Was there a Bonfire?---*A.* There was.

Q. When was that Bonfire?---*A.* The Night after the Child was born.

Q. Pray now, what came of that Child after?

A. Indeed I do not know; there was a Nurſe there that had him, for I left the Place a few Days after he was chriſtened.

Q. What was the Nurſe's Name?

A. To the beſt of my Knowledge, her Name was *Landy.*

Q. How long did you ſtay after the Chriſtening?

A. I left the Houſe a few Days after.

Court.] Did you ſee my Lady delivered?---*A.* Indeed I did, I was an Eye-witneſs to it, for I was in the Room all along.

Q. Are you ſure whether Mrs. *Heath* was in the Room or not?

A. Indeed ſhe was from the firſt to the laſt.

Croſs-Examination.

Mr. *Spring.*] You ſay *Joan Landy* was the Nurſe?---*A.* Yes, Sir.

Q. Was ſhe married or a ſingle Woman?

A. I heard by every Body in the Houſe that ſhe was married.

Q. To whom?---*A.* To one *Mac Cormack.*

Q. Were they living together at that time in their own Houſe?

A I do not know whether they were or not.

Q. Where did they live then?---*A.* They lived in the Town.

Q. At what time was this Birth and Chriſtening?

A. It was in the Month of *May.*

Q. The latter End or the Beginning of *May?*

A. The latter End of *May.*

Court.] How long was it between the Birth and the Chriſtening?

A. Between three and four Weeks, or thereabouts.

Q. Was it both born and chriſtened in *May?*

A. He was born the latter End of the Month of *May.*

Q. Was you there at the Chriſtening, or did you leave the Service before it?---*A.* It was after the Chriſtening I left the Houſe.

Q. What was your Service?---*A.* A Chamber-maid, my Lord.

Mr. *Spring.*] How long was you in that Service before this Child was born?---*A.* Juſt three Months.

Q. How long before this was you acquainted with *Joan Landy?*

A. Never 'till I ſeen her there.

Q. Do you know whether ſhe had a Child or not?

A. I heard that ſhe had a Child.

Q. By whom?---*A.* I do not know by whom.

Q. You ſaid juſt now that Mrs. *Heath*, Mrs. *Butler* and *Nelly Murphy* were preſent at the Birth?---*A.* I did, Sir.

Q. Were there any more but them?

A. Indeed I do not know, for my Part I do not remember them.

Q. How long before that had you known *Eleanor Murphy?*

A. I never ſeen her till I ſaw her there.

Q. What was her name then?---*A. Eleanor Howlett.*

Q. Had you ever any Children?---*A.* I ought to have one Boy.

Q. How old is he?

A. He is thirty Years of Age, but I had a Son before that time.

Q. Which was in the Service firſt, you or *Nelly Murphy?*

A. She was in the Houſe before me, and after to the beſt of my Knowledge.

Q. What is your Son's Name?---*A. Edward Coſker.*

Q. How many Huſbands have you had?

A. I never married but one Man.

Q. How comes you to go by the Name of *Doyle?*

A. Mary Doyle is my own maiden Name.

Q. Where do you live now?---*A.* I live now at the Fort of *Duncannon.*

Q. How came you to ſtile yourſelf, in an Affidavit you lately made, *Mary Doyle* of *Ravilly?*---*A.* Becauſe I lived there.

Q. How many Years ago is it ſince you lived there?

A. Thirty Years this *May* ſince I lived there.

Q. Was you married when you lived there?

A. I was five Years before that a married Woman.

Q. Where did you live before you came to *Ravilly?*

A. In the County of *Wexford.*

Q. Where there?---*A.* I forgot the Name of the Place.

Q. Recollect where you lived before you lived at *Ravilly?*

A. At *Harroſtown.*

Q. How long did you live there?---*A.* I cannot remember.

Q. Where did you live before you lived at *Harrolſtown?*

A. I lived in the County of *Wicklow.*

Q. Where there?

A. Oh! the Lord knows where, I cannot remember.

Q. Where did you go when you left *Ravilly?*

A. To *Low Grange* in the County of *Kilkenny.*

Q. Do you know one *Daniel Hughes?*---*A.* I do.

Q. Did he ever live with you?

A. He lived in the Houſe with me at *Ravilly.*

Q. What is he to you?---*A.* He is my Huſband's Nephew.

Q. How long did you live at *Low Grange?*---*A.* I lived Six Years there.

Q. How long at *Ravilly?*---*A.* Six Years. And it was the Year that I went to *Ravilly* that I was at *Dunmaine*, for my Huſband and I parted.

Q. Where did your Huſband and you part?---*A.* We parted there.

Q. Where?---*A.* At *Harrolſtown.*

Q. When was you brought-to-bed of your Son?---*A.* The Lord knows.

Q. Was you in Service before you went to *Dunmaine?*

A. I was, in the County of *Wexford* and County of *Wicklow.*

Q. Where?---*A.* At one *Oſborne*'s.

Q. How long did you live there?---*A.* I was a Twelvemonth there.

Q. Was that before or after you were married?

A. Before I was married.

Q. How old do you ſay your Son is?

A. I ſay he is thirty Years old next *May.*

Q. Where was he born?---*A.* I cannot remember.

Q. Do you know *Robert Coſker?*---*A.* I do know him.

Court.] What is the Tendency of this Examination?

Mr. *Spring.*] This Examination tends to prove, that ſhe was a married Woman, and lived with her Huſband at the Time ſhe pretends ſhe was a Servant at *Dunmaine?*

Q. Who was Cook at *Dunmaine?*—*A.* I do not know his Name.

Q. Did you know the Houſe-keeper?---*A.* I do not remember.

Q. Do you remember Major *Fitz-gerald*'s being at *Dunmaine?*

A. There was one *Fitz-gerald* that lay there one Night, and I do not know whether he was a Major or a Captain; the Servants told me he was one out of the County of *Carlow.*

Q. Do you remember *Sarah Weedon?*

A. I never ſeen *Sarah Weedon* but once.

Q. Did you know Mrs. *Setwright* the Houſekeeper?

A. I never knew her, I do not know what was her Name.

Q. Who was the Laundreſs?---*A.* There was *Nelly Murphy* and another over her, but I do not remember her.

Q. Who was Butler?---*A.* One *Magher.*

Q. Do you remember *Bourk* the Poſtillion?---*A.* Indeed I do not.

Q. How long before you left the Service did *Dennis Redmond* leave it?

A. He was there before me and after me.

Q. How long did you ſtay there after this Birth?

A. I ſtayed after the Chriſtening two or three Days.

Q. Do you remember the great Eclipſe of the Sun?

A. I do not remember it.

Mr. *Morton.*] The next Witneſs will be one *Mary Freeman*, who will prove to your Lordſhip and the Jury, that ſhe ſaw my Lady *Altham* at *Dunmaine* big with Child, and ſaw the Child in the Care of *Joan Laffan*; that Mrs. *Heath* was particularly fond of it, and that ſhe has ſeen the Child with my Lady in a Coach frequently afterwards.

20. Mary Freeman.

Mr. *Morton.*] Did you know the late Lady *Altham?*

Mary Freeman.] I did, Sir.

Q. Where did you firſt ſee her?---*A.* In *Tyntern*, at Madam *Pigot*'s.

Q. At the time you knew her there, what Condition did ſhe appear to be in?

A. She appeared to me as a Woman in her Caſe, with Child.

Q. Did ſhe appear big?---*A.* She did indeed, Sir.

Q. At what time was this?---*A.* To the beſt of my Knowledge, it was a little before *Chriſtmas* in the Year that King *George* the Firſt came in.

Q. Can you recollect whether before or after *Chriſtmas?*

A. That was the time that Eſquire *Pigot* had the Bonfire in *Tyntern.*

Q. Was it before or after that Bonfire?

A. Before the Bonfire, for we had it at *Michaelmas.*

Q. Did you ever ſee my Lady afterwards, and where?

A. I ſeen her in *Dunmaine* very often.

Q. When you ſaw her there, did you ſee any Child in and about that Houſe?---*A.* I did indeed, upon my Word.

Q. What Child was it?

A. I ſeen the Child with *Joan Laffan* tending of it, at the time Madam *Pigot* ſent a Letter by me there; I ſeen it mighty well dreſſed with *Joan Laffan* in *Dunmaine* Houſe, at the time of the Letter I was ſent with to be delivered to my Lady *Altham.*

Q. Did you deliver the Letter?

A. I gave it to Mrs. *Heath*, into her own Hands, and ſhe went up Stairs with it to my Lady, and told me when ſhe came down, that my Lady was unwell, and could not give me an Anſwer.

Q. Did

Q. Did you see the Child at that Time?
A. I did see the Child that very instant in the Presence of Mrs. *Heath*.
Q. Was Mrs. *Heath* present?
A. It was in her Presence the Minute that I delivered the Letter: *Joan Laffan* was in the Kitchen with the Child in her Arms.
Q. What Time of the Year was this?
A. It was about this Time of the Year, I cannot tell what Time.
Jury.] Are you sure that Mrs. *Heath* was present and saw the Child?
A. *Joan Laffan* had the Child in her Arms in the Presence of Mrs. *Heath*, when I delivered the Letter to her.
Mr. *Morton.*] At the Time you saw this Child, then or any other Time, what Notice did you see Mrs. *Heath* take of it?
A. Why indeed, Sir, upon my Word, I know no more than that I was going to the Fair of *Ross*, and I saw her bring out the Child, and she put a Bundle of Cloaths into my Lady's Coach ——
Q. But I ask you, whether at the Time that you saw this Child when you went with the Letter, and then observed this Child in Mrs. *Heath*'s Presence, you observed Mrs. *Heath* to take any Notice of it?
A. She did take Notice of it, particular Notice, and was playing with it; indeed she was.
Q. How old was the Child then?
A. It was about a Year and half old, to the best of my Knowledge.
Q. What sort of a Child was it?
A. It was a pretty light-headed Child.
Q. Did Mrs. *Heath* take Notice of it as the Child of a Person of Consequence?---A. She did indeed.
Q. As the Child of whom?——A. As a Gentleman's Child.
Q. Whose Child was it considered to be?
A. It was considered my Lady *Altham*'s and my Lord's; as I heard, it was called the young Lord, young *Jemmy Annesley*; any other I cannot tell you.
Q. I ask you whether at any Time after this, you saw this Child in company with Lady *Altham*?——A. I did.
Q. Where was the next Place?
A. I did not see it after that Time, to the best of my Knowledge, 'till I seen him at *Ross* at Madam *Butler*'s.
Q. Who did you see him with there?
A. He was in Madam *Butler*'s Arms, for he was brought from *Dunmaine* that very Day, and she received the Child and carried it up Stairs to my Lady.
Q. Who brought it to *Ross*?——A. I cannot tell.
Q. At this Time in whose Company was it?
A. There was Nobody but Mrs. *Heath* that came down Stairs.
Q. Now I ask you whether the Child that you saw after at *Ross* was the same you saw at *Dunmaine*?
A. I cannot tell that, Sir, but the Child was there.
Q. Was Mrs. *Heath* present at *Butler*'s?---A. She was indeed.
Q. Did she at that Place take any Notice of the Child?
A. I cannot tell you, Sir, it was at the Head of the Stairs, and I cannot tell that.

Cross-Examination.

Mr. *Ed. Malone.*] Do you remember the Year that you saw my Lady with Child?
A. The Year King *George* the first came in.
Q. Was she big with Child then?---A. She was.
Q. You say it was the Year King *George* came in?
A. It was the Year he came in.
Q. Was it not about *Christmas* you said?
A. And was not that the Year King *George* came in?
Q. I ask you, if you did not say you saw my Lady big with Child about *Christmas*?——A. It was about *Christmas*.
Q. Where did you see her then?——A. At *Tyntern*.
Q. Was it before or after *Christmas*?——A. It was before.
Q. You went from Mrs. *Pigot*'s with a Letter to *Dunmaine*?
A. I did, Sir.
Q. What Time of the Year was it?——A. In the Spring.
Q. Of what Year?——A. I cannot tell as to that.
Q. Was it the next Spring after you saw her with Child?
A. Indeed it was not, nor the Spring after.
Q. See if you can recollect the Year?---A. I cannot recollect the Year.
Q. You knew Counsellor *Pigot*?——A. I knew him very well.
Q. Had any Accident happened to him then?
A. No, Sir, it was after.
Q. How soon after?——A. I do not know.
Q. Did not he break his Leg in the County of *Tipperary*?
A. I cannot tell that.
Q. Do you remember the Time he broke his Leg?
A. I was not in the Family then, but in the Town.
Q. Was Mrs. *Piget* at home when he broke his Leg?---A. I believe so.
Q. Did she go to him?——A. She went to him.
Q. Did she go from *Tyntern* to him?——A. She did.
Mr. Serj. *Marshall.*] The next Witness is one *Thomas Elton*, by Trade a Glazier; he was called to *Dunmaine* upon some necessary Repairs of that House some time after the Birth of Mr. *Annesley*; and he will give your Lordship an Account that he saw this Child in the House, when he was there at Work, greatly taken care of by his Father and Mother, and I believe by the Prisoner at the Bar.
Court.] If you have any new Witnesses to any new Matter, produce them; you have produced Witnesses to all the Points of the Indictment already.

21. Thomas Elton.

Mr. Serj. *Marshall.*] Pray, Sir, what Trade do you follow?
Thomas Elton.] I am a Glazier.
Q. Do you know a Place called *Dunmaine*?---A. I do, Sir.
Q. Were you at any Time and when at that House?
A. I served my Apprenticeship in *Ross* to *James Morris* of *Ross*, and I was at *Dunmaine* House several times.
Q. In what Year?
A. To the best of my Memory, I was bound Apprentice in the Year 1715.
Q. And what Time was you at *Dunmaine* House?
A. I was there I believe at several Times.
Q. Name any particular Time.
A. I was there in that same Year, and in 1716 and 1717, and 'till the Separation of my Lord and Lady was.
Q. Who did you see there?---A. The Lord and the Lady was there.
Q. Whom else did you see?
A. I seen *Arthur* Lord *Altham* and his Lady, I seen *Mary Heath*.
Q. Do you know any other of that Family that were there?
A. I have remembered to see a Child there.
Q. What Child was that?
A. A Child as I thought was the Son of *Arthur* Lord *Altham*.
Q. Where was Lady *Altham* when you saw this Son?
A. In the House, Sir.
Q. In what Manner was this Child treated?
A. If you please I will tell you. I am a Glazier by Trade, and at Work in the House at several Times I was.
Q. What Year was this that you saw the Child?
A. In the Year 1716, to the best of my Knowledge; and upon the same, I was up in the Lady's Chamber at Work, and a Messenger came up, I did not turn my Face about, nor do not know who it was, and I heard a Messenger say, Young Master is below: in some time after my Lady called *Mary Heath*, and said, *Go and bring up my Child*. With that, I seen the Child coming up, and upon the same, my Lady embraced it as she was sitting upon the Bed.
Q. What Year was this?
A. I think it was 1716. And she kept it there, during the Time I was at Work, which was close upon an Hour.

Cross-Examination.

Mr. *Recorder.*] Say in what time of the Year 1716 this was?
A. I cannot tell.
Q. Was it in Spring, or Summer, or Winter?
A. I cannot tell, upon my Word.
Q. Was it after, or before *Christmas*?---A. Indeed I cannot tell, Sir.
Q. Upon your Oath, was not it in the Year 1717?
A. Upon my Oath, it was not in 1717.
Q. Well then, what time was it in 1716?---A. I cannot tell, Sir.
Q. Upon your Oath, was it in 1716?
A. It was in 1716, but I cannot particularly guess at the Time; I cannot contain that, it is so long ago.
Mr. *Proby*, Juror.] How old was the Child?
A. As near as I can guess, a Year and half, or thereabouts.
Q. Did you ever hold any Discourse within these few Days with any body upon the Road?
A. I did not, upon my Oath.
Q. Did you see Nobody in a Finglass Chaise between *Kilcullen* Bridge and this?
A. I believe I saw your Face.
Q. Do you remember what you told me then about your Knowledge of this Affair?
A. I do not remember.
Mr. *Proby.*] You told me then you had a Subpœna the Day before, and thought it was very hard you should not know sooner what you had to swear; and swore by your Maker there, you knew nothing of the Matter. You said further, you were in so great a Passion you threw the Subpœna and Shilling into the Fire.
N. B. Witness *Elton* produced a Paper and said, Here is the Subpœna.
Mr. Solicitor General.] I am now, with some Satisfaction, to inform your Lordships that we shall call Mr. *Higginson*; he is a Person of some Reputation. We should not call him so early, but that he is falling sick and not able to attend any longer. This Gentleman will endeavour to prove that he was at *Dunmaine* at the Time of the Assizes of *Wexford*, and we will now produce him, though out of time, to shew where my Lady was at that time, and of her being then with Child. You will observe he is now called by way of Anticipation, and before his time.
Mr. *Proby.*] My Lord, I have something further to mention that this Man told me, which I had forgot.
Mr. Serj. *Marshall.*] I desire, my Lord, that Mr. *Proby* may be sworn.
Court.] You must be sworn, Sir.
Mr. *Proby* sworn to give Evidence to the Court, and his Fellow-jurors.] When he told me that it was very hard he should have such short Warning, and did not know what he had to swear, I desired him by all means to make haste, for the Trial would be very soon, to get to Town and be instructed there. So I will, says he; and immediately he set into a Gallop, and I never saw him 'till now since.
Mr. Serj. *Marshall.*] What were the Words he said to you?
A. He told me, that he was in such a Passion, that he threw the Subpœna and the Shilling into the Fire.
Mr. *Solicitor.*] It shews he was a most unwilling Witness.
Mr. *Proby.*] His Words were these, *By G—d I know nothing of the Matter.*
Mr. Serj. *Marshall.*] Do not you apprehend that the Man meant by that, that he did not know any thing of the Birth of this Child?
A. I cannot tell what he meant.
Q. Upon your Oath, Sir, what do you think he meant?
A. Upon my Oath, Sir, I believe from the subsequent Expressions, that he knew nothing at all of the Affair.
Q. Might not such a Person as you saw here clearly imagine, that his seeing a Child in that House was nothing material, if he knew nothing of the Birth of that Child?
A. He told me he was summoned on the Trial between the old and young Lord, and swore *by G---d he knew nothing of the Matter.*
Q. But might not he think that he knew nothing material?
Mr. *Recorder.*] The Jury will judge of that.

22. Mr. Thomas Higginson.

Mr. *Solicitor.*] Mr. *Higginson*, pray did you know the late Lord and Lady *Altham*?——Mr. *Higginson.*] Yes.
Q. Do you remember to have seen either of them, and when, in the Year 1714 or 1715?
A. I saw Lord *Altham* very often; I had the Honour to receive from the Year 1710, *Arthur* Lord *Altham*'s Rents for Part of his Estate.
Q. You saw my Lord *Altham* very often?

A. I saw him very often

Q. Do you remember to have seen either of them about the Middle of *April* 1715?---*A.* Yes, the Middle of *April* 1715 I called at *Dunmaine.*

Q. How came you to call there?

A. I was Receiver to *Arthur* Lord *Altham*, and *Arthur* late Earl of *Anglesea.*

Q. Go on, and give an Account of what you know of this Family.

A. My Lady I saw when I called at *Dunmaine*, my Lord was not at home.

Q. Do you know any thing of her being with Child?

A. That time I saw her, I took her to be big with Child.

Court.] What time was that?——*Q.* In the Middle of *April* 1715.

Mr. *Solicitor.*] What time in *April* do you say?

A. The Middle, in *Easter* Week 1715.

Q. Where did you see her then?---*A.* At *Dunmaine.*

Q. Inform the Court and Jury what Look or Appearance she had of being with Child.

A. She appeared to be big with Child to me, and towards the last Month of her time.

Q. Tell us wherefore it is that you have made yourself sure it was then?

A. I had a Pocket-book in which I kept my Memorandums; I was receiving Rents for the Earl of *Anglesea*, and I sent my Son to receive the Rents of the *Nanny-water* Estate for Lord *Altham*; I knew he would be at home with the Money; and I called there for Lord *Altham* to send one to *Enniscorthy* with me for the Money.

The Witness's Voice being weak, Mr. Smith, *an Officer of the Court, is directed to repeat what he should say.*

Mr. *Smith.*] Tell what you say, Sentence by Sentence, and I will repeat it.

Mr. *Higginson.*] I called to see if Lord *Altham* was at home to send one with me to *Enniscorthy*, to get some Money for himself.

Q. Did you see my Lady or my Lord at that time?---*A.* My Lady only.

Q. How can you be particular concerning the time of your being at *Dunmaine?*

A. Because the Days that I received Lord *Annesley*'s Rents I had it entered in my Pocket-book, and I gave the Book to the Prime Serjeant *Malone* at the last Trial.

Q. What were the Contents of that Book?--*A.* Lord *Anglesea*'s Receipts.

Q. You say Lady *Altham* looked like a Woman big with Child?

A. She did.

Q. What Conversation had you with her then?

A. Very little, only that I asked for my Lord, and told her what I called for; for I dared not go into the House, for if I had, Lord *Anglesea* would have turned me out of the Receipt of his Rents.

Q. Tell what passed between my Lady and you.

A. I told her I called to get my Lord to send one with me to *Enniscorthy*; and my Lady came down and made me drink, and I drank a good Deliverance to her Ladyship in two Glasses of White-wine.

Q. Who did you see with my Lady?

A. The Maid was there, but I do not know her Name.

Q. Now tell us how did you dispose of yourself after you left *Dunmaine?*

A. I went to *Enniscorthy*, and dined with Major *Rogers* that Day there.

Q. Where did you go from thence?

A. To a Friend's House in *Wexford* early next Morning, *Thursday* Morning.

Q. Recollect the Day you were at *Dunmaine?*

A. I was there on *Thursday* going, and *Tuesday* coming back.

Q. What Day did you go from *Dunmaine* to *Enniscorthy?*

A. I came from *Dunmaine* to *Enniscorthy* on *Tuesday.*

Q. How long did you stay at *Wexford* then?

A. Not above an Hour I believe, we had but one Pint of Wine.

Q. Did you see Lord *Altham* at that Assizes?

A. Yes, he gave me the Receipt.

Q. Did you see my Lady there?---*A.* No, I did not, nor hear of her.

Q. Do you believe, if she had been there, you would not have known it? Could she be there, and you not see her?

A. She might be there for me.

Q. Pray, Sir, you say you were Receiver to my Lord *Anglesea*, did there come any Account to the Earl of *Anglesea* of the Birth of a Child?

A. Several of *Ross* Tenants did come to Lord *Anglesea* in *July*——

Cross-Examination.

Mr. *Le Hunte.*] Pray, Sir, do not you say that you were at *Dunmaine* on *Easter-Tuesday?*---*A.* I was there on *Thursday* and *Tuesday.*

Q. Was you there on *Easter-Tuesday?*---*A.* I was.

Q. What Year was it?

A. By my Books on *Easter-Tuesday* in the Year 1715.

Q. Where was you the *Monday* before?

A. I believe I was at Mr. *Giffard*'s; I was at *Houghton*'s; I know I was in that Neighbourhood on *Easter-Monday.*

Q. Upon your Oath, Sir, where were you on *Easter-Monday?*

A. I believe I was at Mr. *Thomas Houghton*'s on *Easter-Monday.*

Q. How near is that to *Dunmaine?*---*A.* I believe four or five Miles.

Q. Why are you so certain of being at *Dunmaine* and at *Houghton*'s on *Easter-Monday* and *Tuesday?*

A. Those were the Days I received Money, and they were entered in my Book, that is the Reason of my Certainty.

Q. Do you know a Place called *Peppard's-Castle?*---*A.* I do know it.

Q. How far from *Dunmaine* is *Peppard's-Castle?*

A. Which Way would you have me go?

Q. The common Road. How many Miles distant is it?

A. I believe sixteen Miles.

Q. Where were you upon *Easter-Sunday?*---*A.* I believe at *Clomines.*

Q. How near is that to *Dunmaine?*

A. Four or five Miles, I do not know well.

Q. How far is *Clomines* from *Peppard's-Castle?*

A. I believe as far as *Dunmaine*, it cannot be less than sixteen Miles.

Q. Look at that Paper and see if it be your Hand-writing; is that your Name?—*A.* I believe it is.

Q. When you gave Receipts, did you date them on the Days the Tenants paid you the Money?---*A.* Some I did, and some I did not.

Q. Explain yourself.

A. When I would go abroad, I would leave Receipts drawn according to the Days the Tenants promised to pay their Rents, some with my Wife, and some with my Son, and some with *Timothy Murphy* that received for me.

Q. Is that all your Hand-writing?---*A.* I believe it is.

Mr. *Le Hunte.*] I desire that Paper may be read against himself.

Clerk of the Crown.] Received from Mr. *William White* now and formerly the Sum of twenty-five Pounds *Sterl.* in full his last *Michaelmas* Rent, due out of *Peppard's Castle*, &c. to the Right Hon. *Arthur* Earl of *Anglesea*, received by his Lops Order this 18th *April* 1715.

25 *l.* 0 0 *Tho. Higginson.*

Court.] That is *Easter-Monday* that Year?

Mr. *Higginson.*] I will tell your Lordship how that was. I was to pay Major *Rogers* Money for Timber for my Lord *Anglesea*, and I left my Son the Receipt to get the Money, who was to meet me there with it.

Q. Is the Date your own Hand?---*A* Yes, I believe it is.

Q. And did you date Receipts before you received the Money?

A. Yes, very often.

Mr. *Le Hunte.*] What time did you enter this Receipt in your Book?

A. When I came home again.

Q. When was that?---*A.* I entered it on *Wednesday*, when he brought me the Money to *Enniscorthy.*

Q. What Money did he bring?

A. He brought me sixty odd Pounds; I gave him eight Receipts to call upon the People with them, and I got the Money on *Wednesday.*

Q. When did you enter those Receipts in your Book?

A. I believe I entered them before I went from home.

Q. How so?---*A.* Because they promised me the Payment.

Q. Did you draw this Receipt at the time that it bears Date.

A. I gave this Receipt to *Tim Murphy* or my Son before I went away, and they told me they would be there that Day with the Money.

Q. See if this be your Book and Hand-writing?---*A.* It is.

Q. Was this Book kept by you?---*A.* It was. I lent it to Mr. *Wilson.*

Q. Is that Entry your Hand-writing?---*A.* It is my Hand-writing.

Q. When was it entered?---*A.* It was entered when I came back.

Mr. *Mark Whyte.*] Reads the Title, viz.

Peppard's-Castle.	Mr. *William White.*	is	Debtr.	Year Month and Day	} Contra	—— is ——	Credr.	——
				1715	2 Bills		4 10	—
				March 28	Dit. in full *Michaelmas*		11 17	8
				April 18	1714			

Mr. *Le Hunte.*] Where was this Book kept?

A. When *John Wilson* came to receive the Rents of Lord *Anglesea* after me, I lent it to him.

Court.] Can you now say that it was the 18th of *April*, *Easter-Tuesday*, that you were at *Dunmaine*, since it appears by your Book you entered Receipts of that Date elsewhere?

A. I left eight Receipts for my Son and *Murphy*, to give the People that paid the Money.

Q. How came you to enter them the fifteenth and eighteenth?

A. Because they were to go there them Days.

Q. Since your Book shews your Hand-writing at another Place, the time you say you were at *Dunmaine*, can you, from any other Circumstance, recollect that it was *Tuesday* the 18th of *April* that you were at *Dunmaine?*

A. I believe it was *Tuesday* the 18th by my Pocket-book.

Court.] See and get an Almanack for the Year 1715.

Q. Does your Pocket-book and this Book contain the same things?

A. The Pocket-book is of different Things from this Book.

Mr. *Le Hunte.*] Did not you swear on the Trial in the Exchequer, that you received four Pounds from Mr. *Houghton* the Day before you went to *Dunmaine?*

A. I believe so.

Q. What Day did you receive that Money?

A. I believe it was on *Monday* Morning.

Q. What was the Denomination that Rent was paid for?

A. I do not know indeed, I know no Denomination now, but only *Ballysop* and *Dunmaine.*

Q. Did not you swear that you received from Mr. *Giffard* of *Ballysop* Ten Pounds on *Tuesday?*----*A.* Yes, I did.

Q. Was not that the Day you went to *Dunmaine?*

A. Yes, I believe I did that Morning.

Q. Did not you say, you received from *Patrick Sutton* twenty Pounds the Day before?

A. I received some on *Friday*, and *Saturday*, and wanted forty Shillings; and they sent it after me on *Monday.*

Q. Did you swear, or did you not, that you received *Sutton*'s Money on *Monday?*

A. I did not on *Monday.* I wanted about forty Shillings, and I got that on *Monday* or *Tuesday* following.

Q. Upon your Oath, Sir, did you not swear that you received twenty Pounds from Colonel *Sutton* on *Monday?*

A. I do not know whether I did or no; I did receive twenty Pounds in all; but I said then as I say now, that there was forty Shillings behind, and he sent it after me on *Monday.*

Q. What Day did you receive the Money from Mr. *Giffard?*

A. On *Monday* I believe.

Q. What did you receive the Money from Mr. *Sutton* for?

A. It was for the Rent of *Clomines.*

Q. Look

Q. Look at that Book now; is that your Hand-writing?
A. The upper Part is, that is my Hand-writing.

Q. And whose is the other?
A. That is my Son's; I told Counsellor *Ford* so before at *Wexford*.

Clonmines	Col. *Wallis*	is	Debtor	Year Month and Day	Contra	is	Creditor			
	Arrears			1713.						
				Novemb. 30.	Per *Higginson*'s Account			233	14	11½
			His own Writing,	1714 *June* 17th.	Do. — —			48	00	00
				November 2d.	Do. ——			52	00	00
			His Son's Writing,	1715 *April* 5th.	Mr. *Giffard*. ——			30	00	00
							His own Writing	363	14	11½

Q. Were you present at the Time it was entered?
A. No, he was at *Ross*, and *Joe White* the Merchant gave him a Bill for Thirty Pounds, and I allowed this as Cash, the Tenants all received it as Cash; they had a Share in it, and I allowed it as Cash.
Q. Why did not you make your Entries in your Book at that Period of Time?
A. I had not that Book with me; I had lent it to *John Wilson*.
Q. Was the Money paid by the Tenants at the Time set down in the Book?
A. That was the Bill that every one of them had a Share in.
Q. Was the 30l. received on the 5th of *April*?—*A.* The Bill was.
Q. Did not you swear you received the 30l. on *Monday*?
A. It was good 30l. to me, and so I swore I received it on *Monday*.
Q. Where is your Pocket-book?—*A.* I have it not now.
Q. Did not you swear upon your former Examination in the Exchequer, that you were Agent to my Lord *Anglesea* from the Year 1711, to the Year 1717.
A. No, not till the Year 1717; no, if it be 1717, it is wrong printed.
Q. Upon your Oath, was not you Lord *Anglesea*'s Agent in the Year 1717?—*A.* I was not discharged till 1718 or 1719 for that matter, but Mr. *Wilson* came in before that.
Q. Did you continue Agent for my Lord *Anglesea* after the Year 1717?
A. No, nor that Year, but I received for him in 1716.
Q. You received in the Year 1716?—*A.* I did then in several Places.
Q. Upon your Oath, did you in 1717?
A. I cannot charge my Memory; I am sure I did in 1716.
Q. Look at this Bond, and see if it be your Hand-writing?
A. I did see it, it is.
Mr. *Le Hunte.*] My Lord, this Bond is to shew that he was discharged long before this Time, and we desire it may be read.
Mr. *Marke Whyte* reads part of the Bond, which bears Date the 26th Day of *December* 1715.
Mr. *Le Hunte.*] Did you ever settle any Account subsequent to the Account in this Book?—*A.* Yes, I did; six Months after.
Mr. *Solicitor.*] Would you be understood that that was the Book you carried about with you?
A. No, this was the Book that was left at home.
Q. What Book did you take with you commonly?
A. I carried a little Pocket-Book about me.
Mr. Recorder.] When you came home to that Book, did you make Entries different from your Pocket-book?——*A.* Some I did.
Q. How so? then you had no certain Guide for keeping your Accompts?
A. Whenever I was promised any Money, I entered it down in that Book the Day I expected to receive it, and left Receipts with my Wife or Son, for I was very much abroad.
Q. How could you enter the Day before you knew you would be paid?
A. They would keep the Receipts till they got the Money.
Mr. Serjeant *Marshall.*] My Lord, I desire the whole Conditions and all the Bond may be read; Mr. *White* read only a Part of it, and I must insist upon the whole being read, to shew that he might have received the Rents for a Year after the Date thereof.

Mr. *Bowden* reads the Bond as follows:

"Know all Men by these Presents, that I *Thomas Higginson* of *Rahingurrin*, in the County of *Wexford*, Gent. am held and firmly bound unto the Right Honourable *Arthur* Earl of *Anglesea*, in the Sum of one thousand Pounds Sterl. lawful Money of *Great-Britain*, to be paid to the said *Arthur* Earl of *Anglesea*, or his certain Attorney, Executors or Administrators, to the which Payment well and truly to be made, I do bind myself, my Executors and Administrators, firmly by these Presents, sealed with my Seal, and dated this twenty-sixth Day of *December*, Anno Dom. 1715."

"Whereas the above-named *Arthur* Earl of *Anglesea* did constitute and appoint the above-bound *Thomas Higginson* to be Collector and Receiver of his Rents, Arrears of Rents, Revenues, Duties and Profits of his Lordship's Estate in the County of *Wexford* for some Time past. And whereas the said *Arthur* Earl of *Anglesea* did on the first Day of *May* last annul and make void the said Power: Now the Condition of the above-written Obligation is such, that if the said *Thomas Higginson*, his Executors or Administrators, do and shall, on or before the first Day of *May* next ensuing the Date of these Presents, deliver up to the said *Arthur* Earl of *Anglesea*, his Heirs or Assigns, a just and true Account of all such Rents, Duties, Arrears of Rents, Fines, Issues, Goods, Chattels, Profits and Perquisites, as he the said *Thomas Higginson* hath at any Time heretofore levied or received for the Use of the said Earl, as his Collector or Receiver, and do and shall then pay, or cause to be paid unto the said *Arthur* Earl of *Anglesea*, his Heirs or Assigns, all such Sum and Sums of Money, as shall then appear to be and remain due to the said Earl, his Heirs or Assigns, on balancing of such Accompts; and also do and shall at any Time when demanded, well and truly account for, and pay unto him the said *Arthur* Earl of *Anglesea*, his Heirs or Assigns, any Sum or Sums of Money, that shall or may at any Time or Times hereafter, within the Space of one Year from the Date above-mentioned appear to have been received by him, the said *Thomas Higginson*, for the Use, or on the Account of the said Earl, and not accounted for with him by the said *Thomas Higginson*, on or before the said first Day of *May* next ensuing (if any such there be) that then the above Obligation shall be void, or else it shall stand in full Force and Virtue."

Sealed and delivered in Presence of us,

Den. Brien, *Tho. Higginson.*
John Wilson, Junior. 715.

Mr. Serjeant *Marshall.*] He had a Right, it appears, to collect all the Arrears that were due for a Year, he had a Year allowed him to gather them in.
Mr. Recorder.] The Bond says, if it shall appear within the Space of one Year, that he had received any Sum or Sums of Money; but there is no Power given him to receive any Rents.
Mr. *Le Hunte.*] Were not you Tenant to Part of *Arthur* Lord *Altham*'s Estate?—*A.* Not at all.
Q. Did not you hold a House from him in *Ross*?
A. I never had a House in *Ross*.
Q. Who came into Possession of Lord *Altham*'s Estate upon his Death?
A. I do not know, I was not employed then.
Q. Was you Receiver to Lord *Altham* till his Death?
A. No, till the Year 1717 or 1718.
Q. How far is *Ballydaboy* from *Dunmaine*?—*A.* I cannot tell.
Q. How near is it to *Peppard's-Castle*?—*A.* I believe within a Mile.
Q. Is that your Hand-writing?—*A.* Yes, I saw it before.
Q. Look at it again, was it entered the Time it bears Date?
A. I believe the *Wednesday* before I left home.
Q. How came you to enter it then?
A. There was a Fair to be on the 19th, and that was the Reason.

Ballydaboy, &c.	Law: Nangle	is Debtr.	Year Month and Day	Contra	is	Crédr.			
			1715.						
			April 19th.	Ditto			1	16	6

The Bond is given to the Jury.
Mr. Serjeant *Marshall.*] You will observe, Gentlemen, there are two Clauses in the Bond; the first that he shall account for all Sums received; and the next that he shall account for all Sums he should receive.
Court.] Not at all; he was superseded.
Court.] If you mean to produce other Evidence to the same Thing, I shall stop you; we have been near twelve Hours in Court, and cannot adjourn.
Mr. *Edmond Malone.*] And they said, my Lord, they would not take up eight Hours in ten, if the Trial should hold no longer.
Court.] Let us know your next Witness, and what to be examined to; say what they are.
Mr. Serj. *Tisdall.*] The next is one *John Warren*, produced to the same Purpose of several others.
Court.] Let him stay then. Is he a Man of Figure? What's his Addition?
Mr. Serjeant *Tisdall.*] He is a Gentleman, my Lord.
Court.] Let me tell you, there is no Safety in a Multitude of Witnesses.
Mr. Serjeant *Tisdall.*] A Multitude of People agreeing to the same Fact greatly corroborates it.

23. Mr. JOHN WARREN.

Mr. Serj. *Tisdall.*] Mr. *Warren*, was you ever at *Dunmaine*?
Mr. *Warren.*] I never lived at *Dunmaine*, but I belonged to one Mr. *Chambers*, that lived at ——————, and went there several Times about his Business; my Lord's Steward would buy fat Sheep from him---
Q. Were you ever at *Dunmaine*, Sir, while my Lord and Lady *Altham* lived there?---*A.* I was there several Times whilst they lived there.
Q. Did you see ever a Child there?---*A.* Indeed I did see a Child there.
Q. What Sort of a Child?---*A.* They called him *Jemmy*, he was a Boy.
Q. Whose Child was he?---*A.* I do not know whose Child, but my Lady called him her Child, and came one Evening and asked, How does my Child do? putting out her Hand to him.
Q. Who did you see the Child with?---*A.* With a Servant.
Q. Can you say whose Child it was?---*A.* It is impossible for me to know whose Child it was, my Lord called him his Son.

Cross-Examination.

Mr. *Le Hunte.*] How do you get your Livelihood?
A. I have a Livelihood.
Q. Have you any Trade?---*A.* I have no Trade.
Q. Upon your Oath, are not you a Beggar?
A. I am not; I have something of a Livelihood.
Court.] Unless you can now tell us what your Witness will say, I assure you we won't have the Time of the Court taken up in this manner.
Mr. *Archdale.*] For my part, my Lord, if they bring a hundred such Witnesses, I'll never think it worth my while to listen to them.
Mr. *Daly.*] We'll bring but as few as we possibly can.
Mr. Recorder.] We shall bring very good Witnesses, and come to the Point as soon as we can, when we begin our Defence; but these Gentlemen, I perceive, will not give us an Opportunity.

Court.] Unleſs you have ſomething new to offer, or a Man of greater Figure or Honour to corroborate what theſe Witneſſes have ſaid, we ſhall not hear him. If you have any Perſon of undoubted Credit, in the Name of God produce him.

Mr. *MacManus.*] We have many more to examine, and thoſe Witneſſes of undoubted Credit, and I hope the Court will indulge us ſo far as to hear their Evidence. We have examined many, it is true, and I beg Leave to ſay there has been a great Conſiſtency of Truth in their Teſtimony, and they have ſworn very materially; and, my Lord, if we falſify the Traverſer in any one Point, we will falſify her in the whole; we have twelve Men of Honour to try her, and I deſire we may be permitted to call *Robert Kennight*, he is a very material Perſon in my Brief.

Court.] What is it that you produce him to?

Mr. *MacManus.*] He is a material Witneſs upon my Paper; he will prove to your Lordſhip that Lady *Altham* (which is the firſt Point before you upon this Perjury) was big with Child. My Lord, they will not let me open his Evidence any further, becauſe he is here.

Court.] Bring him up.

24. Robert Kennight.

Mr. *MacManus.*] Did you know the late Lord and Lady *Altham?*

Robert Kennight.] Yes, I did.

Q. Where did you live when you knew them?—*A.* In *Garryduffe* firſt.

Q. Did you know them while they lived at *Dunmaine?*—*A.* I did, Sir.

Q. How far from that did you live?

A. In the Bounds of *Dunmaine*, they joined together.

Q. Was my Lady, or was ſhe not with Child at any Time that you knew her at *Dunmaine?*——*A.* In my Opinion ſhe was.

Q. Have you any Reaſon for that Opinion?——*A.* All the Reaſon I have for it is, becauſe I ſeen her big, and like a Woman with Child.

Q. Did you ſee any Child in the Houſe of *Dunmaine?*—*A.* I did.

Q. Did you know of any Bonfires and Rejoicings upon any, and what particular Occaſion?

A. I did, for Joy about the young Child that my Lord and Lady had.

Q. Pray, do you know Mrs. *Heath?*

A. I never knew her, I made no Acquaintance with her.

Q. Do you remember to have ſeen her at *Dunmaine?*

A. I never did ſee her, or know her at all.

I ſhall aſk no more Queſtions.

Court.] How many Bonfires were there made?——*A.* None but one.

Q. Where was it?

A. At the great Houſe, in the Back-ſide in the Avenue.

Mr. Solicitor.] My Lord, we have examined ſuch a prodigious Number of Witneſſes to one Point, that, if my Judgment had prevailed, you ſhould have had an End of them long ago; but we ſhall now call our laſt Witneſs for the preſent, and trouble your Lordſhip no more, except in the Counter-Proof upon the Reply we ſhould have Occaſion to produce freſh Proof. This Witneſs is a Witneſs that was examined upon the laſt Trial in Ejectment in the Exchequer, her Name is *Joan Laffan.*

Court.] Why did not you call her firſt?

Mr. Solicitor.] We look upon her to be a very material one, and hope ſhe will ſatisfy your Lordſhip and the Jury of this whole Affair.

Court.] I was wondering what was become of her all this Time.

25. Joan Laffan.

Mr. Serjeant *Tiſdal.*] Mrs. *Laffan*, did you know my Lord and Lady *Altham?*——*Joan Laffan.*] Yes, Sir.

Q. Was you ever a Servant there?——*A.* Yes, Sir.

Q. What was your Service?

A. I was Chamber-Maid when I came there firſt.

Q. What Time did you come there firſt?

A. The Year after the Death of the Queen: I was at Colonel *Deane*'s at her Death, and came the Year after to Lord *Altham*'s.

Q. Pray, how long did you continue in that Employment of Chamber-Maid?——*A.* About a Year and a Half, and then I was employed to nurſe Maſter *Jemmy Anneſley.*

Q. How old was he then?

A. Near upon a Year and Half, or thereabouts.

Q. Pray now, whoſe Child was he?—*A.* My Lord and Lady *Altham*'s.

Q. By whom were you employed to nurſe him?

A. By my Lord and Lady *Altham.*

Q. Pray, what Time did you go into my Lord's Service?

A. To the beſt of my Knowledge, it is the Harveſt; I lived at Colonel *Deane*'s till after King *George* the Firſt came in better than Half a Year, then I left it, and was a little while with my Friends, and then went to Lord and Lady *Altham*'s.

Q. Pray, can you tell in what Month you went there?

A. I cannot recollect the Month, but, to the beſt of my Knowledge, bout Harveſt.

Q. In what Year was it?——*A.* I cannot exactly tell what Year.

Q. But you ſay it was the Year after the King came in?

A. The Year after, or thereabouts.

Q. How long after you lived as a Chamber-Maid was this Child put into your Care by my Lady?

A. Near upon a Year and a Half after, or thereabouts.

Q. Who was it put the Child into your Care?—*A.* Lady *Altham.*

Q. Pray, did Mrs. *Heath* know that you took Care of it?

A. She did, Sir.

Q. Where was the Child before he was put into your Care?

A. The Child was at Nurſe before; when he came from the Wet-nurſe, he was put into my Care.

Q. Pray now, how old was the Child when you were hired?

A. I believe the Child was three or four Months old when I was hired, there or thereabouts.

Q. How old do you ſay he was?

A. About three Months, or better, I cannot exactly tell that.

Q. How old was the Child when put into your Care?

A. Near upon a Year and Half.

Q. How long after you were hired was he put into your Care? About what Time of the Year?——*A.* About a Year and Half after.

Q. Was you a Year and Half Chamber-Maid before you had the Care of him?——*A.* Yes, I believe I was near upon it.

Q. How long did you attend this Child before my Lady went away?

A. Half a Year.

Q. How long did you attend the Child before my Lord and Lady parted?

A. About two Years old the Child was when they parted; ſo that I attended him Half a Year before my Lady went away.

Q. Before this Child was put into your Care, where was it?

A. At the Wet-Nurſe.

Q. You ſay, that before this Child was put into your Care, it was put unto the Wet Nurſe?——*A.* Yes.

Q. Was it ever brought up by her to *Dunmaine* Houſe?

A. Yes, it was; ſometimes my Lady would go on fine Days and fetch it in the Coach with her, and the Nurſe would bring it other Times.

Q. Was Mrs. *Heath* in the Service then?—*A.* She was indeed.

Q. Pray how did my Lady behave to it?

A. My Lady was very fond of it.

Q. Who uſed to dreſs the Child?

A. Mrs. *Heath* dreſſed it; its Day Cloaths were kept in the Houſe, and the Child was dreſſed by her and my Lady; and the Night Cloaths were kept with the Nurſe.

Q. How did Mrs. *Heath* treat this Child? Was ſhe employed in any Sort about it?

A. Sometimes to dreſs him, and take him in her Arms that Way, very fond. I know that when there were Jellies made, or Jellies left, it was given to the Nurſe, and put into her Whey and Broths to drink.

Q. Was you at *Dunmaine* at the Time of the Separation?

A. I was there.

Q. Where was this Child then?——*A.* In the Houſe.

Q. How did my Lady behave to the Child at parting?

A. She deſired very hard to take the Child with her, and my Lord would not let her have him.

Q. Pray, was there any thing happened particular to the Child at the Time of the parting?

A. My Lady deſired very hard to have the Child; ſhe ſent down for Mr. *Taylor* to come up and hand her down Stairs; ſo, when he came up, I hope, ſays ſhe, you had not a Hand in this wicked Plot contrived for me. He ſaid, No, he had not. Says ſhe, If you are ſo good as to prevail on my Lord to let me have the Child, I do not care if I never ſet my Foot in *Dunmaine* again.

Q. What happened upon that?——*A.* I know that ſhe ſaid ſo, for I ſtood at the Stair-head when Mr. *Taylor* handed her down Stairs.

Croſs-Examination.

Mr. *Spring.*] Where was you hired into the Service of Lord and Lady *Altham?*——*A.* My Lady hired me.

Q. Where?——*A.* In her own Houſe.

Q. Are you ſure my Lady hired you?

A. She did indeed, ſhe did not know me, and ſhe ſent to a Gentlewoman to get a Character of me, and ſhe ſaid ſhe would give her Word for a Character for me.

Q. Who was that Gentlewoman?

A. It was Mrs. *Synnot*, ſhe ſent her Footman to her.

Q. You ſay my Lady was at *Dunmaine* at that Time?—*A.* She was.

Q. Upon your Oath, did ſhe continue the whole Month of *Auguſt* at Home?——*A.* I cannot tell whether ſhe did or not.

Q. Was ſhe, or was ſhe not at Home the Month of *Auguſt?*

A. I cannot tell whether ſhe was at home or not.

Q. Did ſhe lye a Week abroad at any Time in *Auguſt?*

A. I cannot recollect.

Q. Was ſhe a Fortnight abroad in *Auguſt?*—*A.* I cannot tell.

Q. Was ſhe the whole Month of *Auguſt* abroad?

A. I cannot diſcharge my Memory.

Q. Was ſhe the whole Month of *September?*——*A.* I cannot diſcharge my Memory when ſhe was at home or abroad.

Q. Was ſhe the Month of *October?*—*A.* I cannot tell.

Q. Was ſhe in *November?*—*A.* I cannot tell.

Q. Or *December?*—*A.* I cannot tell.

Q. Was ſhe the Month of *January?*

A. I thought I did not come here to ſcold.

Q. Was ſhe abſent for three Months together?

A. I cannot tell but ſhe did go away for three Months.

Q. You ſay that my Lady uſed to go in a Coach to viſit this Child?

A. She did.

Q. Did not you ſay that the Child was brought every Day to the Houſe by the Nurſe?—*A.* Sometimes the Nurſe came up with him, and ſometimes my Lady went to the Nurſe's to ſee him.

Q. Did not this continue every Day during the whole Time that the Child was at Nurſe?

A. Sometimes, I do not ſay every Day; but ſometimes my Lady would go there, and ſometimes the Nurſe would bring him to the Houſe.

Q. To what Place did you go after you left that Service?

A. I went to *Cheek-Point.*

Q. Do you know Mr. *William Bolton?*——*A.* I do.

Q. Is he an honeſt Man?—*A.* I believe he is.

Q. Do you know *Maynard Walker?*——*A.* Yes.

Q. Is he an honeſt Man?——*A.* He has a very indifferent Character, and all the Family; I know they helped to ruin me.

Q. Do you know *William Elms?*——*A.* I do.

Q. What Character has he?——*A.* I ſee nothing by the Man.

Q. What Character did you give him when you were examined in the Exchequer?——*A.* What Character did he give me?

Q. Did not you ſwear then that he was an honeſt Man?

A. I do not ſay to the contrary now, do I?

Q. Did not you then ſay, that you could make him blacker than he could you?——*A.* I do not know but I did.

Q. You ſay, you ſaw the Child in the Coach with my Lady when ſhe was going away?——*A.* I did, and ſhe kiſſed the Child in the Carriage, and the Child was taken away from her.

Q. What Time of the Day was that?—*A.* It was after Dinner-time, between that and Evening; towards the Evening.

Q. Repeat that again.——*A.* It was towards the Evening.

Q. Who uſed to viſit at *Dunmaine* when you lived there?

A. I cannot tell the Company exactly.
Q. Did Mrs. *Giffard* visit my Lady?---*A.* She did sometimes.
Q. Did my Lady visit her?
A. My Lady visited her sometimes, I cannot tell exactly how often.
Q. Did you know Mr. *Palliser* at that House?---*A.* I did.
Q. How long did he use to stay there at a Time?
A. I cannot tell how long.
Q. Did he see the Child?---*A.* He did see it.
Q. Did he know whose Child it was?
A. He knew the Child was my Lord and Lady's.
Q. Had he ever the Child in his Arms?
A. I cannot swear he had the Child in his Arms.
Court.] Do you know *Edmond Howlett*?---*A.* I do.
Q. Did my Lady go away in a Coach or Chariot?
A. To the best of my Knowledge it was a four-wheeled Chair.
Q. Was any Body with her?---*A.* Yes, Mrs. *Heath.*
Q. Was there any Body else with her?
A. Nobody else that I know of.
Q. Was the Child in the Chair?---*A.* I seen the Child was taken to her, and she kissed the Child when it was taken from her.
Q. Did she desire to have the Child brought to her?
A. She desired the Child to be handed to her, and then she kissed it.
Q. How many Horses were there to the Chair?
A. To the best of my Knowledge there were two.
Q. Was the Chaise open before or at the Top?
A. Upon my Word I cannot give my Word for that.
Q. Was it an open Chair, or a Chariot?
A. I cannot give my Word for it, what Carriage it was.
Q. Was it before or after Dinner my Lady went away?
A. It was after Dinner, Sir.
Mr. *Spring.*] Was you ever in the House the Child was nursed in?
A. I was.
Q. Was the Wall a Mud or Stone Wall?---*A.* Stone and Mud, Mortar wall, Stone and Mortar mixed, Stone in the lower Part.
Q. Do you know *Sarah Weedon*?---*A.* I did.
Q. What did you tell Mr. *Bolton* concerning my Lady's having or not having a Child?---*A.* I never told him any Thing, for he never talked to me of the Subject at all.

Mr. *Solicitor.*] My Lord, I told you she should be the last Witness upon the direct Examination; we reserve a Power to reply to any new Points, if necessary.

Court.] You shall, to any new Facts.

Here the Evidence of the Prosecutor was closed.

Court.] How many Witnesses have you, Gentlemen of Counsel for the Traverser? Have you any Objection on either Side to the Jury having some Refreshment?

Counsel.] We have no Objection.

Jury.] My Lord, we chuse to go on, and will not have any Refreshment at all; but desire *Mr. Recorder* will consider how long we have been in the Box, and that he will shorten the Trial as much as is consistent with the Benefit of his Client.

Mr. *Recorder.*] My Lord, it is with the utmost Concern that I am to lay any Thing before the Jury at so late an Hour, but as this is a Matter of great Consequence, I am sure they will hear me with Patience, and I shall make it as short as possible in Ease of the Jury.

My Lord, there are two Points that now are in question; for though there are four or five Assignments of Perjury, yet they all end in two; one is, that Lady *Altham* was with Child while the Traverser, Mrs *Heath*, lived with her; and the other, that she was brought-to-bed of a Son.

My Lord, it appears from the Evidence of the Prosecutor, that my Lady *Altham* came first into this Kingdom in the Month of *October* 1713, and the Fact is so, and that she never was in this Kingdom before. This will be material when I come to speak to the Evidence, and remark upon the Particulars of it. It appears from the Evidence, that my Lady came to the House of Mr. *Briscoe* in this Town; there she stayed till some Time in *December*, that my Lord *Altham* came to Town and was reconciled to her, and though they have endeavoured to prove that they left *Briscoe*'s, and went into Lodgings before they went down to *Dunmaine*, we shall prove that my Lord *Altham* remained at Captain *Briscoe*'s with my Lady, and never went to Mrs. *Vice*'s, the Place they pretend he removed to, till he went to *Dunmaine* in the County of *Wexford*. We shall prove that they remained there, and went from the House of *Briscoe* to *Dunmaine*. My Lord, we shall prove, though they swear that they stayed but three or four Days at *Briscoe*'s after my Lord came, for so *Alice Betts* and the other Witnesses have sworn, that they stayed at *Briscoe*'s during their Continuance in *Dublin*; and that my Lady, when she lodged at Mr. *Briscoe*'s, hired Mrs. *Seturight*, the House-keeper, though those Persons could not remember her Name. We shall prove that *Mary Waters* was hired for the Chamber-maid, and *Betty Doyle* for Laundry-maid, and that my Lady sent these Servants down from *Briscoe*'s to *Dunmaine* before her, two Days before my Lord and Lady set out; and these People will prove that two Days before they set out, my Lord and Lady lodged at *Briscoe*'s, and that these Servants set out from thence to *Dunmaine*. We shall prove when they came to *Dunmaine* what Servants were there, for it will be material to the Jury to know who they were, because we shall not give Evidence of roving, straggling People. We shall prove by a concurrent Testimony of all the Servants of the Family, that my Lady never was with Child at *Dunmaine*, or any where else in *Ireland*. We shall prove, that in the Months of *September*, *October* and *November* 1714, when it is sworn she was in this Town sick, and visited by a Physician, that she was then in the County of *Wexford*. We shall prove that one Mrs. *Giffard*, a near Neighbour and Acquaintance of Lady *Altham*'s, had Twins, and that my Lady was at the Groaning, and so far from being with Child, that she lamented her not having the Prospect of a Child; and we shall prove that my Lady, at the Time that these Witnesses for the Prosecutor swear that she was at *Dunmaine*, and near lying-in, and lay the Time in *April* or *May* 1715, we shall prove by a Cloud of Witnesses, that she went to the Spring Assizes of *Wexford* that Year, was at the Assizes, and at the Trial of one *Masterson* and *Walsh* for enlisting Pretender's Men. We shall prove by several Witnesses of undoubted Credit, and by the Person where she lodged, that she was there all the Time of the Assizes, and was there the 18th Day of *April*, and at the Trial of these People, when *Higginson* swore that she was at home and big with Child; and it will appear to your Lordship, that she was so far from being with Child, that she did not return to her own House till the twenty-second of *April*. We shall then prove, that after that she came to *Dublin*; that she came here in *May* following, which, if what they swear be true, could not be; for they say she lay-in then, and that it was above three Weeks before she got out of her Chamber. We shall prove that she was in *Dublin* the King's Birth-day, when the Fire-works were made on that Occasion, which was on the twenty-eighth of *May*. My Lord, one would imagine that when we shall have given you the concurrent Testimony of all the Servants of the Family, and other undoubted Witnesses touching these Facts, we should have little Occasion for further Proof; but we shall go to Facts that will overturn their Witnesses, and shew that all this is a made, contrived Affair. My Lord, they pretend that this Child was christened, and that Mrs. *Pigot* and Counsellor *Cliff* and Mr. *Colclough* were Godfathers and Godmother; they swear that they were all present at this Christening. These are Circumstances we shall shew to be false; and if we can prove that Mrs. *Pigot* was not in the County of *Wexford* from *November* in the Year 1714, till after the Separation in the Year 1716, all this Contrivance must fall to the Ground. My Lord, we shall prove it incontestably; we shall prove that Mrs. *Piget* came to *Dublin* from the County of *Wexford* in *November* 1714, that she was in *Dublin* in the Year 1715, that her Husband broke his Leg, and happened to lye ill in the County of *Tipperary*, and that she went to him and continued there, and never returned to the County of *Wexford* from *November* 1714, till some Time in the Year 1717, which was after the Separation; and we shall prove what will fix this, that the great Eclipse was the twenty-second of *April* 1715. Now, they lay that this Christening was in *May* or *June* that Year; for they say Lady *Altham* was brought-to-bed in *May*, so that Mrs. *Pigot* must have been in the County of *Wexford*, if at all at the Christening, in *May* or *June*. Now, my Lord, we'll prove that at the Time of the Eclipse, Mrs. *Pigot* was with her Husband, and was actually in the County of *Tipperary* the twenty-second of *April* 1715, and continued there many Months after. When we have proved this, we shall prove that Mr. *Cliff* was not in the County of *Wexford* in *May* or *June* 1715, the Time of his being sworn to be Godfather to this Child; we shall prove he was in *Dublin* during the Term, and continued sick here after, till the Middle of *June*. We shall prove, that at the Time of Mr. *Colclough*'s being said to be Godfather, there was a particular Quarrel between him and my Lord *Altham*; besides that, Mr. *Colclough* was a Papist at that Time, and died one; and then you'll judge whether they would have chosen a Papist Godfather to a Child born to inherit so great an Estate and such Honours. When we have proved this, we apprehend that this concurrent Testimony of all the Servants of the Family of my Lady's having never been with Child, and the Proof of her being at *Wexford* at the Assizes, and after in *Dublin*, and other Circumstances, will convince any reasonable Man that this is all a Fiction. I could open many other Circumstances, but rather chuse to spare the Time, and let the Jury hear the Witnesses.

Mr. *Smith.*] My Lord, the first Witness we produce is Mrs. *Vice*; you have heard of one *Vice* in *Essex-street*, to whose House Lady *Altham* was supposed to go to lodge the first Time she was in *Dublin*, after my Lord and she were reconciled at Mr. *Briscoe*'s: We have the Daughter of that Lady, and she'll give your Lordship a true Account of that Transaction, and the true Periods of Time concerning their lodging there.

The Examination of the Traverser's Witnesses began at a Quarter before Nine o'Clock at Night.

1. Mrs. LETITIA VICE.

Mr. *Daly.*] Mrs. *Vice*, I'd ask you a Question, Madam: Pray, do you remember when the late Lady *Altham* came first into this Kingdom?

Mrs. *Vice.*] I do remember her. Not when she landed; but I remember her being in the Kingdom.

Q. The first Time that you remember her being in the Kingdom, where did she lodge?—*A.* I heard she lodged at Capt. *Briscoe*'s.

Mr. Serj. *Tisdall.*] I am to inform you, you are not to tell what you heard.

Mr. *Daly.*] Pray, Madam, where did you first see her?
A. I first saw her in my Mother's House in *Essex-street.*
Q. Pray, can you recollect the first Time that she came to lodge at your Mother's?—*A.* Indeed, Sir, I can't.
Q. Is it from the Country she came, or from *England?*
A. From the Country, I believe.
Q. Pray, Madam, what Time was it?—*A.* Indeed, Sir, I can't tell.
Q. Do you remember any thing of her living at *Briscoe*'s?
A. Yes, I heard she lived there.
Q. Do you remember the Time, Madam, when she lodged there?
A. I only heard she lodged there; I never was to see her there.
Q. Do you know Mrs. *Cole*?---*A.* No, Sir.
Q. Do you remember whether my Lady came from the Country to your Mother's?---*A.* I believe from the Country.
Q. What Reason have you to believe so?
A. I have Reason to believe so.
Q. Why? Did you observe what People came with her?
A. I did not, Sir, I was then very young.
Q. Do you remember the Fire-works that were at the Birth-Day of King *George* the First; and were my Lord and Lady at your Mother's House then?---*A.* I remember them being at my Mother's House one Birth-day of King *George* the First.
Q. How often were they at your Mother's?
A. They were there twice, and I believe once was before the Birth-day; they were there at the Death of the Queen.
Q. Was that the first Time of their being there?
A. I cannot tell whether that was the first Time.
Q. Were they ever there lodging but twice?
A. But twice, to the best of my Knowledge.
Q. Was your Father living then?---*A.* My Father was dead.
Q. Will you please, Madam, to give a particular Account of the Times they were there?
A. I can't give a particular Account, but that they were there when the Queen died, and one Birth-day of King *George* the First.
Q. What Day of the Week was that Birth-day?

A. It was on a *Saturday.*

Q. Why do you remember it to be on a *Saturday?*

A. I remember the Reſtauration was on *Sunday*, and my Lady had a mind to have a Bonfire made before the Door, and my Mother was not willing there ſhould be one, and there was ſome Diſpute on that; and that makes me remember the Day of the Week.

Q. Do you recollect, Madam, whether there were any Fireworks that Birth-day?—*A.* I believe there was, Sir.

Q. Did you ſee any body at thoſe Fireworks looking at them?

A. We were pretty near the Cuſtom-houſe, and I believe I might ſee ſome of them there; but was not with my Lady to ſee them.

Q. But you ſay the firſt Time my Lord and Lady lodged at your Mother's, they came from the Country?

A. To the beſt of my Knowledge they did.

Q. Pray, Madam, when firſt my Lady came from *England*, did they come to viſit at your Houſe or not?

A. My Lady dined with my Lord there; but I don't believe ſhe came to lodge till after ſhe came from the Country.

Mr. *Morton.*] There was a Direction of your Lordſhip's, that the Witneſſes ſhould be kept together till called for; but I am to inform your Lordſhip here are two of the Witneſſes walking about the Court.

Mr. *Annesley.*] I beg, my Lord, I may explain this Matter to your Lordſhip; I've been with them for theſe three Hours, and Mr. *Hervey* did not leave the Place till it was ſaid he was ſent for by the Court.

Mr. *Daly.*] My Lord, the Witneſs ſays, ſhe remembers, that when it was ſaid that my Lady came from *England*, that my Lord and ſhe came to dine with her Mother.

Q. Where did they lodge at that Time?

A. I heard they lodged at Capt. *Briſcoe's.*

Q. Did they lodge at your Houſe then?

A. Not when they came to dine there.

Q. Did my Lady ever lodge there before?---*A.* No.

Q. You remember thoſe Fireworks that were at the Time they lodged at your Mother's Houſe; how long did they continue in Town after?

A. I can't tell.

Q. Well, Madam, the laſt Time, which is the ſecond Time that they came to your Mother's, how long did they continue there?

A. I can't be exact to the Time; they were there a good while, but I can't tell how long, Sir.

Q. What Time of the Year was it?

A. I can't recollect the Time of the Year.

Q. What Time of the Year were they there the ſecond Time?

A. They were there the eight and nine-and-twentieth of *May*; but how long before that I can't tell.

Q. What Reaſon have you to be exact as to thoſe Days?

A. Why, the firſt being the Birth-day, Sir, and the Fire-works being at that Time, and my Lady's Deſire of having a Bonfire on *Sunday* Night, which was the Reſtauration.

Q. How long did they continue in Town after?

A. I can't be exact how long they continued in Town.

Q. Do you remember any thing of Twelfth-Night?

A. I do remember my Lady was there one Twelfth-Night, but what Year I cannot tell; and I remember there was a Twelfth-Cake.

Croſs-Examination.

Mr. Serj. *Marſhall.*] You ſay, you are ſure that Lady *Altham* was at your Houſe at the Death of the late Queen *Anne?*---*A.* I am, Sir.

Q. Pray, do you remember the 20th of *October* following that?

A. No, Sir, I don't.

Q. Do you remember any thing remarkable that happened that Day?

A. I don't.

Mr. Serj. *Marſhall.*] I tell you then, that was the Coronation of King *George* the Firſt.

A. I aſk you now, were there not the Fire-works on that Day in *Dublin?*---*A.* I don't know indeed.

Q. Do you remember any thing particular of the 20th of *October?*

A. I do not, Sir.

Q. Can you take upon you to ſay, that Lord and Lady *Altham* were not in *Dublin* in *October* 1714?

A. I can't take upon me to ſay whether they were or not.

Q. Can you, that they were not in *November* 1714?---*A.* I can't, Sir.

Q. You mentioned a Twelfth-Day; now I aſk you, can you ſay they were not here on the Twelfth-Day in 1714?

A. I can't ſay that; but my Lady was one Twelfth-day at my Mother's.

Q. Can you ſay it was not that Year?

A. I can't ſay whether it was or not.

Q. Pray, can you ſay, ſince the only Reaſon you give was, that there were Fireworks, that it was not the Fireworks on the Twentieth of *October* 1714?

A. I ſay it was not that Day that I remark; it was the Twenty-eighth of *May*, *Saturday*, and the *Sunday* was the Reſtauration.

Q. Can you ſay that that was not the twenty-eighth of *May* 1716?

A. Indeed I can't take it upon me to fix the Year; but believe that it was the Year 1715, and my Reaſon for it was, that it was *Saturday.*

Q. I aſk you, Madam, can you ſay that it was not *May* 1716?

A. I do not believe it was *May* 1716; I ſay it was on a *Saturday*, whatever was the Year it was in; whether it was the Year 1715, or 1716, it was on a *Saturday*, and that was the Year.

Court.] *Saturday* was the Day in 1715 by the Almanack.

Mr. Serjeant *Marſhall.*] Do you know one *Catharine MacCormack?*

A. I do, ſhe was my Mother's Servant.

Q. Was ſhe a Servant in the Family at the Time Lady *Altham* lodged there?---*A.* She was.

Q. Do you remember that there was any Diſturbance or Quarrel between Lord and Lady *Altham*, while at your Houſe?

A. I do not remember any Particulars of that Sort at all; I was too young to make Obſervations of that Kind.

Mr. *Harward.*] You muſt have been very young indeed at that Time, Madam!——*A.* Not ſo young, perhaps, as you may imagine, Sir.

Mr. Serj. *Marſhall.*] Pray, give me leave to aſk you how old you were then?---*A.* I am now three-and-forty, Sir.

Q. Did you never hear of my Lord's ſending for Mrs. *Lucas* the Midwife?---*A.* I never did.

Q. Was ſhe a noted Midwife at that Time?---*A.* I believe ſo, Sir.

Q. She lived near you, Madam?---*A.* She did ſo.

Q. Was my Lady at any Time confined at your Houſe?

A. I do not know.

Q. Did Doctor *Jemmat* ever viſit her?---*A.* I do not know but he might.

Q. And you do not know but my Lady was here in *October*, *November*, *December* and *January* 1714?---*A.* I do not know.

Q. What Cloaths did my Lord and Lady wear when they came to your Houſe firſt?

A. Indeed, Sir, I cannot tell. You could not tell, I ſuppoſe, what Cloaths I have on now at ſuch a Diſtance of Time.

Q. What Cloaths did they wear generally?

A. I do not know; I know my Lady was in Town in the Queen's Mourning. I have ſeen her too in Colours, in a yellow and ſilver Silk, a blue and a white Damaſk.

Q. What was your Reaſon for fixing the Birth-day to *Saturday?*

A. My Reaſon was, becauſe my Lady would have a Bonfire on *Sunday*, and my Mother was not willing there ſhould be one, and there was a Diſpute about it.

Q. What was the Objection your Mother had to the making it?

A. It was, that as ſhe was a Widow, ſhe thought ſuch a Thing as a Bonfire was not agreeable to her, and that was the Reaſon.

Q. What Day did the King's Birth-day happen on in the Year 1720?

A. I do not know; but my Lady could not be at our Houſe in the Year 1720, becauſe my Mother had left the Houſe.

Court.] The Witneſs ſaid that the Birth-day that Lady *Altham* was at her Mother's Houſe was on a *Saturday*, and whatever Year that happened on, that was the Year. And that was the Year 1715, by the Almanack.

Mr. Serj. *Marſhall.*] You mentioned a Twelfth-cake, I think?

A. Yes, Sir.

Q. Was that the firſt or ſecond Time Lord and Lady *Altham* were at your Mother's?

A. I cannot be particular whether firſt or ſecond.

Q. Pray, Madam, how long is it ſince you firſt recollected that this Birth-day was on a *Saturday?*

A. Since I was aſked whether my Lady was in Town on a Birth-day.

Q. How long is it ſince you looked into an Almanack about this?

A. I never looked into an Almanack 'till after I had told that it was on a *Saturday*, and the Reſtauration on *Sunday*, but never till then.

Q. Were not you in Town when the laſt Trial was in the Exchequer?

A. I was, Sir.

Q. Were not you then applied to?——*A.* I was applied to.

Q. And did you come?——*A.* I did not come.

Q. How ſo?

A. Becauſe I could not recollect any particular Paſſages at that Time.

Mr. Serj. *Marſhall.*] Why then it was not till after the Trial that you were ſet right.

Mr. *Daly.*] Who applied to you to appear at the Exchequer?

A. There came a Gentleman from Capt. *Annesley* to know if I knew any thing of this Affair. I ſent word I did not, and if there had not been a particular Queſtion aſked me about the Fireworks, I ſhould not have recollected.

Mr. Serj. *Marſhall.*] Who aſked that particular Queſtion about the Fireworks?---*A.* I cannot tell who it was.

Q. From whom were you aſked that Queſtion?

A. It was from Mr. *Annesley*'s Family. Mr. *MacKercher* and *Annesley* before that came to me to know what I knew of my Lady's lodging at my Mother's; and I told them I knew nothing particular about it.

Q. Who aſked you the particular Queſtion about the Fireworks?

A. It was Capt. *Annesley*'s and Lord *Angleſea*'s Friends.

Q. Was this at the Time of the Trial?

A. I do not know when the Trial was.

Q. I tell you then, it began the 11th of *November* 1743, and laſted for twelve Days; did they aſk that Queſtion during that Time?

A. They only applied to me in general, to know if I knew any thing of the Time of my Lady *Altham*'s lodging at my Mother's, and I told them I could not recollect.

Q. Did they at that Time put this particular Queſtion about the Fireworks?——*A.* They did not.

Q. Did they any Time before the Trial was over?

A. No, they did not. Mr. *MacKercher* came to me when he came over firſt, to inquire about my Lady's lodging at my Mother's. I told him I recollected nothing particular about it, and had nothing to ſay that could ſerve him.

Q. When was it that that Queſtion was put to you?

A. I cannot remember the Day.

Q. Recollect when that Queſtion was put to you, was it before the Trial at *Wexford?*——*A.* It was.

Q. Who was the Perſon that put the Queſtion to you?

A. I forget by whom, I was ſent to by Lord *Angleſea*'s Friends; I do not know whether Mr. *Colles* did or not, but he was with me.

2. Mary Setwright.

Mr. *Richard Malone.*] Were you at any Time, and when, acquainted with Lord and Lady *Altham?*

Mary Setwright.] I was, Sir.

Q. When were you firſt acquainted with them?

A. When I was hired to them.

Q. When were you firſt acquainted?

A. Four Days before I was hired.

Q. When were you hired?

A. About five or ſix Days before *Chriſtmas-day.*

Q. In what Year?——*A.* The Year I cannot tell well.

Q. Where did Lady *Altham* lodge then?

A. At Captain *Briſcoe*'s in *Bride-Street.*

Q. Do you know how long ſhe had been in *Ireland*, before you was hired?---*A.* Not long.

Q. You have ſaid that you were hired at Capt. *Briſcoe*'s?--*A.* Yes, Sir.

Mr.

Mr. *Le Hunte.*] How ſoon did you go from *Dublin* after you were hired?
A. In four Days.
Mr. *Malone.*] Pray, after you were hired, did you leave Town, and when?
A. Four Days after.
Q. Where did you go?
A. To *Dunmaine*, to my Lord's Country-houſe.
Q. What time did you get there?---*A.* The Day before *Chriſtmas-Eve.*
Q. Were there any other Perſons that went with you?
A. Two Servants, the Chamber-maid and Laundry-maid.
Q. Who was the Chamber-maid?
A. The Chamber-maid was *Mary Waters.*
Q. And who was the other Woman?---*A. Elizabeth Doyle.*
Q. You ſay that you got to *Dunmaine* before *Chriſtmas?*
A. A Day before *Chriſtmas-Eve.*
Q. Pray, Madam, did my Lord and Lady go there at any time after, and when?
A. They came there the very next Night, Sir.
Q. Now, I would aſk you, where did they lodge when you left Town?
A. At Captain *Briſcoe*'s.
Q. In what Station were you hired?---*A.* Houſe-keeper.
Q. How long did you live with my Lady?
A. A Year and a Quarter, or thereabouts.
Q. What time did you leave her?---*A.* In *February.*
Q. What Year?
A. Indeed I do not know the Year; but the Eclipſe was the Year following.
Q. Do you remember, during the time you lived there, to have ſeen Mrs. *Briſcoe* or her Daughter there?
A. I did, Sir.
Q. Can you recollect how ſoon after my Lord and Lady went to *Dunmaine*, it was that they were there?
A. It was very ſoon, but I cannot tell how long.
Q. Now, I aſk you whether my Lady miſcarried, or kept her Room for any, and what Time?
A. Never to my Knowledge.
Q. Did you ever hear it?---*A.* No, indeed.
Q. Could ſhe have miſcarried at *Dunmaine* during the Time Mrs. *Briſcoe* and her Daughter were there, or kept her Room, without your knowing of it?
Mr. Serj. *Marſhall.*] I muſt ſtop Mr. *Malone* a little, becauſe it is a direct leading Queſtion.
Court.] Was my Lady ſick, or confined for any Time while they were in the Houſe?
A. No, not to my Knowledge, my Lord.
Mr. *Malone.*] You ſay that you were Houſekeeper?——*A.* Yes.
Q. What Things were under your Care, as Houſe-keeper?
A. I kept the Sugars, the Spices, and Bread, and all thoſe Things, every thing but only Liquor.
Q. Was you at any time, while Mrs. *Briſcoe* and her Daughter were there, called to for any thing under your Care for any Perſon that was ſick?
A. No, not that I know of.
Court.] Did you ſee my Lady every Day at that time?
A. Every Day in the Week, my Lord, to know her Commands.
Q. Was it poſſible that ſhe could miſcarry, and you not know of it?
Mr. Serj. *Marſhall.*] That, my Lord, muſt depend upon the Credit of Witneſſes, for a Gentlewoman of good Credit has ſworn ſhe did.
Jury.] Do you believe that my Lady was with Child at that time?
A. I believe not.
Mr. *Malone.*] Did Mrs. *Briſcoe* and her Daughter remain at *Dunmaine* for any and what time after my Lord and Lady got there?
A. Yes.
Q. How long?---*A.* I cannot exactly tell how long they ſtaid there.
Q. How long might it be?—*A.* I cannot ſay particularly.
Q. Pray, do you recollect what time they left *Dunmaine*, what time of the Year?---*A.* It was in Summer.
Q. Was it the Summer after my Lord and Lady went to *Dunmaine?*
A. Yes, it was.
Q. I aſk you now, whether my Lord and Lady came from *Dunmaine* to *Dublin* at that time, or any time, and when?
A. They went to *Dublin* in my time.
Q. Was it in the ſame Year?——*A.* Yes, Sir.
Q. How ſoon after Mrs. *Briſcoe* came to *Dublin?*
A. Indeed I cannot tell.
Q. Was it in the Summer Seaſon of the Year?---*A.* Yes, it was.
Q. What Time was it that my Lord and Lady returned to *Dunmaine* next?
A. I cannot exactly tell you what Month it was, but it was in the Summer-time.
Q. Do you know who was Butler in your Time?---*A. Thomas Rolph.*
Q. Had you any and what Directions in order to prepare any and what Thing for *Chriſtmas* that Year? What was it?
A. Minc'd Pyes, and thoſe Things that were proper for *Chriſtmas*-time.
Q. Did you make any Thing particular?---*A.* I made a Collar of Brawn.
Q. By whoſe Directions did you make that?
A. By my Lord's and Lady's Directions.
Q. When was it that they returned to *Dunmaine?*
A. It was in the Summer, it was a great while before *Chriſtmas.*
Q. Did you at any Time and when ſee them in this Town?
A. I did after I left them.
Q. When did you leave them?---*A.* I left them in *February.*
Q. Upon what Occaſion did you ſee them in this Town, and where, and I would know whether you were called to them for any and what Purpoſe?
A. They ſent the running Footman for me, for to prepare an Entertainment they made for Company.
Q. Where did they lodge then?
A. They lodged at Mrs. *Vice*'s in *Dirty-Lane.*
Q. What was it they ſent to you for?
A. They ſent to me to ſerve the Entertainment, to manage it and ſee it properly done.

Q. Do you remember at what Time it was?
A. It was *Chriſtmas*, the Twelfth-day.
Court.] You lived a Year and Quarter and then left them; and ſaw them in *Dublin* after; how ſoon after was it?
A. It was about two Years after I left them that I ſaw them in *Dublin*; it was upon a Twelfth-day.
Mr. *Malone.*] As you were there that Night; do you recollect any of the Perſons in Company?
A. Mr. *Colclough* was one of the Company.
Q. What *Colclough?*—*A.* Mr. *Cæſar Colclough.*
Q. I think you ſaid that *Rolph* was Butler at the Time you were in the Country?——*A.* He was.
Q. When my Lord and Lady returned to *Dunmaine*, was there any and what thing brought for the Butler?
A. There was Mourning brought down.

Croſs-Examination.

Mr. *Walſh.*] Pray now recollect what was the particular Time you came to live with Lord and Lady *Altham.*—*A.* In *December.*
Q. What Year?——*A.* I cannot tell you the Year.
Q. You muſt recollect the Year.
A. It was the Year before the great Eclipſe, whatever Year that was.
Q. When did you leave her Service?—*A.* In *February.*
Q. When?—*A.* In *February* before the great Eclipſe.
Court.] When was it that you came to Lady *Altham?*
A. In *December*, the Year before the Eclipſe.
Q. How long did you live with her?
A. A Year and two Months, to the *February* next but one following.
Q. Was the great Eclipſe after you left her?
A. The Eclipſe was the *April* after I left her.
Jury.] Had you the keeping of any China?—*A.* I had not.
Q. Do you remember any body that had?
A. My Lady's Woman kept what Cups there were.
Q. Do you remember any particular Sawcers?---*A.* I do not indeed.
Mr. *Walſh.*] Recollect now, and tell when you came to live with Lord and Lady *Altham.*
A. I came two or three Days before *Chriſtmas.*
Q. In what Year?
A. I cannot tell you more than it was the Year before the Eclipſe.
Q. How long was the Eclipſe after the Time that you came to live with them?——*A.* It was the *April* after I left them.
Q. And when did you leave them?---*A.* In *February.*
Q. How long did you go to the Country before them, after you were hired?---*A.* I went four Days before them.
Q. Did you ever ſee Mr. *Briſcoe* and his Wife and Daughter at *Dunmaine?*
A. Yes, I did.
Q. Did they all go there together?---*A.* She and her Daughter came firſt.
Q. When did he come?---*A.* I cannot exactly tell the Time he came.
Q. Was it in Summer or Winter?---*A.* I think in Summer.
Q. What Time in the Summer?---*A.* I cannot remember.
Q. Was it in Harveſt?---*A.* I cannot remember the exact Time.
Q. How long did he ſtay there?
A. Mrs. *Briſcoe* ſtayed a good while, but I do not know how long he ſtayed.
Q. Are you ſure it was in Summer when he came?
A. I cannot tell exactly when it was.
Q. When was it that Mrs. *Briſcoe* and her Daughter came?
A. Juſt after the Time that my Lady came.
Q. When did my Lady go down?---*A.* In *December.*
Q. And when did they go?
A. As near as I can remember in a Fortnight, or ſome ſuch Thing.
Q. How long did they ſtay?
A. As good as two Months, I forget if longer.
Q. Do you know did my Lady miſcarry at *Dunmaine?*
A. She never miſcarried, to my Knowledge.
Q. As you were Houſe-keeper, what did you keep the Keys of?
A. I kept the Keys of the Sugar and Spices, and ſeveral other Things.
Q. Was you yourſelf ever ſick at *Dunmaine?*
A. I never was ſick myſelf there.
Q. Did you ever miſcarry there?---*A.* I never did.
Q. Was you ever brought-to-bed there?---*A.* I had a Child there.
Q. When?---*A.* The *June* after I went down.
Q. Were Mrs. *Briſcoe* and her Daughter there when you lay-in?
A. They were.
Q. Might not my Lady have miſcarried when you were laid up with your Child?----*A.* I never heard any Thing of it.
Q. Pray, did you ſee her every Day?---*A.* Every Day, but when I lay-in.
Q. You ſaid you ſaw her every Day, and therefore ſhe could not miſcarry unknown to you?---*A.* I was but a Fortnight in all lying-in.
Q. Is it uſual for Women to go out in that Time?---*A.* I did.
Q. Where was you brought-to-bed?---*A.* At the Dairy-houſe.
Q. How far diſtant was that from *Dunmaine* Houſe?
A. About a Field from the Houſe.
Q. Was my Lady confined to her Chamber at any Time while you lived with her?---*A.* She was not that I know of.
Q. Might ſhe not unknown to you?
A. I ſhould have heard of it, if ſhe had.
Q. Can you ſay, upon your Oath, ſhe did not miſcarry?
A. She did not to my Knowledge.
Q. Could ſhe not unknown to you?
A. I cannot ſay ſhe did to my Knowledge.
Q. Could not ſhe unknown to you, when you were out of the Houſe?
A. I believe not, my Lady came to ſee me when I was lying-in.
Q. Who kept the Keys when you were lying-in?--*A.* Mrs. *Heath.*
Q. Did you come to Town when my Lady came to Town, after ſhe was at *Dunmaine?*---*A.* I did not come to Town till I left them.
Q. When did my Lady come to Town, after you went down?
A. I cannot exactly tell how long after.
Q. When was it that ſhe came to Town? Recollect yourſelf.
A. I cannot tell the particular Time.
Q. Did ſhe come the *February* following?

A. It

A. It was in the Summer following.
Q. What time in the Summer?--*A.* I proteſt, I forget what Month it was.
Q. Was it in *July*?---*A.* No, it was not.
Q. Was it in *Auguſt*?--*A.* To the beſt of my Knowledge, it was *Auguſt*.
Q. How long did ſhe ſtay before ſhe returned?
A. Two Months, or thereabouts.
Q. Did ſhe go to *Dublin* after ſhe returned?
A. She returned in two Months.
Q. Did you live with her when ſhe returned again?---*A.* I did.
Q. In what time did ſhe return?--*A.* In about two Months ſhe returned.
Q. How long did you live with her after?---*A.* Not long.
Q. How long?---*A.* I left her in the *February* following.
Q. Now recollect and tell the particular time that ſhe returned to *Dunmaine*.--*A.* I cannot tell the Month; ſhe ſtaid about two Months away.
Q. Was ſhe in *Dunmaine* when you left her?---*A.* She was.
Q. When was that?---*A.* The *February* after ſhe returned.
Q. How came ſhe to diſcharge you?
A. Something that my Lord ſaid that I took ill made me leave it.
Q. What Reaſon have you to remember that my Lady returned in Two Months?--*A.* It was Summer-time when ſhe went and when ſhe came back.
Q. Now I aſk you a plain Queſtion, was not Lady *Altham* in this Town in *November* and *December* 1714?---*A.* Indeed I do not know.
Q. But you muſt anſwer that Queſtion; was ſhe in this Town the Months of *November* and *December*, before you left her?
A. She was in *Dublin* in the Summer.
Q. Was ſhe, or was ſhe not, here in *November* and *December*?
A. I cannot recollect.
Q. Can you ſay that when ſhe went to Town in Summer that ſhe returned in two Months to *Dunmaine*?---*A.* I cannot be poſitive ſhe did.
Q. Can you be poſitive ſhe was in *Dunmaine* in *November* and *December* before the *February* that you left her? Come, Woman, recollect.
A. I believe they were, I cannot remember.
Court.] Was my Lady *Altham* at *Dunmaine* the *November* and *December* before you left her?---*A.* Yes, ſhe was, my Lord.
Mr. *Walſh.*] Do you know Mr. *Neſbit*, a Clergyman?---*A.* No.
Q. Do not you know Mr. *Neſbit* of St. *Catharine*'s Pariſh?
A. I have ſeen him.
Q. Had you any Diſcourſe with him lately about this Matter?
A. Not lately.
Q. Had you ever any?---*A.* I had ſome.
Q. What was that Diſcourſe? Had you any in relation to Mr. *Anneſley*'s being my Lady's Son or not?
A. He aſked me if I knew of her having a Child, and I told him that I never did, nor never heard ſhe had.
Q. Did not you tell Mr. *Neſbit*, that if Mrs. *Heath* ſwore that my Lady never had a Child, ſhe was a damn'd Bitch?---*A.* No, I never did.
Court.] Is that your Indictment that my Lady never had a Child? Your Indictment is, that ſhe never had a Child while Mrs. *Heath* lived with her.
Jury.] I think you ſaid you made ſome Preparations for *Chriſtmas* at *Dunmaine*?---*A.* I made Brawn in it.
Q. When did you make it?---*A.* The *Chriſtmas* I went down.
Q. When was it my Lord and Lady came to *Dunmaine*?
A. They came the very Day before *Chriſtmas-day*.
Q. And how then could you make the *Brawn* againſt *Chriſtmas*?
A. I made it that Year, but not the Day after I went down.
Q. Was it the *Chriſtmas* you went there that you made it?
A. It was that *Chriſtmas*.
Q. Who gave you Orders for making it?---*A.* My Lord did.
Q. Where was he when he gave you thoſe Directions?
A. He was at home at *Dunmaine*.
Q. Was my Lady there then?---*A.* She was.
Mr. *Walſh.*] Do you remember any Sawcers with ſmutty Figures on them?
A. I did not.
Q. Did you ever hear that any of them were broke by Lord *Altham*?
A. I never did; I never did hear of any ſuch at all.

3. Revd. Mr. William Hervey.

Mr. *Edward Malone.*] He is an antient Man, my Lord, and cannot ſtay any longer, which makes us produce him now, though out of time, and we are now going to ſhew that my Lady *Altham* was at the Aſſizes of *Wexford* in *April* 1715; we examine him out of time, becauſe he is falling ſick.
Mr. Serjeant *Tiſdall.*] My Lord, I muſt complain to your Lordſhip of his being in Court this ſome time, and not having been kept with the other Witneſſes.
Mr. *Malone.*] Call Mr. *Thomas Bourk* to ſhew when the *Wexford* Aſſizes were. I believe the Gentlemen will admit it for ſhortneſs Sake, that they were on the 16th of *April* 1715.
Court.] Do you admit that, Gentlemen?
Mr. Serjeant *Tiſdall.*] I proteſt I do not know what to ſay to it.

Mr. Thomas Bourk.

Mr. *Malone.*] What have you got in your Hand?
A. A Record; a Copy of an Eſtreat.
Q. Where did you get it? From what Office?
A. From Mr. *Morryſon*'s Office.

Clerk of the Crown reads the Record, as follows, viz.

Com Wexford Ss. Extract fin et Amerciament Impoſuit et Recogn fforiffact et Attinctur &c ad General Aſſiz et General Goal Deliberacon tent apud Wexford in Com Wexford præd. Die Sabbati decimo ſexto die Aprilis Anno Regni Domini nr. Georg Dei Gra Magn Britan Franc et Hiberniæ Rex Fidei Defenc &c primo Cor Honobl Johan Forſter Ar Capital Juſtic dict Domini Regis Cur. ſu de Coi Banc ſu regni ſu Hibniæ et Thom Coote Ar ſecund Juſtic dict Domini Regis Cur ſu de Capital plit ſu in Hibernie Juſtic et Comiſſ ejuſdem Domini Regis ad General Aſſiz et general Goal Deliberacon nec non ad omn et ſingul Prodicon Murd Homicid Incend Illicit Aſſemblacon Felon Rober Extorcon Oppreſſion Cna Contempt Offens Malefact et Caus quæcunq; in Com Wexford præd perpetrat ſive perpetrand audiend et terminand aſſign Virtut Commiſſion dict Domini Regis ſub magn Sigill ſu Regni Hibniæ geren dat apud Dublin decimo ſexto die Februar Anno Regni ſu primo.

Mr. *Spring.*] We produce a Clergyman of the County of *Wexford*, a Man of as good Character as any in it, to ſhew that my Lady *Altham* was at that Aſſizes.
Mr. Serjeant *Tiſdall.*] I deſire, Sir, you will pleaſe to give an Account, whether you were not in Court the whole time that the other Witneſſes were examined, or were not informed of what paſſed here.
Mr. *Hervey.*] I was called about an Hour and half ago, and told that the Court wanted me; when I found they did not, I went into the Court of Chancery, and ſtaid there 'till I found the firſt Witneſs coming; afterwards I ſtood by the Clock, and I believe you will think it is impoſſible to hear there any thing that paſſed here; and not one Word was I informed of what was ſaid.
Mr. *Malone.*] Do you remember the time the Pretender's Men were tried at the Aſſizes of *Wexford*?
Mr. *Hervey.*] I remember when Mr. *Walſh* and *Maſterſon* were tried for enliſting Men for foreign Service.
Q. Were you at that Aſſizes?---*A.* I was there and heard the Trial.
Q. Pray, Sir, can you fix the Year when they were tried?
A. They were tried in *Lent* Aſſizes 1715.
Q. Was it Spring Aſſizes?
A. It was *Lent* Aſſizes; but I believe it happened in *Eaſter* that Year.
Q. Were you in Court at the Trial of *Walſh* and *Maſterſon*?
A. I was in Court.
Q. Who were the Judges?
A. My Lord Chief Juſtice *Forſter*, my particular Patron and Friend; his Brother was my Tutor when I was in the College.
Q. Who was the other Judge?
A. I do not remember any other Judge, but I know he was there.
Q. Was you in Court at the Trial?---*A.* I was.
Q. Then I aſk you, Sir, whether or no you ſaw my Lord *Altham* at that time in Town?
A. I did; I ſaw him at his Lodgings and at the Court-houſe, and had Diſcourſe with him in both Places, and never ſaw him before or ſince.
Q. In what Cloaths was he dreſſed then?
A. To the beſt of my Remembrance, he was in Black.
Q. Were there any Ladies in Court at that Aſſizes?
A. There were ſeveral Ladies in Court.
Q. Were they of any Faſhion or Rank in the Country there?
A. I ſaw a Lady of very good Appearance, though of homely Features, and I aſked who ſhe was, and I was told———
Mr. Serjeant *Marſhall.*] You are not to ſay any thing you were told, you muſt declare nothing but what you know yourſelf.
Mr. *Hervey.*] They ſaid it was Lady *Altham*.
Mr. *Malone.*] Did you know that Lady you ſaw to be Lady *Altham*?
A. I am morally aſſured it was her.
Q. Did you ever ſee her after?—*A.* I never ſaw her afterwards.
Q. You ſaw other Ladies there as well as this Lady?---*A.* I did.
Q. Did you know them?
A. I took notice of none but Mrs. *Giffard*, for ſhe was my Relation by Marriage; and I had another Reaſon why I took notice of her, which was, that I have often heard her blamed———
Q. Was Mrs. *Giffard* in company with that ſtrange Lady?--*A.* She was.
Q. Do you remember any Quarrel upon the account of beating a Man at the Aſſizes?
A. Yes, I remember it very well, and have Reaſon to remember it.
Mr. Serjeant *Tiſdall.*] My Lord, I do not ſee to what this Examination can tend.
Mr. *Malone.*] It is in order to fix the time particularly.
Court.] Go on, Sir.
Mr. *Hervey.*] I took a King's Evidence to *Wexford*, one *Sinclare*, he had gone to *France* with ſeveral others, and when he came home, he was afraid I would repreſent him to the Juſtice of Peace and have him proſecuted; to avoid which, he ſaid he would come in and make a Diſcovery if I would get him pardoned. I ſaid I would; and after I had him, I mounted him before my Portmanteau and took him to *Wexford*. While he was there ſome Servants of my Lord *Altham* fell upon him and beat him for being an Informer, and while they were beating him I catched them, and they had almoſt murdered him. I took them to Colonel *Ram*'s Lodgings, and we went to my Lord *Altham* to his Lodgings, and ſhewed him the bloody Condition that this Fellow was in.
Q. How did you know where my Lord lodged?
A. I was informed that my Lord and Lady lodged at Mr. *Sweeny*'s.
Q. Go on, Sir.
A. We went there to ſhew my Lord *Altham* the Treatment his Servants had given this Man, and my Lord ſaid he was aſhamed of their Behaviour, that they ſhould be puniſhed for it, and ſaid they ſhould come into Court.
Q. And did they come into Court?
A. There came but two into Court, the reſt made their Eſcape.
Q. Were they puniſhed for this Aſſault?
A. My Lord Chief Juſtice *Forſter* was very angry, but fined them only 5*l.*
Mr. *Recorder.*] My Lord, thus he aſcertains that Lord *Altham* lodged at Mr. *Sweeny*'s.
Mr. *Malone.*] You ſay that you ſaw Mrs. *Giffard* in the Court-houſe, and that ſhe is your Relation?
A. Yes, her Brother and I took two Siſters in Marriage.
Q. Did ſhe ſit next to my Lady *Altham* that Day?

A. I

A. I do not know whether she was next to her, but she was very near her.

Q. Now I ask you, whether that Lady had any Signs of Pregnancy or not upon her?

A. I took particular Notice of her; she was, to the best of my Remembrance, dressed in Black, was a full-chested Woman, and had a fine, slender Waist.

Q. Did she appear to you as a Woman with Child?

A. She might be very young with Child, for aught I know; but there was no visible Appearance of her being with Child.

Mr. *Harward.*] This Evidence is founded upon a Supposition that the Lady he saw at *Wexford* was the Lady *Altham*; he says he was only told it was she, and cannot say it was of his own Knowledge.

Mr. *Hervey.*] I am pretty certain the Lady I saw was Lady *Altham*. I am told, Sir, that you are Counsellor *Harward*, am not I to believe you are? I am told that Gentleman is Counsellor *Daly*, I am morally assured of it, and I believe it.

Cross-Examination.

Mr. Serj. *Marshall.*] Pray, Sir, did you see that Lady go into the Court-house, that you were so particular in your Observations about?

Mr. *Hervey.*] I cannot say I did; but I saw her in Court.

Q. Do you know Mr. *Cæsar Coldclough?*—*A.* Yes, I do very well.

Q. Did not he sit by that Lady a great Part of the Time?

A. I cannot charge my Memory; as I told you before, I took no notice of any but Mrs. *Giffard.*

Q. I ask you, Sir, whether Mr. *Coldclough* was there or not?

A. He might be there; and I cannot say whether he was or not.

Q. Who were the Persons tried?—*A. Jack Walsh*, and Mr. *Masterson.*

Q. They were tried that Day?——*A.* They were, Sir.

Q. Are you sure they were tried at that Assizes?

A. They were tried at that Assizes.

Q. You are positive they were tried at that Assizes?—*A.* I heard them both tried, and I believe at that Assizes; *Walsh* was tried first.

Q. Are you positive that they were both tried?

A. Indeed I have no Reason to doubt but they were; they were there, and appeared there at the Bar both of them.

Q. Were they convicted or acquitted?

A. Acquitted: Mr. *Walsh* made a very good Defence.

Q. Whereabouts were you in the Court?

A. I was very near the Judge.

Q. Did you or did you not see Mr. *Coldclough* there?

A. I cannot say I saw Mr. *Coldclough.*

Q. Did you see Colonel *Loftus* there?

A. I cannot say I saw Colonel *Loftus.*

Q. Do you recollect any Gentleman of the Country that you saw there?

A. Why, do you believe that I was not there?

Q. 'Tis no matter what I believe, but can you name any one Gentleman that was there?——*A. Lawrence Esmond* of *Ballynastraw* was there.

Q. And you remember that Mrs. *Giffard* was there very positively?

A. I do, Sir.

Q. Now, I ask you, was not Mr. *Masterson* tried the Summer Assizes?

A. Indeed I do not know, I know he was in the Dock then.

Q. Did not you say you were sure he was tried that Assizes?

A. I do not know whether he was tried then or no, but he was in the Dock.

Q. Did you see this Lady any where else but in the Court-house?

A. I saw her no where else but there, neither before nor since.

Q. Did she sit or stand during the Time you saw her?

A. I saw her both sitting and standing.

Q. Whereabouts?——*A.* Almost opposite the Sheriff's Box.

Q. Did you talk to Mrs. *Giffard* at that time?

A. I did not speak to either of them.

Q. Did you speak to her at that Assizes?

A. I do not remember I did; but if you please I'll give the Reason why I took notice of her more than another.

Q. Give your Reason.

A. She was a near Neighbour of Lord *Altham*, and was the most conversant there of any others of the Neighbourhood; and my Lady not bearing the fairest Character in the World, I heard Mrs. *Giffard* blamed for having such an Intimacy there; and therefore when I was told this Lady, that made a very good Figure by her Dress, was my Lady *Altham*, I took notice of Mrs. *Giffard* being in her Company; and whether Mrs. *Giffard* knew it or not I cannot tell, but I have heard her censured for being in it. And if they had lived within three Miles of me, as they did of her, I would not have had Converse with either of them.

Q. Was not there one *Doyle*, a Clergyman, tried at that Assizes?

A. I cannot tell whether he was tried or not, I saw him in the Dock; he was one I knew in the College.

Q. How came you to be seated so near the Judge?

A. I was near the Judge for two Reasons; for the sake of the Justices of the Peace and Grand Jury.

Q. Do you know Mr. *Henry Bolton?*——*A.* Yes, I do.

Q. Was he at that Assizes?—*A.* He might, but I do not remember.

Mr. *MacManus.*] I hope at this late Hour they will produce Witnesses to the Point.

Mr. Solicitor.] I desire, my Lord, to make one Observation; which is, that Mr. *Hervey*'s Testimony will account for every thing that has been said concerning the bad Reputation of this Family.

Mr. *Le Hunte.*] My Lord, We shall now produce one *Edmond Bourk*, he was Postillion to my Lord *Altham* before my Lady came to *Dunmaine.* He will prove that he rode Postillion when the Chariot came to carry my Lord and Lady into the Country, and that they went from Captain *Briscoe*'s, and not from Mrs. *Vice*'s; he will prove that Mrs. *Setwright*, *Elizabeth Doyle* and *Mary Waters* were Servants in the Family, and that he continued in the Service 'till the Year 1716; that he drove my Lady in a Chariot in 1715 to the Spring Assizes of *Wexford*; that Mrs. *Giffard* went in the Chariot with her; that Mrs. *Heath* rode, and that he was one of the Servants mentioned in this Affray, and made his Escape from the Assizes; and he will also prove that my Lady was at a Hurling-Match at a Place called *Rathimny Bogg*, between Major *Sutton* and my Lord, at the Time of this pretended Pregnancy.

4. Edmond Bourk.

Mr. *Le Hunte.*] Did you know *Arthur* late Lord *Altham?*

Edmond Bourk.] I did, Sir.

Q. When did you first know him?—*A.* At his first coming to *Ross.*

Q. Did you ever live in his Service?——*A.* I did.

Q. When did you go to live with him?

A. I cannot exactly tell the Year, but I lived almost six Years and two Months with him.

Q. Where did my Lord live then?—*A.* At *Dunmaine.*

Q. Did you live there before my Lady came over?——*A.* I did.

Q. How long after you lived there did she come to live with him?

A. I cannot tell how long.

Q. What was your Service?

A. I was a Postillion, and came up for my Lady to *Dublin.*

Q. Where did my Lord and Lady go from *Dublin?*

A. They went from *Dublin* to *Dunmaine.*

Q. From what Place in *Dublin* did they go to *Dunmaine?*

A. From Captain *Briscoe*'s in *Bride-street.*

Q. Are you certain that they went from Captain *Briscoe*'s?

A. By the Virtue of my Oath, they did; we took them up there.

Q. Did you know Mrs. *Mary Heath?*—*A.* I did, Sir.

Q. What was she?

A. She waited on my Lady *Altham* as her Gentlewoman then.

Q. When did my Lord and Lady get to *Dunmaine?*

A. We got to *Dunmaine* in *December*, it was about *Christmas-Eve.*

Q. Who went along with you besides my Lord and Lady?

A. I cannot tell you; but the Chariot broke by *Johnstown*, and a great many were in Company, but I cannot tell who they were.

Q. Did Mrs. *Setwright* go with you?

A. Mrs. *Setwright* was sent down two Days before, and two Maids with her, *Betty Doyle* and *Mary Waters.*

Q. Do you remember any body visiting at *Dunmaine* for any Time?

A. There was Mrs. *Briscoe* there.

Q. Was any one along with her?—*A.* Her Daughter was.

Q. How long might they have staid there?

A. I cannot tell, but I was sent with Miss *Briscoe* to the lower Part of the County of *Wexford.*

Q. Do you know one Mr. *Boyde?*——*A.* I did.

Q. Where did he live?——*A.* He lived at *Rosslare.*

Q. Did not you go to his House?

A. We did call there, and stayed there a Night or two, to the best of my Knowledge.

Q. Do you know a Place called *Rathimny Bogg?*

A. I do; I was born near it.

Q. Did you know Major *Sutton?*—*A.* I knew him very well.

Q. Did you know of any Diversion or Sport at *Rathimny-Bogg?*

A. I remember a great Hurling there.

Q. What was the Occasion of it?

A. I was told it was between Major *Sutton* and my Lord *Altham.*

Q. Do you remember any Person that was at that Hurling?

A. My Lady *Altham* was there, Sir.

Q. Were you at the Assizes of *Wexford* at any time after this Hurling?

A. I do not know whether it was after or before.

Q. When was that Assizes?—*A. Easter* Assizes in the Year 1715.

Q. Did you go from the House of *Dunmaine* to the Assizes?

A. I did, Sir.

Q. Did any body go along with you?

A. My Lady went in the Chariot and one Mrs. *Giffard.*

Q. Who rode Postillion?——*A.* I did.

Q. Who was Coachman?—*A. John Weedon.*

Q. Do you know of any Quarrel that happened at the Assizes, and on what Occasion?——*A.* I do very well, I have a Reason to know it, Sir.

Q. Tell your Reasons.

A. Some Gentlemen of the County of *Wexford* were impeached with this thing of enlisting and harbouring Men for the Pretender at that time, and above all, there was the Parish-Priest that is living yet, one Father *Michael Downes*, and he was our Parish-Priest; and this *Downes* being impeached, my Lord's Servants, four or five of us, went to see the Priest, and his Prosecutors were with him at the House of one *Hatchell*'s that kept the Swan; we fell out with the Prosecutors, because that we thought to make it up with them not to prosecute the Priest, my Lord; and upon that, when they would not make it up, a Quarrel happened between us, and please your Lordship, and to be sure we paid the poor People very sorely; but next Morning we were taken Prisoners by Mr. *Hervey*, Colonel *Ram*, and Mr. *Symes*, and kept in Confinement from Morning 'till about eight o'Clock at Night ———

Q. Was my Lord *Altham* at the Assizes?

A. My Lord *Altham* was there.——A little time after I came home he discharged me, because I made my Escape; but two were put on their Trial.

Q. Who were they?

A. They were *Ned MacCormack* and *Bryan Neale*, the Running-footman and the Groom.

Q. Where did you go after my Lord discharged you his Service?

A. I believe to *Kilkenny*, and lived with Alderman *Barnes* there some little time.

Q. Do you know Mr. *Lambert?*—*A.* I do very well.

Q. Did you ever live in his Service?

A. I lived with him after I left *Kilkenny.*

Q. How long did you live in *Kilkenny?*

A. I believe I did not live in *Kilkenny* above two or three Months.

Q. Do you remember any Quarrel between my Lord and Lady *Altham* in your time?—*A.* I do not remember any Quarrel.

Q. Did they continue to live together as long as you knew them?

A. They did, they were ſeparated after.
Q. Where did you live then?---*A.* I believe with *Aaron Lambert.*
Q. Where did he live then?---*A.* He kept a Houſe in *Roſs* then.
Q. How far is *Roſs* from *Dunmaine?*
A. Four ſmall Miles from *Dunmaine.*
Q. Did you ſee my Lady after the Separation?----*A.* I did.
Q. Where?---*A.* In *Roſs.*
Q. Do you recollect the Houſe that my Lord and Lady lodged in at *Wexford* at the Aſſizes?---*A.* I ſet her down at one Mr. *Sweeny*'s.
Q. Pray, whilſt Mrs. *Briſcoe* was in the Houſe at *Dunmaine*, did you hear of any Miſcarriage that my Lady had?
A. I never did of any Miſcarriage, or of her being with Child 'till within theſe three Years.
Q. Did ſhe appear to you to be a Woman with Child?--*A.* She never did.
Q. Do you know *Joan Landy?*---*A.* I do.
Q. Do you know of her nurſing a Child?---*A.* I do.
Q. Was that after my Lady came to *Dunmaine?*
A. She was big with Child at the Time my Lady came.
Q. Where did ſhe live at that Time?---*A.* In my Lord's Houſe.
Q. Was ſhe brought-to-bed there?
A. No; ſhe went to her Father's Houſe to lye-in.
Q. How far was that from the Houſe of *Dunmaine?*
A. As near as I can gueſs, an *Engliſh* Mile.
Q. Did you ever ſee a Child nurſed by *Joan Landy* in the Houſe while my Lady was there?---*A.* I never did, by Virtue of my Oath.
Q. Did you ever ſee a Child of Lord *Altham*'s with *Joan Laffan?*
Q. I never did, nor nobody elſe.
Mr. *Mac Manus.*] My Lord, he ſwears that nobody elſe ſaw that ſhe took care of the Child, as well as him.
Mr. *Le Hunte.*] Did you ever ſee any Child of Lord and Lady *Altham*'s in the Care of *Joan Laffan?*---*A.* Never did, Sir.
Q. Did you ever ſee a Child that was *Joan Landy*'s Child with *Joan Landy?*---*A.* Yes, I did, Sir.
Q. Did you live with my Lady at any Time after the Separation?
A. I did.
Q. How long after?---*A.* As near as I can gueſs, almoſt two Years after they parted I waited on her in the Town of *Roſs.*
Q. Did you ſee any Child there with her that was reputed her Child?
A. I never did.
Q. Did you ever ſee any other Child with her there?
A. Yes, I uſed to bring in Children myſelf to her; ſhe was very fond of them.
Q. What Lodging was you at there?---*A.* At one Mrs. *Wright*'s.

Croſs-Examination.

Mr. Serj. *Tiſdall.*] How long did you live with my Lord *Altham?*
A. To the beſt of my Knowledge, about ſix Years with my Lord and Lady.
Q. Did they live together during the whole Time you lived with them?
A. They did not, Sir,
Q. When were you firſt hired into the Service?---*A.* I cannot tell.
Q. When did you leave my Lord?---*A.* I left him in the Year 1715.
Q. What Time of that Year?---*A.* I cannot tell.
Q. How ſoon was it after they came from *Wexford?*
A. I cannot tell how ſoon.
Q. Was it a Fortnight, three Months, or a Year, or how long?
A. No; it could not be a Year, or a Quarter of a Year.
Q. What was the Occaſion of your leaving the Service?
A. The Occaſion was that I made my Eſcape from *Wexford*, and my Lord promiſed he would not keep them that eſcaped.
Q. Recollect how long you were at *Dunmaine* before you were diſcharged.---*A.* I might have been at Home a Fortnight or three Weeks.
Q. How long before you left my Lord, did he and my Lady come to live together?
A. My Lady came in *December* 1713, to the beſt of my Knowledge.
Q. Where was you then?---*A.* In *Dunmaine*, and they met in *Dublin.*
Q. How ſoon after did you come for her?---*A.* I was not long in Town.
Q. How ſoon after they met, did you come for her to Town?
A. I cannot tell how long.
Q. Was you in Town with my Lord that Winter before they met?
A. I was not.
Q. Did you live with them again after you left them in the Year 1715?
A. I did.
Q. What Time?---*A.* I cannot tell.
Q. Were they ſeparated before you came to live with them?
A. They were; my Lady was at *Roſs* at that Time.
Q. When you returned to live with my Lord, was there any Child in the Houſe?---*A.* Never a Child that I know of.
Q. How long did you live with him after you returned?
A. I cannot tell how long.
Q. Did you live a ſecond Time with them before the Separation?
A. To the beſt of my Knowledge, I did.
Q. Did you return to the Service before my Lord ſeparated from my Lady?---*A.* I am not ſure whether I did or no.
Q. Was you in the Houſe at the Separation?---*A.* I was not.
Q. Where was you at that Time?---*A.* To the beſt of my Knowledge, in *Roſs* with Mr. *Aaron Lambert.*
Q. Were you in his Service then?---*A.* I was.
Q. How long did you live with him?---*A.* I cannot tell; but my Lady was ſome Time in *Roſs* before I came to live with her.
Q. Did you return to my Lord's Service after you were diſcharged that Time after the Aſſizes?---*A.* Indeed, I cannot tell.
Q. Cannot you tell whether you lived with him after at *Dunmaine?*
A. I am not poſitive; I cannot tell you, Sir, whether I ever lived with my Lord again at *Dunmaine.*
Q. You ſay, you were turned away after the Aſſizes?---*A.* I was.
Q. Upon your Oath, did you return to live with my Lord again?
A. Upon my Salvation, I cannot tell whether I returned again to him.
Q. Recollect how often you have lived with him.
A. I remember I lived with him once, becauſe he owed me ſome Wages.
Q. What Wages?---*A.* I believe two Years Wages.
Q. When were thoſe Wages due to you?
A. They were due after the Aſſizes.
Q. Can you anſwer or not, whether you returned again to the Service?
A. I cannot anſwer whether I did or no.
Q. Do you know Mr. *Amias Buſh?*---*A.* I do.
Q. Had you any Converſation with him?
A. Not as I can remember, Sir.
Q. Or with any other Perſon, that my Lord had a Child by his Lady?
A. By the virtue of my Oath, I never did declare it to Mankind.
Q. Did you ever declare that you would go and ſwear for Lord *Angleſea*, and be made a Man of?
A. By the virtue of that Oath I have taken, I never did.
Q. Did any body offer you any Money for ſwearing in this Cauſe?
A. Yes, Mr. *Mac Kercher* did.
Q. What did he offer you?---*A.* He offered me 300*l.* for ſwearing.
When the Witneſs ſaid this, there was a loud Huzza in the Court.
Q. Who was the Agent that offered you 300*l?*
A. Have Patience and I will tell you the Man, one *Paul Keating*, he offered me 300*l.* in private between me and himſelf, if I would join his young Lord, as he called him.
Q. When was this Offer made you?---*A.* About this Time two Year.
Q. Why did not you appear and declare this on the former Trial?
A. I kept off from the laſt Trial, and from this 'till I was compelled by Law.
Q. Was you ever in Company with Mr. *Mac Kercher?*
A. I was in the Room with *Mac Kercher*, and he ſent for me, and Mr. *Bob Snow* carried me up Stairs to an upper Room.
Q. What is it you can ſay of Mr. *Snow?*
A. Nothing of him, but that I was in Mr. *Snow*'s Room along with *Mac Kercher.*
Q. When was this?
A. About this Time two Year, to the beſt of my Knowledge.
Q. What was the Converſation that paſſed between Mr. *Mac Kercher* and you?
A. Why then I will tell you that, Gentlemen. I came in the Evening to Mr. *Snow*'s; Mr. *Snow* was fee'd as an Attorney againſt me in a Cauſe between a Man and me---
Q. Give an Account what paſſed in Converſation in the Preſence of Mr. *Snow.*---*A. Mac Kercher* and *Snow* went up from the Company, they were to ſup there.
Q. Where?
A. At Mr. *Snow*'s that Night; and I told my Landlord, Mr. *Flood*, that Mr. *Snow* was to be there that Evening; and *Snow* told me that *Mac Kercher*, and *Anneſley*, and *Livingſtone* were to ſup there that Night; and he told me if I would come there at Eight o'Clock, that I could ſee *Mac Kercher.* Upon that I did, and we went up Stairs, Mr. *Snow*, and *Mac Kercher* and me, and he aſked me if I knew this young *James Annesley*, Eſq. Where is he? ſays I. I hope, my Friend, you will do nothing againſt his Intereſt, ſays *Mac Kercher.* Indeed I will not, nor appear at all, ſays I, if I can help it; ſo there is all I can remember.
Q. Did there paſs any other Converſation between you that Night?
A. There might, but not to any Purpoſe.
Q. When do you ſay the 300*l.* was offered to you?
A. About this Time two Year.
Q. And who made you the Offer of it?
A. Paul Keating, and carried me to one Captain *Forreſter*'s.
Q. When this Offer was made, was any body preſent?
A. No, he carried me aſide to a little Garden at Captain *Forreſter*'s Door, and he ſaid that when the Cauſe was over I would get the raiſing of my Family.
Q. What did he offer you this Money for?
A. He offered it for to join his young Maſter *James Annesley*, becauſe he thought that I knew a great deal by living with Lady *Altham*, only to give my Promiſe to teſtify for *James Annesley.*
Q. What did he tell you, you were to ſwear?
A. The Words were in general
Clerk of the Crown reads the Eſtreat for the Aſſault on the Proſecutors at *Wexford*, as follows, to ſhew that *Edmund Mac Cormack* and *Bryan Neale* were taken into Cuſtody, and fined for the ſaid Aſſault, *viz.*

ffin. Impoſt. ad præd. General Aſſiz. ſup. ſeperal Perſon in Cuſtod. Vice Com. Wexford.
Edmond Mac Cormack indict. ad præd. Aſſiz. pr. quodm Aſſault. & Cul. pro ffin. in ſum - o o 6
Bryan Neale indict. ad præd. Aſſiz. pr. conſ. pro ffin. in ſum - - - - o o 6

Mr. *Smith.*] My Lord, the next Witneſs is Mrs. *Sweeny.* Your Lordſhip obſerves that the laſt Witneſs gave an Account of my Lady *Altham*'s going from *Dunmaine* to *Wexford* Aſſizes, and that ſhe was drove to Captain *Sweeny*'s at *Wexford.* He, my Lord, is dead: this Mrs. *Sweeny* is his Widow; her Huſband took the Houſe in *March* 1714, and ſhe has lived there ever ſince; ſhe will give account that Lord and Lady *Altham*, Mrs. *Giffard* and other Perſons came and lodged in the Houſe, and that my Lady did not appear to be with Child.

5. Mrs. SARAH SWEENY.

Mr. *Le Hunte.*] Where do you live, Madam?
Mrs. *Sweeny.*] I live at *Wexford.*
Q. What is your Chriſtian Name?---*A. Sarah.*
Q. How long have you lived there?
A. Theſe four or five-and-thirty Years.
Q. Pray, do you know Mr. *John Maſterſon?*---*A.* I do.
Q. Did you know Mr. *Walſh?*---*A.* I did.
Q. Do you remember that they were charged with any Crime at *Wexford?*——*A.* I do.
Q. When?---*A.* In the Year 1715.
Q. Did you know the late Lord or Lady *Altham?*
A. I did; I knew them both, but my Lord much better than my Lady.

Q. Was it usual for you to set Lodgings?——*A.* It was.

Q. Can you recollect whether they lodged at any Time and when in your House?—*A.* They lodged with me in the Year 1715, in *April*.

Q. Do you know upon what Occasion, or what was a-doing in *Wexford* at that Time?——*A.* The Assizes was at that Time.

Q. Pray, Madam, can you recollect how long they lodged with you, and when they came, whether before or after the Assizes?

A. They came just at the Assizes, and they staid no longer than the Assizes held, four Nights or five, I cannot tell which.

Q. Can you tell whether any Gentlewoman came with Lady *Altham* to the Assizes?—*A.* Yes, there did come Mrs. *Giffard*, and Mrs. *Mary Roe*, and there came Mrs. *Heath*.

Q. Was Mrs. *Heath* a Servant to any of the Ladies, or whom?

A. She was her Ladyship's Woman.

Q. Where did she lodge?——*A.* At my House, Sir.

Q. Can you be certain that it was in the Spring Assizes 1715, that they were there?——*A.* I am very sure of it.

Q. Pray, can you give any Reason for that Certainty?

A. I can give several Reasons, if there was an Occasion.

Q. Please to inform the Court and the Jury what your Reasons are.

A. It was in the Year 1714 that I came to that House I now live in. I came to it in *July*, just before the Queen died; and in 1714 Mr. *Sweeny* was ill of a Fever, and was just recovered out of it as her Ladyship came to my House; he was recovered the *March* before she came.

Q. When she was there did you frequently see her?

A. I did see her very often, Sir.

Q. Where did she generally diet in *Wexford*?

A. She dined and supped at my House.

Q. Did she dine and sup at your Table?—*A.* I dined with her at the Table, and with my Lord, when he dined there.

Q. Had she any Signs of Breeding, or being with Child?

A. I did not perceive any, neither do I believe she was with Child.

Q. Could she have been with Child then and you not know it?

A. If she had been with Child I should have heard it.

Cross-Examination.

Mr. *Fitzgerald.*] You say, I think, that my Lady came to lodge at your House in *April* 1715?——*A.* Yes.

Q. What particular Reason have you for fixing it in *April* 1715?

A. I tell you; in *July* before the Queen died I came to the House, and the *April* following she came to lodge there.

Q. Where did you live before?

A. At *Kenny's-Hall*, a little out of *Wexford*.

Q. How long did you live there?

A. From the latter end of the Year 1713, till we left it.

Q. What particular Time did you leave that Hall?

A. In *July* 1714, just before the Queen died.

Q. Was that House, where you received Lord and Lady *Altham*, repaired when you took it?—*A.* We repaired it before we came there.

Q. After you took the Lease, what Time did you take to repair it?

A. Not very long; I cannot tell how long.

Q. Did the Repairs take up three Months?

A. I believe it might take up three Months; but I was sick at that Time, and do not know how long it was.

Q. What Time was it you took the Lease?

A. We took the Lease in the Year 1714.

Q. What Time of that Year?——*A.* In the Beginning of 1714. I have the Lease if you have a mind to see it.

Q. Do you know a Man called *Nicholas Duffe*?—*A.* I do.

Q. What is he?—*A.* He was Master of a Vessel for my Husband.

Q. Did he live with you then?—*A.* He did not live with us then.

Q. Was not he Master of the Ship at that Time?

A. He quit that Employment before I was married to Mr. *Sweeny*. He went Master before for him.

Q. Did he live in your House in *April* 1715?—*A.* No, he did not.

Q. Did he live with you when you took the House and you were sick?

A. He was at Sea in 1714, when I was ill of the Fever, and he came home at that Time in the Year 1714, and was not employed after, for my Husband parted with the Ship.

Q. You say he was not in *April* 1715, in your House?

A. Not to live with me.

Q. Was not he then Master of your Husband's Ship?

A. He was not in that Employ, we were building a Ship then.

Q. Was not he in the Town of *Wexford* in the Year 1715?

A. I do not know but he might.

Q. Do you know Captain *Maxwell*?—*A.* I do, very well.

Q. Do you know his Wife?

A. I do; I am very well acquainted with her.

Q. Did they not visit you in *April* 1715?

A. I cannot tell in what Year, I do not know but she might be there, and they lived in the House where I lived in before.

Q. Do you know one *David Conolly*?——*A.* I do not know any such Body as *Conolly*, I know one *David Connell*.

Q. Was he a Servant of your's at that Time?

A. He was not a Servant, but in and out with me.

Q. How long did he live with you?---*A.* Really I cannot tell.

Q. What do you think of that Man, what is his Character?

A. Why really, I never thought it worth my while to enquire; he did my Business well enough.

Q. Did you and Mrs. *Maxwell* visit frequently?

A. Yes, we did, and I was Godmother to one of her Children.

Q. What is Mrs. *Roe*'s Name now?---*A.* Mrs. *Crumpton*.

Q. Did you declare to any Person of your Acquaintance in *Wexford* that you were not sure when Lady *Altham* was at your House?

A. I do not know whether I did or no; to be sure at the beginning I could not recollect it, but after, when I considered about it, I found it out.

Q. Did she never lodge with you but once?---*A.* Never but once.

Q. Was she never there at the Water-drinking Season?

A. She never was.

Q. And that Time she lodged with you was at the Assizes?

A. It was at that Time.

Mr. *Smith.*] This Lady has mentioned that her Sister, who is now Mrs. *Crumpton*, came to *Wexford* at that Time in Company with Lady *Altham*; she was then called *Roe*, my Lord; we shall now produce her to the same Point.

Court.] Do not you think you have proved it already without producing her?

Mr. *Daly.*] I would produce Mrs. *Giffard* and no more to that Fact, I own it.

Court.] Call Mrs. *Giffard*.

Mr. *Smith.*] This Mrs. *Giffard* not only was at *Wexford* with my Lady at the Assizes, but was a particular Intimate of the Family, and she will prove to your Lordship, that she not only accompanied my Lady to the Assizes, but that she returned from *Wexford* to *Dunmaine* with her, and saw my Lady almost every Day while she stayed there, and never saw or heard of a Child; and your Lordship must recollect that one of the Witnesses did mention, that she was censured for her great Intimacy in that Family; and that *Joan Laffan* said, she and my Lady were very great.

6. Mrs. Anne Giffard.

Mr. *Le Hunte.*] Mrs. *Giffard*, are you a married Woman, or a Widow?

Mrs. *Giffard.*] A Widow.

Q. The Widow of whom?——*A.* Of *Ravenscroft Giffard*.

Q. What is your Christian Name?—*A. Anne*.

Q. Where did your Husband live?

A. At *Ballysop*, in the County of *Wexford*.

Q. Do you know a Place called *Dunmaine*?—*A.* I do.

Q. How far is *Ballysop* from *Dunmaine*?

A. Not two Miles, a Mile and half or thereabouts.

Q. How long have you lived at *Ballysop*?

A. We went to live there forty Years ago, and continued to live there till now, only seven Years that I lived at *Ross*.

Q. Do you remember the late Lord and Lady *Altham*?

A. I do remember them very well.

Q. Where did they live when you knew them?

A. They lived sometimes in *Dublin*, and sometimes at *Dunmaine*.

Q. Do you remember when my Lady first came to live at *Dunmaine*?

A. I do.

Q. When was it?—*A.* In the Year 1713, two or three Days before *Christmas-day*, as I think; I am not positive to the Day.

Q. Were you intimately acquainted with her?—*A.* I was indeed.

Q. Did you ever see her with Child whilst you knew her?

A. Upon my Oath, I never knew it, nor never heard it.

Q. Did you ever know of her having a Child at *Dunmaine*?

A. I never did indeed, Sir.

Q. Do you remember to have travelled with her at any Time to any and what Place?—*A.* I did to *Wexford* in a Chariot.

Q. From whence?—*A.* From *Dunmaine*.

Q. Did you go with my Lady in the Chariot?

A. I did, and my Lord rode.

Q. What Time of the Year, and what Year was it?

A. I believe it was in the Spring.

Q. Of what Year?

A. The Time when Mr. *Masterson* and *Walsh* were tried.

Q. Where did you lodge in *Wexford*?—*A.* At Mrs. *Sweeny*'s.

Q. Who lodged with you there?---*A.* My Lord and Lady *Altham*.

Q. You mentioned something of *Walsh* and *Masterson*, what is the Reason that you remember any thing of them?---*A.* Because my Lady *Altham* and I were in Court to hear their Trials.

Q. What do you call Court?---*A.* At the Session-House.

Q. What is the Use of that House?

A. The House where the Judges are.

Q. Were you and she in that House at this Time of the Assizes?

A. We were indeed.

Q. How long did you stay in *Wexford* that Time?---*A.* We stayed four Days.

Q. Did my Lady and you travel together from *Wexford*?

A. I came home with her in the Chariot, and lay there that Night.

Q. Do you remember any Woman-servant to have travelled with you?

A. Mrs. *Heath*; she rode.

Q. Were any other Persons with you?---*A.* My Husband went.

Q. And who else?---*A.* A Sister of mine went.

Q. What was her Name?---*A. Mary Roe*.

Q. Is that her Name at present?---*A.* Her Name now is *Crumpton*.

Q. Where did you go to from *Wexford*?---*A.* Back to *Dunmaine*.

Q. Where did you lie that Night?---*A.* I lay there.

Q. How long was you acquainted with Lady *Altham* after your Return to *Dunmaine*?---*A.* Whilst she stayed at *Dunmaine*.

Q. Do you remember any remarkable Eclipse of the Sun?

A. I do, the Eclipse was just after we came from *Wexford*; the *Friday* after we came home, I was at a Burying that Day and know it.

Q. What I ask you now is, whether during your Acquaintance with Lady *Altham* you perceived her to be with Child, or knew her to be with Child?---*A.* I did not, nor never heard her talk of it.

Q. How often did you visit?---*A.* Frequently, sometimes twice, sometimes once a Week, or a Fortnight, or so.

Q. Did you go to the same Parish Church?

A. Sometimes; she very often came to *White-Church*.

Q. Can you recollect after her coming to *Dunmaine*, that she went to *Dublin*?---*A.* I remember she went once or twice to *Dublin*.

Q. Have

Q. Have you been in the Room with her when she dressed or undressed herself?——*A.* Yes, I have pretty often.

Q. Did you ever observe any Symptoms of Pregnancy?

A. Upon my Oath, I never did.

Q. I ask you, Madam, whether my Lady was big-bellied at the Assizes?—— *A.* Indeed she was not.

Q. Do you know one *Anne Bennet* that was formerly your Servant?

A. I never had a Servant of that Name in my Life.

Q. Do you know any Person of the Name of *Bennet* that lived with you?

A. I do not know any one of the Name of *Bennet* that lived with me.

Q. Is there any one of the Name of *Anne* that lived with you, that is now married to the Name of *Bennet?*

A. They say so; I heard so to-day, but I know nothing of it.

Q. Did you ever tell any Servant of your's of the Name of *Anne*, that my Lady had been with Child, or had a Child?

A. I never did, I could not say it.

Cross-Examination.

Mr. *Harward.*] If I do not mistake, you were examined at the Trial in the *Exchequer?*——*A.* I believe I was; to be sure I was.

Q. Did not you then swear to all the Company that went with you to *Wexford?*——*A.* And so I do now.

Q. Were you not asked at that Trial, to give an Account of all that went with you to that Assizes?—*A.* Well, I was.

Q. Did you give that Account?

A. I did, of every one that I remembered.

Q. What I ask you now is, did you give an Account that this Mrs. *Roe* went along with you?—*A.* No, I did not.

Q. Then you did not give an Account that she went?

A. No, Sir, I did not.

Q. In what Manner was it that she went?—*A.* She rode.

Q. Did she ride single or double?—*A.* She rode single.

Q. How did Mrs. *Heath* ride?---*A.* Single too.

Q. Pray, Madam, Lord *Altham* rode, I suppose, too?---*A.* Yes.

Q. And how did my Lady and you go?

A. It was a Chariot-and-Six that we went in.

Q. By virtue of your Oath, was not you in Mourning for a Brother of your's at that Time?

A. I was not; I was in Mourning, but not for him; he was dead a great while before that.

Q. Was it not to hear this Trial that you and Lady *Altham* went to *Wexford?*

A. I do not remember whether it was that or no we went for; but we went there to hear it when we were in *Wexford.*

Q. So that it was Curiosity that carried my Lady and you into the Court-house to hear these Trials?

A. We went to see *Wexford*; to be sure it was our Curiosity that carried us into Court when we were there.

Q. Was not that the only Motive that induced you to go there?

A. It was not that that induced us to go.

Q. What induced you to go?---*A.* We went for our Pleasure.

Q. Was you ever in a Court-house before for your Pleasure?

A. Indeed I was in that same very often before when I was a Girl; but what signifies that?

Q. Upon the Trial in the Exchequer did you not say, that you could not tell whether it was before or after the Queen's Death that this Trial was?---*A.* Well, I do not know whether I said it or no.

Q. Did you not upon that Trial say so?

A. Indeed I cannot tell whether I said it or no.

Q. Recollect whether you did not upon that Trial say, you did not know whether their Trial was before or after the Queen's Death?

A. Why, Sir, if I went after the Queen's Death, you know that I could have said nothing else; what do you mean by saying that upon that Trial I said I could not tell whether before or after?

Q. Did not you say upon that Trial that you did not know whether it was before or after the Queen's Death?

A. I do not believe I said any such Thing at all.

Q. Did you or did you not say upon that Trial that it was before or after?

A. Upon my Word, I cannot tell that I said any such Thing.

Q. If you cannot tell whether you said that it was before or after the Queen's Death that you went to *Wexford*, how can you say now that it is either one or the other?---*A.* I do not remember.

Q. Would you be understood to say that you do not know whether it was before or after the Queen's Death that you went to *Wexford?*

Court.] Is not that fully said already?

Mr. *Harward.*] I do not apprehend it so, my Lord.

Q. Which was it, by virtue of your Oath, was it in the Queen's Time, or after her Death, that you went with Lady *Altham* to the Assizes?

A. I could not tell you now; I do not know, Sir.

Q. Now, Madam, I ask you this, how came it that you could not tell that this Mrs. *Roe* went with you?

A. I might have remembered it indeed, but I did not at that Time.

Q. Had you at this Time any extraordinary Intimacy or Business with Mrs. *Sweeny?*---*A.* She is my Sister.

Q. Oh! I did not know that, Madam. Pray, were you in Mourning then?---*A.* I believe I was.

Q. For whom?

A. I cannot tell whether for any body; I wore Black sometimes.

Q. Were you in Mourning for any body at that Time?

A. I wore Black, but I cannot tell whether I was in Mourning for any body.

Q. Was my Lady in Mourning?---*A.* She was.

Q. As to this Trial that you went to see, give us some Account of what passed there.

A. I remember nothing of the Trial, but that I saw the Gentlemen in the *Dock.*

Q. Did you stay, Madam, till they were acquitted or not?

A. Indeed I cannot tell.

Q. Who sat by you in Court?---*A.* Lady *Altham.*

Q. Did not Mr. *Coleclough* sit by her?---*A.* He did.

Q. Did not he hand her in and out of Court?--*A.* I believe he did.

Q. Are you sure he did?

A. To the best of my Knowledge, he did.

Q. Did not you swear on the Trial in the Exchequer, that you could not tell whether he did or not?

A. I say, to the best of my Knowledge, he did.

Q. Who went into the Court-house with Lady *Altham?*

A. He and I and Lord *Altham* went with her.

Q. Did not you swear that you could not tell whether he did or not?

A. I cannot recollect whether I did or not.

Q. Did you know any of my Lord's Family?

A. I knew *Ralph* the Butler, and *Anthony Dyer*, my Lord's Gentleman.

Q. Did you know *Bourke?*-- *A.* Yes, I did.

Q. Did you know *John Weedon?*

A. I did, and Mrs. *Setwright* too, I was often there and knew them.

Q. What was *Bourke?*---*A.* The Postillion.

Q. Was *Doyle* the Clergyman tried at the same Time.

A. He stood on the Side-bar, and was not tried that Time.

Q. Did you know the Judges?---*A.* I knew one *Forster*, I believe.

Q. Did Lord and Lady *Altham* go to *Dublin* after this?

A. They went to *Dublin* soon after *Wexford* Assizes.

Q. Did not they go twice after?

A. I cannot tell indeed, I remember once they did.

Q. Did not you swear on the Trial in the Exchequer that you could not tell whether it was before or after my Lord returned from *Dublin* that you were at *Wexford* Assizes?——*A.* I never did.

Q. Madam, do you know one Mrs. *Bushe?*

A. Not I, indeed I do not.

Q. Did you ever declare, to your Remembrance, that you did not know but this Assizes was in the Year 1716?

A. I cannot remember whether I did or no.

Q. Did you, or did you not?

A. Not that I know of, indeed I did not: I am sure not to Mrs. *Bushe.*

7. Sarah Weedon.

Mr. *Smith.*] Before she comes it will only be proper to observe to your Lordship, that she has been mentioned by some of the Witnesses as being the Coachman's Wife at the Time of the Birth; and, my Lord, Mrs. *Sarah Weedon* was the Coachman's Wife, and she will give your Lordship an Account of her Knowledge of the Family at *Dunmaine* during the Period of Time to which the Birth is sworn to; and I believe, when she is produced and has given her Evidence, that you will think she is not a material Witness for the Prosecutors, as she was upon a former Occasion sworn to be.

Mr. *Morgan.*] Do you know a Place called *Dunmaine?*

Sarah Weedon.] Yes, Sir, I do.

Q. Did you know Lady *Altham?*——*A.* Yes, Sir.

Q. And Lord *Altham?*——*A.* Yes, Sir.

Q. Where was you when my Lady came first to *Dunmaine?*

A. I was at *Dunmaine.*

Q. How long did you continue there after she came?

A. I believe very nigh three Years, to the best of my Knowledge.

Q. Did you know one Mrs. *Briscoe?*

A. I did, Sir.

Q. Did you know her Daughter?——*A.* I did.

Q. Did you see them at *Dunmaine?*——*A.* I did, Sir.

Q. Pray now answer, where was you at the Time that they were there?

A. I was in the House, Sir.

Q. Did you know of any Accident that happened to Lady *Altham* during the Time they were there?

A. I did not know of any Accident that happened to her.

Q. Any Miscarriage?

A. Upon my Word, I never knew nothing of it.

Q. What Condition in point of Health was my Lady in during the Time that they were there?

A. To the best of my Knowledge, she ailed nothing at all.

Q. Did you ever hear of any and what Accidents happening upon account of Sawcers during the Time they were there?

A. I protest I remember no such Thing.

Q. No China broke?——*A.* I do not remember any such Thing, Sir.

Q. I ask now, whether you know of any of that Family to be delivered of a Child during the Time you were at *Dunmaine?*

A. I do.

Q. Who was that?---*A.* One *Hesther*, that my Lord called *Pouty.*

Q. I ask you whether this *Hesther* was delivered of this Child before or after my Lady came to *Dunmaine?*——*A.* Before, Sir.

Q. Do you know of any other Person delivered after she came?

A. Not in the House, Sir.

Q. Do you know of any out of the House?

A. Mrs. *Setwright* was, and myself out of the House.

Court.] Was Lady *Altham* with Child while you were at *Dunmaine?*

A. She was not, my Lord.

Q. Did you see her with Child at any Time whatever?

A. Upon my Word, I did not. My Lord, what I say is Truth, and nothing but the Truth.

Mr. *Morgan.*] You say that this *Hesther* was delivered of a Child, can you recollect the Midwife?

A. If I should tell you the Truth, they sent for one Mrs. ——, I forget her Name,——Mrs. *Shiel* in *Ross*; but to tell you the Truth, before Mrs. *Shiel* came, I delivered her.

Q. Who was sent for Mrs. *Shiel?*

A. Really I cannot tell; there was a Fellow in the House, but I cannot tell his Name now.

Q. Now recollect and say, whether any other Persons were brought-to-bed at *Dunmaine* during your Time?——*A.* There was *Juggy Lamy.*

Q. Now I ask you, did you see this Child of her's?——*A.* I did.

Q. Did you know it?---*A.* I did, Sir.

Q. Did you see it at any other Place?

A. I

A. I did, Sir.

Q. With whom?---*A.* A great while afterwards, when we were in the County of *Carlow*, the Child was brought there.

Q. To what Place?——*A.* To *Carrickduffe*.

Q. Who was it with there?---*A.* It was in the Houſe.

Q. With whom do you mean?———*A.* With Lord *Altham*.

Q. Was that the very Child?

A. I ſay, Sir, it was the ſame I ſaw with *Joan Landy* at *Dunmaine*.

Q. Did you ever ſee any Child at *Dunmaine* conſidered as my Lord *Altham*'s Child by his Lady?

A. Never in my Life; I would not ſay it for all the Eſtate that ever Lord *Angleſea* had, if it was falſe.

Q. Where do you live now?---*A.* I live in *Connaught*.

Q. With whom there?---*A.* With Colonel *Blakeney*.

Q. At what Place does he live?---*A.* At a Place called *Abbart*.

Q. Have you any Children?---*A.* I have, Sir.

Q. What are they?---*A.* Sons.

Court.] What is it you propoſe by this Evidence?

Mr. *Morgan.*] What I propoſe by this Evidence is this, that we ſhall ſhew a very unfair Attempt made upon this Woman on the Part of the Proſecutors.

Court.] Mr. *Mac Kercher* has made an Affidavit, which I wiſh, for his Sake, he had not.

Mr. *Morgan.*] He ſays, my Lord, in his Affidavit, he ſerved this Woman with a Subpœna; I hope I may aſk her that Queſtion.

Court.] Go on, Sir.

Mr. *Morgan.*] Was you ſerved with a Subpœna by him, and when?

A. I cannot tell the Day of the Month, it came one Day, and I was to appear in *Dublin* the next Day.

Q. How far is Colonel *Blakeney*'s Houſe from *Dublin*?

A. It is threeſcore and three Miles off.

Croſs-Examination.

Mr. *Callaghan.*] Did you live as a Servant in the Houſe of *Dunmaine*?

A. I did, Sir.

Q. In what Station were you there?

A. I was Houſe-keeper before my Lady came there.

Q. Was you ſo after?---*A.* I was not; Mrs. *Setwright* was.

Q. In what Capacity did you ſerve in the Houſe after ſhe went there?

A. I was in the Houſe after ſhe went there.

Q. But I aſk, did you ſerve in the Houſe after?

A. I did after, becauſe I did every thing that was to do.

Q. How long did you continue to live in the Houſe?

A. I lived in the Houſe 'till I took a Houſe of my own.

Q. When was that?

A. I cannot tell exactly the Time, but it was juſt at the End of the Avenue, and I was as frequently in the Houſe then, as I was before.

Q. I aſk you how ſoon after my Lady went to *Dunmaine* was it that you left the Houſe?--- *A.* I cannot tell exactly the time, Sir.

Q. Was it a Month?

A. Oh! a great deal more than one, or two, or three.

Q. Was it before or after Mrs. *Briſcoe* and her Daughter went there?

A. I was in the Houſe when they came there.

Q. I aſk you only, whether you were a Servant living in the Houſe at the time they went there?---*A.* I was.

Q. Upon your Oath, did not you keep an Alehouſe at the Bridge then?

A. No, not 'till after they went there.

Q. Did you keep an Ale-houſe there before Mrs. *Briſcoe* and her Daughter left *Dunmaine*?—*A.* No, I did not, to the beſt of my Knowledge.

Q. What time did they go to *Dunmaine*?---*A.* I cannot tell the Year, nor Month, nor any thing of that, it is too long ago for my Memory.

Q. How long did they ſtay there?---*A.* I cannot tell that again.

Q. How long after they left it was it that Mrs. *Setwright* was brought-to-bed?---*A.* I cannot tell; ſhe was with Child coming to the Houſe; but I cannot tell the time ſhe was brought-to-bed.

Q. Was it a Month, or ſix Weeks, or two Months after they left *Dunmaine*, that ſhe was brought-to-bed?

A. Mrs. *Briſcoe*'s Daughter was a Goſſip to the Child, to the beſt of my Knowledge, and they were there at the ſame time.

Q. Was you out of the Houſe at the time Mrs. *Setwright* was brought to-bed?---*A.* I think I was not out of the Houſe then.

Q. Were you or were you not?---*A.* I cannot tell that exactly.

Q. But you are ſure you were a Servant when Mrs. *Briſcoe* went away?

A. No, I did not ſay that: I ſay, to the beſt of my Knowledge I was in the Houſe.

Q. You remember Mrs. *Heſther*'s being brought-to-bed?

A. I do, very well.

Q. Was that before or after my Lady went to *Dunmaine*?

A. It was before my Lady went there.

Q. You mentioned the Midwife's Name?---*A. Shiel* it was.

Q. Could that Midwife be ſent for for any Purpoſe to Lady *Altham*?

A. She could not, becauſe Lady *Altham* never had a Child; ſhe never had a Child.

Q. Was not it before Lady *Altham* went to *Dunmaine* that *Heſther* was brought-to-bed?---*A.* Yes, do not I tell you ſo?

Q. I think you ſay you were at *Carrickduffe*?---*A.* I was, Sir.

Q. Was not you there upon a Day, that was celebrated as a Birth-day of Lord *Altham*'s Son?---*A.* There never was ſuch a thing in this World.

Q. Can you take upon you to ſay there was not?

A. I am as poſitive of it as of any thing in the World.

Q. Had you any Converſation with any body in relation to Lady *Altham*'s having had a Child?---*A.* No, never ſince I was born.

Q. Upon your Oath, did you never ſay that my Lady had a Child?

A. Never, in the courſe of my Life.

Mr. *Recorder.*] Now we ſhall judge whether Mr. *Mac Kercher*'s Information be true or not.

Court.] He was certainly miſinformed.

8. ELEANOR THOMAS, alias FISHER.

Mr. *Le Hunte.*] The Evidence ſhe will give is this——

Court.] Do not open it now ſhe is here.

Mr. *Le Hunte.*] What is your Name?--*Eleanor Themas.*] *Eleanor Themas.*

Q. Is that the Name you go by now?

A. Eleanor Fiſher is; my maiden Name was *Thomas*.

Q. Did you know one *Mary Waters*?---*A.* I did.

Q. Did you know the late Lady *Altham*?---*A.* I did, Sir.

Q. Did you ever live in her Service?---*A.* I did.

Q. When did you go there?

A. I cannot tell you the Year, but I was the ſecond Servant ſhe hired after ſhe came to *Dunmaine*.

Q. What was the Nature of your Service?---*A.* I was Houſe-maid.

Q. How long did you live with my Lady?

A. I lived a Twelvemonth with her.

Q. Where did you go when you left the Service?

A. I went to one Mr. *Bunbury*'s of *Ballyſeſkin*.

Q. Did you ever hear of one Mrs. *Briſcoe* and her Daughter's being at *Dunmaine*?

A. I was in the Houſe at the ſame time.

Q. What Houſe?---*A.* My Lord's in *Dunmaine*.

Q. Whilſt you were Houſe-maid, do you remember to have ſeen them there?---*A.* I did.

Q. Did you continue there 'till they left it?

A. I did indeed.

Q. Do you know of Lady *Altham*'s having a Miſcarriage at *Dunmaine*?

A. Indeed I never did.

Q. Did you know Mrs. *Pigot*?---*A.* Indeed I did.

Q. Of what Place?---*A.* Of *Tyntern*.

Q. Did you ever live in her Service?

A. I lived eight Years Maid and Wife with her.

Q. When did you go to live with her?

A. I went to her after I left *Dunmaine*.

Q. I thought you ſaid you went to Mrs. *Bunbury*'s?

A. I was only a Year at *Bunbury*'s.

Q. How long did you live with Mrs. *Pigot*?

A. I was eight Years Maid and Wife with her.

Q. Did you live any where in her Service but at *Tyntern*?

A. No where but at *Tyntern*.

Q. Can you recollect the Time ſhe was living there when you was hired?---*A.* I was a Twelvemonth her Servant at *Tyntern* before ſhe came from *Dublin*.

Q. When did ſhe come from *Dublin* to *Tyntern*?

A. I went to her at *Lammas*, and the Lady-day Twelvemonth following ſhe came to *Tyntern*.

Q. What Year was it?---*A.* Indeed, Sir, I cannot tell.

Q. Where did ſhe live for that Year?---*A.* In *Dublin*, Sir.

Q. Who hired you then?---*A.* Her Steward, *James Byrne*, hired me.

Q. Was there any Separation between Lord and Lady *Altham*, to your Knowledge?

A. I remember they parted; I was at *Tyntern* at the ſame Time.

Q. Was Mrs. *Pigot* there at that Time?

A. I think ſhe was; I cannot tell poſitively.

Q. Whilſt you were at *Dunmaine* and Mrs. *Briſcoe* there, did you hear that Lady *Altham* miſcarried of a Child?

Mr. *Walſh.*] That is a leading Queſtion; do not anſwer it, Woman.

Court.] Did you ever ſee Lady *Altham* with Child?

A. I never ſaw her with Child, nor never heard of her having a Child.

Croſs-Examination.

Mr. *Mac Manus.*] You ſay, you lived at *Dunmaine*?——*A.* I do, Sir.

Q. What Year?---*A.* Indeed, Sir, I cannot tell you the Year.

Q. Upon your Oath, what Year did you go to live there?

A. I can tell you the time of Year, but not the Year.

Q. Can you tell the Year you left *Dunmaine*?

A. I ſerved her Ladyſhip a Year.

Q. Was it in the Year 1716 or 1717 that you left her Service?

A. I cannot tell, if you would ſhoot me for that.

Court.] Where were you hired?---. *A.* In *Dunmaine* Houſe.

Q. Who hired you?---*A.* My Lady hired me herſelf.

Q. During the time that you were there, did you ſee any Child there?

A. I never did.

Q. Did you ſee Lady *Altham* frequently?

A. I did, I was the next Servant to Mrs. *Heath*, and often ſaw her.

Mr. *Mac Manus.*] Did you ſee the Furniture of that Houſe?--*A.* I did.

Q. Did you ſee any Sawcers with odd Figures on them?

A. I never ſaw the Sawcers.

Q. Did you never ſee thoſe bawdy Sawcers in the Houſe?--*A.* I never did.

Q. Do not you believe they were there?

A. I do not know; I never did ſee them.

Q. Did you never hear of a Miſcarriage occaſioned by the breaking of the Sawcers?---*A.* I never ſaw or heard of a Miſcarriage.

Q. Did you never hear it among the Servants?

A. I never did, upon my Word.

Q. Upon your Oath, did you never hear it?

A. Upon my Oath, and upon my Life, I never did.

Q. Could there not be a Miſcarriage and you not know of it?

A. There could not, Sir; for my Lady could not miſcarry unknown to me.

Q. Could ſhe do any Office of Nature unknown to you?

A. I do not know what you mean.

Mr. *Bradſtreet.*] The next Witneſs will ſhew your Lordſhip where Mr. *Cliffe*, who is ſaid to be Godfather to this Child, was from the fifth of *May* 'till the Middle of *June* 1715. His Son will appear here to prove that; and will ſhew ſome Rules of the Court, where he made Motions during that Time.

Mr. *Walſh.*] I believe many a Rule is entered in a Lawyer's Name that he knew nothing of.

Mr. *Bradſtreet.*] Firſt, we will produce his Son, to ſhew where he was in the Year 1715. We will ſhew that firſt.

Court.] If this be as you have opened it, it will be the moſt material Thing that has happened yet; and I believe there will be little in the Thing after, for it cuts off two or three of the moſt material Witneſſes on the other Side.

The Night being pretty far advanced, Mr. Cliffe *had retired to his Lodgings, and the next Witneſs called was Mrs.* Halpen; *but ſhe being alſo out of the way, Mr.* Tench *was called.*

9. JOHN TENCH, Esq.

Mr. *Spring.*] Pray, Sir, inform the Court and the Jury, whether you had any Knowledge of Mrs. *Pigot* of *Tyntern*?—Mr. *Tench.*] I had, Sir.

Q. You did know her?——*A.* I knew her, Sir.

Q. Was any Friend of your's concerned for her in her Affairs?

A. My Father received her Rents for above thirty Years.

Q. Who was concerned in the Management of her Affairs, and Receipt of her Rents in the Year 1715?——*A.* My Father was.

Q. Can you give the Court and the Jury an Account where Mrs. *Piget* was in the Month of *November*, 1714, and from thence down to the latter End of the Year 1716?——*A.* From my own Knowledge I do not know where she was; but from Letters I can tell you.

Q. Have you any Reason to enable you to form a Judgment where Mr. *Tench* was in———

Court.] Where was Mrs. *Pigot* in *November* 1714?

A. Of my own Knowledge I cannot tell where she was.

Mr. *Spring.*] Are your Father's Accompts, and Papers, and Letters, come to your Hands?——*A.* I have them, Sir.

Q. Have you any Accompts relating to Mrs. *Piget*'s Affairs in the Years 1714, 1715, or 1716, in his Hand-writing?—*A.* I have in the Year 1715.

Court.] It is proper to ask him if he has such; but what then? That won't prove where Mrs. *Piget* was.

Mr. *Spring.*] My Lord, my next Question is, Whether he has any Letters of Mrs. *Pigot* to his Father?

Court. That will not do. If she was produced here as a Witness, you might produce her Letters to confront her. We are not now upon the Proof of Similitude of Hands.

Mr. *Spring.*] Was you at *Tyntern* in the Year 1714?

A. I cannot tell where I was in 1714.

Q. Were you there in the Year 1715?—*A.* I was there in 1715.

Q. Where were you in *May* 1715?——*A.* Indeed, Sir, I cannot tell.

10. JAMES WALSH.

Mr. *Edward Malone.*] We produce this Witness, my Lord, to shew that Mrs. *Pigot* was in another Country, at another Place attending her Husband, who broke his Leg, at the Time they pretend she was Godmother to this Child.

Mr. *Edmond Malone.*] Are you a married Man?

James Walsh.] Yes, Sir.

Q. In what Family did your Wife live when you married her?

A. In the Family of Mrs. *Pigot.*

Q. What Mrs. *Pigot*, Sir?——*A.* Mrs. *Pigot* of *Tyntern.*

Q. Did you know Counsellor *Pigot*?—*A.* I did, Sir, very well.

Q. I ask you, then, if you recollect at any Time when any, and what Accident or Hurt happened to him?——*A.* I do, Sir.

Q. Tell it.

A. Mrs. *Pigot* went to *Dublin* in 1714, about *November* or *December*, I am not sure in what Month, and some time after *Christmas* Mr. *Pigot* went to *London*, and he came back again———

Q. Was it in *January* 1714-15, that he went to *London*?

A. I believe thereabout.

Q. Well, go on.

A. He came back I believe about *March*, or thereabouts, and he went to his Estate in the County of *Limerick*, and happened to break his Leg or Thigh in the Year 1715.

Q. What Time in the Year 1715?

A. *April* I believe, or *March*, or thereabouts.

Q. At what Place did he break his Leg?

A. They tell me, Sir, at *Glengoole*; I was not with him there.

Q. How do you know he broke his Leg?

A. I know, because Mrs. *Pigot* went from *Dublin* to him.

Q. What Time did she go to him?—*A.* She went about *April* 1715.

Q. Where was she to go to?——*A.* Either to the County of *Tipperary* or County of *Kilkenny*, I cannot tell which.

Q. How soon after he went to the County of *Limerick* did she leave *Dublin*?—*A.* I cannot tell exactly how soon she left *Dublin*, but she staved there till she brought Mr. *Pigot* home.

Q. To what Place?——*A.* To her House upon *Arran's-Quay.*

Q. What Time was that?

A. I cannot exactly tell the Time; I believe it was in the Year 1715.

Q. How long might she have staid away with him?

A. I cannot tell exactly; I believe it was more than a Month; I believe it was two Months, I do not exactly know.

Q. When they came to *Dublin*, how long did they continue in *Dublin* without going into the Country again?

A. They staid in *Dublin* till she buried Mr. *Pigot* in 1717.

Q. Are you positive that she remained all that Time in *Dublin*, without going any where to the County of *Wexford*?

A. Yes, Sir, I can say that safely; and that she went home in the Year 1717, and sent me back to *Dublin* to make a Monument for Mr. *Pigot* at the Outside of St. *Paul*'s Church.

Q. How long after their Return to *Dublin* was it that he died?

A. He died in the Year 1717.

Court.] Are you sure that Mrs. *Pigot* was not at *Tyntern* in the Year 1715?

A. She was not, upon my Oath.

Q. Nor in the County of *Wexford*?

A. Indeed she was not, my Lord.

Q. How many Years did you live with her in all?

A. I cannot tell how many Years, but I lived with her from his Death to her Death.

Q. And you are sure she was not in the County of *Wexford* from the Time she came to *Dublin*, till she buried him?

A. I am sure she was not.

Cross-Examination.

Mr. *Harward.*] Pray, Sir, where were you in *Christmas* 1714?

A. In *Dublin*, Sir.

Q. Where did you live in *Dublin*?——*A.* On *Arran's-Quay.*

Q. Was you a House-keeper there?

A. I generally kept Mr. *Pigot*'s House when they were in the Country, but that Year I did not.

Q. Did you keep his House in *Christmas* 1714?——*A.* I did not, Sir.

Q. Where were you then?———*A.* On *Arran's-Quay.*

Q. Where were you in the Beginning of *March* 1714?

A. I was in *Dublin* then.

Q. Where in *Dublin*?——*A.* In Lodgings of my own.

Q. Where were you *May*-day 1715?——*A.* In *Dublin*, Sir.

Q. Are you sure you were?—*A.* I was indeed, Sir.

Q. Where in *Midsummer* 1715?———*A.* In *Dublin.*

Q. Now, I ask you upon your Oath, was Mr. *Pigot* or Mrs. *Pigot* in their House at *Dublin* in the Beginning of *March* 1714?

A. No, they did not come to *Dublin* till *November* 1714.

Q. Where was Mrs. *Pigot* in *March* 1714?

A. In the County of *Wexford.*

Court.] Do you mean *March* 1713-14, or *March* 1714-15?

A. In *March* 1714-15 she was in *Dublin.*

Q. Where was she in *March* 1713-14?

A. I cannot tell, my Lord, I believe in the County of *Wexford.*

Mr. *Harward.*] Where was Mr. *Pigot* the first of *May* 1715?

A. I cannot tell you whether in *Dublin*, or that he was sick where he got his Hurt.

Q. Can you say, upon your Oath, where he was the first of *May* 1715?

A. Indeed I am not sure whether he was in *Dublin*, or whether he was where he broke his Limb.

Q. Now, Friend, where was Mrs. *Pigot* when the great Eclipse was?

A. I believe she was with her Husband where he broke his Leg.

Q. Was you in the County of *Tipperary* at the Time of the great Eclipse?———*A.* I was not.

Q. Where was she at that Time?

A. I suppose she was with Mr. *Pigot.*

Q. Don't be supposing with me; you know you ought to tell nothing but what you know; do you know where she was at the Eclipse?

A. She was, and I take it upon my Oath, she was where Mr. *Pigot* broke his Thigh.

Q. Where was that?—*A.* In the County, I believe, of *Tipperary.*

Q. How do you know that she was not in the County of *Wexford*?

A. Because I know she was not.

Q. Was not you in Summer 1715 in *Dublin*?

A. I was, Part of the Summer 1715.

Q. How do you know that she was where her Husband lay ill at the Time of the Eclipse?

A. I know it very well; she was with Mr. *Pigot* where he broke his Leg.

Q. Did you see her with him?——*A.* No, I did not.

Q. Why will you swear then she was with him?

A. Why, because I am sure of it.

Q. How are you sure of it?

A. She told me she was going to him, I knew that she went there, and we all knew that she went there.

Q. Have you any other Reasons for being so positive?

A. There are Letters from under her Hand, giving an Account that she was there.

Q. What Letters?———*A.* To her Agent Captain *Tench.*

Q. Pray now then, is not that the Reason that you know she was there?

A. It is only one Reason.

Q. Tell another Reason.

A. Why, I am sure she was there, because I know she went there, and all that were along with her told me so.

Q. Do you know of your own Knowledge where she was?——*A.* No.

Court.] Did you see Mr. *Pigot* when he came to *Dublin*?——*A.* I did.

Q. In what Condition did he then appear to you?

A. He appeared as if he had a Leg broke, and was very bad.

Court, to the Jury.] The Witness says, he saw Mrs. *Pigot* go down to her Husband, and saw them return together.

Mr. Recorder.] Where he swears that she went to her Husband at a certain Time, that she said she was going to her Husband, and that he saw her come back with him, with his broken Leg, it is as full Evidence as is necessary.

11. MARY WALSH.

Mr. *Lee.*] What is your Husband's Name?

Mary Walsh.] *James Walsh.*

Q. Did you know Mrs. *Pigot*?——*A.* I did.

Q. Did you know her in the Year 1715?——*A.* Yes, I did.

Q. Where was she then?——*A.* In *Dublin* then.

Court.] Where did she go from *Dublin*?

A. She went to where Mr. *Pigot* broke his Thigh.

Q. Where was that?——*A.* Beyond *Kilkenny*, going up to *Munster.*

Q. Was you with her?——*A.* I was not.

Q. How do you know she went there?

A. Because she was sent for when he broke his Thigh.

Mr. *Lee.*] When did Mrs. *Pigot* come to Town after that?

A. I cannot tell when she came up.

Q. Who came with her?

A. Mrs. *Wallace* and others, I cannot tell who.

Q. Did you ever see Mr. *Pigot* after?

A. Sure I was with him when he was buried.

Q. Do you remember when he came to *Dublin* after he had broke his Leg?

A. Why, I believe he came when she came.

Q. Who came to Town with Counsellor *Pigot*?

A. I cannot tell you, Sir; I cannot remember that.

12. JOHN CLIFFE, Esq.

Mr. *Bradstreet.*] My Lord, this is the Evidence that I have already open'd.

Mr. *Bradstreet.*] What is become of your Father?—Mr. *Cliffe.*] Dead.

Q. What Profession was he of?—*A.* A Lawyer at the Bar.

Q. Do you remember where your Father was in *May* and *June* 1715?

A. I

A. I cannot take upon me to say where he was; he was in this Kingdom, but whether in Country or Town I cannot take upon me to say from my own Memory.

Q. Where was you at that time?—*A.* I believe I was at the College.

Q. Pray, recollect and consider now, where your Father was in those Months?

A. I cannot take upon me to say, from my Memory, where he was in *May* 1715.

Q. Where do you say you yourself were at that time?

A. I was in the College at that time.

Q. Did your Father attend the Terms regularly at that time, or not?

A. I believe he did; but I cannot take upon me to say that I remember his keeping Terms regularly; I believe he did.

Mr. *Bradstreet.*] It appears to your Lordship that Mr. *Cliffe* was a Lawyer at the Bar; now, we are to falsify the Testimony of some Witnesses produced on the other Side, who swear he was Godfather to this Child, and therefore I hope we shall be at Liberty to shew some Rules of the Court, to prove that Mr. *Cliffe* was here in *May* and *June* in the Year 1715.

Mr. Serj. *Tisdall.*] I desire to know first, whether you have other Questions to ask the Witness.

Mr. *Bradstreet.*] My Lord, I remember when the Testimony of a Person was defeated, by shewing that the Name of a Lawyer was to a certain Bill. He said, that the Lawyer was dead before that time, the Record was produced, and his Name was at the Record in the Cause of *Reynolds* and *Sandys*. We produce this Witness to shew that those Witnesses, who swore his Father was Godfather to my Lord *Altham*'s Child, swear false; cannot we, in addition to his Testimony, shew the Rules of the several Courts that his Father made Motions in at that time?

Mr. *MacManus.*] My Lord, I only get up to answer Mr. *Bradstreet.* I do apprehend, that a Bill in Chancery is not Evidence, and the Reason is, because any Man may file a Bill in the Name of another; and therefore, unless you can shew some Proceedings have been had upon it, you cannot produce it in Evidence. The same Rule will hold in a cursory Motion in Court, which may be made by one Person and have another's Name to it.

Mr. *Daly.*] It is never done on the Equity Side, it is always moved in Court publickly.

Court.] I think it must appear, who the Counsel is that makes the Motion.

Mr. *MacManus.*] The Attorney is the Person to whom you must give notice, and is answerable for all the Proceedings; the Lawyer's Name may be, and often is mistaken by the Officer of the Court, it not being material what Lawyer moves.

Court.] The Question is, Whether attested Copies of the Acts of a Court of Record may not be produced, proved and given in Evidence to falsify a Witness, to shew that a Person sworn at a certain Time to be in one Place, was then at another?

Mr. *Daly.*] The Indenture of a Fine is read against a Man every Day.

Mr. Solicitor.] By Act of Parliament?

Mr. *Daly.*] It is not made Evidence by Act of Parliament.

Court.] Put the Case distinctly.

Mr. *Bradstreet.*] I say, my Lord, I put it thus: After the Evidence of this Gentleman, his Father appearing to be a Lawyer at the Bar, and after the Evidence that has been given on the other Side of his being Godfather to a Child at *Dunmaine* at such a Time, I offer these Rules of his on Motion, to shew that he was not at *Dunmaine* at that Time, but in these Courts, and I instanced the Case of *Reynolds* and *Sandys* for a Precedent.

Mr. *Robins.*] Are they litigated Motions?

Mr. *Bradstreet.*] They are litigated, and Hearings and open Pleadings.

Mr. Thomas Bourk.

Mr. *Bradstreet.*] What is that in your Hand?

Mr. *Thomas Bourk.*] Rules in the Court of Exchequer in *Easter* Term 1715.

Q. Are they all out of that Court?—*A.* They are, Sir.

Q. Are they true Copies?——*A.* They are.

Mr. Serj. *Tisdall.*] I believe it is an established Rule in Evidence, that the greatest Certainty must be had, that the Nature of the Thing to be proved will admit of. This is Evidence of no sort of Certainty, because it depends upon a Person not on his Oath, and because he incurs no Penalty by falsifying the Name of the Lawyer. He is not upon his Oath not to put the Name of the Lawyer to the Record, and it is no more than a falsifying Evidence; and besides, Records can only be produced as Evidence between the Parties to them.

Mr. *MacManus.*] I apprehend it no sort of Evidence at all.

Mr. *Bradstreet.*] What I apprehend is this, that this is Evidence which is contradictory to the Evidence that they have produced to this Point. Here are Motions that have been litigated, that have not passed of course; but I say, they have been litigated, so that it is to be presumed, that he was litigating these Matters; and if so, it is impossible he could be at *Dunmaine* at that time. And as such, I hope, is good Proof, and especially since he is dead.

Court.] I think it may be read to Contradict a Witness; and I know that the Officer is so far from being permitted to do this Thing of falsifying a Name, that he is under a great Penalty for it.

Mr. *Bradstreet.*] The Register is answerable, though committed by the Deputy.

Court.] I think it may be read in contradiction to the Witnesses.

Mr. *MacManus.*] Your Lordship is going to establish a Rule that may be of dangerous Consequence.

Court.] I am not going to settle a Rule, but I only tell you what I think is and ought to be allowed as Evidence. The Journals of both Houses of Parliament have been produced in Evidence.

Mr. *Walsh.*] I beg leave to consider this——

Court.] Read the Notes and Orders.

Mr. *Whyte* reads, This is the 5th of *May* 1715.

Powell v. Goodwin Ex. of Goodwin. } Mr. *Cliffe* pro Q. prays Interest for the 246 *l.* which the Defendant's Testator received since they were paid the Mortgage Money.

Mr. *Baly.*] I do not oppose Plaintiff's having a Decree for the Money, but they move for Interest, and I am surprized at their demanding of Interest.

Cur. Take a Decree for the Money reported, and Interest for the Money reported from the Time the Report was confirmed; and take an Injunction forthwith to be put in Possession, and take a Decree for the Rent that fell due the 25th of *March* last.

Court.] He must be personally in Court at that Motion.

Mr. *Whyte.*] The next is the 6th of *May*, 1715.

Bermingham et al. v. Lord Shelburne } Mr. *Cliffe* pro Q. moves on the last Notes for putting off the giving of the Judgment of the Court on Affidavit.

The next is the 9th of *May*, 1715.

Lawless v. Shee } Mr. *Cliffe* pro Q. moves on last Order for putting off the Hearing a Week.

The next is the 11th of *May*, 1715.

Bermingham et al. v. Lord Shelburne } Mr. *Cliffe* prays a Day to speak to this Matter.

The next is the 12th of *May*, 1715.

Archer v. Rogers } Mr. *Cliffe* pro D. moves for Time to answer personal Interrogatories as to several Books, in regard the Books are very large, and produces an Affidavit of this Matter.

The next is the 13th of *May*, 1715.

Wattson v. Butler } Mr. *Cliffe* pro D. moves for to dissolve the Injunction.

The next is the 14th of *May*, 1715.

White & Ux. v. Gale et al. } Mr. *Cliffe* pro Q. moves on the Notes upon the Hearing.

The next is the 31st of *May*, 1715.

Thomas White v. David Dunbarr } Mr. *Cliffe* opens the Defendant's Answer.

The next is the 1st of *June*, 1715.

Archer v. Rogers } Mr. *Cliffe* pro D. the Plaintiff never demanded any Custom for Timber these fourteen Years.

The next is the 18th of *June*, 1715.

Bermingham v. Lord Shelburne } Mr. *Cliffe* pro Q. moves on the Order for Liberty to read the Bill and Answer in the Cause of *Stewart* against the Lord *Shelburne.*

The next is the 23d of *June*, 1715.

King v. Gore et al. } Mr. *Cliffe* pro D. moves on Affidavit for a Commission to examine.

The next is the 25th of *June*, 1715.

Bermingham et al. v. Lord Shelburne } Mr. *Cliffe* pro Q. *Stewart* et al. have a Decree against Lord *Shelburne*, *Evans* et al. and they have a Decree for the 29,503 and also for the 21,032 Acres, and on the Hearing of this Cause the Bill of *Stewart* and others and the Lord *Shelburne*'s Answer was offered to be read, but the Court has not yet read that Bill and Answer; prays that Bill and Answer may be read, before the Bill is dismissed.

Mr. *Bradstreet.*] How many of your Name were at the Bar in the Year 1715?

Mr. *Cliffe.*] I know of no Person of that Name but my Father.

Q. Did you ever attend the Courts?——*A.* I did not, Sir.

Q. Did you know Mr. *Anthony Colclough*, Sir?——*A.* Yes.

Q. Of what Religion was he?—*A.* He was reputed a Papist.

Q. Is he alive or dead?—*A.* I have heard that he is dead.

Q. Did not he die a Papist?

A. He was reputed a Papist during his Life.

Cross-Examination.

Mr. *MacManus.*] Did you attend the Terms in the Year 1715 or 1716?---*A.* I did not attend in 1715 or 1716.

Q. Was your Father the only Person of the Name that professed the Law?

A. There might be another, but I never heard of any.

Mr. *Walsh.*] It has not been taken notice of in what Terms these Motions have been made. Here is a Chasm of about a Fortnight between the first and last Motion, and there is so between the two Terms. The first Rule is on the 5th of *May*, the last the 25th of *June*, so that it must be in two Terms that they were made.

Court.] So it was.

Mr. *Walsh.*] Well, then there was a short Vacation, when he might have been in the Country, and stood Godfather to the Child.

Court.] But you will consider, one of the Witnesses said the Christening was four or five Weeks, and another three or four Weeks after the Birth.

13. Mrs. Penelope Halpen.

Mr. *Lee.*] What was your Maiden name?---Mrs. *Halpen.*] *Hunt*, Sir.

Q. Whose Daughter are you?---*A.* Daughter to *John Hunt* of *Glangoole*, near *Killenaule*, in the County of *Tipperary.*

Q. Where did he live in the Year 1714, 1715, and 1716?

A. He lived there, Sir.

Q. Do you remember the Eclipse of the Sun?---*A.* I do.

Q. Where was you at that time?---*A.* I was at my Father's House then.

Q. Were you acquainted with Counsellor *Pigot* and his Wife?

A. I was.

Q. What was the Occasion of your being acquainted with them?

A. He broke his Thigh near my Father's House, and came and lay there till he was cured.

Q. When was that?---*A.* In the Year that the Eclipse happened.

Q. Was Mrs. *Pigot* there?

A. She was there at the Time of the Eclipse.

Q. How long did she stay after the Eclipse?---*A.* I cannot tell indeed.

Q. How long was she there before?---*A.* I cannot tell indeed.

Q. Was she a Fortnight, or a Month, or how long?
A. I cannot tell how many Days.
Q. Who came there first, he or she?—A. He came first.
Q. How long was he there before she came?
A. He was a few Days before she came.
Q. Who came with her?---A. Mrs. *Wallace.*
Q. In what State of Health was he?
A. He was in his Bed with that broken Leg.
Q. How long did he keep his Bed?
A. I cannot tell how long he kept it; whether a Month or six Weeks I cannot tell.

Court.] How long did his Wife stay with him?
A. I believe more than a Month.

Mr. *Lee.*] Were they visited by any body while they stayed there?
A. By several.
Q. Can you recollect any one that visited them?
A. Mr. *Cæsar Colclough* was there; whether to pay him a Visit or not I cannot tell, but I saw him there.
Q. Did they leave your Father's House together?
A. They did, to the best of my Memory and Knowledge.
Q. Where did they go to from your Father's House?
A. I cannot tell indeed.

Court.] Did they come to your Father's before or after the great Eclipse?
A. Before.
Q. Was Mrs. *Pigot* there before the great Eclipse?
A. She was indeed.

Cross-Examination.

Mr. Serjeant *Tisdall.*] Can you be positive of the Time that she came to your Father's House?---A. I cannot tell what Time.
Q. Can you say whether she was there at the Time of this Eclipse?
A. Yes.
Q. Are you sure she was?---A. I am sure she was.
Q. Was any Person with her at that time?
A. Mrs. *Wallace* and she were there.
Q. Have you any particular Reason for being so certain?
A. Yes, Sir, I was in the Garden when the Eclipse happened, and I called Mrs. *Wallace* out, to the Garden, to look at the Eclipse with me.
Q. When was the Eclipse?---A. I cannot tell, Sir.
Q. How long after the Eclipse did Mrs. *Pigot* stay?
A. I cannot tell indeed.
Q. How long did she come before it?---A. Nor how long before she came.

Mr. *Le Hunte.*] My Lord, we now produce Mr. *Sutton*, who will shew your Lordship that *Dennis Redmond* in the Year 1718 told him, that he carried a Midwife to *Dunmaine* to deliver one there, who was called my Lady.

14. William Sutton, Esq.

Mr. *Le Hunte.*] Pray, Sir, do you know *Dennis Redmond?*
Mr. *Sutton.*] I do, Sir.
Q. When did you first know him?---A. I believe in the Year 1717.
Q. Was he ever in the Service of you or your Mother?
A. He lived in the House with us in the Year 1717.
Q. Had you ever a Sister at that Time?---A. I had.
Q. Had she any Occasion for a Midwife?---A. She had, Sir.
Q. Was any body sent for a Midwife?---A. *Dennis Redmond* was sent.
Q. Will you give an Account of what you remember of the bringing her by him to your Sister?

A. I believe it was in *February* 1717 that I sent him to *Ross* for Mrs. *Shiel*; he went out pretty early in the Morning, so as I expected him home before Dinner, but he did not return till an Hour or two in the Night, which made me imagine he had Occasion to go further for her; and when he came home, I went to the Stable to look what Condition the Horse was in. When I came into the Stable, I found him taking care of the Horse, and asked him how he came to stay so late; he told me he could not get her to come away sooner; and upon examining the Horse, I took up the Saddle and Pillion, and found him very warm and wet; upon which, I asked him how that came? He said, he could not tell, unless that unhappy Woman had pissed upon the Pillion, for that she was fond of Drink, and had served him so once before.

Q. Upon what Occasion did he tell you he had been sent for her before?
A. He told me he had brought her once from *Ross* to *Dunmaine* for a young Gentlewoman, as he called her, that was kept by my Lord *Altham.*
Q. Go on, Sir.
A. He named the young Gentlewoman's Name, but I will not take upon me to swear her Name; I do not remember now what he called her.
Q. Who was it he said he brought the Midwife for?
A. He said, he brought her for a young Gentlewoman kept by my Lord *Altham.*
Q. Did he ever tell you that he fetched one for my Lady *Altham?*
A. He never did.
Q. What is the Character of *Redmond*, is he to be credited upon his Oath?
A. Why, of late Years he is not reckoned a Man of Veracity in our Country.
Q. Is he to be believed upon his Oath?
A. I should take but very little Notice of his Oath now.

Cross-Examination.

Mr. *Mac-Manus.*] Why now?
A. From his general bad Character in the Country.
Q. How long has he had that general bad Character?
A. He has not had a good one these several Years.
Q. Do you know him to have perjured himself?
A. I did not know him to have perjured himself in a Court of Justice.

Mr. *Edmond Malone.*] We now produce *Nicholas Croake*, and he will shew that my Lady *Altham* stayed in *Dunmaine* in the Months of *October* and *November* 1714, that she went to *Dublin* in *May* following, and stayed in *Dublin* all the Year 1715.

15. Nicholas Croake.

Mr. *Edmond Malone.*] When did you first become acquainted with Lord and Lady *Altham?*

Nicholas Croake.] The first time that I knew Lord *Altham* was in the Year 1711.

Q. And when with my Lady?---A. In the Year 1713.
Q. Where did you live in the Year 1713?---A. At *Ballycarrigmore.*
Q. How near is that to *Dunmaine?*
A. I believe very near two small Miles the high Road, but to go a short Road it is much nearer.
Q. You say in the Year 1713 you first knew my Lady, where was it you first saw her?
A. In 1713, that was the first time that I saw her at *Dunmaine*, some time after she came there, in *December* 1713.
Q. Do you know *Rathimny Bogg* in that Country?---A. Very well.
Q. Do you know any thing particular that happened there?
A. I do, very well.
Q. Give an Account of what you know.
A. In the Year 1714, his Lordship and Major *John Sutton* made a Hurling-match, to be hurl'd at the Green of *Rathimny.*
Q. What time of the Year was that Hurling-match?
A. It was hurled in *September* 1714, or the Beginning of *October* 1714; I cannot tell whether in *October* or the latter End of *September.*
Q. Pray, Sir, how long after that, and when did you see Lady *Altham* at *Dunmaine?*
A. I saw her that Day at the Hurling Green in her Chariot.
Q. Was my Lord there?---A. He was on Horseback.
Q. Pray, Sir, were you at any time and when at *Wexford* in the Year 1715?
A. I was there at the Assizes in 1715, which happened upon *Easter* Week.
Q. I ask you, Sir, whether there were any and what Persons of Consequence there that you took notice of?
A. Lord and Lady *Altham* were there.
Q. Between the time of the Hurling-match and the time of the Assizes, did you visit them at *Dunmaine?*
A. I was very often at *Dunmaine* in the Year 1714, when they lived there.
Q. Were you ever there in *November* 1714?
A. I was often there between the Hurling-match and *Christmas* 1714.
Q. Were you there in *November* that Year?---A. I cannot tell that.
Q. Did you see my Lord and Lady often between the Hurling-match and the Assizes?——A. I did, Sir.
Q. When you saw my Lady at the Assizes, did you observe her to be with Child?
A. I never did, by the Virtue of my Oath, nor never heard she was 'till this Affair.
Q. After the Assizes, can you recollect any Misfortune that happened in your Family?
A. When I was at *Wexford* Assizes, my Father, being ill for several Months before, died; when I came home the 20th of *April* 1715, he was dead before I came home, and was buried that *Friday* that the great Eclipse happened, the 22d of *April.*
Q. Do you remember any Rejoicings at *Dunmaine* about the Time of the Eclipse, and on what Occasion?
A. I cannot tell you on what Occasion, but on the 23d of *April*, being St. *George*'s Day, that my Lord made a Merriment, it was on a *Saturday*, the Day after my Father's Burying.
Q. Did my Lord *Altham* celebrate any Day, and what Day in the Year with Dancing and Merriment?
A. That Day he did, the 23d of *April* 1715, and the 23d of *April* 1714 before.
Q. Did you see Lady *Altham* at the time you were there?
A. I saw her there, indeed.
Q. Was she present at the Diversion?—A. She was.
Q. In what Condition did she appear, as to being with Child then?
A. By the Virtue of my Oath, I never saw her appear as to say she was any way big, or with Child.
Q. How soon after did they go from *Dunmaine* to *Dublin?*
A. They went in *May* 1715 to *Dublin.*
Q. Did you see them at any time after, and when?
A. I saw them in *August* 1715.
Q. Was that the *August* after the Assizes?
A. It was in *August* 1715 that I saw them in *Dublin.*
Q. Did you see them at any time that Year besides, and how soon after?
A. I did see them in *October* 1715, and in *February* 1715 I seen them here; and in *April* 1716, the latter End of that Month I came to Town to my Lord, and staid till he went into the Country in *May* 1716.
Q. Where was my Lady then?---A. I saw her at her Lodging.
Q. Where?---A. At Mrs. *Vice*'s in *Essex-street.*
Q. Can you say when my Lord returned to *Dunmaine?*
A. He went from *Dublin* to *Dunmaine* in *May* 1716.

Cross-Examination.

Mr. *Mac Manus.*] You say, you knew my Lord and Lady *Altham* at *Dunmaine?*——A. I did, Sir.
Q. Pray, how often did you see them there?
A. I cannot tell, but very often.
Q. I think you said, that my Lady was not with Child when you saw her?
A. I did say so, and I never heard it 'till this Affair.
Q. Might not she have been with Child and you not know it?
A. I should have heard it in the House where I was so conversant.
Q. Might not she have been with Child and you not know it?
A. I never knew her to be with Child.
Q. What sort of a Woman was Lady *Altham?*
A. She was a clever proper Woman.
Q. Was she tall?——A. She was tall.
Q. May not a tall Woman be with Child and you not observe it, if she was young with Child?
A. If she was, I never saw it nor heard it.
Q. Did you ever hear that she miscarried?---A. I never did.
Q. You say you were at the Assizes of *Wexford?*---A. I was.
Q. Was you there in *Easter* Assizes 1716?
A. In *Easter* Assizes 1715, I was there.
Q. Were you there in *Easter* Assizes 1716, or any other Assizes?

A. I

A. I cannot tell but I might be at other Aſſizes, I do not remember which now.

Q. How came you to know you were there in 1715?

A. I gave you a Reaſon before, that my Father was ill when I went to the Aſſizes, and I found him dead when I came home.

Q. Was Mr. *Colclough* at that Aſſizes?---*A.* I believe he may be there.

Q. Would not you have ſeen him, if he had been there?

A. There may be ſeveral there, that I did not ſee.

Q. Name any Perſon you did ſee there.---*A.* I ſaw Lady *Altham* there.

Q. How came you to take more particular notice of her being there than of Mr. *Colclough*'s?

A. Becauſe I was much better acquainted with them than him; and I had very great Reaſon for it.

Q. Did you ſee her go into Court?---*A.* I did not.

Q. Was ſhe in it to your Knowledge?---*A.* She was, as I was told.

Q. Were you in the Court during the Aſſizes?

A. I was in it ſometimes, and I cannot tell well whether I was or not, but I believe I was.

Q. What coloured Cloaths had ſhe on at *Wexford* then?--*A.* I cannot tell.

Q. Where was it you ſaw her at that Aſſizes?

A. At her Lodging at Captain *Sweeny*'s, at *Wexford*.

Q. Where did he live?

A. In the Street as you go down towards the Gaol.

Q. How came you to ſee her there?

A. Becauſe I came to his Lordſhip about ſome Buſineſs.

Q. Did you ſee her whenever you went to ſee my Lord at any other Time?---*A.* Perhaps I might, and perhaps not.

Q. Where was my Lord at *Wexford* when you ſaw him?

A. I ſaw him at Captain *Sweeny*'s Houſe.

Q. And where did you ſee my Lady?

A. She was coming out of the Room when I ſaw her.

Q. What ſort of Cloaths did ſhe wear then?

A. I cannot tell what ſort of Cloaths, it is ſo long ſince.

Jury.] Pray, Sir, when did you hear of your Father's Death?

A. Not until I came home, in the Night.

Q. How long was you at home after he was buried?

A. I came home before he was buried, he died on *Wedneſday*, and I came home that Night, and he was buried on *Friday* the twenty-ſecond of *April*.

Q. How far do you live from *Dunmaine?*

A. About two Miles, or thereabouts.

Q. Was you at *Dunmaine* the twenty-third of *April?*

A. I was there the twenty-third of *April*, the Day after my Father was buried.

Mr. *Mac Manus.*] How many Days did you ſtay at the Aſſizes?

A. Two Days, Sir.

Q. Were you there the firſt Day of the Aſſizes?

The Witneſs is directed to go off the Table.

The Examination of the Witneſſes for the Traverſer ended at three o'Clock in the Morning.

Mr. *Solicitor.*] I mentioned to your Lordſhip ſome time ago, that if theſe Gentlemen offered any thing new, we would reſerve a Liberty of replying, and encountering ſome Teſtimony that we expected on the other Side. It relates to the Tranſaction at *Wexford*, on which they lay great Weight; in anſwer to which, for the Satisfaction of the Jury, we ſhall beg leave to have two or three Witneſſes produced.

Court.] Well, be it ſo. Who do you call?

Mr. Serjeant *Tiſdall.*] We ſhall now call Mr. *John Maſterſon*, the very Man that was tried at that Aſſizes.

Mr. *Malone*, Mr. *Daly*, &c.] Not one of the Witneſſes ſaid that he was tried, but that *Walſh* was.

Mr. *Robins.*] This is to ſhew whether Lady *Altham* was there or not.

1. Mr. John Masterson.

Mr. Serjeant *Tiſdall.*] Was you at the Aſſizes of *Wexford* in Spring 1715?——Mr. *John Maſterſon.*] I was, Sir.

Q. Pray, Sir, was you arraigned there?---*A.* I was.

Q. Can you ſay whether there was any Lady at the Court-houſe the Day you were arraigned?

A. There were ſome Gentlewomen there, but I know of no Lady.

Q. Did you take notice of any of them?

A. There were two Aunts of mine, and a Siſter of mine, and two Couſin-Germans.

Q. Who were they? Name them.---*A.* My Aunt *Swords*, my Aunt *Talbot*, my Siſter *Colclough*, and my Aunt *Talbot*'s two Daughters.

Court.] Did you know Lady *Altham* then?---*A.* I did.

Q. Did you ſee her in the Court-houſe that Day?

A. I take it upon me, to the beſt of my Knowledge, to ſay, that I did not ſee her.

Q. Do you know Mrs. *Anne Giffard?*---*A.* I did know her formerly, but have not ſeen her ſince the laſt Time I ſeen her at *Wexford*.

Q. Did you ſee her in Court?

A. To the beſt of my Knowledge, ſhe was not there.

Q. Was ſhe in *Wexford* at that Aſſizes?

A. If ſhe was, ſhe was not in Court.

Q. How do you know?---*A.* Becauſe I did not ſee her.

Q. And might not ſhe be there for all that?

A. She might be in Diſguiſe, may be.

Q. Would you know her now if you ſaw her?

A. I do not believe I would, for I live very remote from that Part of the Country, and have not ſeen her a long time.

Q. Might not ſhe be there and you not ſee her?

A. Not, except ſhe kept behind Backs.

Mr. Serjeant *Tiſdall*]. Did you know Lady *Altham* before that Aſſizes?

A. I have ſeen her before at *Roſs* at Captain *Butler*'s, my Wife's Father-in-Law's.

Q. Were you acquainted with her Face?---*A.* I was.

Q. Did you, or did you not ſee her in the Court at the Aſſizes?

A. I did not ſee her, to the beſt of my Knowledge.

Mr. *Daly.*] Was Lord *Altham* there?---*A.* He was.

Mr. Serjeant *Tiſdall.*] Was *Cæſar Colclough* there?---*A.* He was.

Q. Whereabouts was he in the Court-houſe?

A. I do not remember whereabouts he was.

Court.] This is improper; it is not regular, *Mr. Serjeant.* It is Evidence to the ſame Fact, your Evidence now muſt be only to diſcredit the Witneſſes.

Mr. Serjeant *Tiſdall.*] My Lord, it is a new Fact ariſen upon their Teſtimony.

Q. Did you ſee Lady *Altham* there at any other Aſſizes?---*A.* I did.

Q. At what other Aſſizes?

A. I cannot tell which Aſſizes, but it was after that, and I have ſeen Mrs. *Giffard* with her, and it was not the Aſſizes I was tried.

Q. Are you ſure it was not the Aſſizes 1715?---*A.* It was not.

Q. Were you tried at that Aſſizes?

A. I was arraigned, and tried then, and acquitted with Honour.

Q. Was Mr. *Walſh* tried at the ſame time?

A. He was not tried by the ſame Jury, nor the ſame Day.

Q. Pray, were you both at the ſame time in Court?---*A.* We were, Sir.

Mr. *Recorder.*] I aſk you, Sir, were you under ſo little Concern, as that you reckoned all the Ladies in the Court?

Court.] You eſtabliſh him as a Witneſs properly produced, if you croſs-examine him.

Mr. *John Maſterſon.*] There were more Women that I do not remember.

Mr. Serjeant *Tiſdall.*] We beg leave to produce Mr. *Colclough.*

Jury to Mr. *Maſterſon.*] What was the Day you were tried on?

A. I believe it was on *Wedneſday* I was tried, to the beſt of my Memory, and I believe it was the twentieth of *April.*

Q. On what Day was Mr. *Walſh* tried?

A. Mr. *Walſh* was tried the Day before me.

Q. Did the Court ſit the Day after you were tried?

A. I did not mind that, for I was drinking with my Friends and minding other Buſineſs, and did not mind that; I believe the Judges diſcharged the Country.

Q. Were you in Court when *Walſh* was tried?---*A.* I was.

Mr. *Mac Manus.*] Mr. *Colclough* has met with a very great Misfortune by the Death of a valuable Son, but for the Sake of publick Juſtice he will appear here.

2. Cæsar Colclough, Eſq.

Mr. Serjeant *Tiſdall.*] Were you at the Spring Aſſizes of *Wexford* in the Year 1715?

Mr. *Cæſar Colclough.*] I was, Sir.

Q. Did you ſee Lady *Altham* or Mrs. *Giffard* there?

A. I did not that I know of.

Q. Were you in the Court-houſe when the *Pretender*'s Men were tried?——*A.* I was.

Q. Pray, Sir, were Lady *Altham* and Mrs. *Giffard* there?

A. To the beſt of my Knowledge, they were not.

Q. Did you ſit by them at thoſe Trials?---*A.* I did not, Sir.

Q. Pray, Sir, did you hand either of them into Court?—*A.* I handed neither of them into Court, by the Virtue of my Oath.

Q. Did you attend the whole Trial?

A. I did, and was there before and after.

Q. You were acquainted with Mr. *Pigot*, I preſume?---*A.* What *Pigot?*

Q. Counſellor *Pigot*, that was married to Mrs. *Pigot* of *Tyntern.*

A. Yes, he was married to my Relation.

Q. Can you ſay where he was in Spring 1715?

A. To the beſt of my Knowledge, he was then in *England.*

Q. Do you remember his breaking his Leg?---*A.* I do, Sir; I remember he broke it at *Glangoole* in the County of *Tipperary.*

Q. Pray, Sir, what Year was that?

A. In the Year 1716, to the beſt of my Knowledge.

Q. Did you go to the County of *Tipperary* to ſee him?

A. I was in Town here when he broke his Leg, and my Couſin *Pigot* wrote to me, ſhe had a Jointure upon that Eſtate, and wrote to me that I ſhould come——

Mr. *Daly.*] I muſt object to this Evidence Mr. *Colclough* is going into; thoſe Letters, Sir, that you received from Mrs. *Pigot* are not Evidence.

Mr. Serjeant *Tiſdall.*] Do you know *Dennis Redmond?*---*A.* I do.

Q. Pray, Sir, what Character does he bear; is he a Man to be credited upon Oath?

A. Upon my Word, I believe he is to be credited upon his Oath; if you will aſk me for my Reaſons, I will give them to you.

Q. What is his general Character?

A. He has as good a Character as any Man of his Abilities that I know of in the World; I have known him theſe twenty Years.

Q. Pray, Sir, do you know when Counſellor *Pigot* died?

A. I believe in the Year 1719, or thereabouts; he was buried in *St. Paul*'s Church, the Time of his Death is on his Tomb there; I believe it was 1718 or 1719, or thereabouts, I am not certain.

Court.] Do you know whether Mrs. *Pigot* went to her Huſband when he broke his Leg?

A. She did; and ſtaid with him 'till he came to *Dublin.*

Q. Do you remember what Year it was?

A. It was in the Year 1716, as near as I can recollect.

Croſs-Examination.

Mr. *Recorder.*] Can you ſwear that Lady *Altham* was not at the Aſſizes in the Year 1715?

A. I can, as poſitively as I can ſwear any thing in the World.

Q. Can you, that ſhe was not at the Aſſizes?

A. I can, that ſhe was not in the Court.

Q. Can you ſwear that ſhe was not in the Town?

A. I cannot take upon me to ſwear that ſhe was not in the Town.

Q. Can you ſwear that Mr. *Pigot* did not break his Leg in the Year 1715?---*A.* I can, to the beſt of my Memory.

Q. But can you poſitively ſwear that he did not break his Leg in the Year 1715?

A. I can ſwear that it was not in the Spring 1715, becauſe I was at the *Wexford* Aſſizes, and my Couſin wrote to me to come to her.

Q. Where was ſhe?---*A.* She was at *Glangoole.*

Q. At whoſe Houſe there?

A. At one *Hunt*'s, it was a thatched Houſe.

Q. Do you remember *Penelope Hunt*, a Daughter there?

A. I cannot tell, I might ſee Women there, but did not take ſuch Notice as to remember them.

Q. Do not you believe that Mr. *Hunt*'s Family knew when Mr. *Pigot* broke his Leg? Was not it broke near them?

A. Upon my Word, Sir, I do not believe they knew better than I; becauſe I was directed by my Couſin to come down, and I did; and I found her there, and Surgeons ſetting his Leg, and I am ſure it was the Year 1716.

Q. Where was Mrs. *Pigot* in the Year 1715?

A. She was in the Winter 1714, I am poſitive that ſhe was at *Tyntern*, and ſhe ſeldom left it 'till towards *May*, or thereabouts.

Q. Do you know *James Walſh*?---*A.* He did not live with her then.

Q. Did not he live with her in the Year 1715?

A. No, Sir, nor his Wife neither.

Q. Where did they live?

A. They lived in Town, or ſomewhere elſe, but not in our Family.

Q. Was not he an Attendant of the Family at that Time?

A. No, Sir, I believe he was then a Door-keeper to the Play-houſe.

Q. Upon your Oath, do you know that of your own Knowledge?

A. I do know it ſo far, as I had it from his own Mouth, upon my Oath, that he was a Door-keeper at the Play-houſe.

Q. How long before that was he in their Service?

A. He had not been in the Service before.

Q. Was not he in the Service at all?

A. He was afterwards, but he was not in the Service at the Time Mr. *Pigot* broke his Leg at all.

Jury.] Was Lord *Altham* at the Aſſizes of *Wexford* in 1715?

A. I do not recollect any Thing about him at all; I was told he was, but he was a Man taken very little Notice of.

Q. Do you know whether he was in Court or not at the Trial?

A. I do not know whether he was in the Court or not.

Mr. Recorder.] Do you remember where you were at the Time of the Eclipſe?

A. I was in the County of *Wexford*; I was hunting on the Mountain of *Forth* at the very Inſtant of the Eclipſe.

Q. Did you, or did you not ſee Lord *Altham* at *Wexford* Aſſizes?

A. I did not ſee him there, to the beſt of my Knowledge.

Q. Recollect, and ſay upon your Oath, whether you did or no?

A. I do not recollect, I cannot ſay I did not ſee him or that I did, upon my Oath.

Mr. Serjeant *Tiſdall.*] We ſhall trouble your Lordſhip but with two Witneſſes more, and them but to two ſhort Points. The firſt relates to *Edmond Bourke*; we produce Mr. *Buſh* to give an Account of that Man, and a Character of him too.

3. Arthur Bush, Eſq.

Mr. Solicitor.] Do you know *Edmond Bourke*?

Mr. *Buſh.*] I do, him of *Collombkill.*

Q. Do you remember that he was a Poſtillion to any body?---*A.* I do not.

Q. What is he now?---*A.* He is a kind of a Farmer now.

Q. Had you any Diſcourſe with him about the Affairs of the *Angleſea* Family?---*A.* I had a Diſcourſe with him.

Q. Give an Account what that Diſcourſe was.

A. A little after the Time that Mr. *Anneſley* and Lord *Angleſea* were at *Roſs*, examining Witneſſes, this *Bourke* came to my Houſe about ſome Buſineſs of a Juſtice of Peace, and after I had done what he came about, I aſked him whether he was at *Roſs*, and what was doing there? He told me there was a great deal of Company, and he ſaid he gave ſome Evidence there. I then aſked him on which Side he was a Witneſs; he told me, on the Earl's Side. What was it, ſays I, that you had to ſay? He ſwore that he was Servant to Lord *Altham*, when he lived at *Dunmaine*, and that there was a Kitchen Maid there that my Lord had got with Child, that ſhe was under the Cook in the Kitchen, and that all the Family diſliked her, becauſe ſhe took a great deal upon her for lying with my Lord. That one Day there was a Hare in the Kitchen to be dreſſed for Dinner, and the Cook took the Skin of the Hare off and threw it at her, and hit her upon the Back, and ſaid, Damn you, for a Whore, if I can do nothing elſe, I will mark your Baſtard. Some Time after, he ſaid, ſhe was brought-to-bed of a Son, and they were all deſirous to ſee if it had that Mark, and they run to ſee it, and it had the Mark of the Hare's Skin upon the Back of it. I told him, this is a very material Thing, and I thought you were a cunninger Fellow than to be pinned down to ſwear ſuch a Thing as that. Oh! ſays he, if they do not like that, I can ſay that my Son was that Day drowned, and that I was a Madman and did not know what I was doing. He ſwore further, that there was a Quarrel between my Lord and Lady *Altham* on Account of *Tom Palliſer*; and upon that, he ſaid, they parted, and my Lord lived at a Place called *Dunmaine*, and ſhe in *Roſs*, and he went with a Compliment from my Lord to my Lady, with a How-do-you-do, and ſaid, that he ſaw my Lord very fond of the Child; and, ſays he, I ſpoke to my Lord about it and ſaid, How can you be ſo very fond of that Baſtard? Why, ſays he, I got him, and I will take Care of him, I will get him to be a Captain of Horſe.

Q. What Character has this *Bourke*?

A. He is of a very bad Character.

Q. Is he to be believed upon his Oath?

A. I will not believe him; nor no one that ever heard talk of him would believe him.

Q. How long have you known him?

A. I have known him theſe ſix-and-twenty Years, and I have known him under a bad Character during that Time.

Croſs-Examination.

Mr. Recorder.] Had you any Diſcourſe with this Man about a Child of Lady *Altham*'s?

A. No indeed, he told me that ſhe never had a Child.

Mr. Juſtice Blennerhasset.

Gentlemen of the Jury, The Traverſer, *Mary Heath*, is indicted for Perjury, committed by her on her Examination in the Court of Exchequer, in a Cauſe wherein *Campbell Craig*, Leſſee of *James Anneſley*, was Plaintiff, and the Earl of *Angleſea*, Defendant. The ſeveral Aſſignments of Perjury in the Indictment are as follow:

Firſt, It is laid in the Indictment, that ſhe ſwore on that Trial that Lady *Altham* never had a Child, while ſhe, the Traverſer, lived with her.

Secondly, That Lady *Altham* never had a Child at *Dunmaine* in the County of *Wexford*.

The *third* is, That there never was a Child as a Child of Lord *Altham*'s and *Mary* his Lady chriſtened or living at *Dunmaine* Houſe, while ſhe, the Traverſer, was there.

The *fourth*, That ſhe never ſaw a Child in the Hands or Care of *Joan Laffan* while ſhe was at *Dunmaine*.

And the *fifth* is this, That Lady *Altham* did not miſcarry of a Child at *Dunmaine*.

The Indictment, Gentlemen, averreth the contrary of all theſe Facts, ſworn by the Traverſer, to be true, and that ſhe has been guilty of malicious, wilful and corrupt Perjury. There have been many Witneſſes produced by the Proſecutor in Support of this Indictment, and many in Support of the Traverſer; and it has been admitted, that there was a Verdict in that Cauſe tried in the Exchequer, and that Verdict was given on the Side of the Party, who was to gain by having the Traverſer's Teſtimony diſcredited: And it is alſo admitted, that thoſe ſeveral Facts above-mentioned were ſworn by the Traverſer on that Trial in Ejectment. It is likewiſe admitted by both Sides, that the Traverſer lived with Lady *Altham* from the Month of *October* 1713, the Time of her firſt coming into this Kingdom, till the Year 1729, when Lady *Altham* died. All theſe are admitted, to ſhorten the Time.

" [The firſt Witneſs examined by the Proſecutor was Mrs. *Henrietta*
" *Cole*, whoſe Teſtimony related to the Miſcarriage of Lady *Altham*.
" She ſwears, that Lady *Altham* came over in 1713. That Lord and
" Lady *Altham* lived at *Dunmaine*. That they, and Mrs. *Cole*, and
" her Mother, were at Dinner at *Dunmaine*. That there were Sawcers
" of indecent Images brought to Table, which were broke by my Lord,
" whereby my Lady *Altham* received a Fright, and that Mrs. *Heath* came
" and alarmed her Mother that Night with the Indiſpoſition of Lady *Al-*
" *tham*; and that Mrs. *Cole* was in Bed with her Mother, when Mrs.
" *Heath* deſired her Mother to make haſte, and riſe, for that Lady *Al-*
" *tham* was extremely ill. And the Witneſs ſaid, ſhe believed, that
" Lady *Altham* miſcarried, for that ſhe ſaw the Abortion in Lady *Altham*'s
" Cloſet; ſhe firſt ſaid, that the Abortion was ſhewed to her by her Mother,
" and did not remember any particular Converſation about a Miſcarriage,
" with Lady *Altham*; that Lady *Altham* was confined to her Chamber a
" Fortnight, and that ſhe mentioned this Affair to Mr. *Monk*'s Family.
" This is the Subſtance of her direct Teſtimony. But ſhe is not quite
" ſo conſiſtent when croſs-examined.
" You obſerve, Gentlemen, that Mrs. *Cole* ſays, that Lord and Lady
" *Altham* went from her Father, to lodge at another Lodging, and that
" from thence they went to *Dunmaine*. In this Point, the Witneſſes for
" the Traverſer ſtand in Contradiction to her; for they ſwear, that Lord
" and Lady *Altham* went directly from Mrs. *Cole*'s Father's Houſe to
" *Dunmaine*. Mrs. *Setwright*, who was hired to be the Houſekeeper, is
" particular in her Teſtimony herein, that Lord and Lady *Altham* went
" from Mrs. *Briſcoe*'s, and not from *Vice*'s, to *Dunmaine*. Mrs. *Cole* ſaid,
" that *Setwright* was brought-to-bed in *Dunmaine*. *Setwright* and ſhe
" agree in this Part of the Evidence.
" Mrs. *Cole* ſaid, ſhe was examined in the Court of Exchequer, and
" there declared, that ſhe and her Mother went down to *Dunmaine*,
" from *Dublin*, in *March* or *April*, in the Spring immediately following
" Lady *Altham*'s coming over to this Kingdom. But now ſhe corrects
" herſelf, and ſays, ſhe then miſtook the Time, for that it was in *Fe-*
" *bruary* ſhe and her Mother went to *Dunmaine*. She ſays, the Accident
" of China Sawcers happened two Months after going to *Dunmaine*, and
" that four Gentlemen and her Mother and ſhe dined with Lord and Lady
" *Altham* that Day, and were preſent at that Accident: She does not
" mention who they are, but conceals their Names. In her Teſtimony,
" ſhe deſcribes the Room. She tells you, Gentlemen, that Lord *Altham*
" emptied the Sawcers very carefully from the Sweetmeats, and threw
" them down, one by one. She ſwears, that Lord *Altham* knew his Lady
" was with Child. She ſays, that ſhe believes that ſhe ſwore, that ſhe
" was about 13 Years old, at the Time of the former Trial; but now
" ſhe ſays ſhe was born in the Year 1691, ſo that ſhe muſt be then about 23
" Years old, and differs now 10 Years from the Account ſhe gave of her
" Age on her former Examination. She tells you now, that one might
" obſerve the large Eyes and Head of the Abortion. She admits to have
" ſaid, on the former Trial, that her Mother told her it was an Abor-
" tion; but now ſhe ſays, that her Mother and ſhe went into the Cloſet
" together. She ſaid on the former Trial, that Lady *Altham* ſat next to
" her at Table, but now ſhe ſays that Lord *Altham* ſat next to her; and
" excuſes herſelf from theſe Miſtakes, that they all aroſe from the Con-
" fuſion ſhe was in at the Time of her Examination.
" She now will not be poſitive that Lady *Altham* went to *Vice*'s
" before ſhe went to *Dunmaine*, but is poſitive ſhe went to other Lodg-
" ings. Says, ſhe does not remember the Houſemaid at *Dunmaine*, nor
" *Bourke* the Poſtillion. She tells you, ſhe paid a Viſit to Mr. *Boyde*'s.
" She was aſked if ſhe knew *Anthony Dyer*, one of the Servants; She ſaid
" ſhe did not. She was aſked if ſhe was at *Dunmaine* on St. *George's-day*;
" ſhe ſaid ſhe believed ſhe was. She was aſked if ſhe remembered any
" Smock-Race to be at *Dunmaine* that Day; ſhe ſaid ſhe did not remem-
" ber of any Smock-Race. She denies ſhe ever had any Diſcourſe with
" Mr. *Mark White*, that ſhe could ſwear for Lord *Angleſea*, if her Leaſe
" was renewed. She ſaid ſhe did not know of any Fire, or Candle, be-
" ing in the Room when Mrs. *Heath* came to alarm her Mother of Lady
" *Altham*'s being ill; but the Manner of her knowing Mrs. *Heath* was,
" by her Voice.
" The next Witneſs in behalf of the Proſecutor was Dr. *Jemmatt*. He
" ſwore that he was Phyſician to Lord *Altham* ſeveral Years. He ſwears,
" That Lord *Altham* came to his Lodging to acquaint him of the Indiſpo-
" ſition of his Lady, and that he went along with my Lord to ſee her, and
" found her very warm, and preſcribed for her; but that afterwards he
" diſcovered by her all the Symptoms of Pregnancy, and that ſhe told
" him ſhe was gone three Months with Child. She ſaid ſhe was regu-
" lar 'till about two Months paſt, and thereupon he ordered her mild
Medicines:

" Medicines: He further ſaid, he believed, that Lady *Altham* was " with Child, and that her Complexion was altered, as pregnant Wo- " men are. He was aſked on the Croſs-Examination, whether there " was any infallible Rule to know a real from a falſe Conception. He " ſaid, the Colleges of Phyſicians of *Dublin*, or *London*, or the Royal " Society in *London*, could not as yet determine that Point.

" *Hellen Moncriefe* was the next Evidence. She ſwore, that Doctor " *Walker* recommended her as a Nurſe to Lady *Altham*. That ſhe met " him in *Stafford-ſtreet* the Beginning of *November* or *December* 1714. " That ſhe was three times at my Lady's Lodgings; that ſhe appeared as " big with Child as any Woman that had been gone ſix or ſeven Months, " that ſhe laid her Hands on her Belly near her Petticoat; though ſhe " was not quite ſo critical as the Doctor was in his Profeſſion, yet ſhe " ſeemed to know more of Lady *Altham*'s Pregnancy than the Phyſician " knew. When ſhe was croſs-examined, ſhe ſaid, ſhe did not obſerve " any Child to move in her Belly.

" Mrs. *Buſh* was next examined. She ſaid, ſhe was acquainted with " Lady *Altham*, and ſaw her at *New Roſs* in *February* 1714, and that ſhe " ſeemed then to be with Child; and that ſhe was in Mourning for " Queen *Anne*. That ſhe was introduced to her there, and in a Day or " two paid her a Viſit. She ſays that ſhe ſaw her after the latter End of " *June*, to the beſt of her Recollection, without her big Belly. There " was nothing certain in her Teſtimony, and nothing material aroſe " from her Croſs-Examination; therefore, Gentlemen, I will not " trouble you therewith.

" *Alice Betts* ſwore, that ſhe wiſhed Lady *Altham* Joy, and in *November* " 1714, and after, had ſome Converſation with Mrs. *Heath*; and that ſhe " uſed to joke with her about Lady *Altham*'s being with Child. She ſaid, " that Lady *Altham* appeared with Child, and that it was eaſy to be ſeen " that ſhe was with Child; that it was before or after *Chriſtmas*.

" *Mary Sutton* ſwore, that ſhe dined at *Dunmaine*, and toaſted the Boy " in the Box.

" As to *Evan Thomas*, and *Martha Tenant*, their Teſtimony was not " very material. You have it, Gentlemen, in your Notes.

" *Anſtace Toole* ſaid, ſhe fitted a Gown on Lady *Altham*, and that Mrs. " *Heath* was preſent. That ſhe ſaw the Child at *Roſs*, and made a Gown " for the Child, and ſaid that ſhe never had any Converſation with Lady " *Altham* about the Child.

" *Anne Bennett* ſaid, ſhe believed in her Heart, Lady *Altham* was with " Child, and that Lady *Altham* looked very round.

" *Edward Howlett* was the next Witneſs, who was examined after " *Bennett*. You have ſeen, Gentlemen, the mean Figure and Appear- " ance he made. He ſwore he ſold Clouts to Mrs. *Heath*, for Lady *Al-* " *tham*'s Lying-in. That on the Day of Separation of Lord and Lady " *Altham*, her Ladyſhip kiſſed the Child in the Coach at parting. He ſaid " that this happened about ten or eleven o'Clock in the Morning. But " here, Gentlemen, I muſt take notice, that all the other Witneſſes " ſay it was in the Afternoon Lady *Altham* went from *Dunmaine*, the Day " of the Separation; and herein contradict *Howlett*.

" It is of no Purpoſe to mention all the Croſs-Examinations, therefore " I ſhall not repeat them to you.

" *Newton Rickets* ſaid, that he made a ſmall Chair for a Child, but did " not ſwear, that Lord and Lady *Altham* called him their Child, but that " they behaved to him as ſuch. I ſhall likewiſe not trouble you with " his Croſs-Examination.

" *Elizabeth Doyle* ſwore, that her Mother fell ill of a Fever, which " prevented her nurſing the Child. On her Croſs-examination ſhe ſaid, " that Madam *Cole* deſired her to go to *Dunmaine* laſt Summer to give an " Account of what ſhe could ſay, and that ſhe was not at *Dunmaine* for " twelve Years before.

" *James Sinnot* ſwears, that he ſaw Lord and Lady *Altham* at his Fa- " ther's Houſe, and obſerved that Lady *Altham* was with Child, and " that the Child was afterwards at *Dunmaine*, and that Lord *Altham* had " ordered the Child to be brought to Table to be ſhewn to the Witneſs " and Mr. *Ivory*, as his Son and Heir. This Piece of Evidence is ſome- " what extraordinary, that Lord *Altham* ſhould call his Son and Heir to " be ſhewn to him, and that he never ſaw the Child but once.

" *James Fitzpatrick* ſays, that he ſaw a Child in the Arms of a clean, " orderly Woman, and that he took it to be Lord *Altham*'s legitimate " Child; and the only Reaſon he gave for it was, that he believed Lord " *Altham* had that Regard for him that he would not introduce his illegi- " timate Child to him, and that, to the beſt of his Memory, he ſaw the " Child once before the Separation. But I muſt obſerve to you, Gentle- " men, that no Witneſs of Figure has been produced to ſatisfy you that " Lady *Altham* miſcarried, or was brought-to-bed.

" You have given great Attention, Gentlemen, to the Evidences of " both Parties, and you have them on your Memory, therefore in regard " it is ſo late, at this Time I ſhall not trouble you farther with a Repe- " tition of them."]

Gentlemen, I ſee you are all greatly fatigued; I do not wonder at it, for I think we have ſat here without Refreſhment for near twenty-two Hours. You have heard the Evidence on both Sides, and ſeen the Witneſſes, ſo that it will be unneceſſary to take up more of your Time. I ſhall only obſerve to you, that the Crime the Traverſer ſtands charged with is a Crime of a high Nature; the Conſequence of a Conviction is no leſs than to make her perpetually infamous, never to be believed after in a Court of Juſtice; and therefore it is that Men of Honour will ſee, that Evidence is clear and demonſtrative, before they will lay ſuch an Imputation by their Verdict on any body: You will, for this Reaſon, weigh the Teſtimony on both Sides, and compare the Credit of the Witneſſes; and if, on the whole, you ſhall believe that the Balance goes on behalf of the Crown, you will then find the Traverſer guilty; if, on the other Hand, the Teſtimony in favour of the Traverſer outweighs the Crown Evidence, or is equal with Reſpect to Credit, even in that Caſe Juries rather incline to Mercy than otherwiſe; ſo that, Gentlemen, you'll go together, and I'll wait for you till you pleaſe to return with your Verdict.

Lord Chief-Juſtice MARLAY.

Gentlemen,

My Brother has ſummed up and obſerved upon the Evidence, ſo far as he has gone, as clearly and diſtinctly as poſſible.

There have been Twenty-five examined on behalf of the Proſecutor, beſides three new ones produced on the Reply, and no leſs than fifteen on the Part of the Traverſer. To repeat every thing they have ſaid would be endleſs, and almoſt impoſſible, conſidering the Time already taken up in this extraordinary Trial.

I ſhall only obſerve to you, that in a criminal Caſe of this Nature, the Teſtimony to convict any Perſon of ſo great and infamous an Offence, ought to be ſo full, clear and conſiſtent, that there can be no Room to doubt the Truth of what it is offered to prove.

Whether what you have heard on behalf of the Proſecutor, be ſuch of itſelf, conſidered without Regard to what has been given in Evidence for the Traverſer, you are the proper Judges.

Though there are many Witneſſes for the Crown, there are few material ones; and it has been obſerved to you already, that the bare Declarations of my Lord or Lady *Altham* are not Evidence in this Caſe.

The firſt Witneſs produced, Mrs. *Cole*, is a material Witneſs; my Brother has fully repeated her Teſtimony; I ſhall not add to his Obſervations; ſhe ſwears to the Miſcarriage, and there is no other Witneſs brought to ſupport her Teſtimony, though two contradict her.

The eleventh, *Edmond Howlett*, a Pedlar, is in ſome meaſure a material Witneſs; he ſwears that the Child was owned by Lady *Altham* before Mrs. *Heath*, and a Ribband bought for it by my Lady, and put on the Child by the Traverſer, and Diaper bought for it for Clouts, before it was born, by the Traverſer. You have ſeen and heard him, and are the beſt Judges how far he is to be credited.

James Fitzpatrick; the fifteenth, ſwears, though not ſo fully, to the ſame Purpoſe, the publick owning of the Child; and to this Purpoſe are thoſe who are produced to prove the Enquiry for a Nurſe, and the Child's being carried about by my Lord and Lady *Altham*.

Eleanor Murphy, the eighteenth, and *Mary Doyle*, the nineteenth Witneſs, are both material, and ſwear poſitively, that they were preſent at the Birth of the Child; and *Dennis Redmond*, the ſeventeenth, produced, ſwears almoſt as fully to the ſame Purpoſe, though he does not ſwear himſelf an Eye witneſs of the Birth.

Joan Laffan, the laſt produced by the Proſecutor, is a very poſitive and material Witneſs, if you credit her; ſhe dry-nurſed the Child in the Houſe with my Lord, and ſhe ſays, with my Lady too, where the Traverſer ſaw him every Day. As to all the others, they are only Evidences as to their Belief and Opinion, merely conjectural.

Doctor *Jemmat*, the Perſon of moſt Skill, told you, that neither he, nor the College of Phyſicians here, nor that in *London*, aſſiſted by the Royal Society, can diſtinguiſh between a falſe Conception and a real Pregnancy.

I ſaid the other Witneſſes were only to their Belief and Opinion; I muſt except *Thomas Higginſon*, who would have been a material Evidence, if his Memory did not fail him.

Now, Gentlemen, if you believe *Eleanor Murphy*, *Mary Doyle*, *Dennis Redmond*, and *Joan Laffan*, you have ſufficient Evidence to convict the Traverſer, Mrs. *Heath*; but if you ſhould not think them Perſons of Credit, you have not ſufficient poſitive Evidence on which you can ground ſuch a Verdict.

Three of theſe Witneſſes, *Murphy*, *Doyle*, and *Redmond*, ſwear to my Lady *Altham*'s being delivered of a Son, and ſwear it very poſitively.

But if they ſwear truly, this Child was born at *Dunmaine*, and very near *Eaſter*, in the latter End of *April*, or Beginning of *May* 1715; and chriſtened at *Dunmaine* by Mr. *Lloyd*, a Clergyman of the Church of *England*, three, or four, or five Weeks after its Birth, and had for Godfathers and Godmother, Mr. *Cliffe*, Mr. *Anthony Colclough*, and Mrs. *Pigot* of *Tyntern*, who were all preſent.

If there was no Child of my Lady *Altham*'s born at the Place and Time they poſitively ſwear to, nor chriſtened there, they are, I mean all theſe three Witneſſes, directly perjured.

Now, if my Lady *Altham* was at *Wexford* Aſſizes at that time, ſhe could not be delivered of a Child at *Dunmaine*. If Mr. *Cliffe* and Mrs. *Pigot* were, one in *Dublin*, and the other in the County of *Tipperary*, from the latter End of *April* till ſix Weeks after *Eaſter*, they could not poſſibly ſtand in Perſon as Goſſips to a Child of my Lady *Altham*'s, chriſtened at *Dunmaine* in three, or four, or five Weeks after it was born.

Obſerve, Gentlemen, that it appears by the Almanack, that *Eaſter* Day in the Year 1715, fell on the 17th of *April*; the great Eclipſe of the Sun happened on the 22d of *April*; King *George* the Firſt's Birth-day, the 28th of *May*, was on a *Saturday*. On that Birth-day my Lady *Altham* was in *Dublin*. The Spring Aſſizes of *Wexford* began on *Eaſter-Eve* that Year. My Lady *Altham* is ſworn to have been there.

Now, as to my Lady *Altham*'s being or not being at the Spring Aſſizes of *Wexford* in 1715, if the Matter ſhould ſtand doubtful; becauſe, tho' three Witneſſes of Credit have ſworn ſhe was, yet Mr. *Maſterſon* and Mr. *Cæſar Colclough* ſwear they did not ſee her there; yet it is impoſſible that Mrs. *Pigot* and Mr. *Cliffe* could be at a Chriſtening at *Dunmaine*, when they were at many Miles Diſtance at the time that Chriſtening was, if there were ever any ſuch Thing.

Mr. *Cliffe* is proved by the Records of the Court of Exchequer to have been in *Dublin*.

And Mrs. *Pigot*, by a Witneſs, (who, if ſhe ſwears the Truth, cannot be miſtaken) to have been at Mr. *Hunt*'s in the County of *Tipperary*.

I muſt obſerve to you, that Mr. *Arthur Buſh*, the third and laſt Witneſs produced by the Proſecutors on their Reply, ſwears only to diſcredit *Edmond Bourke* the Poſtillion, a Witneſs on behalf of the Traverſer.

If you believe the Traverſer's Witneſſes, particularly Mrs. *Gifford*, *Mary Setwright*, and *Sarah Weedon*, my Lady never was brought-to-bed at *Dunmaine*; and conſequently *Joan Laffan*, who ſwears that ſhe had this Child put into her Hands by my Lord and Lady *Altham*, and that ſhe dry-nurſed it at *Dunmaine*, and all the reſt of the poſitive Witneſſes for the Proſecutor, are not in the leaſt to be credited.

You, Gentlemen, are Judges of the Fact; 'tis your Buſineſs to weigh the Teſtimony on both Sides, and, as you find one or other deſerve Credit, to find the Priſoner Guilty, or acquit her.

At Half-an-hour after four o'Clock the Jury left the Box, and after twenty Minutes Stay, returned with their Verdict for the Traverſer, Not Guilty.

XXVIII. The

XXVIII. The Trial of WILLIAM CHETWYND, Esq. for the Murder of Mr. THOMAS RICKETTS, before the Right Honourable *Robert Willimot*, Esq. Lord Mayor of the City of *London*, the Right Honourable the Lord Chief Justice *Lee*, the Honourable Mr. Baron *Reynolds*, Mr. Serjeant *Urlin* Recorder, and others his Majesty's Justices of Oyer and Terminer for the City of *London*, and Justices of Gaol Delivery of *Newgate*, holden at the *Old-Bailey* for the said City and County of *Middlesex*, the 12, 13, 14 and 17 of *October* 1743.

Counsel for the Crown.

Mr. Serjeant *Wynne*.
Mr. *Moreton*, afterwards Recorder of *London*.
Mr. *Erskine*.
Mr. *Purcas*.

Counsel for the Prisoner.

Mr. (afterwards Sir *Richard*) *Lloyd*.
Mr. (afterwards Mr. Baron) *Legge*.
Mr. *Hume Campbell*.
Mr. *Hatsell*.
Mr. *Stracey*, afterwards Recorder of *London*.

WILLIAM CHETWYND was indicted at Common Law for the Murder of *Thomas Ricketts*.

He was likewise indicted on the Statute of Stabbing by the Name of *William Chetwynd*, of the Parish of *St. Ann, Westminster*, in the County of *Middlesex*, Gent. for that he not having God before his Eyes, &c. on the 26th Day of *September*, in the 17th Year of his Majesty's Reign, with Force and Arms, in the said Parish, and the said County, in and upon *Thomas Ricketts*, in the Peace of God, and our Lord the King, then and there being, feloniously did make an Assault; and with a certain Knife made of Iron and Steel, of the Value of Six-pence, which he, the said *William Chetwynd*, then and there had, and held in his left Hand; him, the said *Thomas Ricketts*, in and upon the right Side of the Belly of him the said *Thomas*, below the Navel of him the said *Thomas*, then and there feloniously, and in the Fury of his Mind did strike and stab (he the said *Thomas Ricketts* then and there not having any Weapon drawn, nor the said *Thomas Ricketts* then and there having first stricken the said *William Chetwynd*), and that the said *William Chetwynd*, with the Knife aforesaid, did then and there give to the said *Thomas Ricketts* in and upon the right Side of the Belly of him, the said *Thomas*, below the Navel of him, the said *Thomas*, one mortal Wound, of the Breadth of half an Inch, and of the Depth of three Inches, of which mortal Wound the said *Thomas*, at the Parish aforesaid, and County aforesaid, from the said 26th Day of *September* until the 29th of the said Month of *September*, did languish, and languishing did live; upon which said 29th Day of *September*, the aforesaid *Thomas Ricketts*, in the said Parish, and the said County, of the said mortal Wound did die; and so the Jurors aforesaid do say, that the aforesaid *William Chetwynd* the aforesaid *Thomas Ricketts* feloniously, and in the Fury of his Mind, did kill and slay, against the Peace of our Lord the King, his Crown and Dignity.

He was a third Time indicted on the Coroner's Inquisition, for feloniously slaying the said *Thomas Ricketts*.

Middlesex Jury.

Allen Evans.	*Benjamin Ingram.*	*John Archambo.*
Samuel Bowler.	*Jacob Lebat.*	*Benjamin Tickner.*
Charles Carleton.	*Jonathan Alderton.*	*John Holmes.*
Francis How.	*Peter Archambo.*	*Thomas Hogg.*

The Counsel for the Prisoner desired, that as the Prisoner had the Misfortune to be extremely deaf, he might have the Liberty of standing at the Inner Bar; which the Court readily granted.

The Counsel for the Prosecution having opened the several Indictments, and set forth the Circumstances relating to the Fact, they proceeded to examine their Witnesses.

Master WILLIAM HAMILTON *sworn.*

Counsel. I think you are one of the young Gentlemen who boarded at Mr. *Clare*'s Academy in *Soho-Square*?——*A. Hamilton.* Yes, I am.

Q. Was you boarded there last *September*?—*A.* Yes.

Q. Was the Prisoner at the Bar at board there then?——*A.* Yes.

Q. Do you remember one Mr. *Thomas Ricketts* being there?

A. Yes, I was present when the Prisoner and Mr. *Ricketts* were together in the Room.

Q. What Time was it?—*A.* It was on the 26th of *September*.

Q. Who was in the Room when you went in?

A. There was one *Samuel Malcher*, *Thomas Ricketts*, and Mr. *Chetwynd*; they were the only Persons in the Room.

Q. What was the Conversation turning upon? What were they talking about, when you came into the Room?

A. Mr. *Chetwynd* had got some Cake, and Mr. *Thomas Ricketts* desired Mr. *Chetwynd* to give him a Piece of his Cake; *Chetwynd* denied it him; I asked him for a Piece, and he likewise denied it me.

Q. What happened then?

A. Hannah Humphreys came into the Room about that Time. Mr. *Chetwynd* took the Cake, and cut a Piece off, and laid the Piece upon the Bureau, and locked the other up; with that Mr. *Ricketts* came and took the Piece of Cake off the Bureau; Mr. *Chetwynd* asked him for it; and Mr. *Ricketts* laughing, went up to the Maid, and told her, he had taken a Piece of Mr. *Chetwynd*'s Cake; with that, Mr. *Chetwynd* came up to him, and demanded it of him again.

Q. Did Mr. *Ricketts* deliver it to him again?—*A.* No.

Q. Did Mr. *Ricketts* refuse to deliver it?

A. Mr. *Ricketts* did not refuse to deliver it.

Q. What Answer did Mr. *Ricketts* give Mr. *Chetwynd*, when he asked him for the Cake again?

A. He gave him no Answer, but continued laughing.

Q. You mean he was laughing with you, not laughing at the Prisoner.

Prisoner's Counsel. That is nice indeed!

Prosecutor's Counsel. What happened next after this?

Hamilton. After Mr. *Chetwynd* demanded the Cake, and Mr. *Ricketts* giving him no Answer, he struck him immediately with the Knife, which he had in his Hand.

Q. Was it back-handed?—*A.* It was back-handed.

Jury. I desire he may speak a little louder; Was *Ricketts* behind him when he struck him with the Knife?

A. Mr. *Ricketts*'s Side was to Mr. *Chetwynd*'s. He was standing by his Side.

Q. How near were you to them?—*A.* Not very near.

Q. Where did you stand?—*A.* I stood a little Way before them.

Q. Where was this Blow given?

A. Just here about upon the Side (*pointing to the right Side of the Belly*).

Q. Did you see him pull the Knife out?

A. I did not see him pull it out.

Q. How do you know it was a Knife that he struck him with?

A. Because it was the same Knife that he cut the Cake with.

Q. What followed upon that?

A. Mr. *Ricketts* cried out he was afraid he was stabbed.

Q. Did Mr. *Ricketts* fall down?

A. No; he laid his Hand upon his Side, and said he was stabbed.

Q. What Sort of a Room is it?---*A.* It is a pretty large Room.

Q. What Part of the Room did the Scrutoire stand in?

A. It stood in the Corner of the Room by the Window; the Window and the Scrutoire were on the same Side.

Q. What Kind of a Knife was this?

A. It was a Sort of a *French* Knife.

Q. Was it a Penknife? or what Knife was it?

A. It was a pretty large Knife.

Q. Was it a Clasp Knife?—*A.* Yes.

Q. Did you see *Chetwynd* cut the Piece of Cake?——*A.* No.

Court. Did you see the Deceased take it away?---*A.* Yes.

Q. Did *Chetwynd* see him take it away?---*A.* I cannot tell that.

The Counsel for the Prosecution having done with this Witness, he was examined on behalf of the Prisoner.

Prisoner's Counsel. Mr. *Hamilton*, if I understand you right, the Deceased and you asked Mr. *Chetwynd* for a Piece of Cake, and *Chetwynd* refused it?---*Hamilton.* Yes.

Q. So he was not willing to give either of you any?---*A.* No, he was not.

Q. I think you said Mr. *Chetwynd* took the Knife out of his Pocket?

A. I said he cut a Piece of Cake; I did not say he took the Knife out of his Pocket.

Q. I think it was a Cake that they call a Simnel; was it not?

A. Yes, it was.

Q. I think they are very hard, with a Crust on the Outside, and difficult to be cut?—*A.* It was pretty hard.

Q. Then that may possibly require more Strength than he had in one Hand, to cut it; he cut it down did not he?

A. I did not see him cut it.

Q. You said he took his Knife and cut it?

A. Yes he did cut it.

Q. Then tell me whether or no (I am sure I will do fairly, God forbid that I should do otherwise) Mr. *Chetwynd* did not refuse to give any of the Cake to Mr. *Ricketts*?

A. Yes, he did refuse it.

Q. Who did he cut the Cake for? was it not for himself?

A. I believe it was.

Q. Then he did not cut it for any body else; I think you said, he laughingly told the Maid he had got it?---*A.* Yes.

Q. And upon that Mr. *Chetwynd* demanded it from him again, and he laughed, but did not deliver it?

A. He made him no Answer, but did not deliver it.

Q. Did he ask him to give it him again before this unhappy Accident happened?——*A.* Yes, he did.

Q. Pray tell me whether he did not besides his Laughing, endeavour to keep the Cake from him?—*A.* I did not observe that.

Q. Please to tell me, whether, as you were School-fellows together, you were not all good Friends?———*A.* Yes, we were.

Q. Which of the two was biggest?

A. Ricketts was larger than *Chetwynd*.

Q. I am obliged to the Gentlemen on the other Side, for intimating that Mr. *Chetwynd* gave Mr. *Ricketts* a Piece of Cake before; I would ask you whether Mr. *Chetwynd* did not give Mr. *Ricketts* a Piece that Morning?

A. I heard he did.

Q. How long was that before this Thing happened?

A. I

A. I do not know how long it was. This happened about one o'Clock.

Q. When this unfortunate thing happened, what did Mr. *Chetwynd* say immediately upon it?---*A.* Really, I do not know.

Q. I think, Sir, you were telling the Court of a *French* Knife; I own I do not know what they are; but the Question I would ask you, is, Whether most of you young Gentlemen do not carry these Knives in your Pockets?

A. I have heard so; it was a Knife that he always had.

Q. And I suppose many of you had such Knives?

A. I cannot tell, as to that, Sir.

Q. I am obliged to you for the Candour you have used in your Evidence; I have no more Questions to ask you.

Court. Can you recollect, how these young Gentlemen lived together, whether there was any Ill-will between them, or whether they lived in a friendly Manner?

Hamilton. I think they lived as the other Scholars did.

Court. Do you apprehend there was any Malice between them?

Hamilton. I never knew of any Malice between them.

Court. How did the young Gentleman behave after he had given that Wound?—*Hamilton.* I did not see him afterwards.

Master SAMUEL MALCHER sworn.

Court. How old are you?---*Malcher.* I am thirteen next *January*.

The Court asked *Malcher* what he thought would become of him, if he did not speak the Truth? To which he replied, he should be unhappy everlastingly.

Court. Were you present at this unhappy Affair?---*Malcher.* Yes.

Counsel. Then give us an Account of what you heard, and what you saw.

A. Mr. *Ricketts* asked Mr. *Chetwynd* for a Piece of his Cake, and Mr. *Chetwynd* gave him a Piece; he asked him for another Piece, and he refused it him.

Q. How long was that after he had given him the first Piece?

A. It was about a Quarter of an Hour; and after he had refused it him, he went out of the Room, with the Cake under his Arm, and then came into the Room again.

Q. What Room was it?

A. It was the Room where Mr. *Chetwynd* lay.

Q. What Room did he go into, when he went out of his own Room, after his refusing him the Cake?

A. He did not go into any Room; he only went out of the Room to the Head of the Stair-case, and then came in again.

Q. Did he open the Bureau then, or was it open before?

A. I cannot justly recollect that.

Q. You say he had the Cake with him?---*A.* Yes.

Q. What did he cut it upon?---*A.* He cut it upon the Bureau.

Q. You say he cut a Piece, what did he do with it?

A. He laid it down upon the Bureau, and *Ricketts* came and took it---snatched it away.

Q. Did *Chetwynd* see him take it away?

A. I cannot tell whether he did or no.

Court. How did *Chetwynd* stand?--*Malcher.* He had his Back to *Ricketts*.

Court. Where did the Cake lie?

Malcher. The Cake was before *Chetwynd*, and *Ricketts* put his Hand beside him, and took it away, and then he went to the Window.

Counsel. Where did he carry it?

Malcher. He went to the second Window with it.

Q. How far was that from the Bureau?---*A.* I believe about a Yard.

Q. What did he do after that?--*A.* Mr. *Chetwynd* came and stabbed him.

Q. In how long Time was that after he took the Cake?

A. I believe it was a Minute.

Q. Was it so long as a Minute?---*A.* I do not know whether it was quite so long as a Minute, or not, it was but a very little Time.

Q. Did *Chetwynd* ask for his Cake?---*A.* I was not near enough to hear it; I was at my Box, at the other End of the Room.

Q. Is it a small Room?---*A.* It is not a very large Room.

Q. What happened after that?

A. Mr. *Ricketts* told the Maid he was stabbed, and then he went down Stairs.

Q. Was *Hannah Humphreys* in the Room?---*A.* Yes.

Q. What did she say?---*A.* She said, he was stabbed.

Q. What was said or done afterwards?---*A.* Really I do not know.

Q. Had *Ricketts* any thing in his Hand?---*A.* He had nothing in his Hand that I saw; nor said any thing to provoke him, as I heard.

[*Cross-Examination by the Prisoner's Counsel.*]

Counsel. You was present at the Beginning of this Transaction, was you not?--- *Malcher.* Yes.

Q. Was you present before Mr. *Hamilton* came up?—*A.* Yes, Sir.

Q. When Mr. *Ricketts* had the Piece of Cake given him, that was before Mr. *Hamilton* came up, was it not?

A. Mr. *Hamilton* did not see him give it him.

Q. They were good Friends before this, were they not?

A. I think so, they used to be so.

Q. When *Ricketts* asked him for the second Piece of Cake, was not he teazing of him?

A. No, he teazed him about the first; and then he went out of the Room, and *Ricketts* followed him.

Q. You say, Mr. *Chetwynd* carried the Cake under his Arm out of the Room, and *Ricketts* followed him; and then *Chetwynd* came into the Room again, and *Ricketts* followed him still, did not he?---*A.* Yes.

Q. Then he came to his Bureau, *Ricketts* following of him still?

A. Yes; and then I saw Mr. *Ricketts* take the Piece of Cake up, which Mr. *Chetwynd* had laid upon his Bureau.

Q. Then Mr. *Chetwynd* turned about to ask for his Cake again?

A. I did not hear him ask for it.

Q. He went after him, did not he?---*A.* Yes.

Q. Was it not for his Cake?---*A.* I cannot tell.

Q. Did *Ricketts* shove him?---*A.* Not that I saw.

Q. When *Ricketts* took the Cake from *Chetwynd*, had *Chetwynd* his Back towards him?---*A.* Yes.

Q. Did *Ricketts* reach over his Shoulder, or take it under his Arm?

A. He went under his Arm, and took the Cake.

Q. Did he touch him?---*A.* I cannot tell that.

Q. You say immediately upon that he went to the Window, how far was that from the Bureau?-- *A.* About a Yard or two.

Q. Pray, now, when *Chetwynd* went to cut the Cake (you were there all the while); did *Ricketts* offer to assist him in it, did he offer to lend him a Knife?---*A.* Yes, he did, and had it open.

Q. What did *Chetwynd* say then?

A. *Chetwynd* said, he had a Knife of his own.

Q. Pray, had *Ricketts* a Knife in his Hand?

A. Yes, he had a Knife, and offered to lend it Mr. *Chetwynd*.

Prosecutor's Counsel. I should be glad to know whether he did not put that Knife into his Pocket again?---*Malcher.* I do not know that he did.

Q. Here is a Question misunderstood I believe; did the Knife that you speak of belong to Mr. *Chetwynd*, or to Mr. *Ricketts*?

A. The Knife belonged to Mr. *Ricketts*.

Prisoner's Counsel. That is a fair Answer to the Question.

Court. *Ricketts*'s Knife was opened before *Chetwynd*'s; were both the Knives open at the Time this unhappy Accident happened?

Malcher. Mr. *Chetwynd*'s Knife was not opened when Mr. *Ricketts* offered him his Knife; but he refused it, and said he had one of his own.

Court. Was *Ricketts*'s Knife open then?---*Malcher.* Yes.

Court. Were they both open when the Accident happened?

Malcher. No, *Ricketts*'s was clasped, and put into his Pocket, on Mr. *Chetwynd*'s refusing it, and before the Cake was cut and put upon the Bureau.

Court. Then you saw him clasp his Knife when *Chetwynd* refused it, and put it into his Pocket?---*Malcher.* Yes.

Court. And this was before this Wound was given?---*Malcher.* Yes.

Prosecutor's Counsel. Was it before the Cake was cut and laid upon the Bureau?---*Malcher.* Yes, it was.

HANNAH HUMPHREYS sworn.

Counsel. Pray give us an Account what you know of this unhappy Affair.

Humphreys. The young Gentlemen were in the Dining-room, and I was in the next Room; I heard a Noise, upon which I went into the Dining-room and asked them what they did there, and what was the matter they were not in their own Rooms; Mr. *Ricketts* made Answer, that he wanted a Piece of Cake of Mr. *Chetwynd*; I said to Mr. *Ricketts*, Have not you had a Piece? He said No, and smiled. I looked at Mr. *Ricketts*, and said, I believed he had had some, for he had some Crumbs of Cake upon his Lips; Mr. *Ricketts* smiled again, and said, he wanted another Piece, or a bigger Piece.

Q. Where was Mr. *Chetwynd* then?

A. Mr. *Chetwynd* at that Time was at his own Bureau, cutting his Cake.

Q. How far was Mr. *Ricketts* off the Bureau?

A. He was as near as I can guess about two Yards from the Bureau; Mr. *Ricketts* went up to the Bureau to Mr. *Chetwynd*, and Mr. *Chetwynd* lifts up his Arms, and says, Don't, Mr. *Ricketts*; and Mr. *Ricketts* then took the Cake.

Court. Mentionin what Manner he took it.

Humphreys. I think, to the best of my Knowledge, it was over Mr. *Chetwynd*'s Shoulder.

Counsel. Where did you stand at that Time?

Humphreys. I stood at the Corner of the middle Window, and Mr. *Ricketts* almost faced me, not quite, but was a little sideways of me.

Court. Had Mr. *Ricketts* the Cake in his Hand?

Humphreys. He had the Cake in his Hand.

Court. How far were you off the Bureau then?

Humphreys. I was then from the Bureau about three Yards, and Mr. *Ricketts* came up to me, and said, *Hannah*, I have got some Cake. (I had a Stocking in my Hand which I was darning.) Upon Mr. *Ricketts*'s saying he had got some Cake, Mr. *Chetwynd* came from his Bureau to my Right-hand, and in a very short time Mr. *Ricketts* said, *Hannah*, Mr. *Chetwynd* has stabbed me. I looked at him.

Prosecutor's Counsel. Did you see Mr. *Chetwynd* come from the Bureau?

Humphreys. Yes.

Q. Where did Mr *Ricketts* stand?---*A.* Mr. *Ricketts* stood just by me.

Q. Now tell us whether you saw this Stab given?--*A.* I did not see it given.

Q. Did you observe that Mr. *Ricketts* had any Thing in his Hand?

A. He had nothing in his Hand but a Bit of Cake.

Q. Did you observe that Mr. *Ricketts* had struck Mr. *Chetwynd*?

A. No, he had not struck him, and was not seemingly in any Anger.

Q. You say that at this Time Mr. *Chetwynd* came up and stabbed Mr. *Ricketts*?

Prisoner's Counsel. No, that is not right.

Court. She said Mr. *Ricketts* told her so.

Prisoner's Counsel. I do not doubt your Candour, but you are mistaken in the Evidence; repeat it again.

Humphreys. I saw Mr. *Ricketts* come from the Scrutore, and he said, Mr. *Chetwynd* has stabbed me. Says I, Mr. *Ricketts*, you joke. Mr. *Ricketts* had put his Hand to his Side: I bid him take his Hand away, and then I saw a little Blood; Mr. *Chetwynd*, said I, you have done very well. Mr. *Chetwynd* said, *Hannah*, if I have hurt him, I am sorry for it.

Prosecutor's Counsel. Did you observe who were in the Room?

Humphreys. I saw Mr. *Hamilton*, Mr. *Ricketts*, and Mr. *Chetwynd*.

Court. Did you hear *Chetwynd* ask *Ricketts* for his Piece of Cake?

Humphreys. I did not hear him.

Counsel. What became of Mr. *Chetwynd* after that? where did he go?

Humphreys. He went out of the Room.

Q. How long did he continue in the House?

A. He continued in the House till *Tuesday* Morning.

Q. That was the next Morning; did he give any Notice of his going away?---*A.* I cannot tell that.

[*Counsel for the Prisoner on the Cross-Examination.*]

Counsel. Tell us where this Room was, where you heard the Noise before you went to them.---*Humphreys.* It was on the same Floor.

Q. Did you hear any Rustling of Feet, or only their Tongues?

A. It was only their Tongues; it is my customary Way when I hear any Noise among the young Gentlemen to go to them, in order to persuade them to be quiet.

Q. Where was Mr. *Chetwynd* when you came into the Room?

A. Mr. *Chetwynd* was at his Bureau, and Mr. *Ricketts* was standing in the Room, and he said he wanted a Piece of Cake of Mr. *Chetwynd*.

Q. Was this Mr. *Ricketts*'s Room?

A. No, Mr. *Ricketts* had a Room up another Pair of Stairs.

Q. Then he was got into Mr. *Chetwynd*'s Room, which was the Occasion of your asking him what he did there?

A. Yes, it was the Room where Mr. *Chetwynd* lay; he had not a Room to himſelf.

Q. Was there any Converſation about the Cake, or any aſking for Cake before you went into the Room?

A. I do not know, he only ſaid he wanted another Piece of Mr. *Chetwynd*'s Cake.

Q. Was Mr. *Chetwynd*'s Back toward you?——*A.* Yes.

Q. Then conſequently it muſt be to Mr. *Ricketts?*

A. Yes——Mr. *Chetwynd* put out his Arms a little to keep *Ricketts* from the Cake. It was but a very little Way thus, extending his Arms a little from his Body, and raiſing them up, and Mr. *Chetwynd* ſaid, Don't, Mr. *Ricketts.*

Q. Did you obſerve Mr. *Ricketts* then offer to take the Cake, or to touch Mr. *Chetwynd?*

A. I only obſerved him to take the Cake.

Q. But did you ſee him touch him?—*A.* I did not ſee him touch him.

Q. That is very odd, becauſe putting out his Arm, and ſaying Don't, ſhews as if he had done ſomething.

A. He might touch his Cloaths, when he took away the Cake.

Q. Was not he taller than Mr. *Chetwynd?*

A. He was a great deal taller than Mr. *Chetwynd*, he might for his Heighth reach over Mr. *Chetwynd*, and take the Cake.

Q. Could he take it over his Shoulder, or over his Head without touching him?

A. Over his Shoulder he might do it without touching him.

Q. Did he take the Cake over his Shoulder or over his Head?

A. I think it was over his Shoulder.

Q. Did not Mr. *Ricketts* laugh when he had got the Cake?

A. Mr. *Ricketts* came away laughing, and ſaid, he had got a Bit more Cake.

Q. Was there any Motion or Action between them before this Thing happened?——*A.* There was not any Motion or Action at all that I ſaw before this happened.

Q. Did you ſtand facing the Bureau?

A. The Bureau was behind my Back, and Mr. *Ricketts* ſtood facing me, as I ſtood ſideways to the Window, with my Work in my Hand, and Mr. *Chetwynd* was by my right Hand, we all three in a Manner touched one another.

Q. How could this be done without your ſeeing it?

A. I did not ſee it done.

Q. And then the firſt Thing you heard was, that he was ſtabbed?

A. That was what Mr. *Ricketts* ſaid.

Q. And you at that Time did not believe it?

A. No, I did not believe it; for when Mr. *Ricketts* ſaid he was ſtabbed, I liſted my Eyes off my Work, and ſaid, Mr. *Ricketts*, you joke.

Q. Was there any Blow given?—*A.* I believe there was no Blow; I did not ſee any; I did not at firſt believe that there was a Wound.

Q. As you did not believe it, it is plain that Mr. *Chetwynd* did not believe it; for he ſaid, *If I have hurt Mr.* Ricketts, *I am ſorry for it.* Did he look to have Anger in his Countenance?

A. No; he looked with Concern; and ſaid, Hannah, *if I have hurt Mr.* Ricketts, *I am ſorry for it.*

Mr. Beeston Long ſworn.

Proſecutor's Counſel. Pray, Mr. *Long*, inform the Court what Diſcourſe paſſed between you and the Deceaſed, after he had received the Wound.

Mr. *Long.* I came to Town on *Monday* Night, the 26th of *September*, and found a Letter from Mr. *Clare*; wherein he acquainted me, that Mr. *Ricketts* had met with an untoward Accident, and had received a Wound from a young Gentleman in the Houſe, but that he thought there was then no Danger; this Letter having been wrote in the Morning, I enquired if there had been any ſubſequent Meſſage from Mr. *Clare*; I was told there had not: I did not go to Mr. *Ricketts* that Night, not thinking there was any Occaſion for ſo doing; but in the Morning, I determined to take the Advice of Mr. *St. Hill*, who being a Gentleman very eminent in his Profeſſion, we always take his Opinion, when any Accident happens to the young Gentlemen under our Care: I wrote a Letter to him, and deſired he would meet me at the Academy that Day [that was on *Tueſday*], which he did; and I found there Mr. *Shipton* and Mr. *Middleton*, who had likewiſe been called in; theſe three Gentlemen, with Mr. *Mac Cullock*, the Surgeon of the Houſe, viewed Mr. *Ricketts*'s Wound, and thought him in very great Danger; they continued attending him till *Thurſday* Morning the 29th, when he died.

Q. What Account did Mr. *Ricketts* give you of the Occaſion of this Accident?

A. Mr. *Ricketts* told me, that on the *Monday*, about Noon, he was ſent to call Mr. *Chetwynd* to fence, and found him in the Dining-Room, with a Cake, of which he aſked him for a Piece, which he gave him; that he then aſked Mr. *Chetwynd* for another Piece, which he refuſed; and cut a Piece of the Cake, and laid it upon his Bureau, which ſtood at the End of the Room; Mr. *Ricketts*, to teaze Mr. *Chetwynd*, for having refuſed him, (but without any Intention of eating or keeping it) took up the Piece of Cake, carried it to the middle Window, and ſaid to a Maid, who ſtood there, *Hannah, I have got a Piece of Cake*; and he ſaid that Mr. *Chetwynd* followed him, and immediately ſtabbed him in the Belly.

Priſoner's Coun. You ſaid, you came to Town that *Monday*, did you ſee Mr. *Ricketts* that Day?

Mr. *Long.* I came to Town that *Monday* Night, and found a Letter from Mr. *Clare*; I did not ſee Mr. *Ricketts* that Day; for I did not apprehend there was ſo much Danger, as I afterwards found there was.

Q. How many Surgeons had you?

A. There were four Surgeons; three were called in; and there was Mr. *Mac Cullock*, the Surgeon of the Houſe.

Q. I ſhould be glad to know, whether Mr. *Ricketts* gave any Account to you of any Paſſage that happened immediately after the taking of the Cake?

A. He ſaid, that after he had taken the Piece of Cake, he carried it to the middle Window, where the Maid ſtood; and ſaid, *Hannah, I have got a Piece of Cake*; and that Mr. *Chetwynd* came up to him, and ſtabbed him without ſpeaking a Word.

Q. Without whoſe ſpeaking a Word.

A. Without Mr. *Chetwynd*'s ſpeaking a Word.

Q. Did you aſk him in what Manner he had lived with this young Gentleman the Priſoner, whether they did not live in Friendſhip?

A. He ſaid, he never had had any Quarrel with him; and I have Reaſon to think it to be true, becauſe Mr. *Ricketts* was a Lad of a remarkably good-natured Diſpoſition.

Q. Did you aſk him any thing farther?

A. Mr. *Ricketts* was generally, when I ſaw him, in ſuch extreme Torment, that I did not care to trouble him with too many Queſtions.

Q. Did not he tell you he forgave him?

A. He did ſay that he forgave him.

Proſecutor's Counſel. Call Mr. *St. Hill.*

Priſoner's Counſel. There is no Occaſion for it.

Proſecutor's Counſel. The Jury muſt have Satisfaction, that the Wound was the Occaſion of his Death.

Mr. Peter St. Hill ſworn.

Proſecutor's Counſel. Pray, Sir, give the Court an Account in what Condition you found the Deceaſed.

Mr. *St. Hill.* On *Tueſday* the 27th of laſt Month I received a Letter from Meſſ. *Drake* and *Long*, deſiring me to go to Mr. *Clare*'s Academy in *Soho-Square*, to ſee a young Gentleman that they had the Care of, who the Day before had been accidentally wounded: I met there Mr. *Shipton*, Mr. *Middleton*, and Mr. *Mac Cullock*; and by Mr. *Mac Cullock*'s Account of the Wound, who firſt dreſſed him, and the Symptoms that attended it, we had too much Reaſon to fear that it had penetrated into the Cavity of the Belly, and that ſome of the *Viſcera* were wounded; for his Belly was much ſwelled, and croſs the upper Part of it ſo very painful, as to deprive him of all Reſt, and his Pulſe was extremely quick, and contracted. The next Day we met again—he had had a very unquiet Night; his Pulſe was extremely quick and low; and though his Belly was not ſo much ſwelled, yet his Pain croſs the upper Part of it was more ſevere, and attended with a continual Hickup, and frequent bilious Vomitings.

Q. Pray, Sir, inform us, whether you think that Wound was the Occaſion of his Death? what Depth was the Wound of?

A. It is not eaſy to know the Depth of a Wound after it has penetrated into the Cavity of the Belly: But, upon the whole, I think we have given our Opinon in ſuch a Manner, that Nobody will doubt, but that the Wound was the Occaſion of his Death.

Q. Then you do think that Wound to be the Occaſion of his Death?

A. I do think it to be the Occaſion of his Death.

Q. In what Part was the Wound given?——*A.* It was on the right Side of the Belly, two Inches obliquely below the Navel.

[*A Piece of the Blade of the Knife was produced, which was about three Inches long, and ſharp at the Point.*]

Counſel to *Humphreys.* Did you ſee the Knife in Mr. *Chetwynd*'s Hand?

Humphreys. Yes.

Q. What kind of a Knife was it?

A. It was a Knife with a long Handle.

Q. Was it a long Blade?

A. It was ſuch a Blade as this; this is but a Piece of it.

Q. It is a *French* Couteau.

Priſoner's Counſel. It is no ſuch thing, it is only a common *French* Knife.

Mr. Peter Mac Cullock ſworn.

Counſel. Mr. *Mac Cullock*, pray, give an Account how you found the Deceaſed.

Mr. *Mac Cullock.* I was called at half an Hour after One, on the *Monday*, to go to Mr. *Clare*'s; when I came there, I aſked to ſee the Knife, and the Knife was produced.

Q. Was it produced broke?

A. Yes, it was produced to me then broke, as it is now. I probed the Wound; but did not find at that Time, that it had penetrated into the Cavity of the Belly; the Deceaſed's Pulſe was extremely low, but I thought that was owing to the Fright: I went the next Day; and then upon ſearching the Wound, I found it had penetrated into the Cavity of the Belly, and found it to be a very bad Caſe; upon that Mr. *Middleton* was ſent for; and after that Mr. *St. Hill*, and Mr. *Shipton.*

The Counſel for the Priſoner called no Witneſſes, admitting that the Fact had been fairly laid before the Court by the Evidence, and acknowledged the Candour of the Gentlemen concerned for the Proſecution, in repreſenting it to the Jury without any Aggravation; but inſiſted, on his behalf, that however his Hand might have been unhappy, his Heart was innocent; that this Fact therefore could not amount to Murther at Common Law, which the Lord *Coke* defines to be an unlawful killing another Man with Malice afore-thought, either expreſſed by the Party, or implied by the Law; that in this Caſe, there was not the leaſt of that Ingredient, their own Evidence having ſhewed they were Friends, Friends to the laſt Hour, Friends to the dying Hour; when the Gentleman ſaid, He forgave him. That it being proved there was a Friendſhip ſubſiſting, it would be talking againſt the Senſe of Mankind, to ſay the Law could imply any thing contrary to what is plainly proved. That Deliberation and a Cruelty of Diſpoſition makes the Difference between Manſlaughter and Murther. For which Purpoſe *Holloway*'s * Caſe was cited.

If *A* be paſſing the Street, and *B* meeting him, takes the Wall of *A*, and thereupon *A* kills him, this is Murder; but if *B* had juſtled *A*, this Juſtling had been a Provocation, and would have made it Manſlaughter, 1 *Hale's Hiſt. Pl. Cr.* 455.

If I ſee another's Child beat, or Wife debauched, it would be Murder in me to kill the Party, not ſo in the Parent or Huſband.

A ſudden Challenge and fighting immediately, the Challenge is held to be a ſufficient Provocation.

The

NUMBER I.

Holloway's Caſe, 4 *Charles* I.

* *Holloway* was indicted for the Murther of one *Payne*. The Indictment was, that he with Malice forethought tied the ſaid *Payne* to a Horſe's Tail, and cauſed the Horſe to drag him on the Ground three Furlongs, whereby the Shoulder of the ſaid *Payne* was broke, whereof he inſtantly died. On Not Guilty pleaded, the Jury found a ſpecial Verdict, that the Earl of *Danby* was ſeized in Fee of *Oſterley* Park in *Middleſex*, and made the ſaid *Holloway* Woodward of the ſaid Park; and that the ſaid *Payne*, with others unknown, entered the ſaid Park, to cut Wood there; and that the ſaid *Payne* climbed up a Tree, and with an Hatchet cut down ſome Boughs thereof;

The Law makes a Difference between a Perſon's killing another, when he is doing a lawful Act, and when he is doing an unlawful Act. If the Maſter deſigneth moderate Correction to his Servant, and accordingly uſeth it, and the Servant by ſome Misfortune dieth thereof, this is not Murder, but *per infortunium*; becauſe the Law alloweth him to uſe moderate Correction, and therefore the deliberate Purpoſe thereof is not *ex malitia præcogitata*.

But if the Maſter deſign an immoderate or unreaſonable Correction, either in reſpect of the Meaſure, or Manner, or Inſtrument thereof, and the Servant die thereof; if it be done haſtily, and without Deliberation, this would be Manſlaughter; if done with Deliberation and Deſign, it would be Murder, L. C. J. *Hale* in his Hiſt. *Pl. Coron.* p. 454.

Shall the young Boy at the Bar, who was doing a lawful Act, be ſaid to be guilty of Murder? He was reſcuing what was his own; the Witneſſes have told you, that after he had given the poor Boy, *Ricketts*, a Piece of Cake, *Ricketts* went to him for more; he denied it him; he had a Right to keep his Cake, the other had no Right to take it; and he had a Right to retake it.

There are Caſes in the Books which make a Difference between Murder and Manſlaughter: If a Man takes * up a Bar of Iron and throws at another, it is Murder; and the Difference in the Crime lies between a Perſon's taking it up, and having it in his Hand; *Chetwynd* had the Knife in his Hand, and upon that a Provocation enſues, for he did not take the Knife up; if he had, that might have ſhewn an Intention to do Miſchief. It may be doubted, whether or no, when he had this Knife in his Hand for a lawful Purpoſe, and in an Inſtant ſtruck the other, whether he conſidered he had the Knife in his Hand; for if, in his Paſſion, he intended to ſtrike with his Hand, and ſtruck with the Knife, not thinking it was in his Hand, it is not a ſtriking with the Knife.

That in reſpect to the Statute of the firſt of *James* I. † it had always been looked upon as a hard Law, and conſtrued therefore conſtantly very ſtrictly by all the Judges in Favour of the Priſoner. That when the Facts amount only to Manſlaughter at Common Law, it has been the Cuſtom of the Courts ‡ to acquit upon this Statute.

That this Act was made for a particular Purpoſe §: On the Union of the two Kingdoms, there were national Factions and Jealouſies, when wicked Perſons, to conceal the Malice lurking in their Hearts, would ſuddenly ſtab others, and ſcreen themſelves from the Law, by having the Act looked upon as the Reſult of an immediate Quarrel.

That it was to be conſidered, whether there was not Evidence to except this Caſe from the Letter of the Law: At the Beginning of the Fray *Ricketts* had a Knife in his Hand; and it was one continued Act. And another Queſtion was, whether there was not a Struggle; here was the Cake taken, and in endeavouring to get it again this Accident happens; on the firſt taking of the Cake, it is in Evidence, that *Chetwynd* was forced to extend his Arms to keep the other off; now there was no Occaſion for him to extend his Arms, unleſs the other was coming to take it from him; and then a Struggle is a Blow. In *Reneer*'s Caſe, (cited in the King and *Keite*) *Cymbal* gave no Stroke but in ſtruggling, and yet it was adjudged but Manſlaughter in *Reneer*. Lord *Raymond*, 143.

If a Man hath done a Treſpaſs, and is not continuing in it, and he that hath received the Injury ſhall thereupon beat him to a Degree of killeing, this, ſaith the Lord Chief Juſtice *Holt* (*Kelyng* 132) is Murder. But this Act of the Deceaſed is a Treſpaſs, and the not reſtoring what he had taken was a continuing in the Treſpaſs, and is ſuch a Provocation as will make it Manſlaughter at Common Law.

That this Statute is not to be literally interpreted; for taking up a Candleſtick to throw at another has been judged a Weapon drawn.

Mere ſtabbing is not within the Act; when a Man is taken in Adultery with another Man's Wife, if the Huſband ſhall ſtab the Adulterer, or knock out his Brains, this is bare Manſlaughter. 1 *Vent.* 158. *Raymond*, 213. *Kelyng* 137.

A Man muſt intend to kill to be within the Statute; and muſt intend to ſtab, for throwing a Hammer is not within the Act. *William's* ‖ Caſe cited in *Kelyng* 131.

That ſome Degree of Malice is required in this Caſe, as well as at Common-Law: The Act indeed has taken away the Neceſſity of the Proof of Malice, and laid the Negative upon the Criminal, and here the Negative is proved. The Intent of the Statute was to take away the Benefit of the Clergy from cruel and bloody-minded People; 'tis impoſſible to conceive, that the Parliament would, at all Events, condemn to Death thoſe who had no preconceived Malice.

But the Caſe moſt ſtrongly inſiſted and relied on in Behalf of the Priſoner, was *Buckner*'s ¶ Caſe on this Statute, wherein the Judges all agreed, becauſe there was ſome Provocation and no preconceived Malice, that he was not within the Act of Parliament.

The Counſel for the Crown, in Reply to the Arguments and Caſes inſiſted upon on behalf of the Priſoner, ſubmitted to the Court, whether (ſince

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thereof; and that *Holloway* came riding into the Park, and ſeeing *Payne* on the Tree commanded him to deſcend, and he deſcending from thence, *Holloway* ſtruck him two Blows upon the Back with his Cudgel; and *Payne* having a Rope tied about his Middle, and one End of the Rope hanging down, *Holloway* tied the End of that Rope to his Horſe's Tail, and ſtruck *Payne* two Blows upon his Back; whereupon the Horſe running away with him, drew him upon the Ground three Furlongs, and by this means brake his Shoulder, whereof he inſtantly died; and *Holloway* took *Payne*, and threw him into a Buſh, behind the Pales of the Park. And whether upon all this Matter found, the ſaid *Holloway* be guilty of the Murder, they pray the Direction of the Court, *&c.*

This ſpecial Verdict was removed by *Certiorari* into the King's-Bench, and depended three Terms: And the Opinion of all the Judges and Barons was demanded, and they all (except *Hutton*, who doubted thereof) held clearly, that it was Murder. For when the Boy, who was cutting on the Tree, came down from thence upon his Command, and made no Reſiſtance, and he then ſtruck him two Blows, and tied him to the Horſe's Tail, and then ſtruck him again, whereupon the Horſe ran away, and he by that means was ſlain, the Law implies Malice, and it ſhall be ſaid in Law to be prepenſed Malice, he doing it to one who made no Reſiſtance. Whereupon he was adjudged to be hanged, and was hanged accordingly. *Croke, Charles*, 131. *Palmer*, 545. *W. Jones*, 198. See this Vol. page 63.

NUMB. II.

At the Seſſions in the Old-Bailey, October 10, 1666.

* *John Grey* being indicted for the Murder of *William Golding*, the Jury found a ſpecial Verdict to this Effect, *viz.* We find, that the Day, Year, and Place in the Indictment mentioned, *John Grey*, the Priſoner, was a Blackſmith; and that *William Golding*, the Perſon killed, was his Servant; and that *Grey*, his Maſter, commanded him to mend certain Stamps, being Part belonging to his Trade, which he neglected to do; and the ſaid *Grey*, his Maſter, after coming in, aſked him, the ſaid *Golding*, why he had not done it; and then the ſaid *Grey* told the ſaid *Golding*, that if he would not ſerve him, he ſhould ſerve in *Bridewell*; to which the ſaid *Golding* replied, that he had as good ſerve in *Bridewell*, as ſerve the ſaid *Grey*, his Maſter; whereupon the ſaid *Grey*, without any other Provocation, ſtruck the ſaid *Golding* with a Bar of Iron, which the ſaid *Grey* then had in his Hand, upon which he and *Golding* were working at the Anvil; and with the ſaid Blow he broke his Skull, of which he died; and if this be Murder, *&c.* This was held to be Murder by all the Judges of the *King's-Bench*, with the Concurrence of the Lord Chief-Juſtice *Bridgman*. See page 64.

NUMB. III.

1 Jac. c. 8. *An Act to take away the Benefit of Clergy for ſome kind of Manſlaughter.*

† To the end that ſtabbing and killing Men on the ſudden, done and committed by many inhumane and wicked Perſons, in the Time of their Rage, Drunkenneſs, hidden Diſpleaſure, or other Paſſion of Mind, contrary to the Commandment of Almighty God, and the common Peace and Tranquillity of this Realm, may from henceforth be reſtrained through Fear of due Puniſhment to be inflicted on ſuch cruel and bloody Malefactors, who heretofore have been thereunto emboldened, by preſuming on the Benefit of Clergy,

Be it therefore enacted, *&c.* That every Perſon which ſhall ſtab or thruſt any Perſon, that hath not then any Weapon drawn, or that hath not then firſt ſtricken the Party which ſhall ſo ſtab or thruſt, ſo as the Perſon ſo ſtabbed or thruſt, ſhall thereof die within the Space of ſix Months then next following, although it cannot be proved that the ſame was done of Malice forethought, yet the Party ſo offending, and being thereof convicted, *&c.* ſhall ſuffer Death, as in caſe of Wilful Murder.

Provided always, That this Act, or any Thing therein contained, ſhall not extend to any Perſon or Perſons which ſhall kill any Perſon or Perſons *ſe defendendo*, or by Misfortune, or in any other Manner than as aforeſaid; nor ſhall extend to any Perſon or Perſons, which in keeping and preſerving the Peace, ſhall chance to commit Manſlaughter, ſo as the ſaid Manſlaughter be not committed wittingly, willingly and of Purpoſe, under Pretext and Colour of keeping the Peace; nor ſhall extend to any Perſon or Perſons, which in chaſtiſing or correcting his Child or Servant, ſhall beſides his or their Intent and Purpoſe, chance to commit Manſlaughter. This Act to continue until the End of the firſt Seſſion of the next Parliament. 3 *Car. c.* 4. continued.

‡ At a Meeting of all the Judges, on *Saturday*, the 28th of *April*, 1666, at *Serjeants-Inn*, to conſider of ſuch Things as might in Point of Law fall out in the Trial of the Lord *Morley*, who was on *Monday* to be tried by his Peers for a Murder; they were all of Opinion, that the Statute of 1 *Jac.* for ſtabbing a Man not having firſt ſtruck, nor having any Weapon drawn, was only a Declaration of the Common-Law, and made to prevent the Inconveniencies of Juries, who were apt to believe that to be a Provocation to extenuate a Murder, which in Law was not. *Kelyng* 54.

Mr. *Lindon*, who had been Clerk of the Indictments at *Hicks's-Hall* a great many Years, on being applied to on Mr. *Chetwynd*'s Caſe, ſaid that if a Man was found guilty of Manſlaughter, on an Indictment for Murder at Common-Law, it was the Cuſtom, if he was indicted on the Statute of Stabbing likewiſe, to find him Not Guilty on that Statute. Yet in *December* Seſſions 1700, *John Cowland*, Gent. was tried for the Murder of Sir *Andrew Slanning*, Bart. at the *Roſe* Tavern, in *Drury-lane*, on three Indictments. 1. For Murder, at Common Law. 2. On the Statute of Stabbing. 3. Upon the Coroner's Inqueſt for the Murder of Sir *Andrew*, when the Jury acquitted him of the firſt Indictment for Murder at Common Law, and on the third for Murder on the Coroner's Inqueſt, but found him guilty on the Statute of Stabbing; and he was executed at *Tyburn*, *December* 20, 1700, *Old-Bailey* Trials, Vol. I. p. 21.

§ This Statute was enacted in the Time of King *James* the Firſt, when many Animoſities aroſe between the *Engliſh* and the *Scotch*, who uſing Daggers were accuſtomed to ſtab many of the *Engliſh*, *ex improviſo*, which could not have been done by a flat Sword, the uſual Weapon of the *Engliſh*; therefore this Statute was deſigned to ſecure defenceleſs People from Surprize, ſuppoſing that whoever ſtruck would be prepared. *Rex v. Keite.* Lord *Raymond*, 139.

NUMB. IV.

At the Seſſions in the Old-Bailey, March 22, 1638.

‖ *David Williams* was indicted ſpecially upon the Statute 1 *Jac.* for the Death of *Francis Marbury*; on which a ſpecial Verdict was found, *viz.* That upon St. *David's-day* the Priſoner, being a *Welſhman*, had a Leek in his Hat; and that there was, at the ſame Time, in Waggery, a *Jack-a-lent* in the Street put up with a Leek; and one *Nicholas Redman*, a Porter, ſaid, *Look at your Countryman*; and the Priſoner being therewith enraged, threw an Hammer at *Redman*, to the Intent feloniouſly to hit him; but miſſing him, the Hammer did hit *Francis Marbury*, whereof he died; and ſo the ſaid *David* the ſaid *Francis* with the ſaid Hammer did ſtab and thruſt the ſaid *Francis* then not having any Weapon drawn, nor then having firſt ſtricken the ſaid *David*, It was reſolved he was not within that Statute, but guilty of Manſlaughter at Common Law. *W. Jones*, 432. 1 *Hale Hiſt. Pl. Cr.* 469.

This Caſe, I fear, hath been the Occaſion of ſome Miſtake in the Deciſion of Queſtions of this Kind: I concur with the Judgment, that it is not within the Statute of Stabbing, for it is not ſuch a Weapon, or Act, that is within that Statute; neither could he be found guilty of Murder, but only Manſlaughter, for the Indictment was for no more. But if the Indictment had been for Murder, I do think that the *Welſhman* ought to have been convicted thereof; for the Provocation did not amount to that Degree, as to excite him deſignedly to deſtroy the Perſon that gave it him. Lord Chief-Juſtice *Holt*, in *Mawgridge*'s Caſe, Page 64.

NUMB. V.

The Protector *and* Buckner.

Mich. 1655. *In the upper Bench.* Stiles, 467.

¶ *Buckner* was indicted upon the Statute of 1 *Jac.* made againſt Stabbing, at the Juſtice-Hall in the *Old-Bailey*, for killing of *Horwood*; and upon the Evidence given for the Protector, the Jury found a ſpecial Verdict, which was to this Effect, *viz.* That *Horwood* and another Man with him came into the Lodging of *Buckner*, being in *Drury-lane*; and when they were come into the Lodging, that other Man took down a Sword in the Scabbard which hung there, and ſtood at the Door of the Chamber with this Sword undrawn in his Hand, and kept the Door to keep *Buckner* from going out, till they might bring a Bailiff to arreſt *Buckner* for a Debt which he owed *Horwood*; whereupon, upon ſome Diſcourſe between *Buckner* and *Horwood*, *Buckner* takes a Dagger out of his Pocket, and ſtabs *Horwood*, and kills him; and whether this was within the Statute of Stabbing was doubted by the Jury. Upon which *Buckner* was committed to *Newgate*, and after the Body and the Cauſe was removed into this Court by *Habeas Corpus* and *Certiorari*, and argued divers Times at the Bar, and at laſt on the Bench:

And firſt *Arthur Harris*, of *Lincoln's-Inn*, opened the Record, and only put the Queſtion; and then, on the Behalf of the Priſoner it was moved, that he might have a Copy of the Record, and Counſel aſſigned him, ſuch as deſired, which the Court granted; then it was prayed he might be bailed; but that the Court would not grant, but turned him over to the *Marſhal*, and gave a Day for the Protector's Counſel to be heard.

At which Day *Tewiſden*, for the Protector, made this Queſtion, Whether *Buckner* was to have his Clergy in this Caſe, or were debarred by the Statute or not? And he ſaid, this Queſtion ſhould not have been made by the Jury as they have done upon the ſpecial Verdict, but the Court ought to have made it; for the Jury are only to proceed upon Matter of Fact, and not upon Matter of Law; and he argued, that he ought not to have his Clergy, for the Statute of 1 *Jac.* doth not create the Offence, but leaves it to the Common-Law, and only takes away the Clergy from the Party that commits it; and to prove this, 1. It is not within the Words of the Statute, and 2dly, It is not within the Meaning of the Statute, neither in its Preamble, nor in the Body, or in the Proviſo thereof; for *Buckner* was not firſt ſtruck, nor had he a Weapon drawn againſt him, altho' he was kept a Priſoner in his Chamber, which was not a conſiderable, but a ſlight Provocation of him to move him to ſo foul a Fact. And within the Body of the Act, there are no Acts expreſſed, but having a Weapon drawn againſt him, or being firſt ſtruck, and this Enumeration of the Acts excludes all other, as it is in the Statute of Fines, and in the Statute which takes away Clergy. Alſo the Reaſon of Law requires to allow the Clergy to one that is firſt ſtricken: But here is no ſuch Reaſon, and the Party might have had his Remedy againſt *Horwood*, for coming into his Chamber, and impriſoning of him, by an Action of Treſpaſs; and the having a Weapon drawn, was a Reaſon for the other to defend himſelf.

Finch (Heneage) for the Priſoner argued, that the Priſoner was only guilty of Felony at the Common-Law, and is not within the Statute, by which his Clergy ſhould be taken away. For firſt, the Statute is to be literally interpreted, becauſe it is made

the only Points inſiſted upon by way of Defence for the Priſoner, were Queſtions of Law, in which the Jury were to be guided by their Opinion) the Facts proved and admitted, did not clearly, in the firſt place, amount to Murder at Common-Law; and in the ſecond place, whether there could be the leaſt Doubt in point of Law, but that this Caſe was within the Statute of 1 *James* I. *c.* 8.

Upon the firſt it was admitted, that to conſtitute Murder there muſt be Malice.

But it was argued, that Malice was of two Kinds: either expreſs and in fact, or implied by Law.

That when one Perſon kills another without Provocation it is Murder *, becauſe the Law preſumes and implies Malice from the Act done.

And therefore, where-ever any Perſon kills another it is Murder, unleſs ſome ſufficient Provocation appear.

But that it is not every Provocation which extenuates the killing of a Man from Murder to Manſlaughter.

A ſlight or trivial Provocation is the ſame as none, and is not allowed by Law to be any Juſtification or Excuſe for the Death of another.

And therefore no Words of Reproach or Infamy, whatever provoking Circumſtances they may be attended with; no affronting Geſtures or deriding Poſtures, however inſolent or malicious, are allowed to be put in the Balance with the Life of a Man, and to extenuate the Offence from Murder to Manſlaughter. *Kelyng* 130. *Croke El.* 779 †.

For the ſame Reaſon, no ſudden Quarrel upon a ſlight Provocation ſhall juſtify ſuch an act of Cruelty as one Man's ſtabbing another, though it is done immediately in the Heat of Paſſion. As if two Perſons, playing at Tables, fall out in their Game, and the one upon the ſudden kills another with a Dagger; this was held to be Murder by *Bromley* at *Cheſter* Aſſizes. See this Vol. page 63.

In like manner, no Treſpaſs on Lands or Goods ſhall be allowed by Law to be any Excuſe for one Man's attacking another in ſuch a Manner as apparently endangers his Life, and could not be intended merely as a Chaſtiſement for his Offence; becauſe no violent Acts beyond the Proportion of the Provocation receive Countenance from the Law.

And therefore if a Man beats another that is treſpaſſing upon his Goods or Lands, and does not deſiſt, he will be juſtified by Law; becauſe what he does is only in Defence of his Property, and no more than a Chaſtiſement to an Offender.

But (ſays the Lord Chief Juſtice *Holt*) if one Man be treſpaſſing upon another, breaking his Hedges, or the like; and the Owner, or his Servant, ſhall upon Sight thereof, take up an Hedge-Stake, and knock him on the Head, that will be Murder; becauſe it is a violent Act, beyond the Proportion of the Provocation. *Kelyng* 132.

That applying the Rules of Law to the preſent Caſe, it was plain, that the violent Act done, bore no Proportion to the Provocation. All the Provocation given was taking up a Piece of Cake, which is not ſuch an Offence, as can juſtify the Priſoner's attacking the Perſon, who took it up, with an Inſtrument, that apparently endangered his Life, or rather carried certain Death along with it.

And laſtly, That *Grey*'s Caſe before cited (*Kelyng* 64, and 133.) was much ſtronger than the preſent: Where a Maſter, who was provoked with the Neglect, Diſobedience, and Inſolence of his Apprentice, and had therefore a Right by Law to chaſtiſe him; immediately upon receiving the Provocation, took up a Bar of Iron, at which he was then working, and ſtruck his Apprentice, who afterwards died of the Blow. This was by all the Judges held to be Murder, notwithſtanding it was done upon a ſudden, and notwithſtanding the Provocation, and the Right which *Grey* had as a Maſter to correct his Servant. For having exceeded Meaſure herein, what he did was malicious.

Upon the ſecond Indictment it was ſaid, that the Gentlemen who had argued on behalf of the Priſoner, had, in order to raiſe a Doubt upon this Point, in effect contended that the Statute of 1 *J.* I. ſhould never be allowed to comprehend any one Caſe whatſoever, or extend to any one Offender.

For if Perſons indicted upon that Statute, were to be acquitted where-ever the Caſe would have been Manſlaughter at Common-Law, the Statute would be entirely fruſtrated, and have no kind of Effect whatſoever.

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made in reſtraint of the Common-Law, and it was made only to prevent Feuds betwixt the *Engliſh* and the *Scotiſh* Nation, which were then apt to break forth, and the Quarrel here was not a drunken and ſudden Quarrel, but acted upon Deliberation, and here is an Aſſault ſo great uſed againſt the Priſoner, that it amounts to the ſtriking of him, 43 *E.* III. *f.* 41, 42. *E.* III. *f.* 7. and the Impriſonment of him is more than an Aſſault, and here is found a forcible Entry into his Chamber, and the ſending for a Bailiff, and the ſtanding at his Chamber Door with a Sword in the Party's Hand, though not drawn, which is as much in effect as if it had been drawn; and 23 *Car.* the Clergy was allowed to two Perſons that aided and aſſiſted a third Perſon in ſtabbing of a fourth Man, and that becauſe the Clergy ſhall not be taken away by Intendments.

Glyn (Chief Juſtice). The Statute hath not been ſo favourably conſtrued as hath been argued, for here is no Stroke, nor Weapon drawn for his preſent Defence, as the Statute intends; and ſtabbing with a Tobacco-pipe, and with a Halberd, hath been adjudged to be ſtabbing within the Statute, and the Statute doth not ſay being firſt aſſaulted, as this Caſe is, but firſt ſtricken, and I conceive not that there are any Words in the Statute that will keep you out of it. *Day was given over to the next Term.*

At which Day the ſpecial Verdict was again repeated by Serjeant *Maynard*, and by him it was argued for the Priſoner, that he was not within the Statute 1 *Jac.* of ſtabbing, becauſe firſt, here was an unlawful Impriſoning of *Buckner* in his own Chamber, and this could not be without an Aſſault; next this Statute is not to be literally interpreted, for if there be Acts of Terror uſed againſt one, although a Weapon be not drawn, yet he is not within the Statute, although he kill another, for the taking up of a Candleſtick to ſtrike another hath been adjudged a Weapon drawn; and he cited *Patye* and *Horwood*'s Caſe; and all the Perſons that came into his Chamber were Treſpaſſers, and one of them taking the Sword in his Hand, how could it be known what Miſchief might have been done with it? *Cook*'s Caſe 14 *Caroli*, one may do a lawful Act by unlawful Means, and although *Buckner* did ill, yet is he not within the Statute.

Arthur Harris on the other Side argued, that the Act was ſtabbing within the Statute, and ouſted the Priſoner of his Clergy, and that he is within the Meaning and Words of the Statute. The Statute intended to prevent the killing of Men ſuddenly, which is the worſt of all other killing; for it is, as it were, to deſtroy not only the Body, but even to kill Body and Soul alſo, and therefore though the Statute be penal, yet it is not to be favourably interpreted, it being made for the Peace and Quiet of the Nation. The killing is the Matter aimed at in the Statute, and it matters not whether the Party be killed with a Faulchion or a Piſtol, as *Williams*'s Caſe was, that killed another, by throwing a Taylor's Gooſe at him, and he is not within the Saving of the Statute though he was aſſaulted, and the other ſtood with the Sword in the Scabbard in his Hand, 36, 37 *Eliz. Hanger* and *Molin*'s Caſe in the Exchequer Chamber. The Words of the Statute are, "not being firſt ſtruck;" but an Aſſault is not a ſtriking, and ſo he is out of the Letter of the Statute; and here is no Weapon drawn, for the Sword was in the Scabbard, which is no more than a Staff in a Man's Hand, *Stat.* 5 *E.* VI. *c.* 4. and it is like a Piſtol uncocked; and if the Sword had been drawn it would not have altered the Caſe, becauſe it was not in *Horwood*'s Hand, who was ſlain, but in another's, and you cannot extend the Statute further.

Glyn (Chief Juſtice). Will you have it argued any more?—*Finch.* No.

Glyn (Chief Juſtice). I have conſidered of the Verdict, and conſulted with the Statute, and adviſed with all the Judges, and they are of my Opinion. This is a good Law, and to be interpreted ſtrictly, yet I hold the Priſoner is not within it, for the Scope of the Statute appears by the Preamble, the Body, and Saving of it, which do all confirm my Opinion. My firſt Reaſon is, becauſe I find that the Intent of the Statute is againſt ſudden killing; but here was not a ſudden killing, and the Statute takes not away the Clergy from all manner of Manſlaughter; and here was a Treſpaſs and an Impriſonment acted againſt the Priſoner before he killed *Horwood*, and ſo the Act was not ſuddenly done. 2dly, The Body of the Act ſeems to mean, that there ought to be Malice in the Caſe, and it doth not intend we ſhould ſtick to the very Words of it; and here the Party ſlain might have foreſeen the Danger, and defended himſelf. 3dly, The Proviſo excepts divers Particulars out of the Law, and the Word killing is only in the Proviſo, ſo that there is Proviſion made how the Statute ſhall be interpreted, *viz.* That it muſt be ſudden killing, which is not ſo here, for there are Provocations, and Time intervenient betwixt them and the ſtabbing, and the Verdict finds no pre-conceived Malice, and the Statute extends to no other killing by the Proviſo. And if one be aſſaulted by Thieves which have no Sword drawn, and the Party aſſaulted ſtabs one of the Thieves, he is not within the Intent of the Statute, although he be within the Words of it; or if one be aſſaulted in his Houſe, and the Aſſaultor hath no Weapon drawn, and one of the Aſſaultors be ſhot, yet the Party aſſaulted is not within the Statute. 15 *Car.* in *Davy* and *Williams*'s Caſe, it was adjudged by all the Judges, that he that killed another by throwing a Hammer at him was not within the Statute, becauſe there was a preceding Provocation of him. And if two aſſault a third Perſon, and one of them ſtrike the third Perſon, and the third Perſon kills the other that did not ſtrike him, I do not conceive he is within the Statute, for it is the Aſſault of both, and ſhall alſo be adjudged the ſtriking of both.

Aſh (Juſtice) held he was within the Statute, becauſe it was not unlawful to come to arreſt him, and here was no Weapon drawn, and ſo it was adjourned to another Day.

At which Day *Buckner* was again brought to the Bar, *Aſh (Juſtice)* repeats the Special Verdict, and made the Queſtion, Whether this Fact of *Buckner* be within the Statute of 1 *Jac.* enacted againſt ſtabbing? And he argued that it was, and that *Buckner* could not have his Clergy, becauſe the Statute ſhall be taken beneficially for the Commonwealth, and not for the Priſoner, who is a particular Perſon, and the Intent of the Statute is to take away the Clergy for ſome Felony; neither by the Common-Law, nor by the Law of God is there Clergy given for killing a Man, and it was the *Popiſh* Power that introduced the Clergy to be given for Manſlaughter, and alſo for Murder, in diminution of the Common-Law, and of Regal Power, yea, and of the Law of God alſo; and if a Woman kill one, ſhe ſhall not have her Clergy, but be hanged; which ſhews that by the Common-Law the Clergy was not given for Manſlaughter. And by the Law of God I find no Difference between Murder and Manſlaughter, for it makes no Difference between hot Blood and cold Blood, as we do now diſtinguiſh; and every Word in the Statute methinks doth take away the Clergy by way of Argument, even from the Title of the Act to the very End of it; and here is a great Sin to be puniſhed, and great Inconveniences would follow to admit of the Clergy in ſuch Caſes as this is, and here was a ſudden killing as the Act expreſſeth, for it was done with a Dagger which was not ſeen, but ſuddenly drawn out of a Pocket, and no Weapon was drawn againſt him; for the Provocations alledged, they cannot amount to the drawing of a Weapon, or ſuch a Provocation as the Statute intends, for all the Acts done by *Horwood* amounted but to a Treſpaſs, and cannot be ſuch a Provocation as ſhould cauſe *Buckner* to fear his Death, for no Violence was uſed to his Perſon by ſtriking, or drawing of a Weapon, or otherways, and the ſending for Bailiffs to arreſt him cannot be ſuch a Provocation as the Statute intends, which is to put the Party in fear of his Life, and the Party knew that *Horwood* came with an Intent only to arreſt him, and not to kill him, nor did the Party ſlain do any thing to *Buckner* to provoke him; and there is by Preſumption of Law a prepenſed Malice in *Buckner* to kill *Horwood*, which is ſeen by his ſudden Manner of ſtabbing him; and *Davy* and *Williams*'s Caſe, urged on the other Side, is not like to this Caſe. I grant if one kill a Thief ſuddenly it is not within the Statute, for ſuch killing was never intended to be prevented by it. The worſt Words one Man can give another are not a ſufficient Provocation within the Statute, for ſpeaking of Words doth much differ from drawing of a Weapon: Nor is this a killing *ſe defendendo*, or by Misfortune, but a killing at the Common-Law, and ſo the Clergy is taken away by the Statute, and the Caſe of *Serjeants-Inn* in *Fleet-Street*, amongſt whom are *Barkly*, *Foſter*, and *Rolle*, who have been Judges, are of my Opinion.

Glyn (Chief Juſtice) held it not within the Statute. He argued long much to the Effect as formerly; but having taken cold, I could not diſtinctly hear him. *Adjourned.*

This Caſe was again argued, *Trin.* 1656, to inform Juſtice *Warburton*, who was called to that Bench, after the former Arguments and Opinion of the Court delivered much to the ſame Manner as formerly, by *Finch* for the Priſoner, and *Baldwin* for the Protector; and thereupon my Lord Chief Juſtice *Glyn* and Juſtice *Windham* were of Opinion againſt Juſtice *Aſh*, and ſo Judgment was given for the Priſoner, that the Stabbing was not within the Statute, but was only Felony at the Common-Law, and the Priſoner was admitted to his Clergy, and burnt in the Hand accordingly.

* He that doth a cruel Act voluntarily, doth it of Malice prepenſed, 3. *Inſt.* 62.

Some have been led into Miſtake, by not well conſidering what the Paſſion of Malice is; they have conſtrued it to be a Rancour of Mind lodged in the Perſon killing, for ſome conſiderable Time before the Commiſſion of the Fact; which is a Miſtake ariſing from the not well diſtinguiſhing between Hatred and Malice. Envy, Hatred, and Malice, are three diſtinct Paſſions of the Mind. Lord Chief Juſtice *Hale* in *Mawgridge*'s Caſe. See this Vol. page 61.

NUMB. VI.

Watts and Brains. B. R. 1599.

† Appeal of Murder for the Death of her Huſband. The Defendant pleaded not guilty; and upon Evidence at the Bar it appeared, that two Days before her Huſband's Death, he and the Defendant fighting upon a Quarrel then betwixt them, the Defendant was hurt in that Fray; and the third Day after, the Plaintiff's Huſband, paſſing by the Defendant's Shop, the Defendant purſued him ſuddenly, and the Huſband's Back being towards him, ſo as he perceived him not, the Defendant ſtruck him upon the Calf of his Leg, whereof he inſtantly died; the Defendant, to excuſe himſelf, affirmed, that he, who was ſlain, when he came by his Shop, looked upon him, and wried his Mouth at him, and therefore, for this mocking of him, he purſued him. And it was much enforced by the Defendant's Counſel, that it was a new Cauſe of Quarrel; and ſo the Stroke is not upon any precedent Malice, and therefore it is not Murder: but all the Court ſeverally delivered their Opinions, that if one make a wry or diſtorted Mouth, or the like Countenance upon another, and the other immediately purſues, and kills him, it is Murder; for it ſhall be preſumed to be Malice precedent, and that ſuch a ſlight Provocation was not ſufficient Ground, or Pretence, for a Quarrel; and ſo delivered the Law to the Jury, that it was Murder, although what the Defendant pretended had been true; whereupon, the Jury going from the Bar, notwithſtanding the Evidence was pregnant againſt the Defendant, Eight of them agreed to find him not guilty, but the other Four withſtood them, and would not find it, but to be Murder: and on the next Day Morning, two of the Four agreed with the Eight, to find him not guilty; and afterwards the other Two conſented in this Manner: that they ſhould bring in, and offer their Verdict not guilty; and, if the Court diſliked thereof, that then they all ſhould change the Verdict, and find him guilty. And, upon this Agreement, they came to the Bar, and the Foreman pronounced the Verdict, that the Defendant was not guilty; and the Court much diſliking thereof, being contrary to their Direction, examined every one of them by the Poll, whether that was his Verdict; and Ten of the firſt Part of the Panel ſeverally affirmed their Verdict, that the Defendant was not guilty; but the two laſt affirmed how they agreed, and diſcovered the whole Manner of their Agreement; whereupon, they were ſent back again, and returned, and found the Defendant guilty. And, for this Practice, *Harris*, the Foreman, was afterwards fined 100 Marks, and the other Seven, who agreed with him at the firſt, every of them was fined 40*l.* and the other two, who agreed with the Eight, although they affirmed, that it was, becauſe they could not endure, or hold out any longer; yet in that they did not diſcover the Practice, being examined by Poll, but affirmed the Verdict, were fined each of them at 20*l.* and all of them impriſoned; but the other two were diſmiſſed, yet blamed, for ſuch a Manner of conſenting in abuſe of the Court. And afterwards the Defendant was adjudged to be hanged.

Since it was only made in order to exclude such Persons as stabbed others upon the sudden, not upon their Guard, from the Benefit of Clergy; and was intended as a Sort of Correction to the Common-Law, by restraining such Offenders, through Fear of due Punishment, who were emboldened by presuming on the Benefit of Clergy, allowed by the Common-Law.

But if it is to exclude none from their Clergy, who at Common-Law would have been entitled to it, it can never have any Effect, and may as well be repealed.

That whatever the Reasons might be which first gave Rise to this Statute, the Legislature thought it of general publick Benefit, and therefore afterwards continued it by a subsequent Law.

And, if the Statute is to have any Force or Effect at all, there cannot be a Doubt but that it must extend to the present Case.

It is expressly within the Words; Mr. *Ricketts* was stabbed, having then no Weapon drawn in his Hand, and not having before struck the Person who stabbed him.

It is plainly within the Intention; which is declared in the Preamble to have been in order to punish Stabbing, or killing upon the sudden, committed in Rage, or any other Passion of the Mind, &c.

And the principal Reasons upon which the Determination in *Buckner*'s Case is founded, conclude strongly against the Prisoner:

For it is there argued, that *Buckner* was not within the Statute, because it appeared to have been made to prevent sudden killing, the worst of all killing, of a Person not upon his Guard.

And secondly, because in that Case the Party slain might have foreseen the Danger, and defended himself.

But the unfortunate Person killed in this Case, had no Opportunity either of foreseeing the Danger, or of avoiding it, or making any Defence; but was killed on the sudden, before he could apprehend any Danger.

And therefore it was submitted to the Court, whether upon the Facts proved and not denied, the Consequence of Law was not clear that the Prisoner was guilty within both Indictments.

Mr. Baron *Reynolds* and Mr. Recorder Serjeant *Urlin*, (being the only Gentlemen of the long Robe on the Bench, when Mr. *Chetwynd* was tried) taking Notice of the Points of Law that had arisen, the learned Arguments of the Counsel, and the many Cases cited upon this Occasion, were of Opinion, that it would be proper to have the Facts found specially, that they might be put in a way of receiving a more solemn Determination. A Special Verdict was accordingly on all Sides agreed on, and drawn up to the following Purport, *viz.*

The King against *William Chetwynd*, the same against the same, and the same against the same.

We find that *Thomas Ricketts*, on the 26th of *September* last, being a Scholar at Mr. *Clare*'s Academy, in *Soho-square*, was in a Room in the said Mr. *Clare*'s House, in which the said Mr. *Chetwynd* used to lie, (and not Mr. *Ricketts*) in Company with the Prisoner *William Chetwynd*, *William Hamilton*, *Samuel Malcher*, and *Hannah Humphreys*, a Maid-servant in the said Mr. *Clare*'s Family; that the said Mr. *Chetwynd*, the Prisoner, having his own Cake in his Hand, which was a hard Cake, called a *Simnel*, and hard to cut, the deceased, *Thomas Ricketts*, asked the said Mr. *Chetwynd* to give him a Piece, upon which the said Mr. *Chetwynd* gave him a Piece; that the said *Thomas Ricketts* afterwards asked him, the said *Chetwynd*, to give him some more of his Cake, which the said *Chetwynd* refused, and thereupon, the said *Chetwynd* went out of the said Room with his Cake under his Arm, and the Deceased followed him out of the said Room; upon which, the said *Chetwynd* returned again into his said Room, and went to his own Bureau, and cut another Piece of the Cake for himself; the said *Ricketts* offered to lend the said *Chetwynd* his Knife to cut the Cake, and at the same Time pulled his Knife, being a clasped Knife, out of his Pocket, and opened it; but the said *Chetwynd*, refusing to make use of the said *Ricketts*'s Knife, saying, he had a Knife of his own, the said *Ricketts* put up his Knife again; and immediately after this, the said *Chetwynd* being then at his Bureau, cut off a Piece of the said Cake with his own Knife, being a common Knife, and such as Mr. *Chetwynd* and his School-fellows generally used, and laid the same Piece of Cake upon the Top of his Bureau for himself; that the said *Chetwynd*, standing then with his Back to the rest of the Company, was putting the rest of his Cake into his Bureau, and, whilst he was so doing, the Deceased came up, and put his Hand over the said Mr. *Chetwynd*'s Shoulder, whereupon, the said Mr. *Chetwynd* raising his Arms, said to the said Deceased, Don't, Mr. *Ricketts*; the said Mr. *Ricketts* immediately snatched the said Piece of Cake away, against the Consent of the said Mr. *Chetwynd*, which lay upon the Top of the said Bureau, and went up to the said Maid-servant, who was about two or three Yards off, and said, laughing, *Hannah*, I have got a Piece of Mr. *Chetwynd*'s Cake, which he shewed to her in his Hand; that thereupon immediately the said Mr. *Chetwynd* followed the Deceased, with his Knife in his Hand, and demanded the said Mr. *Ricketts* to return him his Piece of Cake; the Deceased, Mr. *Ricketts*, returned no Answer to this, but continued laughing, and did not return the Piece of Cake; upon which, the said Mr. *Chetwynd* struck the said Mr. *Ricketts* backhanded, with the said Knife which he had kept in his Hand all along, and with which he had cut the said Cake, (the said *Ricketts* being then only in his Waistcoat, which was at that Time unbuttoned) and gave him a Wound upon the Right Side of the Belly below the Navel, which penetrated into the Cavity of the Belly (the Deceased not having before struck the Prisoner, and not having at that Time any Weapon in his Hand); that immediately after, the Deceased cried out, *Hannah*, *Chetwynd* has stabbed me; and then the said *Hannah* said to the Prisoner, What have you done? Upon which the Prisoner looked on the said *Hannah*, with Concern, and said, If I have hurt Mr. *Ricketts*, I am sorry for it. We find that there never had been any Quarrel or Malice between the Deceased and the Prisoner, but that they constantly had lived in Friendship together; and we find likewise, that the Deceased was about the Age of Nineteen *, and Mr. *Chetwynd* about the Age of Fifteen; and that of this Wound the Deceased died, on the 29th of the said *September*: and whether upon the whole, the Prisoner is guilty of all, or any of the several Indictments, the Jurors submit to the Judgment of the Court.

Allen Evans,	*Benjamin Ingram*,	*John Archambo*,
Samuel Bowler,	*Jacob Lebat*,	*Benjamin Tickner*,
Charles Carleton,	*Jonathan Alderton*,	*John Holmes*,
Francis How,	*Peter Archambo*,	*Thomas Hogg*.

Soon after this Trial, *Roger Drake*, Esq. and other Friends of Mr. *Ricketts*, laid the following Case before Sir *John Strange*:

The King against *Chetwynd*. } THE Defendant was tried the last Sessions at the *Old Bailey* for the Murder of Mr. *Thomas Ricketts*, and the Jury brought in the following special Verdict:

"That *Thomas Ricketts*, on the 26th of *September* 1743, being a Scholar "at Mr. *Clare*'s Academy in *Soho-square*, was in a Room in the said Mr. "*Clare*'s House in which the said *Chetwynd* used to lie and not Mr. *Ric*"*ketts*, in Company with the Prisoner *William Chetwynd*, *William Hamil*"*ton*, *Samuel Malcher*, and *Hannah Humphreys* a Maid-servant in the said "Mr. *Clare*'s Family. That the said Mr. *Chetwynd* the Prisoner having "his own Cake in his Hand, which was a hard Cake called a *Symnel*, and "hard to cut, the deceased *Thomas Ricketts* asked him for a Piece of it, "which the said Mr. *Chetwynd* gave him. That the said *Thomas Ricketts* "afterwards asking the said *Chetwynd* to give him some more of his Cake, "the said *Chetwynd* refused, and thereupon the said *Chetwynd* went out of "the said Room with his Cake under his Arm, and the Deceased follow"ed him out of the said Room; upon which the said *Chetwynd* returned "again into his said Room, and went to his own Bureau and cut another "Piece of Cake for himself: the said *Ricketts* offered to lend the said *Chet*"*wynd* his Knife to cut the Cake, and at the same time pulled his Knife "(being a clasp Knife) out of his Pocket and opened it; but the said *Chet*"*wynd* refusing to make use of Mr. *Ricketts*'s Knife, saying, he had one "of his own, the said *Ricketts* put up his Knife; and immediately after "this the said *Chetwynd* being then at his Bureau, cut off a Piece of the "said Cake with his own Knife (being a common Knife, and such a one "as the said *Chetwynd* and his School-fellows generally used), and laid the "same Piece of Cake upon the Top of his Bureau for himself. That the "said *Chetwynd*, standing then with his Back to the Company, was put"ting the rest of the Cake into his Bureau; and whilst he was so doing, "the Deceased came up and put his Hand over the said *Chetwynd*'s Shoul"der, whereupon the said Mr. *Chetwynd* raising his Arms said to the De"ceased, Don't, Mr. *Ricketts*; and the said Mr. *Ricketts* immediately "snatched the said Piece of Cake away against the said *Chetwynd*'s Con"sent, which lay upon the Top of the said Bureau, and went to the said "Maid-Servant about two or three Yards off and said, laughing, *Hannah*, "I have got a Piece of *Chetwynd*'s Cake, which he shewed to her in his "Hand; that thereupon immediately the Prisoner Mr. *Chetwynd* follow"ed him with his Knife in his Hand, and demanded the said Mr. *Ricketts* "to return his Piece of Cake; the deceased Mr. *Ricketts* returned no An"swer to this, but continued laughing, and did not return the Piece of "Cake, upon which the Prisoner struck him back-handed with the said "Knife, which he had kept in his Hand all along, and with which he "had cut the said Cake, the said *Ricketts* being then only in his Waistcoat "which was then unbuttoned, and gave him a Wound upon the right "Side of the Belly below the Navel, which penetrated into the Cavity of "the Belly, the Deceased not having before struck the Prisoner, and not "having at that time any Weapon in his Hand. That immediately after "the Deceased cried out, *Hannah*, *Chetwynd* has stabbed me; and then the "said *Hannah* said to the Prisoner, What have you done? Upon which the "Prisoner looked on the said *Hannah* with Concern, and said, If I have "hurt Mr. *Ricketts* I am sorry for it. We find that there never had been "any Quarrel or Malice between the Deceased and the Prisoner, but that "they constantly had lived in Friendship together. We find likewise the "Deceased was about the Age of nineteen, and Mr. *Chetwynd* about the "Age of fifteen, and that of this Wound the Deceased died upon the "twenty-ninth of the same *September*. And whether upon the whole the "Prisoner is guilty of all or any of the several Indictments, the Jury sub"mit to the Court."

Mr. *Chetwynd* is still in *Newgate*; it is apprehended Mr. *Chetwynd* will apply to his Majesty for a Pardon before the special Verdict is argued, or if not he will do so afterwards, in Case the Judges should be of Opinion that the Facts stated in the special Verdict should be Murder. To prevent this, and his escaping the Justice due for his Offence, if the Law declares him to be guilty of Murder, it is proposed to bring in an Appeal of Murder, and to that end your Opinion is desired.

Q. Whether the Offence found by the special Verdict is Murder or Manslaughter?

"I am strongly inclined to think this will be adjudged to be Murder."

The Deceased's Father and eldest Brother are both resident in *Jamaica*: It is apprehended that an Appeal if brought must be brought by the eldest Brother, who is the Heir at Law of the deceased.

Q. Whether such Appeal can be brought by Mr. *Barham* and Mess. *Drake* and *Long*, for and on his behalf; or must the same be brought by the Heir in Person?

"The Appeal must be commenced by the Heir in Person if he is of full "Age, if not by Guardian."

As the Heir is resident in *Jamaica*, and it will be some time before he can be in *England*, and as a Year and a Day from the time of the Death is allowed for bringing such Appeal, so if Mr. *Chetwynd* should in the mean time obtain his Pardon,

Q. Whether he will upon pleading such Pardon be discharged out of Custody without Bail, and if so and he cannot afterwards be apprehended within the Year and Day, how is the Appellant to save the Benefit of his Appeal?

"If there is no Appeal commenced when the Pardon is pleaded, I "hardly think the Court will require Bail upon allowing the Pardon; "but it will be proper to shew that the Heir is expected, and in order "to give time for his appearing it may be proper to enter Caveats,

* That Mr. *Ricketts* was about Nineteen Years of Age was admitted: No Evidence being offered as to the Age of the Prisoner, the Jury formed their Judgment thereof, on seeing him.

" and desire to be heard, as a Means to procure some Terms where-
" by the Opportunity of having the Appellee forthcoming may be
" secured: If the Appeal is commenced in time, it will not be any Ob-
" jection that the Appellee is not apprehended within the Year."

Q. Whether an Appeal may be brought immediately, or must the Appellant wait the Determination of the special Verdict?

" The Appeal must be commenced within the Year and Day, and the
" Appellant is not bound to wait the Determination of the special Ver-
" dict before he commences it. The Court perhaps may give the Appel-
" lee Time to plead upon that Account, but this should be opposed."

Q. Whether the Appellant is obliged to enter into any Recognizance with Sureties to prosecute his Appeal with Effect; and suppose, upon trying such Appeal, the Jury find the Offence only Manslaughter; is the Appellant or his Sureties liable to any Damage, Fine or Punishment for bringing such Appeal?

" The giving Pledges to prosecute is recited in the Writ, and I believe
" there is some Security given to the Sheriff before he serves the Writ,
" though in *Bambridge*'s Case it was omitted. But it is out of doubt, if
" the Jury find it to be Manslaughter, that will be a sufficient prosecuting
" it with Effect, and protect the Appellant and his Sureties from any
" Damage, Fine or Imprisonment."

If the Defendant should be found guilty upon the Appeal,

Q. Whether the King can reprieve or respite the Execution of the Judgment, or any otherwise interfere therein?

" I apprehend that upon a Conviction of Murder on an Appeal, the
" Crown cannot interfere."

Upon the whole, under the Circumstances of this Case, your Opinion is desired,

Q. Whether it is advisable for Mr. *Ricketts* to appeal in case Mr. *Chetwynd* should obtain a Pardon; or would such a Proceeding be considered as severe or vindictive?

" The Youth of the Offender, the Suddenness of the Action unattended
" with any aggravating Circumstances, and the Friendship which the
" Jury find to have subsisted to the Moment of the fatal Accident, make
" me incline to think, that even the Appellant, if he should succeed in
" his Suit, would hardly insist upon the Rigour of the Law; and then
" considering he is now abroad, I think the Gentlemen who have hitherto
" prosecuted and obtained the present Verdict, will be well justified in
" acquiescing under the Pardon, (supposing the King should grant it)
" after they have laid the State of the Case properly before those through
" whose Hands it is to take its Progress." J. STRANGE.

31st *October*, 1743.

After the beforementioned special Verdict was found, the Relations of the Prisoner, who were Persons of some Figure in the World, had a Meeting with his Counsel, to consult what was most proper to do in this Affair, whether to endeavour the bringing on the arguing of the special Verdict, or immediately to apply to his Majesty for a Pardon.---The Counsel, considering the Youth of the Prisoner, and the Length of Time he might lay in *Newgate*, before the Determination of the special Verdict, advised the applying directly to his Majesty for a Pardon.---Whereupon the following Petition was delivered to the Lords Justices, (the King being then at *Hanover*) *viz.*

To their Excellencies the Lords Justices in Council,

The humble Petition of William Chetwynd, *an Infant of the Age of* 15 *Years*,

Most humbly sheweth,

THAT the Petitioner was tried at the last Sessions of Oyer and Terminer at the *Old-Bailey*, on three Indictments preferred against him in the Name of his Majesty, for the Murder of *Thomas Ricketts* his School-fellow, on the Trial whereof the Jury brought in a special Verdict in the Words following, *viz.*

That *Thomas Ricketts*, on the twenty-sixth Day of *September* last, being a Scholar at Mr. *Clare*'s Academy in *Soho-Square*, was in a Room in the said Mr. *Clare*'s House, in which the said *Chetwynd* used to lie and not Mr. *Ricketts*, in company with the Prisoner *William Chetwynd*, *William Hamilton*, *Samuel Malcher*, and *Hannah Humphreys* a Maid-servant in the said Mr. *Clare*'s Family. That the said Mr. *Chetwynd*, the Prisoner, having his own Cake in his Hand, which was a hard Cake called a Simnel, and hard to cut; the Deceased, *Thomas Ricketts*, asked him for a Piece of it, which the said *Chetwynd* gave him. That the said *Thomas Ricketts* afterwards asking the said *Chetwynd* to give him some more of his Cake, the said *Chetwynd* refused; and thereupon the said *Chetwynd* went out of the said Room with his Cake under his Arm, and the Deceased followed him out of the said Room; upon which the said *Chetwynd* returned again into the said Room, and went to his own Bureau, and cut another Piece of the Cake for himself; the said *Ricketts* offered to lend the said *Chetwynd* his Knife to cut the Cake, and at the same Time pulled his Knife (being a clasped Knife) out of his Pocket and opened it; but the said *Chetwynd* refusing to make use of Mr. *Ricketts*'s Knife, saying, he had a Knife of his own, the said Mr. *Ricketts* put up his Knife again; and immediately after this the said *Chetwynd*, being then at his Bureau, cut off a Piece of the said Cake with his own Knife, being a common Knife, and such a one as the said *Chetwynd* and his School-fellows generally used, and laid the same Piece of Cake upon the Top of his Bureau for himself. That the said *Chetwynd* standing there, with his Back to the rest of the Company, was putting the rest of his Cake into his Bureau, and whilst he was so doing, the Deceased came up and put his Hand over the said *Chetwynd*'s Shoulder; whereupon the said Mr. *Chetwynd*, raising his Arms, said to the Deceased, Don't, Mr. *Ricketts*; and the said Mr. *Ricketts* immediately snatched the said Piece of Cake away, against the said *Chetwynd*'s Consent, which lay upon the Top of the said Bureau, and went to the said Maid-servant about two or three Yards off, and said, laughing, *Hannah*, I have got a Piece of *Chetwynd*'s Cake, which he shewed her in his Hand. That thereupon immediately the Prisoner, Mr. *Chetwynd*, followed him with his Knife in his Hand, and demanded the said Mr. *Ricketts* to return him his Piece of Cake; the deceased Mr. *Ricketts* returned no Answer to this, but continued laughing, and did not return the Piece of Cake; upon which the Prisoner struck him back-handed with the said Knife which he had kept in his Hand all along (and with which he had cut the said Cake), the said *Ricketts* being then only in his Waistcoat, which was then unbuttoned, and gave him a Wound upon the right Side of the Belly, below the Navel, which penetrated into the Cavity of the Belly, the Deceased not having before struck the Prisoner, and not having at that Time any Weapon in his Hand. That immediately after the Deceased cried out, *Hannah, Chetwynd* has stabbed me; and then the said *Hannah* said to the Prisoner, What have you done? Upon which the said Prisoner looked upon the said *Hannah* with Concern, and said, If I have hurt Mr. *Ricketts* I am sorry for it. We find there never had been any Quarrel or Malice betwixt the Deceased and the Prisoner, but that they constantly had lived in Friendship together; we find likewise that the Deceased was about the Age of Nineteen, and Mr. *Chetwynd* about the Age of Fifteen; and that of this Wound the Deceased died the 29th of the same *September*; and whether upon the whole, the Prisoner is guilty of all or any of the several Indictments, the Jury submit to the Court. That as it is expressly found, by this special Verdict, that there never had been any Quarrel or Malice between the Deceased and the Petitioner, but that they constantly lived in Friendship together; and as the fatal unhappy Wound your Petitioner gave the Deceased was the Effect of a sudden and instant Provocation, and for which he has ever since been, and still is, under the deepest and most inconsolable Affliction, and as the Petitioner had not the most remote Apprehension of murdering the Deceased, and in regard to your Petitioner's tender Age,

Your Petitioner most humbly hopes he may, under all the Circumstances of this unfortunate Case, be considered as a proper Object of the Royal Mercy; which your Petitioner most humbly prays your Excellencies will be graciously pleased to extend to him, by granting him the Royal Pardon for the said Offence.

And your Petitioner, as in the strictest Gratitude and Duty bound, shall ever pray, &c.

When their Lordships were pleased to refer it to the Attorney and Solicitor-General, who made the following Report thereupon:

A Copy of the Report of his Majesty's Attorney and Solicitor-General, on Mr. *Chetwynd*'s Petition.

To the King's most excellent Majesty in Council.

May it please your Majesty,

IN humble Obedience to their Excellencies the Lords Justices Commands signified to us by Mr. *Stone*, by his Letter of 25th *October* last, directing us to take the annexed Petition of *William Chetwynd*, an Infant of the Age of fifteen Years, into Consideration, and report our Opinions what may be proper to be done therein; We have taken the same into Consideration, after having been attended by the Agent and Counsel of the Petitioner, and also by the Agent and Counsel for Mr. *Roger Drake* and Mr. *Beeston Long*, under whose Care *Thomas Ricketts* the Deceased mentioned in the Petition had been placed by his Father, who now lives at *Jamaica*; and which said Mr. *Drake* and Mr. *Long* opposed before us the Prayer of the said Petition.

The Petition states, That the Petitioner had been tried at the last Sessions of *Oyer* and *Terminer* at the *Old Bailey*, on three Indictments, for the Murder of the said *Thomas Ricketts* his School-fellow, on the Trial whereof the *Jury* brought in a special Verdict, which the Petition sets forth particularly, and prays, that as it is expressly found by this special Verdict, that there never had been any Quarrel or Malice between the Deceased and the Petitioner, but they constantly lived in Friendship together, and as the fatal unhappy Wound the Petitioner gave the Deceased was the Effect of a sudden and instant Provocation, and for which he hath ever since been, and is still under the deepest and most inconsolable Affliction, and as he had not the most remote Apprehension of murdering the Deceased, and in regard to his tender Age, the Petitioner most humbly hopes he may, under all the Circumstances of his unfortunate Case, be considered as a proper Object of the Royal Mercy, which he most humbly prays may be extended to him, by granting the Royal Pardon for the said Offence.

We have inquired into the Case, and find that the Petitioner was indicted on three Indictments, whereof Copies are annexed, for the killing of the said *Thomas Ricketts*; one of which was on the Coroner's Inquest, which had found him guilty of Manslaughter; another at Common Law for Murder; and the third on the Statute of Stabbing, of the first Year of King *James* the First, Chap. 8th, all which were tried at the last Sessions of *Oyer* and *Terminer* at the *Old Bailey*; and the Jury found a special Verdict, which is not yet drawn up in form, but the Minutes thereof signed by the Jury are in the following Words, *viz.*

Middlesex.] The King against *William Chetwynd*, the same against the same, and the same against the same.

That *Thomas Ricketts*, on the twenty-sixth of *September*, being a Scholar at Mr. *Clare*'s Academy in *Soho-Square*, was in a Room in the said Mr. *Clare*'s House, in which the said *Chetwynd* used to lie, and not Mr. *Ricketts*, in Company with the Prisoner *William Chetwynd*, *William Hamilton*, *Samuel Malcher*, and *Hannah Humphreys*, a Maid-servant in the said Mr. *Clare*'s Family.—That the said Mr. *Chetwynd* the Prisoner having his own Cake in his Hand, which was a hard Cake, called a *Simnel*, and hard to cut, the Deceased, *Thomas Ricketts*, asked him for a Piece of it, which the said *Chetwynd* gave him; that the said *Thomas Ricketts* afterwards asking the said *Chetwynd* to give him some more of his Cake, the said *Chetwynd* refused, and thereupon the said *Chetwynd* went out of the said Room, with his Cake under his Arm, and the Deceased followed him out of the said Room; upon which the said *Chetwynd* returned again into his said Room, and went to his own Bureau, and cut another Piece of the Cake for himself; the said *Ricketts* offered to lend the said *Chetwynd* his Knife to cut the Cake, and at the same Time pulled his Knife (being a clasped Knife) out of his Pocket, and opened it, but the said *Chetwynd* refusing to make use of Mr. *Ricketts*'s Knife, saying, he had a Knife of his own, the said Mr. *Ricketts* put up his Knife again; and immediately after this, the said *Chetwynd* being then at his Bureau, cut off a Piece of the said Cake with his

his Knife, being a common Knife, and such a one as the said *Chetwynd* and his School-fellows generally used, and laid the same Piece of Cake upon the Top of his Bureau for himself; that the said *Chetwynd* standing then with his Back to the rest of the Company, was putting the rest of his Cake into his Bureau; and whilst he was so doing, the Deceased came up and put his Hand over the said *Chetwynd*'s Shoulder, whereupon the said Mr. *Chetwynd*, raising his Arms, said to the Deceased, Don't, Mr. *Ricketts*; and the said Mr. *Ricketts* immediately snatched the said Piece of Cake away, against the said *Chetwynd*'s Consent, which lay upon the Top of the said Bureau, and went to the said Maid-servant about two or three Yards off, and said, laughing, *Hannah*, I have got a Piece of *Chetwynd*'s Cake, which he shewed her in his Hand; that thereupon immediately the Prisoner, Mr. *Chetwynd*, followed him with his Knife in his Hand, and demanded the said Mr. *Ricketts* to return him his Piece of Cake; the Deceased Mr. *Ricketts* returned no Answer to this, but continued laughing, and did not return the Piece of Cake, upon which the Prisoner struck him back-handed with the said Knife, which he had kept in his Hand all along, (and with which he had cut the said Cake) the said *Ricketts* being then only in his Waistcoat, which was then unbuttoned, and gave him a Wound upon the Right Side of the Belly, below the Navel, which penetrated into the Cavity of the Belly; the Deceased not having before struck the Prisoner, and not having at that time any Weapon in his Hand. That immediately after the Deceased cried out, *Hannah*, *Chetwynd* has stabbed me; and then the said *Hannah* said to the Prisoner, What have you done? Upon which the said Prisoner looked on the said *Hannah* with Concern, and said, If I have hurt Mr. *Ricketts*, I am sorry for it. We find there never had been any Quarrel or Malice betwixt the Deceased and the Prisoner, but that they had constantly lived in Friendship together. We find likewise, that the Deceased was about the Age of Nineteen, and Mr. *Chetwynd* about the Age of Fifteen; and that of this Wound the Deceased died the twenty-ninth of the same *September*; and whether upon the whole the Prisoner is guilty of all or any of the several Indictments, the Jury submit to the Court.

Allen Evans.	*Peter Archambo.*
Charles Carleton.	*Benjamin Ingram.*
Benjamin Tickner.	*John Holmes.*
Samuel Bowler.	*Jacob Lebat.*
Francis How.	*Jonathan Alderton.*
Thomas Hogg.	*John Archambo.*

As the Minutes of the special Verdict have stated the Case with all its Circumstances so very minutely, no other Evidence was offered on either Side to mitigate or aggravate the Charge. And we beg leave humbly to certify your Majesty, that it lies entirely in your Majesty's Royal Breast, to pardon the Petitioner or not; and if your Majesty shall be graciously pleased to extend your Royal Mercy to him, there can be no Objection thereto in point of Law.

All which is humbly submitted to Your Majesty's great Wisdom.

D. RYDER,
W. MURRAY.

Upon which his Majesty (being then returned from *Hanover*) was pleased to order his Most Gracious Pardon, for the said *William Chetwynd*, to be made out. As soon as this came to be known, a Caveat was entered against passing the same at (Lord *Gower*'s) the Lord Privy-Seal's Office; whereupon the Lord Privy-Seal sent to Sir *Thomas Abney*, Knt. one of the Judges of the Court of Common-Pleas, to assist him at the Hearing the same; Sir *Thomas* in a very genteel Letter begged to be excused, on account of his former Intimacy with *Walter Chetwynd*, of *Grendon* in *Warwickshire*, Esq. the young Gentleman's late Father; upon which the Lord Privy-Seal sent to the Lord Chief Baron, to desire his Assistance at the Hearing of Counsel (at *Whitehall*) for and against passing the said Pardon; when after hearing the Arguments, (Serjeant *Wynne* and Mr. *Morton* for the Caveat, and Mr. *Lloyd* and Mr. *Legge* against it) the Lord Privy-Seal declared he had heard no Reasons sufficient given against allowing the same, and put the Privy-Seal to the said Pardon. After which the Friends and Relations of the Deceased entered a Caveat against passing the same at the Lord Chancellor's; when the Right Honourable the Earl of *Hardwick* ordered the Counsel on both Sides to attend him at his House in *Ormond-street*; when after hearing the Arguments on both Sides, his Lordship said, he had no doubt with him about passing the said Pardon, and ordered the Great Seal to be put to it. When the Prisoner came to *Westminster-hall* in *Hillary Term* to plead this Pardon, it was strongly opposed by Counsel; but after hearing the Arguments on both Sides, Lord Chief Justice *Lee* declared, he had heard no sufficient Reasons offered against the Prisoner's taking the Benefit of his Majesty's Pardon; which he did directly by pleading it on his Knees, and was immediately discharged.

Hilary Term, 17 George II.

DOMINUS REX *Vers.* CHETWYND.

" A special Verdict, on an Indictment for Murder, was found at the *Old-Bailey*, and removed into the King's Bench; but before Argument* the Defendant obtained his Majesty's Pardon, which he pleaded upon his Knees; and it was allowed. Then the Counsel for the Prosecutor insisted, that by Vertue of 3 *H.* VII. *c.* 1. the Court ought to require Bail for his Appearance to answer an Appeal; there being an Affidavit produced, that the Brother and Heir was beyond Sea, but expected in time; and it was also insisted, that by Vertue of 5 and 6 *W.* and *M.* c. 13, the Court should take Security for the Good-behaviour.

" The Statute 3 *H.* VII. *c.* 1. runs: " That if any Person charged as " Principal or Accessory, be acquitted at the King's Suit, within the Year " and Day, the Justices, before whom he is acquitted, shall not suffer him " to go at large; but either remit him again to the Prison, or else let him " to bail, after their Discretion, 'till the Year and Day be past.

" Upon this Clause it was argued, that the Case of pleading a Pardon " after a special Verdict, was stronger than the Case of an Acquittal by " a Jury, which took away all the Presumption of Guilt; and that this " was an actual Acquittal, and is called so in the Pardon. The Judgment is *Quod eat inde sine Die*, and if he is again indicted, he may plead " *Autre foits acquitte*, 11 *H.* IV. 41. *Bro.* 20. *Coron.* 29, 133. *Fitz.* N. B. " 251. *G.* and the Record being moved into the King's Bench, this Court " are the Justices before whom he is acquitted ‡; and it is not discretionary only as to the Point between Bail and Imprisonment, the latter " of which the Prosecutor did not insist upon.

" But as to this Point, the Court were of Opinion, that the present " Case was not such as the Act of Parliament meant; and this being to " subject the Prisoner to a second Trial, which before he was not, he " not being indictable (*Kelynge* 23.) 'till the Time to appeal was elapsed, " 'till this Act gave such a Prosecution; it was therefore to be construed " strictly, and confined literally to an Acquittal by Verdict (*Kelynge* 104.) " upon an Arraignment at the King's Suit; and it was material, that no " Instance could be shewn of requiring such Bail upon pleading a Pardon; " on the contrary, *Bowen* in *Mich.* 8 *Ann.* was discharged without Bail. " Acquittal, they said, must be understood *in a Course of Law*, and not an " Interposition of the Crown's Mercy.

" The other Point, as to Sureties for the Good-behaviour, depended " on the 5 and 6 *W.* and *M.* c. 13. which enacts, " That the Justices " before whom any Pardon for Felony shall be pleaded, may, at their " Discretion, remand or commit the Person pleading it to Prison, 'till " he shall enter into a Recognizance with two Sureties, for his good Behaviour, for any time not exceeding seven Years; and if the Party be " an Infant (which was the present Case) then he is not to be bound, but " must find Sureties." Upon this Clause, therefore, the Prosecutor " insisted upon Sureties for the Good-behaviour, and instanced 2 *H.* " *P. C.* 394, where it is said, that at Common-Law, without the " Aid of 18 *Eliz.* c. 7. a Party acquitted may be bound to his Good-" behaviour, *if of ill Fame.*

" The Counsel for the Prisoner did not much oppose giving Sureties, " and said, they had them ready; and Mr. *J. Wright* and Mr. *J. Dennison* " were inclined to take them; but as there had yet been no Instance since " the Act, and this was merely discretionary, the Chief Justice (Sir " *William Lee*) was unwilling to make the Precedent in the Case of an " Infant, where some favourable Circumstances were stated in the Verdict. And the Case *Hale* cites out of *Rastal*'s Entries, was, where " (as the Record says) *testatum fuit cur' per fide dignos*, that the Defendant was of ill Fame; and at last the others came in to discharge him " without Security."

N. B. I (Sir *John Strange*) on behalf of the Prosecutor, (the Heir being beyond Sea) desired it might be taken notice of, that we did not waive our Demand; and upon that the Court said, it should be their own Act, upon the Discretion of the Court.

The whole Expence attending this Prosecution, at Consultations, Fees to Counsel at the Trial, at the Attorney General's, at Lord Privy Seal's, at the Lord Chancellor's, and at the King's Bench on pleading his Pardon, and Imprisonment in *Newgate* from *October* to *February*, amounted to above 1300*l.*

This *William Chetwynd*, Esq. was the Last Heir-male of the *Chetwynds* of *Grendon* in *Warwickshire*, and *Rudgley* in *Staffordshire*. For though (on the Death of his elder Brother, *Walter Chetwynd*, Esq. who catched a Fever by attending Captain *Clark*'s Trial at the *Old Bailey*, *April* 1749, of which he died) he came into a good Estate, as Heir at Law (his Brother *Walter*'s Will being in part set aside on a Trial in *B. R.*) he enjoyed it but a few Years.

* *Strange*'s Reports, Vol. II. p. 1203, 4, 5.

‡ *Slaughterford* was acquitted before *Holt*, at *Surrey* Assizes; and he took Bail to answer an Appeal; which was afterwards tried at Bar, and the Party convicted and hanged. *Strange*, Vol. II. p. 1204. *Slaughterford*'s Case was this:

Christopher Slaughterford (Son of a Miller, himself a Maltster of some Substance, near *Guildford* in *Surrey*) courted one *Jane Young*, who thereupon left her Service in order to be married to him; was seen in his Company *October* 5, 1708, but never heard of afterwards; whereupon he was suspected of murdering her, taken up, and committed to the *Marshalsea*; and at the *Lent* Assizes following, was tried at *Kingston*, in *Surrey*, for the said Murder, and acquitted. However, he was ordered to remain in Gaol, many People thinking him guilty. The Father and Friends of the Deceased being poor, a Subscription was set on foot and Money raised, and an Appeal was brought against the said *Slaughterford* by *Henry Young*, Brother of the Deceased. He was brought to the Queen's-Bench Bar at *Westminster*, the second Day of the Term following, and tried before the Lord Chief Justice *Holt*, on the said *Appeal*, and convicted on very strong Circumstances, and ordered for Execution on *Saturday July 9th*. *Slaughterford* being led to the Gibbet from *Guildford* (to which Place he was carried from the *Marshalsea*), the only Request he had to make to the Executioner was, *that he might throw himself off*: And they were almost the only Words he uttered there; for being tied up, before the Executioner could descend to do the rest of his Office, in turning him off the Ladder, *he had swung himself off*. He seemed to die with a resolute Obstinacy, but delivered the following Paper to the Sheriff.

Guildford, July 9, 1709.

" I being brought here to die, according to the Sentence passed upon me at the " Queen's-Bench Bar, for a Crime of which I am wholly innocent, thought myself " obliged to let the World know (that they do not reflect on my Friends and Relations whom I have left behind me much troubled for my fatal End), that I know " nothing of the Death of Mrs. *Jane Young*; nor how she came by her Death directly or indirectly; though some have been pleased to cast Reflections on my " Aunt. However, I freely forgive all my Enemies, and pray to God to give them " a due Sense of their Errors, and in his due time to bring the Truth to light. In " the mean time, I beg every one to forbear reflecting on my dear Mother, or any of " my Relations, for my unjust and unhappy Fall, since what I have here set down " is the Truth and nothing but the Truth, as I expect Salvation at the Hands of " Almighty God; but I am heartily sorry that I should be the Cause of persuading " her to leave her Dame; which is all that troubles me, as witness my Hand this 9th " Day of *July*."

C. Slaughterford.

XXIX. The Trial of FRANCIS TOWNLEY, Esq. for High-Treason, (in levying War against his Most Sacred Majesty King *George* the Second) at the Court-House at St. *Margaret's-Hill*, *Southwark*, before the Right Honourable the Lord Chief Justice *Lee*, the Right Honourable the Lord Chief Justice *Willes*, Mr. Justice *Wright*, Mr. Justice *Denniſon*, Mr. Justice *Foſter*, Mr. Justice *Abney*, Mr. Baron *Reynolds*, and Mr. Baron *Clive*; with Sir *Thomas De Veil*, Knt. and *Peter Theobalds*, Esq. (both Justices of the Peace for the County of *Surry*, and Gentlemen named in the Special Commission) *July* 15, 1746 *.

THE whole Pannel (108) being first called over in the Prisoner's Presence, after he had made several Challenges, the following Jury-men were sworn †.

1. *Daniel Ponton* of *Lambeth*, Starch-maker.
2. *John Haywood* of *Chelsham*, Gent.
3. *Michael Cuffe* of *Battersea*, Gardener.
4. *Francis Bartholomew* of *Egham*, Gent.
5. *Robert Wood* of *Epsom*, Baker.
6. *William Brooker* of *Walton* upon *Thames*, Brewer.
7. *Edmond Browne* of *Croydon*, Brewer.
8. *Thomas Belch* of *Coulsdon*, Gent.
9. *Thomas Dawson* of St. *George* in *Southwark*, Brazier.
10. *William Taylor* of St. *Saviour* in *Southwark*, Brewer.
11. *Thomas Lintall* of the same, Cloth-worker.
12. *James Paine* of *Seal*, Yeoman.

Then the Clerk of the Arraigns (after Silence commanded) read over his Indictment to him, which was as follows:

Surry. Be it remembered, That at a Special Session of Oyer and Terminer, and Gaol-Delivery of our Sovereign Lord the King, of and for the County of *Surry*, holden at the Borough of *Southwark* in the said County, on *Monday* the twenty-third Day of *June*, in the twentieth Year of the Reign of our said present Sovereign Lord *George* the Second, by the Grace of God of *Great Britain*, *France*, and *Ireland*, King, Defender of the Faith, and so forth, before Sir *William Lee*, Knight, Chief Justice of our said present Sovereign Lord the King, appointed to hold Pleas before the King himself, Sir *John Willes*, Knight, *&c.* (naming the rest of the Judges and Commissioners present) and others their Fellow-Justices and Commissioners of our said present Sovereign Lord the King, assigned by Letters Patent of our said present Sovereign Lord the King under his Great Seal of *Great Britain*, made by Virtue of the Statute made in this present Parliament, intitled, *An Act for the more easy and speedy Trial of such Persons as have levied or shall levy War against his Majesty, and for the better ascertaining the Qualifications of Jurors in Trials for High-Treason, or Misprision of Treason, in that Part of* Great Britain *called* Scotland, to the said Justices and Commissioners above-named and others, and to any three or more of them (of whom our said present Sovereign Lord the King willed that any of them the said Sir *William Lee*, [naming some others of the Judges] and others in the same Letters Patent named and appointed shall be one, to deliver the Gaol of the said County of the Prisoners therein being, or such as shall or may be detained in the same, on or before the first Day of *January*, in the Year of our Lord One Thousand Seven Hundred and Forty-six, for or on Account of the High-Treason mentioned in the said Statute in levying War against our said present Sovereign Lord the King within this Realm, and to enquire by the Oath of good and lawful Men of the same County of all such High-Treasons in levying War against our said present Sovereign Lord the King within this Realm by the said Prisoners, or any of them, or by any other Person or Persons who are now in actual Custody for or on Account of the same, or who are or shall be guilty of High-Treason in levying War against our said present Sovereign Lord the King within this Realm, and shall be apprehended and imprisoned for the same on or before the said first Day of *January*, in the said Year of our Lord One Thousand Seven Hundred and Forty-six, and the same High-Treasons to hear and determine according to the Form of the said Statute, by the Oath of Sir *William Richardson* of *Bermondsey*, Knt. Sir *Abraham Shard* of *Kennington*, Knt. Sir *Thomas Hankey* of *Clapham*, Knt. Sir *Peter Thompson* of *Bermondsey*, Knt. *Josias Wordsworth* of *Adscombe*, Esq. *Percival Lewis* of *Putney*, Esq. *Samuel Atkinson* of *Croydon*, Esq. *John Copeland* of *Camberwell*, Esq. *Charles Heskins* of *Croydon*, Esq. *Joseph Creswick* of *Stretham*, Esq. *William Clarke* of *Southwark*, Esq. *Joseph Willoughby* of *Croydon*, Esq. *Thomas Bevois* of *Bermondsey*, Esq. *Elias Bird* of *Rotherhith*, Esq. *Thomas Tarrant* of *Southwark*, Esq. *Edward Steavens* of *Southwark*, Esq. *Henry Robinson* of *Wandsworth*, Esq. *John Heathfield* of *Croydon*, Esq. *Nathaniel Green* of *Southwark*, Esq. *Isaac Eeles* of *Lambeth*, Esq. *John Smith* of *Lambeth*, Esq. *Hammett Richardson* of *Bermondsey*, Esq. *Samuel Nicholson* of *Croydon*, Esq. good and lawful Men of the said County, being then and there sworn and charged to enquire for our said present Sovereign Lord the King, touching and concerning the Premises in the said Letters Patent mentioned, It is presented, that the Bill of Indictment to this Schedule annexed is a true Bill.

The Jurors for our present Sovereign Lord the King upon their Oath present, that *Francis Townley*, late of the City of *Carlisle*, in the County of *Cumberland*, Esq. otherwise called *Francis Townley*, late of the same Place, Gentleman, *John Hamilton*, late of the City of *Carlisle*, in the County of *Cumberland*, Esq. otherwise called *John Hamilton*, late of the same Place, Gentleman, *Alexander Abernethy*, late of the same Place, Gentleman, otherwise called *Alexander Abernethy*, late of the same Place, Surgeon, and *George Abernethy*, late of the same Place, Gentleman, *&c.* being Subjects of our said present most Serene Sovereign Lord *George* the Second, by the Grace of God of *Great Britain*, *France*, and *Ireland*, King, Defender of the Faith, and so forth, not having the Fear of God in their Hearts, nor having any Regard for the Duty of their Allegiance, but being moved and seduced by the Instigation of the Devil, as false Traitors and Rebels against our said present Sovereign Lord the King, their supreme, true, natural, lawful, and undoubted Sovereign Lord, entirely withdrawing that cordial Love, and that true and due Obedience, Fidelity and Allegiance, which every Subject of our said present Sovereign Lord the King should and of Right ought to bear towards our said present Sovereign Lord the King; and also devising, and (as much as in them lay) most wickedly and traitorously intending to change and subvert the Rule and Government of this Kingdom, duly and happily established under our said present Sovereign Lord the King, and also to depose and deprive our said present Sovereign Lord the King of his Title, Honour, and Royal State, and of his Imperial Rule and Government of this Kingdom, and also to put and bring our said present Sovereign Lord the King to Death and final Destruction, and to raise and exalt the Person pretended to be Prince of *Wales* during the Life of *James* the Second, late King of *England*, and so forth, and since the Decease of the said late King, pretending to be, and taking upon himself the Stile and Title of King of *England*, by the Name of *James* the Third, to the Crown and to the Royal State and Dignity of King, and to the Imperial Rule and Government of this Kingdom, upon the tenth Day of *October*, in the nineteenth Year of the Reign of our said present Sovereign Lord the King, at the City of *Carlisle* aforesaid, in the County of *Cumberland* aforesaid, with a great Multitude of Traitors and Rebels, against our said present Sovereign Lord the King (to wit) to the Number of three Thousand Persons (whose Names are as yet unknown to the said Jurors), being armed and arrayed in a warlike and hostile Manner (to wit), with Colours displayed, Drums beating, Pipes playing, and with Swords, Clubs, Guns, Pistols, and divers other Weapons, as well offensive as defensive, with Force and Arms, did falsely and traitorously assemble and join themselves against our said present Sovereign Lord the King, and then and there with Force and Arms did falsely and traitorously, and in a warlike and hostile Manner array and dispose themselves against our said present Sovereign Lord the King, and then and there with Force and Arms, in Pursuance and Execution of such their wicked traitorous Intentions and Purposes aforesaid, did falsely and traitorously prepare, order, wage and levy a publick and cruel War against our said present Sovereign Lord the King, then and there committing and perpetrating a miserable and cruel Slaughter of and amongst the faithful Subjects of our said present Sovereign Lord the King, and also then and there during the said War with Force and Arms did with the said Traitors and Rebels so assembled, armed and arrayed as aforesaid, falsely and traitorously against the Will of our said present Sovereign Lord the King, enter into and take Possession of the said City of *Carlisle*, and the Castle thereto belonging within the same City, (the said City and Castle being a City and Castle of our said present Sovereign Lord the King) and the said City and Castle with Force and Arms then and there did falsely and traitorously possess, hold, keep, maintain, and defend, against our said present Sovereign Lord the King, against the Duty of their Allegiance, against the Peace of our said present Sovereign Lord the King, his Crown and Dignity, and also against the Form of the Statute in such Case made and provided.

To this Indictment the Prisoner pleaded, *Not Guilty.*

N. B. This Indictment and Caption were made use of against all the Rebels who were tried in *Surry*, except *Æneas Macdonald*; save that the Overt-Acts were laid in different Counties of *England* or *Scotland*, as the Cases respectively required; and also save that the Overt-Act of taking and possessing the City and Castle of *Carlisle* was not charged on those who were not concerned in that Part of the Rebellion.

Clerk of Arraigns. Gentlemen, upon this Indictment the Prisoner at the Bar has been arraigned, and thereunto has pleaded, Not Guilty, and for his Trial hath put himself upon God and his Country, which Country you are: Your Charge is to enquire, whether he be guilty of the High-Treason whereof he stands indicted, or Not Guilty. If you find him Guilty, you are to enquire what Goods and Chattels, Lands or Tenements, he had at the Time of the High-Treason committed, or at any Time since: If you find him Not Guilty, you are to enquire whether he fled for it; and if you find he fled for it, you are to enquire of his Goods and Chattels, as if you had found him Guilty: If you find him Not Guilty, nor that he did fly for it, you are to say so, and no more, and hear your Evidence.

* Though there were no Trials of the Rebel Commoners in 1715, printed in the Collection of *State Trials*; yet we shall insert here a short Account of a few of the Trials of the principal Commoners concerned in the Rebellion in 1745-6, as printed at that Time, (with Additions) to shew they were Persons of no Consequence or Estate, concerned in that unnatural Rebellion; being either Men of small Fortunes, or who had run out what they had, or Tradesmen, who took Part in that desperate Undertaking.

† For the several Steps taken relating to the Rebels, previous to their Trials, see Judge *Foster's* Reports, Page 1, 2, 3.

The Counsel for the King were *Mr. Attorney General*, Sir *John Strange*, *Mr. Solicitor General*, Sir *Richard Lloyd*, and the Honourable Mr. *York*; and for the Prisoner, Mr. Serjeant *Wynne*, and Mr. *Clayton*.

Mr. York, *Counsel for the King*. May it please your Lordship, and you, Gentlemen of the Jury; This is an Indictment against *Francis Townley*, the Prisoner at the Bar, and sets forth, *&c.* (as is before mentioned). To this Indictment he hath pleaded Not Guilty; we shall produce our Witnesses to make good the Charge against the Prisoner, which if we do, we doubt not that you will find him guilty of the Indictment.

Mr. Attorney General (Sir *Dudley Rider*). My Lords, and you, Gentlemen of the Jury, the Prisoner at the Bar, having been deeply engaged in the late unnatural and wicked Rebellion begun in *Scotland*, and carried into the Heart of this Kingdom, in order to overset our present happy Constitution in Church and State, hath made it necessary for this Prosecution against him: I do not doubt but in the course of our Evidence we shall make it appear to your Satisfaction, that the Prisoner with two others, whose Names are *Blood* and *Fletcher*, and other their Confederates, did assemble in a warlike Manner, and procured Arms, Ammunition, and other Instruments of War; and composed a Regiment for the Service of the Pretender to these Realms, to wage War against his present most sacred Majesty; and did march through and invade several Parts of this Kingdom, and unlawfully did seize his Majesty's Treasure in many Places for the Service of their villainous Cause, and took away the Horses and other Goods, Merchandize, and Chattels of many of his Majesty's peaceable Subjects. And that during the said March the Prisoner, with other Rebels, in open Defiance of his Majesty's undoubted Right and Title to the Crown of these Realms, frequently caused the Pretender's Son to be proclaimed in a publick and solemn Manner as Regent of these Realms; and himself marched at the Head of a pretended Regiment, which they called the *Manchester* Regiment.

My Lords, I shall not take up the Time of the Court in saying a great deal, for all that the Prisoner is charged with will appear so full and plain from the Evidence we shall produce for the King, that there will not be the least Doubt with the Jury, to find him guilty.

Sir *John Strange* then spoke to the following Effect: My Lords, and you Gentlemen of the Jury, I am of Counsel in this Case likewise for the Crown: I am very far from aggravating this Case against the Prisoner at the Bar, but I cannot help observing, that the Engagements which the Prisoner had embarked in, would have overset one of the most glorious and free Constitutions that ever was framed, and I believe I may venture to say, is the only one in the whole World.

If an Attempt to subvert the Government, to destroy the King, and set up a *Popish* Pretender; if marching in an hostile manner, carrying on a bloody and destructive War in this Nation, can move Compassion, or be extenuated, any Rebellion may be palliated over and excused, since scarce any Circumstance can be added in Aggravation of that which hath lately been raised and carried on in this Kingdom.

Every Body knows the Rebellion broke out in *Scotland* with a small Number of People, and made a very great Progress, 'till at last the Rebels had the Audaciousness, with the Pretender's Son at their Head, to fight his Majesty's Forces at *Preston Pans*, and then the Rebellion burrowed into *England*, and the Prisoner at the Bar was with them in *Lancashire*, particularly at *Preston*, and several other Places, and then they proceeded to *Manchester*, where the Prisoner formed a Regiment, and accepted a Commission to be Colonel of the said Regiment, from the eldest Son of the Pretender, and wore a white Cockade, and a Plaid Sash, as a Mark of his Authority, and the Party he sided with; and then advanced from *Manchester* to *Derby* with his Regiment, where the Rebel Army halted some few Days; but being apprehensive of the Duke of *Cumberland*'s attacking them, it so alarmed them, that they marched back with great Precipitation 'till they came to *Carlisle*, where he acted as Commandant of the City, and gave out Orders to the Garrison, amongst which he ordered the Houses of some of his Majesty's faithful Subjects to be set on fire, but was afterwards obliged by the Duke to surrender to the King's Pleasure; and though Humanity may induce you to have Compassion towards the Prisoner, yet if it is proved he is guilty of the Crimes laid to him, the Justice of this Nation calls aloud for his Punishment.

For no less was to be a Sacrifice than his Majesty and his Royal Family (a Succession of Princes, appointed by Divine Providence to be not only the Preservers of our Rights and Liberties, but to be the Guardians of the Protestant Interest in *Europe*), to appease the Fury of a Sett of unsatisfied People, who have associated in this most wicked and unnatural Rebellion, and who envied us, the faithful Subjects of his Majesty, the Blessings we enjoyed uninterrupted, of our Religious and Civil Rights and Privileges.

These People, in order to divert themselves, and amuse the Ignorant, had on their Standards or Colours, Mottoes that they imagined would be grateful, *viz.*

LIBERTY *and* PROPERTY,
CHURCH *and* KING.

But your Lordship and the Gentlemen of the Jury, as well as the unfortunate Person who stands before you at the Bar, will excuse me if I take upon me to interpret the Meaning of their famous Motto or Inscription on their Colours, which, not to take up too much of the Time of the Court, I shall do in few Words.

The Liberty they designed, was nothing less than Slavery; their intended Property was Plunder, which too many of the good People of this Kingdom hath found; their Church was Popery, and the Meaning of their King, was only to make these free Kingdoms a Province to *France*. We shall now call our Witnesses, who will give such Proofs against the Prisoner, that I doubt not, Gentlemen of the Jury, you will find him guilty of the Treason he stands charged with.

Mr. Solicitor General. (Hon. *W. Murray*, Esq.) Call *Roger Mac Donald*.

Roger Mac Donald being sworn, said, That he knew Colonel *Townley* the Prisoner, that he saw him at *Derby*, and on the Retreat of the Rebel Army from thence, he marched at the Head of the *Manchester* Regiment, as Colonel of the same.

This Witness also said, that he saw him with a white Cockade in his Hat, a Brace of Pistols, and was accounted as principal Officer between *Lancaster* and *Preston*, and he appeared at the Head of the Regiment, with Colours flying, and Drums beating, and that he had on a Plaid Sash.

This Witness was then asked, What Number at that Time the Rebel Army might consist of? and he said, to the best of his Knowledge, he believed 5600 Men, but not all armed.

This Witness farther deposed, That the Prisoner at the Bar was always looked upon by both Officers and Soldiers, as Colonel of the Regiment called the *Manchester* Regiment; and that he gave Command to all the Officers under him, who obeyed his Command as their principal Officer. ---- That the Regiment had a Flag with these Words on one Side, *viz. Liberty* and *Property*; and on the other, *Church* and *King*. That they had some Artillery with them, and the Prisoner always appeared at the Head of his Regiment.

Cross-Examination.

Prisoner's Counsel. (Mr. Serjeant *Wynne*) Pray have you had no Promise of Pardon?

Witness. I have had no certain Promise of Pardon. I was first examined, at *Inverness*, by the Judge Advocate of *Scotland*, but he did not assure me of a Pardon.

Prisoner's Counsel. Did not you expect it?

Witness. I cannot say but I did expect to be pardoned, for I was only a Servant. I was brought ashore very poor, and without any thing to subsist on.

King's Counsel. You say you saw the Prisoner, in the Retreat from *Derby*, command his Regiment: Was not he looked upon as Colonel?

Witness. Yes, I saw him on Horseback very often, and he always rode at the Head of the Regiment on a bay Horse.

Sir *Richard Lloyd.* Call *Samuel Maddox*; who appeared, and was sworn.

Maddox said, The first Time he saw the Prisoner, Colonel *Townley*, was at *Manchester*, about the sixth, seventh, or eighth Day of *December* last, but the Day he could not particularly remember; and said the Prisoner was made Colonel of the *Manchester* Regiment by the Pretender's Son; and one Reason why he was certain he was Colonel of the Regiment, was, that a Guard from the said Regiment was mounted every Day, and Centinels placed at the Prisoner's Quarters; that he, the said *Maddox*, marched out with him in the Station of an Ensign, but never had any Commission, though he carried the Colours as such; that the Prisoner wore a Sword and a Brace of Pistols, with a white Cockade in his Hat; and that the Prisoner gave Command as Colonel of the Regiment, and that he ordered the said *Manchester* Regiment to be drawn up in the Church-Yard in *Manchester*, where the Pretender's Son reviewed them, and that he marched at the Head of the Regiment as Colonel to *Derby*. Their first Day's March from *Manchester* was to *Winslow*, where the Prisoner appeared also at the Head of the Regiment, and had a white Cockade in his Hat, a Plaid Sash, a Brace of Pistols, and a Sword; that their next Day's March was to *Macclesfield*, where he, this Witness, signified, he had an Inclination to leave the Regiment, and return home to his Master at *Manchester*, but was intimidated from so doing, by being threatened, and told, that if he did he would have his Brains knocked out.

This Witness farther deposed, That when they were at *Derby* with the Rebel Army, they beat up for Volunteers for the *Manchester* Regiment, commanded by the Hon. Colonel *Francis Townley*; and the same was done by the particular Order and Direction of the Prisoner.

That when the Rebel Army retreated from *Derby*, Colonel *Townley*, the Prisoner, and some of his Regiment, took out of a House between *Derby* and *Ashborn*, a Sack full of Arms, which were concealed under some old Writings; that the said Arms were taken with them to *Ashborn*, and lodged all Night in the Prisoner's own Room, and disposed of afterwards among his Men; that the Prisoner had two Centinels always at his Door all Night, for fear the Duke of *Cumberland* was nearer to them than they imagined; that the Prisoner marched as Colonel of the *Manchester* Regiment, in their Retreat from *Derby* to *Carlisle*; sometimes at the Head of the Regiment; that when they came to *Carlisle*, the Prisoner was made by the Pretender's Son, Commandant of *Carlisle*, and had another Commission given him by the Pretender's Son to raise a Regiment of Horse; that so soon as the main Body of the Rebel Army were gone from *Carlisle* for *Scotland*, he the Prisoner took on him the Command of the whole Rebel Forces left there; and that he gave Orders for the Guns to be mounted, and also ordered a House to be burnt; which was accordingly done, alledging that several of the King's Forces had fired from it, and annoyed the Pretender's Army; and that he particularly directed and caused several *Chevaux de Frize* to be made, and fixed at the Gates and Entrance to the City, to prevent his Majesty's Horse and Dragoons from approaching it; that the Prisoner ordered some of the Rebel Army then in *Carlisle*, to make a Sally out to bring in some Sheep, and that the Prisoner mounted the Walls, with a Pistol in his Hand, to give notice if the King's Forces were near where the Men were to go; that the Prisoner paid the Men of his own Company himself, as all the Captains of Companies did theirs; and that he had heard the Prisoner when in *Carlisle*, in company with other Officers, complain that he was fourscore Pounds out of Pocket in paying his Men; that before the Capitulation, this Witness heard the Prisoner have some Words, and was seemingly in a great Passion with Colonel *Hamilton*, who was Governor of the Castle or Citadel of *Carlisle*, for surrendering the Place, and not making a Defence to the last; and that he heard the Prisoner declare, that *it was better to die by the Sword, than to fall into the Hands of those damned* Hanoverians.

This Witness being particularly asked by the King's Counsel, if he had at any time seen the Prisoner in *Carlisle* act as an Officer, said, That he had particularly seen him encouraging the Rebel Soldiers to make Sallies out on the King's Forces.

Cross-Examination.

Mr. Serjeant *Wynne.* Mr. *Maddox*, after the Surrender of the Town and Citadel of *Carlisle*, did not you all expect Mercy?

Maddox. We were all put Prisoners into the Church.

Serjeant *Wynne.* Did you all expect to be hanged?

Maddox. I cannot say that, for we were in expectation of being at Liberty again soon.

Serjeant *Wynne.* Pray do not you expect a Pardon, or have you had any Promise of a Reward for what you have done in this Affair?

Maddox. I cannot ſay I have ever had any Promiſe of a Reward.

Serj. *Wynne.* I find you are a very ſmart young Man, and I deſire to be anſwered to this Queſtion; Pray, have you had any Promiſe of a Reward or Pardon, or do you expect any Reward or Pardon, after having given your Evidence againſt the Priſoner at the Bar, or the other Priſoners that are in Cuſtody?

Maddox. My Brother came to me when I was in *New-Priſon*, and he did adviſe me to do the beſt I could for myſelf, and ſerve my Country. Soon after one of his Majeſty's Meſſengers took me away; and I have been at his Houſe ever ſince, only at thoſe Times I went to be examined; Nobody ever told me that I ſhould be pardoned, but my Friends adviſed me to do what I have done. If I could have a free Pardon, I ſhould be very thankful for it.

Mr. *Clayton.* (*another of the Priſoner's Counſel.*) Mr. *Maddox*, Did not his Royal Highneſs the Duke (when you ſurrendered Priſoners) promiſe you Mercy?

Maddox. All the Terms his Royal Highneſs ſaid we were to expect, were, we ſhould not be put to the Sword, but that we ſhould be left to his Majeſty's Pleaſure; which two *Scots* Officers who went to the Duke, and whoſe Names were *Abernethy* and *Forbes*, told us; and that the People in *Carliſle* were to deliver up all their Arms at the Gate, and the Officers were to go into the Church.

King's Counſel. Call *Auſtin Coleman*, who appeared and was ſworn, and ſaid, He ſaw the Priſoner at the Bar in *Carliſle*, who was called Colonel *Townley*, and commanded the *Mancheſter* Regiment, and was made Commandant of the ſaid City by the Pretender's Son; and if any of the Soldiers wanted Arms, they applied to him, and he furniſhed them with Firelocks, Piſtols and Bayonets; and that he often had ſeen the Priſoner order the Guard to mount, and always acted as their chief Officer, and all the other Officers took their Orders from him as their Superior.

Croſs-Examination.

Mr. Serj. *Wynne.* Pray, Sir, inform me what Time you ſaw the Gentleman at the Bar at *Carliſle*, was it in the Month of *November?*

Coleman. I cannot tell what Month it was, I know I ſaw him at *Carliſle* when it was in Poſſeſſion of the Rebels, and he had a Commiſſion from the Pretender's Son.

Mr. Serj. *Wynne.* Did you ever hear him ſay he had a Commiſſion?

Coleman. No, I never did.

Mr. Serj. *Wynne.* Then what you ſay ſignifies nothing.

King's Counſel. Call Capt. *Carey* of the Foot-Guards, who appeared.

King's Counſel. Pray ſwear the Captain; which being done, Capt. *Carey* ſaid, That he received Orders by Lord *George Beauclerk*, from his Royal Highneſs Duke *William*, to take Care of the Governor of *Carliſle*, and had his Royal Highneſs's Orders to examine all the Rebel Priſoners Papers, amongſt whom he applied to the Priſoner at the Bar, who ſaid he had delivered his Commiſſion before to Major *Adams*. He further ſaid, That the Priſoner had ſome Guineas in his Pockets, and his Watch, which he did not take from him; for his Royal Highneſs's Orders were, not to take any Money out of the Pockets of any of the Officers, only to ſeize all publick Money that they had collected; for that what Money they had in their Pockets might be of Service to them in their Confinement. That this Evidence indorſed all the Papers that he found on ſuch of the Officers as he ſearched, and ſaid, the Capitulation was ſigned by the Duke of *Richmond*, Lieutenant-General in the Army; wherein the Rebels in *Carliſle* were to be at the King's Pleaſure.

Counſel for the King. Sir, are you ſure that in the Capitulation that was ſigned by the Duke of *Richmond*, it was mentioned that the Priſoners ſhould be reſerved for the King's Pleaſure?

Capt. *Carey.* I cannot take upon me to be certain of that; but I think ſo.

King's Counſel. Do you know the Duke of *Richmond*'s Hand-writing?

Capt. *Carey.* No, I never ſaw his Grace write.

Then a Paper was ſhewn him, which he ſaid was the Capitulation, and was read, as follows:

"All the Terms his Royal Highneſs will or can grant to the Rebel Garriſon of *Carliſle*, are, That they ſhall not be put to the Sword, but be reſerved for the King's Pleaſure.

"If they conſent to theſe Conditions, the Governor and principal Officers are to deliver themſelves up immediately, and the Caſtle, Citadel, and all the Gates of the Town are to be taken Poſſeſſion of forthwith by the King's Troops. All the ſmall Arms are to be lodged in the Town Guard-Room, and the reſt of the Garriſon are to retire to the Cathedral, where a Guard is to be placed over them. No Damage is to be done to the Artillery, Arms, or Ammunition." *Head Quarters at* Blackall, 30 Dec. *Half an Hour paſt Two in the Afternoon.*

By his Royal Highneſs's Command,

Signed *Richmond*, *Lenox*, and *Aubigney*, Lieutenant-General of his Majeſty's Forces*.

King's Counſel. Call Captain *Nevet* of the third Regiment of Foot Guards; who appearing, and being ſworn, ſaid, He went by order of his Royal Highneſs the Duke to viſit and examine the Rebel Officers in *Carliſle*; and that the Priſoner was one of them, and went by the Name of Colonel *Townley*, and Commandant of *Carliſle*.

King's Counſel. Swear Captain *Vere*, which was done.

King's Counſel. Sir, will you be pleaſed to tell my Lords, and the Gentlemen of the Jury, what you know of the Priſoner at the Bar being in the late unnatural Rebellion?

Capt. *Vere.* I ſaw the Priſoner on the 20th of *November* at *Carliſle*, for I was taken Priſoner a little before by the Rebel Army; he was called Colonel *Townley*, Colonel of the *Mancheſter* Regiment, and Commandant of the Town. On the 25th of *December* he appeared with a white Cockade; I went up to Colonel *Hamilton*'s Room, where we talked of a Capitulation, and Mr. *Hamilton* was willing to agree to it: We then wrote a Letter to his Royal Highneſs the Duke, and the Meſſenger who carried it was made a Priſoner; and Mr. *Hamilton* deſired me to go to Captain *Abernethy*, and the *Scotch* Officers, and they all agreed to what was done, and the next Day they hung out the White Flag.

Sir *John Strange.* Did not *Townley* appear as the Commanding Officer?

Capt. *Vere.* Yes, I ſaw his Commiſſion in the Guard-Room.

Sir *John Strange.* Did you ſee it in his own Hands?

Capt. *Vere.* I cannot ſay I did.

Mr. Serj. *Wynne.* Pray, Sir, what are you?

Capt. *Vere.* I am an Officer, and was ſent by his Grace the Duke of *Newcaſtle* upon the publick Service, and was taken Priſoner before by the Rebel Army.

Mr. *Davidſon*, a Grocer of *Carliſle*, was the next Witneſs, who being called and ſworn, depoſed, That he had ſeen the Priſoner at *Carliſle*, where he acted as Colonel of the *Mancheſter* Regiment, and Commandant of the City of *Carliſle*; he was preſent when he ordered a Houſe to be ſet on Fire at *Carliſle*; and on this Deponent's aſking him the Reaſon for it, he replied, That ſeveral of the Elector of *Hanover*'s Men had fired from it, and annoyed his Men.

Here the King's Counſel reſted it.

The Counſel for the Priſoner proceeded now to his Defence, and pleaded, That Mr. *Townley* was a Gentleman of a good Family, and that his Education was ſuitable to his Birth; but by ſome Misfortunes in his Family was obliged to retire to *France*, which happened in the Year 1728. Being a Man of Spirit, he was ſoon taken Notice of by the *French* Court, and being recommended to his moſt Chriſtian Majeſty, as a Perſon capable of a Poſt in his Army, the King gave him a Commiſſion; in conſequence of which he ſerved at the Siege of *Philipſburgh*, under the Marſhal Duke of *Berwick*, who loſt his Life before the Walls of that Place. He there behaved with ſuch Courage and Conduct as gained him the Reſpect and Eſteem of all the Officers in the Army. He executed all the Orders of his Superiors with the greateſt Intrepidity, and expoſed himſelf on every Occaſion in ſuch a Manner, as if Life was of no Signification, when Honour and the Service of his Maſter ſtood in Competition with it. He was likewiſe in ſeveral other Sieges and Engagements, where his Behaviour was always ſuch as became a Man of Honour; and as he received the Pay of his moſt Chriſtian Majeſty, he thought it his Duty to ſerve him with all the Fidelity he was capable of. Thus he continued in that Service from the Year 1728, till a few Years ſince that he came into *England*, where he privately reſided till about the Time of the breaking out of the Rebellion. And the *French* King imagining he might be of Service in promoting his Views, in the Invaſion which he had meditated againſt theſe Kingdoms, ſent him a Colonel's Commiſſion, to enable him to raiſe Forces, and to aſſiſt his Ally, the Pretender, in his Expedition to *Scotland*. Thus it appears, that he has been ſixteen Years in the Service of *France*; that he has had the *French* King's Commiſſion during all that Time; and conſequently was as much in the Service of *France* as any Officer in the *French* Army; and therefore they were humbly of Opinion, that Col. *Townley* had as juſt a Right to the *Cartel*, as any *French* Officer that has been taken by the *Engliſh*, during the Progreſs of the War between the two Kingdoms.

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* As ſome People may be willing to know what the Rebels called, *The Capitulation on the Surrender of Carliſle*; and as ſeveral of thoſe unhappy Perſons in their dying Speeches aſſerted, *That their Lives were taken away contrary to the Laws of Nations and of Arms, as appears by the Capitulation granted them at the Surrender of that City*; to contradict ſo falſe an Aſſertion, we ſhall here inſert all the Meſſages, &c. that paſſed on that Occaſion, whereby it will appear, that nothing was granted them but, "*that they ſhould not be put to the Sword, but reſerved for the King's Pleaſure*;" which Terms they conſented to accept, as appears by Colonel *Hamilton*'s, and the other Officers Anſwer to the Terms offered by his Royal Highneſs, *viz.* On the firſt Platoon of the Old Battery firing, (*December* 30, 1745) the Rebels hung out the White Flag; whereupon the Battery ceaſed, and they called over the Walls, *That they had two Hoſtages ready to be delivered at the* Engliſh *Gate, on the oppoſite Side of the Town*; his Royal Highneſs the Duke of *Cumberland* then ordered Colonel *Conway* and Lord *Bury* to deliver two Meſſages marked in Writing, to be ſigned by Colonel *Conway*; the ſecond Meſſage being deſigned as an Anſwer to a Perſon's Letter, who called himſelf a *Frenchman*.

In about two Hours they returned, and brought a Paper ſigned *John Hamilton*; whereupon they were ſent back with the Terms ſigned by the Duke of *Richmond*, by Order of his Royal Highneſs; and about Four they brought a Paper ſigned alſo by the ſaid *John Hamilton*; on which Brigadier *Bligh* took Poſſeſſion of the City.

Copy of his Royal Highneſs's Meſſage to the Rebels at Carliſle, *upon their hanging out a White Flag*, Monday *Morning, the* 30*th of* December, 1745, *ſent by Colonel* Conway.

His Royal Highneſs will make no Exchange of Hoſtages with Rebels, and deſires they will let him know by me, what they meant by hanging out the White Flag.

To let the *French* Officer know, if there is one in the Town, that there are no *Dutch* Troops here, but enough of the King's to chaſtiſe the Rebels, and thoſe who dare to give them any Aſſiſtance.

Signed, *Col. Conway*,
Aid de Camp to his Royal Highneſs the Duke.

John Hamilton's *Anſwer to his Royal Highneſs the Duke's Meſſage to the Rebels in* Carliſle, December 30, 1745.

In Anſwer to the ſhort Note ſent by his Royal Highneſs Prince *William*, Duke of *Cumberland*; the Governor, in Name of himſelf, and all the Officers and Soldiers, Gunners and others, belonging to the Garriſon, deſires to know what Terms his Royal Highneſs will be pleaſed to give them, upon the Surrender of the City and Caſtle of *Carliſle*; and which known, his Royal Highneſs ſhall be duly acquainted with the Governor and Garriſon's laſt or ultimate Reſolution, the White Flag being hung out on Purpoſe to obtain a Ceſſation of Arms for concluding ſuch a Capitulation. This to be given to his Royal Highneſs's Aid de Camp.

Signed, *John Hamilton.*

His Royal Highneſs's Declaration to the Rebels, ſent by the Colonels Conway *and Lord* Bury, *Aid de Camps to his Royal Highneſs, after receiving* John Hamilton's *Letter*, December 30, 1745.

All the Terms his Royal Highneſs will or can grant to the Rebel Garriſon of *Carliſle*, are, that they ſhall not be put to the Sword, but be reſerved for the King's Pleaſure.

If they conſent to theſe Conditions, the Governor and principal Officers are to deliver themſelves up immediately, and the Caſtle, Citadel, and all the Gates of the Town, are to be taken Poſſeſſion of forthwith by the King's Troops. All the ſmall Arms are to be lodged in the Town Guard-Room, and the reſt of the Garriſon are to retire to the Cathedral, where a Guard is to be placed over them. No Damage is to be done to the Artillery, Arms, or Ammunition. Head Quarters at *Blackall*, 30 *December*, Half an Hour paſt Two in the Afternoon.

By his Royal Highneſs's Command,

Signed *Richmond*, *Lenox*, and *Aubigney*, Lieutenant-General of his Majeſty's Forces.

The Rebels Anſwer to the Terms offered them by his Royal Highneſs, December 30, 1745.

The Governor of *Carliſle*, and all the Officers compoſing the Garriſon, agree to the Terms of Capitulation given in by his Grace the Duke of *Richmond*, *Lenox*, and *Aubigney*, Lieutenant-General of his Majeſty's Forces, recommending themſelves to his Royal Highneſs's Clemency, and that his Royal Highneſs will be pleaſed to interpoſe for them with his Majeſty; and that the Officers Cloaths and Baggage may be ſafe, with a competent Time to be allowed the Citizens of *Carliſle* to remove their Beds, Bedcloaths, and other Houſhold Furniture impreſſed from them for the Uſe of the Garriſon in the Caſtle. The 30th of *December*, at Three in the Afternoon.

W:

We muſt acknowledge that the King's Counſel have opened the Nature of the Indictment with all the Candour that could be expected, and have not exaggerated the Charge againſt the Priſoner beyond the Bounds of Humanity and Good-nature; and we humbly hope they will be of Opinion with us, that tho' the Priſoner at the Bar ſhould unhappily be found acting in this unnatural Rebellion, yet as he acted under a Commiſſion from the *French* King, he has a Right to the *Cartel* for ſettling the Exchange of Priſoners that may be taken on either Side, in the War now carried on between the two Kingdoms.

The Evidence we have to produce in Behalf of the Priſoner, are only three. The firſt is Capt. *Carpentier*, who will prove, we hope, to your Lordſhips Satisfaction, that Col. *Townley* was many Years in the *French* Service, under a Commiſſion from the *French* King; and ſince his being taken at *Carliſle* has been conſtantly ſupplied from *France*; the other two, who are *John Hayward* and *Thomas Dickinſon*, we ſhall bring to invalidate the Evidence of *Maddox*, by ſhewing the Badneſs of his Character, and that he is ſuch a Man whoſe Teſtimony is not to be credited.

And the Priſoner's Counſel farther obſerved, that the Indictment was inſufficient, for that they had not mentioned the Day in the Indictment when the Treaſon was done, and that the glorious Statute of the 7th of King *William* III. which was juſtly eſteemed the Bulwark of *Engliſh* Liberty, directed, that nothing ſhall be given in Evidence but what is inſerted in the Indictment; and that the Time not being mentioned in the Indictment when the Treaſon was acted, is ſufficient to quaſh it, becauſe it might be ſo long paſt as to entitle the Priſoner to the Benefit of the Limitation enacted in the ſaid King's Reign; and that Act ſays, That no Perſon ſhall be convicted, or ſuffer for High or Petit Treaſon, unleſs a Proſecution is begun againſt the Perſon who committed ſuch Treaſon, in three Years after the Commiſſion of ſuch Treaſon.

Counſel. Pray call Mr. *Carpentier*; who appeared, and was ſworn.

King's Counſel. Pray, what would you aſk this Gentleman to?

Priſoner's Counſel. To prove that the Priſoner had a Commiſſion from the *French* King, and that he was at the Siege of *Philipſburg*.

Court. That will be againſt you; for no Man that is a liege Subject of his Majeſty can juſtify taking up Arms, and acting in the Service of a Prince that is actually in War againſt his Majeſty.

On which *Carpentier* was ſet aſide, without being examined.

Mr. Serj. *Wynne.* Pray call *John Hayward*; who appeared, and was ſworn.

Mr. Serj. *Wynne.* Pray Sir, do you know *Samuel Maddox*, and how long have you known him?

John Hayward. Yes, Sir, about two Years.

Mr. Serj. *Wynne.* Pray, what Character doth he bear?

John Hayward. He bears ſuch a very bad Character, that I would not believe him upon his Oath.

Croſs-Examined.

Sir *John Strange.* I hope you believe that every Perſon that joined with the Rebels are bad Men?---*Hayward.* Yes, Sir.

Sir *R. Lloyd.* What Buſineſs are you of?---*Hayward.* I am a Glover and Leather-ſeller at *Mancheſter*. [After being examined, he went out of Court, but was recalled.]

Sollicitor Gen. Mr. *Hayward*, Pray, did you ſee the Priſoner at the Bar in *Mancheſter?*

Hayward. No, I never ſaw the Priſoner before.

Counſellor *Clayton.* Pray call *Thomas Dickinſon*; who appeared, and was ſworn.

Sir, do you know *Samuel Maddox?*

Dickinſon. Yes, Sir; he was bound Apprentice to an Apothecary at *Mancheſter*.

Counſ. *Clayton.* Pray, what Character does he bear?

Dickinſon. A very bad one.

Counſ. *Clayton.* Would you believe him upon his Oath?

Dickinſon. No, I would not, eſpecially upon Life and Death.

Sir *John Strange.* For what Reaſon do you take upon you to ſwear he is not to be believed upon his Oath?

Dickinſon. I do not know particularly; but I have heard he was a very bad Apprentice, and that he had wronged his Maſter.

Sir *John Strange.* Do you know his Maſter?

Dickinſon. Yes; his Maſter is in *London* now.

Sir *John Strange.* So, for no other Reaſon, than becauſe you have heard he was not a good 'Prentice, you take upon you to ſwear he is not to be believed on his Oath. I ſuppoſe you have other bad 'Prentices in *Mancheſter?*

Dickinſon. Yes, there are.

Mr. Att. Gen. Dickinſon, Did you ever ſee the Priſoner at *Mancheſter* at the Time the Rebel Army was there?---*Dickinſon.* Yes.

Mr. Att. Gen. What was he doing there?

Dickinſon. He was Colonel of the *Mancheſter* Regiment.

Mr. Att. Gen. What, in the Pretender's Service?

Dickinſon. Yes, in the Rebel Army.

The Evidence for the Priſoner being all gone through, Mr. Sollicitor General *replied to what had been objected by the Priſoner's Counſel to the Indictment.*

Mr. Sollicitor General ſtood up, and made a Reply to the Priſoner's Counſel, wherein he obſerved, "The firſt Overt-Act of High-Treaſon charged againſt the Priſoner, is compaſſing and imagining the Death of the King; the next is, adhering to the King's Enemies, and levying of War againſt his Majeſty's Perſon and Government; and this is founded on the Statute of the 25th of *Edward* the Third. And levying of War by one or more Perſons, is Treaſon. That this War has been levied, and that Acts of Hoſtilities have been committed by the Priſoner, I do not doubt but that it has been ſufficiently proved to you, Gentlemen of the Jury; there is no Occaſion to prove explicitly all that is laid in the Indictment; but that War has been levied againſt his Majeſty, has been ſufficiently proved and admitted by the learned Counſel for the Priſoner; it has been proved, likewiſe, that the Priſoner, with a tumultuous Number of Rebels and Traitors, did aſſemble in ſeveral Parts of his Majeſty's Dominions, and levied a cruel and deſtructive War. The Counſel on the other Side would inſinuate, that the Crime was committed before the Day laid in the Indictment, therefore the Day of the Commiſſion in the Indictment ſhould be inſerted. But admitting it was ſo, this Indictment is good; for in the Caſe of Sir *Harry Grey*, it was the Opinion of all the Judges, that Sir *Harry* was guilty, notwithſtanding that the Fact was committed twelve Years before the Indictment; and it is recent in the Memory of many Gentlemen of the Law, that this was the Caſe of *Chandler*, *Layer*, and *Bradſhaw*; and ſo it was allowed, in conſtructive Treaſon, in the Caſe of *Dammery* and others *, in the Reign of the late Queen *Anne*, for pulling down of Meeting-houſes, and many Caſes of the like Nature in Sir *Matthew Hale*'s Pleas of the Crown; for which ſeveral Reaſons, and what has been mentioned before, I humbly conceive your Lordſhips will over-rule this Exception, as having no Weight." (Upon which the ſaid Motion was over-ruled by the Court.) Then my Lord Chief Juſtice *Lee* ſummed up the Evidence very impartially to the Jury.

After which the Jury conſulted together in Court, but not agreeing in their Verdict, withdrew about ten Minutes, and when they returned into Court, were called over by the Clerk of the Arraigns, and anſwered to their Names.

Clerk of the Arraigns. Gentlemen of the Jury, are you agreed on your Verdict?---*Jury.* Yes.

Clerk of the Arraigns. Who ſhall ſay for you?---*Jury.* Our Foreman.

Clerk of the Arraigns. Francis Townley, hold up your Hand. (*Which he did.*)

How ſay you? Is *Francis Townley* guilty of the High Treaſon whereof he ſtands indicted, or not guilty?---*Foreman.* Guilty.

Clerk of the Arraigns. What Goods and Chattels, Lands and Tenements, had he at the Time of the ſaid High Treaſon committed, and at any Time ſince, to your Knowledge?---None.

Clerk of the Arraigns. Hearken to your Verdict, as the Court has recorded it; You ſay that *Francis Townley* is guilty of the High-Treaſon whereof he ſtands indicted, and you ſay he had no Goods, nor Chattels, Lands or Tenements, at the Time of the ſaid High-Treaſon committed, or at any Time ſince to your Knowledge, and ſo you ſay all?---*Jur.* Yes.

Then Mr. *Jones*, Keeper of the County Gaol of *Surry*, was ordered to take Care of the Priſoner.

Mr. Townley's Caſe, July 15, 1746.

HIS Counſel moved that before any Juryman ſhould be brought to the Book, the whole Pannel might be called over once in the Priſoner's Hearing, that he might take notice who did and who did not appear; which they ſaid would be a conſiderable Help to him in taking his Challenges †. This was done by Order of the Court, and the Attorney-General did not oppoſe it.

Every Juryman as he came to the Book was aſked, whether he was a Freeholder or no. Thoſe who anſwered that they had no Freehold in the County, were examined upon a *Voire dire* to that Matter; and on their anſwering that they had no Freehold, were ſet aſide. Thoſe who anſwered that they had both Freehold and Copyhold were aſked, whether both put together did amount to 10*l.* a-Year; and if they did, that was admitted to be a good Qualification, though the Freehold alone was under 10*l.*

The Court grounded this Rule on the Bill of Rights, 1 *W. M.* St. 2. c. 2. 4. 5. *W. M.* c. 24. S. 15. and the 4th and 5th *W. M.* compared.

The Priſoner's Counſel offered to call a Witneſs to ſhew that he was at the Time of the Rebellion in the Service and Pay of the *French* King, and ſo intitled, as they inſiſted, to the Benefit of the Cartel for Exchange of Priſoners: But the Court declared that ſuch Proof is not to be admitted. It is no Defence in a Court of Law, nor is it ſo much as an Excuſe, that he had entered into the Service of an open Enemy. See the Caſe of *Æneas Macdonald*.

They then inſiſted on what they (very improperly) called the Capitulation at the Surrender of *Carliſle*. In this likewiſe the Court over-ruled them. It is no Sort of Defence in a Court of Law. But to prevent Miſconſtructions, Colonel *Carey* was examined touching the Terms upon which the Surrender was made. And he ſwore, that the Duke expreſly reſerved the Rebels in *Carliſle* to be dealt with as His Majeſty ſhould pleaſe.

The Court then obſerved, that the Priſoners had received the whole Benefit of the Terms offered by the Duke, in that they were not immediately put to the Sword, [See Lord *Winton*'s Trial 6. St. Tri.] but were reſerved for his Majeſty's Pleaſure; which now appears to be, that they ſhall have a fair Trial, and Liberty to make their Defence according to Law.

They then inſiſted that the Overt-Acts are charged in the Indictment to be committed on the 10th of *October*, and that all the Evidence is of Overt-Acts ſubſequent to that Time; and ſaid, that however the Reſolutions with regard to this Point may have been before the 7th *W.* III. yet now, by that Act, no Evidence is to be given but of Overt-Acts laid in the Indictment; and conſequently the Overt-Acts muſt be proved in ſuch Manner as they are laid: That in this Caſe eſpecially the King's Counſel are not at Liberty to vary in their Proofs from the Day laid, ſince they have confined themſelves in the Indictment to one Day, and have not charged (as they ſaid in moſt of the Precedents it is charged) that the Defendant did commit the Treaſon charged on him on the Day laid, and at divers Days and Times, as well before as after.

To this Mr. *Murray*, the Sollicitor General, anſwered, That the 7th *W.* III. makes no Alteration with regard to this Point, ſo as to make either Time or Place more material than they were before the Act. The Act indeed ſaith, That no Evidence ſhall be given of any Overt-Acts not laid in the Indictment: But what is or is not Evidence of ſuch Overt-Acts, is left upon juſt the ſame Foot in this reſpect as it was before the Act; what was Evidence at Common Law is in this reſpect Evidence ſtill; and as to the charging the Overt-Acts at divers Days and Times as well before as after the Day particularly mentioned, he ſaid, that the greateſt Part of the Precedents he had ſeen of Indictments for levying War, which is the preſent Caſe, do charge the Overt-Acts on one Day only.

Sir *Richard Lloyd* offered to ſpeak on the ſame Side; but the Court told

* State Trials, Vol. VIII.

† *N. B.* This was done in *Layer*'s Caſe, after a much longer Debate than the Matter deſerved.

him, he need not give himself the Trouble of ſpeaking to the Point, on which there could be no Doubt, and over-ruled the Objection. *

The following Warrant was ſoon after ſent to the Sheriff, *viz.*

SURREY.

'AT a Special Seſſion of Oyer and Terminer and Goal Delivery of our preſent Sovereign Lord the King of and for the County of *Surrey* holden at the Borough of *Southwark* in the ſaid County on *Monday* the Twenty-third Day of *June* in the Twentieth Year of the Reign of our ſaid preſent Sovereign Lord *GEORGE* the ſecond by the Grace of God of *Great-Britain France* and *Ireland* King Defender of the Faith and ſo forth before Sir *William Lee* Knt. Chief Juſtice of our ſaid preſent Sovereign Lord the King appointed to hold Pleas before the King himſelf Sir *John Willes* Knt. Chief Juſtice of the Court of Common Pleas Sir *Martin Wright* Knt. one of the Juſtices appointed to hold Pleas before the King himſelf Sir *James Reynolds* Knt. one of the Barons of the Court of Exchequer Sir *Thomas Abney* Knt. one of the Juſtices of the ſaid Court of Common Pleas Sir *Thomas Burnett* Knt. one other of the Juſtices of the ſaid Court of Common Pleas *Charles Clarke* Eſq. one of the Barons of the ſaid Court of Exchequer *Edward Clive* Eſq. one of the Barons of the Court of Exchequer Sir *Thomas De Veil* Knt. and *Peter Theobalds* Eſq and from thence continued by ſeveral Meſne Adjournments until *Tueſday* the Twenty-ſecond Day of *July* then next following and then held before the ſaid Sir *William Lee* Sir *James Reynolds* Sir *Thomas Abney* Sir *Michael Foſter* one of the Juſtices appointed to hold Pleas before the King himſelf and the ſaid *Edward Clive* and Sir *Thomas De Veil* and others their Fellow Juſtices and Commiſſioners of our preſent Sovereign Lord the King aſſigned by Letters Patent of our ſaid preſent Sovereign Lord the King under his Great Seal of *Great-Britain* made by Vertue of the Statute made in this preſent Parliament intitled *An Act for the more eaſy and ſpeedy Trial of ſuch Perſons as have levied or ſhall levy War againſt his Majeſty and for the better aſcertaining the Qualification of Jurors in Trials for High Treaſon Miſpriſion of Treaſon in that Part of* Great-Britain *called* Scotland to the ſaid Juſtices and Commiſſioners above-named and others and to any three or more of them (of whom our ſaid preſent Sovereign Lord the King willed that any of them the ſaid Sir *William Lee* Sir *John Willis* Sir *Martin Wright* Sir *James Reynolds* Sir *Thomas Abney* Sir *Thomas Burnett* *Charles Clark* Sir *Michael Foſter* *Edward Clive* and Sir *Thomas De Veil* and others in the ſaid Letters Patent named and appointed ſhould be one) to deliver the Gaol of the ſaid County of the Priſoners therein being or ſuch as ſhall or may be detained in the ſame on or before the firſt Day of *January* in the Year of our Lord One thouſand Seven hundred and Forty-ſix for or on Account of the High-Treaſon mentioned in the ſaid Statute in levying War againſt our ſaid preſent Sovereign Lord the King within this Realm and to enquire by the Oath of good and lawful Men of the ſame County of all ſuch High Treaſons in levying War againſt our ſaid preſent Sovereign Lord the King within this Realm by the ſaid Priſoners or any of them or by any other Perſon or Perſons who are now in actual Cuſtody for or on Account of the ſame or who are or ſhall be guilty of High Treaſon in levying War againſt our ſaid preſent Sovereign Lord the King within this Realm and ſhall be apprehended and impriſoned for the ſame on or before the firſt Day of *January* in the Year of our Lord One thouſand Seven hundred and Forty-ſix and the ſame High Treaſons to hear and determine according to the Form of the ſaid Statute.'

Alexander Abernethey, *James Gadd* otherwiſe *Gad*, *Thomas Furnivall*, *Chriſtopher Taylor*, *Andrew Blood* otherwiſe *Blyde*, are attainted on their own Confeſſion of High Treaſon in levying War againſt our Sovereign Lord the King within this Realm.

Francis Townley, *George Fletcher*, *William Brettaugh* otherwiſe *Bratter* otherwiſe *Bretter*, *Thomas Chadwick* otherwiſe *Chaddock*, *Thomas Deacon*, *James Dawſon*, *John Berwick*, *John Saunderſon*, *Thomas Syddall*, *Charles Deacon*, *James Willding* otherwiſe *Wheelding*, *David Morgan*, are attainted on Verdict of High Treaſon of levying War againſt our Sovereign Lord the King within this Realm.

" Let the ſeveral Priſoners above-named return to the Gaol of the County " of *Surrey* from whence they came and from thence they muſt be drawn " to the Place of Execution and when they come there they muſt be ſeve- " rally hanged by the Neck but not 'till they be dead for they muſt be " cut down alive then their Bowels muſt be taken out and burnt before " their Faces then their Heads muſt be ſevered from their Bodies and their " Bodies ſeverally divided into four Quarters and theſe muſt be at the " King's Diſpoſal.

" *John Hunter* is acquitted by Verdict of High-Treaſon in levying " War againſt our Sovereign Lord the King within this Realm and muſt " be diſcharged.

" Let Execution be done on *Wedneſday* " the Thirtieth Day of *July* Inſtant.

W. Lee,
M. Wright,
Ja. Reynolds,
T. Abney,
M. Foſter,
E. Clive.

Of the above Seventeen, *Abernethey*, *Gadd*, *Furnivall*, *Taylor*, *Brettaugh*, *Saunderſon*, *Charles Deacon*, and *Willding* were reprieved, and the other Nine executed *July* 30.

The Priſoner *Townley* was executed according to his Sentence on *Kennington-Common*, on *Wedneſday* the 30th of *July* 1746.

After he had hung ſix Minutes, he was cut down, and having Life in him, as he lay upon the Block to be quartered, the Executioner gave him ſeveral Blows on his Breaſt, which not having the Effect deſigned, he immediately cut his Throat; after which he took his Head off; then ripped him open, and took out his Bowels and Heart, and threw them into a Fire, which conſumed them; then he ſlathed his four Quarters; and put them with the Head into a Coffin, and they were carried to the New Jayl in *Southwark*, where they were depoſited till *Saturday Aug.* 2. when his Head was put on *Temple-Bar*, and his Body and Limbs ſuffered to be buried.

This unfortunate Perſon was about 38 Years of Age, born near *Wigan* in *Lancaſhire*, of a very good Family. His Uncle Mr. *Townley*, of *Townley-Hall*, in *Lancaſhire*, was tried in *Southwark*, before Judge *Powis*, for being in the Rebellion in 1715; and tho' acquitted by his Jury, yet not thought innocent by the Publick; for many of his Men who were tried at other Places, for going into the Rebellion with him, were convicted and executed.

In 1727, he went over to *France*, and entered himſelf a Volunteer in the *French* King's Service; and in 1728 obtained a Commiſſion from the King of *France*, and continued abroad about 15 Years. He was at the Siege of *Philipſburg*, when the Duke of *Berwick*'s Head was ſhot off, and was near the Duke at that Time. He was alſo in the *French* Army, when the *Germans* made ſuch a ſudden Attack upon that Quarter of the Army where Marſhal *Broglio* commanded, as obliged the Marſhal in a terrible Fright to run away without his Breeches. He was likewiſe in ſeveral other Actions and Sieges, and, as was ſaid by his Friends, he always behaved well and with Honour.

The Reaſon of his leaving the *French* Service, about five Years ſince, and coming to *England*, was to live ſome Time in his own Country with his Friends; and when the Rebel Army came into *England*, he went and met them between *Lancaſter* and *Preſton*; and came with them to *Manchester*, where the Pretender's Son gave him a Commiſſion to raiſe a Regiment of Foot, which was immediately done; and the young Pretender, on leaving him at *Carliſle*, gave him another Commiſſion to raiſe a Regiment of Horſe.

His Behaviour from the firſt of his being taken Priſoner at *Carliſle*, to the Time of his Trial, was of a Piece; he frequently ſaying that he could not be hurt, for that he had a Commiſſion from the King of *France*, and ſo muſt be exchanged upon the Cartel; but when he was convicted, he ſeemed a little more ſerious, and often ſaid, he expected no Mercy.

He was much more reſerved than many of his Fellow-Sufferers; and would not talk a great deal to any body but his particular Friends and Brother-Priſoners.

The Morning of his Execution, and even at the fatal Place, he ſhewed no manner of Signs of Dread, but ſaid he hoped he ſhould be happy in the next World.

XXX. The Trial of George Fletcher, for High Treaſon, at the Court-houſe, St. *Margaret's-hill*, *Southwark*, on *Wedneſday*, *July* 16, 1746.

THIS Day the Court, according to Adjournment, met at Ten in the Morning, where there were preſent, the Lord Chief Juſtice *Lee*, Mr. Juſtice *Wright*, and Mr. Baron *Reynolds*.

And alſo the other Officers, that attended the Court the preceding Day, took their Seats; and Proclamation being made by the Cryer, he proceeded to call the Jury, and ordered the Keeper of the County Gaol to ſet *George Fletcher* to the Bar; which being done accordingly, the following Gentlemen (after the Priſoner had made ten Challenges) were ſworn in for the Jury.

The Names of the Jury.

1 *Daniel Ponton* of *Lambeth*, Starch-maker.
2 *Michael Cuſſe* of *Batterſea*, Gardener.
3 *Michael Conſtable* of *Dorking*, Yeoman.
4 *William Brooker* of *Walton* upon *Thames*, Brewer.
5 *Edmund Brown* of *Croydon*, Brewer.
6 *Thomas Belch* of *Coulſdon*, Gent.
7 *Chriſtopher Stoakes* of *Bermondſey*, Fellmonger.
8 *William Taylor* of St. *Saviour*, Brewer.
9 *Thomas Lintall*, of *Ditto*, Cloth-worker.
10 *Francis Simmonds* of *Puttenham*, Yeoman.
11 *James Paine* of *Seal*, Yeoman.
12 *Richard Sparkes* of *Wonerſh*, Yeoman.

And they being all ſworn, took their Seats in the Jury-box; and Proclamation was again made for Silence, whilſt the Indictment was reading to the Priſoner.

Note, The Indictment was the ſame as that of *Townley*'s (convicted the Day before), the Treaſon being laid to be committed the ſame Time, at the ſame Place, and in the ſame Manner.

After the King's Counſel had opened the Charge, the following Evidence was called againſt the Priſoner.

Ormſby Mac Cormack, *being ſworn*,

King's Counſel. Mr. *Mac Cormack*, pray look upon the Priſoner, and then tell the Court, and the Gentlemen of the Jury, what you know of him; and ſpeak out loud, that you may be heard.

Mac Cormack. The firſt time that I ſaw him, was before the Rebels marched from *Manchester* to *Derby*.

King's Counſel. What Appearance did the Priſoner make at *Manchester*? Did you look upon him to be an Officer?

Mac Cormack. He had a white Cockade in his Hat, and marched as Captain in the *Manchester* Regiment. I ſaw the Flag that belonged to the Regiment

* The Lord *Balmerino*, who had neither Counſel nor Witneſs at his Trial, inſiſted on the ſame Point. And the Houſe out of their extreme Tenderneſs in caſe of Life (after my Lord Chancellor had delivered his Opinion clearly that the Time is not material, provided the Treaſon be committed before the Bill found) put the Queſtion to the Judges. Lord Chief Juſtice *Lee* delivered the unanimous Opinion of the Judges, that the Day is not material, provided the Treaſon be proved to have been committed before the finding of the Bill. *Foſter's Report of ſome Proceedings on the Commiſſion for the Trial of the Rebels*, p. 9.

Regiment flying, and the Motto was, *Liberty and Property, Church and King.*

King's Counſel. Did he march with all the Rebel Army? Were there any Pipes playing?

Mac Cormack. There were Pipes playing before the *Highland* Rebels, but none in the *Manchester* Regiment.---I ſaw him alſo at *Derby.*

Priſoner's Counſel. Pray, Friend, how came you to know him ſo particularly?---*Mac Cormack.* They called him Capt. *Dawſon.*

[*Here the Counſel for the Priſoner interrupted the Witneſs, becauſe there is one* Dawſon *now in Cuſtody, who was an Officer in the ſaid Regiment, and the Priſoner's Name is* Fletcher.]

King's Counſel. Look at the Priſoner again.

(Looking earneſtly at him.)

Mac Cormack. Though I may miſtake his Name, I am ſure he is the Perſon that I ſaw at *Derby*, tho' I cannot poſitively ſay he gave any Command there as an Officer. I ſaw him at *Preſton*, and other Places along the Road, till we came to *Carliſle.*

King's Counſel. Was you with him at *Carliſle?*

Mac Cormack. I was at *Carliſle*; but he was there before I came, and there I ſaw him act as a Captain; and when the Soldiers were drawn up in the *Caſtle-Yard*, I ſaw him there, and ſaw Arms diſtributed to ſome of the Soldiers who had none.

Priſoner's Counſel. Did you ſee him diſtribute any Arms to any of the Soldiers?---*Mac Cormack.* I cannot ſay that I did.

Priſoner's Counſel. Then who diſtributed thoſe Arms?

Mac Cormack. It was a *Scotch* Officer, whom I am informed is ſince killed.---I heard ſo.

King's Counſel. Was not the Priſoner at the Bar at *Carliſle* when the Duke was before the Town?

Mac Cormack. Yes, I am ſure he was, and commanded as an Officer; he had a white Cockade in his Hat, an *Highland* Plaid Saſh, lined with white Silk, and all Military Accoutrements that Officers have.

King's Counſel. Then you are certain as to his Perſon?

Mac Cormack. I am certain this is the Gentleman, for he mounted the very firſt Captain's Guard that was mounted at *Carliſle.* I ſaw him at the Surrender, and he was carried into the Church, and made Priſoner with the reſt of the Officers.

Serj. *Wynne.* Are you ſure he is the very Man?

Mac Cormack. I am very ſure of it, tho' he has been long out of my Sight.

L. C. J. Conſider you are upon your Oath, and what you ſay affects his Life.

Mac Cormack. I am ſure he is the very ſame, I know his Perſon perfectly well.

Serj. *Wynne.* How can you be ſo poſitive to him, did you ever ſee him before you came to *Manchester?*---*Mac Cormack.* Not to my Knowledge.

Serj. *Wynne.* Where did you come from, what Countryman are you?

Mac Cormack. I am an *Iriſhman*, I came from *Ireland.*

Serj. *Wynne.* What brought you to *Manchester?*

Mac Cormack. I am a Weaver by Trade, and I came to *Manchester* laſt *May* was Twelvemonth to ſeek for Buſineſs, and I continued there, and worked till the 30th of *June*; then Buſineſs falling ſhort, I went into *Warwickſhire*, and worked as a Haymaker for my Living.

Croſs-Examination.

Priſoner's Counſel. It is a little extraordinary, that you ſhould take ſuch particular Notice of the Priſoner; was you in the Rebel Army; was he your Commander?

Mac Cormack. No, he was not; Capt. * *Peter Moſs* was my Commander.

Serj. *Wynne.* Had you any Command in the Rebel Army, was you either a Captain, or a Lieutenant?

Mac Cormack. I had no Command at all.

Counſel. How came you hither to give your Evidence?

Mac Cormack. I was taken into Cuſtody by Mr. *Carrington*, one of the King's Meſſengers, at *Weſt-Cheſter*, and I did not know I was to come to *London* to be an Evidence.

Counſel. Have you had any Promiſe of a Pardon?

Mac Cormack. I have not, nor never had to my Knowledge.

Sir *John Strange.* Pray call *Samuel Maddox*, who appeared, and was ſworn.

King's Counſel. Mr. *Maddox*, do you know Mr. *Fletcher*, the Priſoner at the Bar?

Maddox. I know him very well; and in the Month of laſt *November*, but I cannot particularly remember the Day, I ſaw him at the *Dog-Inn* in *Manchester*, where there were ſeveral Perſons aſſembled, and his Name was put down as an Officer in a new-raiſed Regiment, called the *Manchester* Regiment; he marched as a Captain from *Manchester* to *Winſlow*, and from thence on to *Macclesfield*, where the ſaid Regiment was drawn up in the Church-yard; and all the Soldiers who were unarmed had Arms delivered unto them; the Priſoner, Mr. *Fletcher*, had there a Sword by his Side, and appeared in his Regimentals, as Captain, with a white Cockade, and a Plaid Saſh.

The Rebels at *Macclesfield* were in general in Confuſion for want of Men, and very much dreaded the King's Forces. I was determined to return to *Manchester*, and communicated my Thoughts and Intentions to ſeveral of my Comrades; the Priſoner, Mr. *Fletcher*, heard of my Reſolution at a Place called *Blackerſey*, and then he came to me, and told me it would be a ſcandalous Thing to make a diſhonourable Retreat; and putting his Hand in his Pocket pulled out a great Parcel of Gold, and told me I ſhould never want while that laſted. I marched with him to *Derby*, and back to *Carliſle* afterwards.

Croſs-Examination.

Priſoner's Counſel. How came you to be at the *Black-Dog* at *Manchester?*

Maddox. I went there accidentally; I was with the Regiment three Days before it marched, and I was never ſober all the Time.

Priſoner's Counſel. What, not ſober all the Time?

Maddox. I mean not all the Time I was at *Manchester.*

Priſoner's Counſel. Where did you ſee the Priſoner beſides at *Manchester?*

Maddox. I ſaw him at *Penrith*, and I ſaw him at *Carliſle*, with other Officers, and with the Pretender's Son; at both which Places he acted in the Capacity of a Captain: And when *Carliſle* was ſurrendered, he went into the Church with other Officers.

Priſoner's Counſel. Have you had no Promiſe of a Pardon?

Maddox. I have had none; I told you ſo, Sir, ſeveral times before.

Priſoner's Counſel. What, did none of your Friends adviſe you, or perſuade you to do what you have done?

Maddox. I cannot ſay, but one of my Relations perſuaded me to do what I could to ſave my own Life.

Priſoner's Counſel. Could not Mr. *Fletcher* have eſcaped to ſave his Life, if he would?

Maddox. I cannot tell but what he might; for Capt. *Bradſhaw* got away, but he ſoon joined the Army again.

Priſoner's Counſel. Pray what Character does the Priſoner bear at *Manchester?*

Maddox. I do not know much of his general Character; I have ſeen him at the Aſſembly with the Ladies: He was a Chapman, and dealt in Linnen before this Affair.

King's Counſel. Pray call *Thomas Bradbury*, who appeared and was ſworn.

King's Counſel. Mr. *Bradbury*, pray what do you know, or what have you to ſay againſt the Priſoner at the Bar?

Bradbury. I lived at *Manchester* when the Rebels were in that Town; and one Morning when a Serjeant and Drum were beating up for Volunteers at the *Exchange* for the Pretender's *Manchester* Regiment, I happened to be there, where I believe there were more than 1000 People aſſembled: And when the Serjeant had done his Speech, and concluded with ſaying God bleſs King *J——s* and Prince *C——les!* the Priſoner pulled off his Hat and hallooed.

Croſs-Examination.

Priſoner's Counſel. As you live at *Manchester*, pray what Character does the Priſoner bear at that Town?

Bradbury. A good Character for aught I know, for I only came here to ſpeak the Truth.

King's Counſel. Pray call *Auſtin Coleman*, who being ſworn, was aſked if he had ever ſeen the Priſoner act as an Officer?

Coleman. Yes, I have ſeen him act as a Captain at *Preſton*, *Penrith*, and at *Carliſle*, when it was ſurrendered to the Duke of *Cumberland.*

Priſoner's Counſel. What Countryman are you?

Coleman. I am an *Iriſhman*, and I came to *Manchester* about twelve Months ago,

Thomas Craig was then called by the King's Counſel, and being ſworn, was aſked what he knew of the Priſoner?

Craig. I ſaw him march from *Manchester*; I ſaw the Colours of the *Manchester* Regiment flying, and the Drums beating; and I ſaw him act on the March as Captain, and I ſaw him ſurrender at *Carliſle* to his Royal Highneſs the Duke of *Cumberland*'s Troops.

King's Counſel. Pray call Capt. *Nevet*, who appeared and was ſworn.

King's Counſel. Pray, Sir, give the Court and the Jury an Account of what you know of the Priſoner at the Bar.

Capt. *Nevet.* I was at *Carliſle* when the Rebels ſurrendered the Town to his Royal Highneſs the Duke of *Cumberland.* When the Officers of the Garriſon ſurrendered themſelves Priſoners, and were in Cuſtody, I had a particular Order from his Royal Highneſs to go to the Place of their Confinement, to take the Names, Ranks, and Qualities of all thoſe that were there. When I called on the Priſoner at the Bar, he told me he was a Captain; and when I had taken the Names of all the reſt, and what Commiſſions they had under the Pretender's Son, I went and made a Report that Evening to the Duke, and his Royal Highneſs commanded me the next Day to go to the ſame Place; and I called over their Names, and he anſwered by the Name of Captain *Fletcher.*

The Priſoner's Defence.

Priſoner's Counſel. Call *Anne Acton*, who was ſworn. Do you know the Priſoner?

Acton. Yes, Sir, I have known him ever ſince he was born, for I have lived in the Family 27 Years; he managed the Trade for his Mother at *Salford*, juſt over the Bridge at *Manchester*, and he had a very good Share of Buſineſs for a Young Man. The Rebels came the 29th of *November* to *Manchester*, and we had a great many of them quartered upon us; Mr. *Fletcher*'s Mother was very uneaſy at the Sight of them, and went away, becauſe ſhe could not bear to ſee them eat and drink, and make free with every Thing in the Houſe. They tarried at *Manchester* three Days, and upon the 8th of *December*, they returned again to *Manchester*, and Capt. *Robinſon*, who commanded the Soldiers who were at our Houſe before, came a ſecond Time, and aſked for our Maſter; he went out, and there were half a Dozen of Soldiers at the Door, and ſwore they would have him; and I never ſaw him after. I do not know he ever did a bad Thing in his Life; he always behaved well and dutiful to King *George*, and all the Royal Family. I never ſaw the leaſt Willingneſs in him to join with the Pretender; all the Family were of the Church of *England*, and when they dragged him away, he went away with Tears in his Eyes.

She was Croſs-Examined by Sir *John Strange*; and prevaricated ſo much in her Anſwers in moſt Queſtions that were aſked of her, that no Credit was given to her Evidence.

Charles Worral was produced and ſworn, who ſaid, he knew the Priſoner an Apprentice, and had ſold him Goods, and that the Priſoner paid him honeſtly; but as to his Principles, he knew nothing of them.

Then *John Hayward* † was called and ſworn, and being aſked what Buſineſs he followed, he ſaid, he was a Dealer in Leather.

Priſoner's Counſel. What do you know of the Priſoner?

Witneſs. I cannot ſay that I know much of his Notions one way or other.

Priſoner's Counſel. I think, Sir, you live at *Manchester?*

Witneſs. Yes, I do, Sir.

Priſoner's Counſel. Then pray inform the Court and the Gentlemen of the Jury, ſo far as you know, what paſt at *Manchester* relating to the Priſoner, during the Time the Rebels were there.

Witneſs. I cannot ſay any Thing particularly.

* *Peter Moſs* eſcaped out of *Newgate* the Night before the Rebel Priſoners were removed by *Habeas Corpus*, and hath not been heard of ſince.—Died in *France.*

† This is the ſame Perſon that was Evidence the Day before for Colonel *Townley.*

Priſoner's Counſel. Pray do you know that at the Time the Pretender's Party were beating up for Volunteers, at the Exchange in *Mancheſter*, the Priſoner was preſent, and took off his Hat and hallooed?

Witneſs. I was not out of doors at that Time; I had a Relation lay dead in my Houſe at the ſame time.

The Priſoner's Counſel not having any thing more to ſay in his Defence, and the Teſtimony of Mrs. *Ann Acton* having very little Weight with the Court and Jury, after my Lord Chief Juſtice had ſummed up the Evidence, the Jury, without going out of Court, found the Priſoner, *Guilty*.

N. B. The Priſoner deſired his Fetters might be taken off whilſt he was on his Trial, which the Court granted; but after his Conviction, the Court gave the Gaoler Direction to iron him again, and take an eſpecial Care of his Priſoner, for that he was convicted of High-Treaſon.

This Priſoner was executed the ſame Day, *viz.* the 30th of *July* 1746, in the ſame Manner as *Townley*, and his Head with *Townley*'s was put up on *Temple-Bar*, on *Saturday* the 2d of *Auguſt*, the *Saturday* following their Execution.

He was about 28 Years of Age, and was bred up in *Salford*, adjoining to *Mancheſter*, where his Parents lived, who were very ſubſtantial People. His Father had been ſome time dead, but his Mother was then living, whoſe Buſineſs he managed. He was reckoned before he took on in the Rebel Army, to be a young Man of a good Character; but being unhappily prejudiced againſt the preſent Royal Family, he was very ready to join the Pretender's Forces as ſoon as they came to *Mancheſter*; and he gave *Murray*, the Pretender's Secretary, 50*l.* for his Captain's Commiſſion.

There is one Thing pretty ſingular in the Story of Mr. *Fletcher*, which muſt not be omitted, becauſe it ſhewed the Heartineſs of the Man in the Cauſe he endeavoured to ſupport. At his Trial, Mr. *Maddox*, who was a principal Evidence againſt him, ſwore, that when the Rebels were at *Macclesfield*, they were in great Confuſion for want of Men, and mightily diſheartened at the Approach of the King's Forces; upon which he (*Maddox*) determined to leave them, and return to *Mancheſter*, and communicated ſuch his Intention to ſeveral of his Comrades; which being told to *Fletcher*, he came to *Maddox*, and expoſtulated with him about it; telling him, what a Scandal it would reflect upon him to leave his Friends at a Juncture, when they had the greateſt Occaſion for his Aſſiſtance; that if he wanted Money, he need but ſpeak, and he ſhould have whatever he had Occaſion for; and at the ſame time, putting his Hand in his Pocket, ſhewed him a Handful of Gold.

Fletcher's Behaviour during the Time of his Confinement in *Newgate*, was, as the reſt of his Fellow Rebel Priſoners, very chearful; and he continued ſo during the time he was under Sentence of Death, even from the Gaol to the Place of Execution, and was the ſame to the laſt. He was a young Man of very good Parts, and very often acknowledged, that he had brought this Misfortune upon himſelf by his Obſtinacy; for that his Mother had begged and intreated of him, even on her Knees, that he would keep himſelf out of the Rebellion; and when no Perſuaſions could prevail upon him, ſhe offered him a thouſand Pounds to do with as he pleaſed, if he would hearken to her Advice: But all to no Purpoſe; and therefore that he had Nobody to thank but himſelf for the Conſequences that had happened.

At the Place of Execution he delivered Papers to the Populace, as the reſt of them did, the Contents of which Papers were, that they died in a good Cauſe; that they did no way relent at what they had done, and doubted not but their Deaths would in time be revenged; and many treaſonable and other vile Expreſſions not fit to be here mentioned.

XXXI. The Trials of Thomas Chadwick and William Battragh, for High Treaſon, at the Court-houſe *Southwark*, *July* 16, 1746.

THOMAS CHADWICK and *William Battree*, otherwiſe *Battro*, otherwiſe *Battragh*, otherwiſe *Bretah*, were both brought to the Bar, and both agreed in their Challenges of the Jury; but before Mr. *Chadwick* was tried, he deſired his Irons might be taken off, which was done directly; and after having challenged thirteen Jurymen, the Twelve following Gentlemen were ſworn to try them.

1 *Francis Bartholomew* of *Egham*, Gent.
2 *Thomas Dawſon* of *St. George's*, Brazier.
3 *William Shurlock* of *Shere*, Yeoman.
4 *Richard Toy* of *Richmond*, Grocer.
5 *John Fielder* of *Eſher*, Yeoman.
6 *James Vinal* of *Eſher*, Wheelwright.
7 *John Otway* of *Aſhted*, Yeoman.
8 *Thomas Puplett* of *Banſtead*, Yeoman.
9 *John Start* of *Epſom*, Chandler.
10 *George Hart* of *Croydon*, Callico-printer.
11 *William Bridgeſtock* of *Croydon*, Farmer.
12 *John Rowles* of *Croydon*, Wheelwright.

Mr. Att. Gen. Call *Samuel Maddox*; who appearing in Court, was ſworn.

King's Counſel. Mr. *Maddox*, Pray relate to my Lord and the Gentlemen of the Jury, what you know concerning the Priſoners at the Bar, or either of them.

Maddox. (looking on the Priſoners at the Bar) I know both of them; Mr. *Chadwick* was a Lieutenant, and Mr. *Battragh* ſerved as an Enſign in the *Mancheſter* Regiment in the Rebel Army.

King's Counſel. Pray how did Mr. *Chadwick* appear; did he appear as an Officer?

Maddox. Chadwick wore a laced Hat, with a white Cockade in it, and I ſaw both of them march from *Mancheſter*; and when they marched, Mr. *Battragh* had on a *Scotch* Plaid Saſh, lined with a white Ribband; I was with them when they marched from *Mancheſter* to *Winſlow*; there were a great many Men liſted as we went on the Road.

King's Counſel. Can you take upon you to ſay that either of the Priſoners at the Bar inliſted any?

Maddox. I cannot be poſitive to that; but there were a great many Men inliſted by Captain *Deacon* upon our March from *Mancheſter*. Both the Priſoners appeared on Horſeback as Officers; and I myſelf carried the Colours out of *Mancheſter*. And as we were upon the Road on our March, I ſaw the Priſoner, *Battragh*, carry the Colours once or twice, whereon was the Motto, Liberty and Property, Church and King.

King's Counſel. Did any thing remarkable happen at *Winſlow*, relating to the Priſoners? did they act as Officers?

Maddox. I know nothing at all particular there.

King's Counſel. What Rout did you take when you left *Winſlow?*

Maddox. We marched on for *Derby*.

King's Counſel. Did the Priſoners all along appear as Officers, and act as ſuch?

Maddox. Yes, they did, *Chadwick* as a Lieutenant, and *Battragh* as an Enſign: I ſaw them at *Penrith*, and at *Preſton*; *Battragh* belonged to Captain *James Dawſon*'s Company, but I do not know what Company the other Priſoner belonged to; and I ſaw both of them reviewed by the Young Pretender.

King's Counſel. And what further happened? Tell my Lord and the Gentlemen of the Jury every thing you know relating to this Matter.

Maddox. I cannot ſay any thing more that is very material, only that from *Mancheſter* all the Way they acted as Officers.

King's Counſel. Do you remember any thing that was remarkable when you came to *Lancaſter?*

Maddox. I remember that all the Officers were very merry there, and Mr. *Chadwick* propoſed to entertain them with a Tune; and myſelf, and moſt of the Rebel Officers went into *Lancaſter* Church, and went up into the Organ Gallery, and Mr. *Chadwick* played a Tune on the Organ.

King's Counſel. What Tune did he play?—*Maddox.* He played *The King ſhall enjoy his Own again*; and we were all very merry.

King's Counſel. Pray inform the Court, if you ſaw any of the Priſoners at *Carliſle*.

Maddox. Yes, I ſaw both the Priſoners at *Carliſle*, in the Room with the Young Pretender.

King's Counſel. How came they in particular to be in the Room with the Young Pretender?---*Maddox.* We were all drawn up together to take Leave of him, before he left *Carliſle*.

King's Counſel. Was the Town of *Carliſle* put in a Poſture of Defence againſt the King's Forces?

Maddox. Yes; we oppoſed his Majeſty's Forces, and I ſaw both the Priſoners mount Guard in the Town Hall, where a Guard was placed a Day or two after the Pretender left the Town.

King's Counſel. Was you preſent when the Town was ſurrendered to his Royal Highneſs the Duke of *Cumberland?*

Maddox. I was; and both the Priſoners were put into the Aiſles of the Church, amongſt the other Rebel Officers.

Croſs-Examination.

Priſoner's Counſel. How long have you known *Battragh*, or *Batteagh*, as they call him?

Maddox. I have known him two Years and upwards, he was an Attorney's Clerk, and came and perſuaded me to join with the Young Pretender's Army, before I had an Inclination ſo to do: This we talked of privately in his Bed-chamber; he told me he had new Linnen made on purpoſe, and was going to the Sadler's to beſpeak Bags to carry his Linnen and other Things in.

Priſoner's Counſel. Had not you and the Priſoner a Quarrel at *Carliſle?* I think you had a Trial of Skill there.

Maddox. That I confeſs, and I will tell you what it was about; it was about a very fooliſh Affair.---Proviſions being a little ſcarce at *Carliſle*, I had ſome Sauſages, and the Priſoner would have them from me, and I not caring to part from them, cauſed a Quarrel, and we fought together.

Priſoner's Counſel. Did not you tell him you would do for him, or be revenged on him, or ſome Words to that Purpoſe?

Maddox. No, never as I remember; I would not ſwear any Man's Life away for a Sauſage.

Priſoner's Counſel. Do not you ſwear in expectation of ſaving your Life?

Mr. Att. Gen. It is not a proper Queſtion;---that has been anſwered already.

Sir *J. Strange.* Do you expect to ſave your Life by falſe Swearing?

Maddox. No, I do not indeed; I will ſwear nothing but the Truth; and what I have ſworn in this honourable Court, is all Matter of Fact.

King's Counſel. Pray call *Thomas Craig*; who appeared, and was ſworn.

King's Counſel. Well, Sir, what have you to ſay to either of the Priſoners that ſtand by you?

Craig. I know Mr. *Chadwick* very well; but I cannot ſay that I have ſo much Knowledge of *Battragh*. I remember ſeeing Mr. *Chadwick* at *Mancheſter*, with a Cockade in his Hat: Then I afterwards ſaw him march from *Mancheſter* to *Winſlow*, as a Lieutenant: I ſaw him at ſeveral other Places on the Road, and alſo at *Penrith*, where he ſtill appeared as a Lieutenant.

King's Counſel. Then you are ſure he was a Lieutenant in the Rebel Army?

Craig. Yes; he marched from *Mancheſter* to *Penrith Moor* as ſuch, then I ſaw him at *Carliſle*, and there he mounted Guard as a Lieutenant. I am ſure that I ſaw him once mount Guard.

Croſs-Examination.

Priſoner's Counſel. Do not you expect to have a free Pardon?

Craig. As to that I muſt truſt to his Majeſty's Mercy.

Priſoner's Counſel. How came you to know Mr. *Chadwick* ſo well; do you know him ſo very well that you can be poſitive to him?---*Craig.* I have known him many Years, and I belonged to the *Mancheſter* Regiment.

King's Counſel. Call *Auſtin Coleman*; who was produced, and ſworn.

King's Counſel. Give an Account, Mr. *Coleman*, to my Lords and the Jury, what you know of the Priſoners at the Bar.

(Coleman *being ſworn, and looking on them, and then pointing to* Battragh,) That

That Gentleman's Name is *Battragh*, and I have ſeen him at *Derby*; and the other is *Chadwick*, and him I have ſeen at *Mancheſter*; there he appeared as an Officer with a Plaid Saſh, and a laced Hat, with a white Cockade in it: I did not ſee *Battragh* have any. They both appeared as Officers in marching along; they were ſometimes on Foot, and ſometimes on Horſeback.

King's Counſel. Do you know any thing of their being at *Carliſle?*

Coleman. I ſaw them both in the Guard-Room with Capt. *Fletcher*.

King's Counſel. Did they wear their Saſhes there, as other Officers did?

Coleman. I cannot remember that; but when the Town was ſurrendered to the Duke of *Cumberland*, they were put into the Church with other Rebel Officers.---I am ſure of that.

(Ormſby Mac Cormack *was next produced and ſworn.*)

King's Counſel. Do you know either of the Priſoners?

Mac Cormack. Yes, I have ſeen both of them in the *Mancheſter* Regiment; I ſaw *Battragh* with the Rebel Army, and he carried the Colours from *Penrith* to *Carliſle*.

King's Counſel. And did you ſee him at *Carliſle?*

Mac Cormack. Yes, I ſaw him there when the Town was beſieged by the Duke of *Cumberland*.

King's Counſel. Did he ever mount Guard at *Carliſle?*

Mac Cormack. Not to my Knowledge; but I have ſeen him in the Guard-Room, with a Sword, a Saſh, and a Cockade.

King's Counſel. And you always took him to be an Officer there, did you not?

Mac Cormack. Yes, for I very well remember that he was walking up and down the Caſtle Yard, as an Officer, when the Arms were diſtributing to the Rebel Soldiers there, and Mr. *Chadwick* was with them.

(John Collins, *a Boy of* 13 *Years of Age, was called and ſworn.*)

Priſoner's Counſel. Do you know the Nature of an Oath, Child?

Collins. Yes, I do; I know I am ſworn to ſpeak the Truth; and I ſhall never be happy if I do not.

King's Counſel. Do you know either of the Priſoners? was you among the Rebels at *Carliſle?*

Collins: Yes; I was, and was a Servant to Capt. *Lowther*, and we were taken Priſoners by the Duke at *Carliſle*, where on my Knees I begged my Life of his Royal Highneſs, which he generouſly granted, and God bleſs him for it. I ſaw both the Priſoners at *Carliſle*, and there they always acted as Officers in the *Mancheſter* Regiment; *Chadwick* as a Lieutenant, and *Battragh* as an Enſign: I know them both perfectly well.

King's Counſel. Pray call Captain *Nevet*, who was ſworn.

King's Counſel. I think when *Carliſle* ſurrendered to his Royal Highneſs the Duke, you had a Command from his Royal Highneſs to go to the Church where the Officers were Priſoners, and to take their Names.

Capt. *Nevet.* Yes, I had, Sir:

King's Counſel. Do you remember to have ſeen either of the Priſoners at the Bar at *Carliſle?*

Capt. *Nevet.* Perfectly well: The firſt Time that I ſaw them, Mr. *Chadwick* gave in his Name as a Lieutenant in *Townley*'s *Mancheſter* Regiment; and the other Priſoner, *Battragh*, told me he was an Enſign in the ſame Regiment; I noted it ſo in my Paper: And on making a Report to his Royal Highneſs the Duke, and giving in a Liſt of their Names and Qualities, I was ordered to go the next Morning, and I went accordingly, and called all the Priſoners over by their Names, and they anſwered, *Chadwick* as a Lieutenant, and *Battragh* as Enſign.

The King's Witneſſes being all gone through, and neither of the Priſoners making any Defence, or calling any Witneſſes to their Characters, the Jury, without going out of Court, found both the Priſoners Guilty of High Treaſon; and the Court ordered the Irons to be put on Mr. *Chadwick* again.

The Priſoner *Chadwick* was executed on *Kennington-Common*, on *Wedneſday* the 30th of *July*, 1746, according to his Sentence; and his Head was preſerved in Spirits, and ſent down to *Carliſle* or *Mancheſter*, to be put up as thoſe of *Townley* and *Fletcher*'s had been on *Temple Bar*; but his Body was delivered to his Friends to be buried.

He was about 32 Years of Age, of very honeſt and creditable Parents in *Mancheſter*, and whoſe Father then lived there, and followed the Trade of a Tallow-Chandler and Soap-boiler. This unfortunate Man was bred up to the ſame Trade; but he playing pretty well on ſeveral Inſtruments, kept ſome of the moſt polite Company of the Place, and never followed any Trade.

He was a Perſon of great Reſolution, and could, as he uſed to ſay, look Death in the Face with as much Pleaſure as he could a Friend who came to viſit him, and could meet it with as much Good-will. His Behaviour, during the whole Time of his Confinement, was always cheerful and merry, taking all Manner of Pleaſures the Gaols afforded; and frequently declaring, that what he had done he was not ſorry for, for if it was to do again, he would act in the ſame Manner.

The Morning of his Execution, whilſt they were at Breakfaſt, Mr. *Chadwick* ſaid to Mr. *Berwick*; *Ah! Duke* (for this is the Name that *Berwick* went by in the Rebel Army) *our Time draws very near; though as to my Part, I am as hearty as ever I was in my Life.* Mr. *Berwick* replied, *As to my Part, I think we all look pretty well, and I declare Death don't ſhock me in the leaſt. I hope God will be merciful to us all; for I can lay my Hand on my Heart, and ſay, the greateſt Injury I ever did was to myſelf and Relations; and though I have brought them and myſelf to Diſgrace, they have been ſo kind as to forgive me, and would have ſaved my Life had it been in their Power.*

The other Priſoner *Battragh* received his Majeſty's moſt gracious Reprieve.

XXXII. The Trial of Thomas Theodorus Deacon, for High Treaſon, at the Court-houſe, St. *Margaret's-hill Southwark, July* 17th, 1746.

THE Court being ſat, the following Judges being preſent; *viz.* Lord Chief Juſtice *Willes*, Mr. Juſtice *Abney*, and Mr. Juſtice *Foſter*, *Thomas Deacon* was put to the Bar.

King's Counſel. Call Mr. *Samuel Maddox*; who appeared, and was ſworn.

King's Counſel. Mr. *Maddox*, give an Account to the Court and Jury what you know of the Priſoner that ſtands by you.

Maddox. I ſaw him at the *Bull Head* at *Mancheſter*, where he ſat at a Table, writing down the Names of ſuch as enliſted in the Pretender's Service; for which he was paid for every Name enliſted, One Shilling. There were ſeveral blue and white Ribbands lying before him, which, when he was not writing, he made up into Favours, and gave them to the Men enliſted. I ſaw him march from *Mancheſter* to *Winslow* as an Officer, wearing a Plaid Waiſtcoat, with laced Loops, a broad Sword by his Side, a Brace of Piſtols ſtuck in his Girdle, and a Cockade in his Hat. When he beat up for Volunteers at ſeveral Places, he made a very long Speech, inviting all Gentlemen Volunteers to come and ſerve *Charles*, Prince Regent, and they ſhould have good Quarters, be well uſed by the Officers, and enter into preſent Pay, and when they came to *London*, they ſhould receive five Guineas to bear their Expences Home, if they thought proper to leave the Service, and ſhould receive Thanks, and have a Protection. At *Winslow* he was ordered by the Pretender to march to *Derby* as a Guide, with Ammunition, &c. that had been ſeized; and at *Leake* he went with *Thomas Sydall* and *James Bradſhaw* to raiſe Recruits, and joined the Rebel Army again at *Mancheſter*. That at *Preſton* he commanded his Company, and gave Directions to the Officers under him, who obeyed him; and that at *Carliſle* he mounted Guard in the Town-hall during the Siege.

Thomas Bradbury, another Witneſs, ſwore, That the Priſoner was a Captain in the Rebel Army, and was dreſſed as above. That he, the Witneſs, being a Servant to a Printer at *Mancheſter*, the Priſoner, with other Rebels, came to him, in the Abſence of his Maſter, and compelled him to print a treaſonable Paper, which they called a *Manifeſto*, and likewiſe an Advertiſement; both which were delivered into Court and read. The Advertiſement, or Hand-bills, were diſtributed by the Rebels, offering all fitting Encouragement to ſuch as would enliſt with them; and that he the ſaid *Deacon* was in a great Hurry, and came ſeveral Times to the Printing-Office, and threatened Mr. *Bradbury*, if he did not get the Papers ready, he ſhould be ſeverely puniſhed;---and that he the ſaid *Deacon* brought with him, when he came for the ſaid Papers, a great Number of Horſe belonging to the Rebel Army, who threatened to pull down the Houſe.

Thomas Craig, another Witneſs, ſwore, That he ſaw the Priſoner mount Guard at *Mancheſter*, *Preſton*, and *Carliſle*; that he was Lieutenant-Colonel, and promoted for his great Diligence, in raiſing Recruits. ---Capt. *Nevet* ſwore, that the Priſoner ſaid, his Name was *Thomas Deacon*, and that he was a Captain in the *Mancheſter* Regiment.---Capt. *Carey* confirmed Capt. *Nevet*'s Teſtimony.

The Priſoner had no Witneſſes to produce, ſo the Jury found him guilty of the Indictment. Death.

Mr. Deacon's Caſe, *July* 17, 1746 *.

IN Mr. *Deacon*'s Caſe, his Counſel objected to the receiving the Evidence of a Printer touching the Priſoner's obliging him to print the Pretender's Manifeſto at *Mancheſter*, and his publiſhing of it there, while the Rebel Army was in the Town; and alſo to the reading the Manifeſto. They inſiſted that this ought not to be given in Evidence, becauſe it is an Overt Act not laid in the Indictment; and alſo becauſe the Orders were given and the Manifeſto printed and publiſhed in *Mancheſter*, and all the Overt Acts are laid in *Cumberland*.

But it was anſwered by the *Court* (Lord Chief Juſtice *Willes*, Juſtice *Abney*, and Juſtice *Foſter*), that an Overt Act not laid may be given in Evidence, if it be a direct Proof of any of the Overt Acts that are laid.

One of the Overt Acts charged in this Indictment is the aſſembling and marching *Modo Guerino*, in order to depoſe the King, and to ſet the Pretender on the Throne. It is proved that the Priſoner with the reſt of the Rebel Army was at *Mancheſter*, and appeared in an hoſtile Manner there. Now what ſtronger Proof can there be that the Priſoner joined this Army for the Purpoſe mentioned in the Indictment, than his cauſing to be printed and diſperſed among the People the Pretender's Manifeſto? It never was doubted that the being preſent with Rebels and joining in proclaiming the Pretender, might be given in Evidence on ſuch an Indictment as this; and yet that Circumſtance was never expreſsly laid in any Indictment. But 'tis ſufficient that it proves *Quo Animo* the Rebel Army was raiſed, and *Quo Animo* the Priſoner joined it.

As to the Objection that this Fact was not committed in *Cumberland*, where all the Overt Acts are laid, Mr. Juſtice *Abney* and Mr. Juſtice *Foſter* held, that it is indeed neceſſary on this Indictment that ſome Overt Act laid be proved on the Priſoner in *Cumberland*; but that being done, Acts of Treaſon tending to prove the Overt Acts laid, though done in a foreign County, may be given in Evidence.

And the Manifeſto was read.

Lord Chief Juſtice *Willes* declined giving any Opinion on the ſecond Point. But no Objection was made during the whole Courſe of the Trials

* *F. Foſter's* Reports, p. 9.

to the giving Evidence of Overt Acts in a County different from that where the Fact was laid, an Overt Act having been first proved in the proper County. And that * sort of Evidence was given in almost all the Trials †.

This unfortunate young Man, who was about twenty-two Years of Age, was the Son of Dr. *Deacon* of *Manchester*, who gave him a liberal Education, and designed to have brought him up to his own Profession; but he was unhappily prejudiced in Favour of the Pretender against the present Royal Family, by the Company he frequently conversed with; and by their Persuasion, took on in the Rebel Army as soon as it came into *Manchester*, and he had often declared before the Rebels came to the Town, that he would join them as soon as they did; and was one of the most strenuous Zealots for the Cause amongst them.

It was very unfortunate for his Family his taking a Commission in the Pretender's Service, for by his Example his two other Brothers did the same, one of whom died in the Pretender's Service, and *Charles* the Younger was condemned, but reprieved on account of his Youth.

His great Activity in the Service made him so far taken Notice of by the Young Pretender, that he was made Lieutenant-Colonel of the Regiment, and was to have been Colonel of the same, as soon as Colonel *Townley* had raised his new Regiment of Horse.

His taking Leave of his Brother, *Charles Deacon*, in the County Gaol, was very moving; his Brother declaring he had rather have suffered with him, than to survive him; and that was the only Time any particular Alteration could be discerned in him, and then he was in great Agonies, and wept.

He was executed with *Townley* and the rest, on *Kennington-Common*, on *Wednesday* the 30th of *July* 1746, in the same Manner as *Townley*. His Body was delivered to his Friends to be buried, and his Head was preserved in Spirits, and sent down to *Carlisle*, or *Manchester*, to be put on one of the Gates.

XXXIII. The Trial of John Berwick, for High-Treason, at St. *Margaret's-Hill, Southwark, July* 17, 1746.

JOHN BERWICK was then brought to the Bar, and being arraigned on the same Indictment with the other *Manchester* Officers, the Jury were sworn to try him. The Treason, and Overt Acts of Treason, were laid to be committed on the 10th of *November*.

The first Witness for the King that was called and sworn, was *Samuel Maddox*; and he deposed, That he had often seen the Prisoner, particularly at *Manchester*, and other Places, and that he always appeared as an Officer, and gave his Command; he saw him at *Carlisle*; and that he was there when the Town surrendered.---Mr. *Bowker*, the *Manchester* Constable, said, That he saw him in the Town, and that he appeared in the same Garb as the other Officers belonging to the Regiment which they called the *Manchester* Regiment.

The Counsel for the Prisoner insisted, that the Charge was not proved, for that in all Cases of High-Treason, there must be two positive Witnesses to prove the Fact, and, as they apprehended, that was not done sufficiently by the two Witnesses that had been examined; on which the King's Counsel called Capt. *Nevet* and Capt. *Carey*, who both appearing, and being sworn, deposed, That when they went into *Carlisle* by the Duke's Order, to take an Account of what Rank all the Officers were, the Prisoner gave in his Name to them as a Lieutenant in the *Manchester* Regiment.

The Prisoner calling no Witnesses, the Jury found him Guilty.

John Berwick's Case, *July* 17, 1746 ‡.

IN the Case of *John Berwick*, there was only one Witness that proved him to have been in Arms with the Rebels. This Witness proved that he was inrolled and reviewed as a Lieutenant in the Regiment called the *Manchester* Regiment, and did Duty as such at *Penrith* and *Carlisle*.

Two other Witnesses (Officers in the Duke's Army) swore, that after the Surrender of *Carlisle*, they were ordered by the Duke to take an Account of the Names of the Officers and of their respective Ranks in the Rebel Garrison; that accordingly they went to the Prison where the Officers were confined apart from the Common Men, and took such Account of them; that the Prisoner *Berwick* appeared among the Officers, and gave in his Name to them as Lieutenant in the *Manchester* Regiment.

Lord Chief Justice *Willes* and Mr. Justice *Abney* were of Opinion, that this Declaration of the Prisoner is not to be considered as a bare Confession after the Fact, but as an Evidence of the Fact itself, *viz.* That the Prisoner did appear and take the Rank of a Lieutenant in the Rebel Garrison. They thought too, that a Confession after the Fact proved by two Witnesses, was sufficient to convict within the 7 *W.* III.

Mr. Justice *Foster* doubted whether this Declaration, being made after the Surrender, can be considered in any other Light than as a Confession after the Fact §. And with regard to a Confession after the Fact, he said he never doubted whether it might be given in Evidence as a corroborating Proof. His Doubt was, whether it being proved by two Witnesses is a conclusive Evidence, nor an Evidence sufficient of itself to convict without other Proof. Since the 7 *W.* III. seems to require two Witnesses to Overt Acts, or a Confession in open Court ‖; and says further, page 243. I would not in any thing I have said, be understood to arraign the Proceeding in the Case of *Berwick*, before-mentioned; he was found in a Prison assigned by the Duke (of *Cumberland*), after the Surrender, to the Officers in the Rebel Garrison, *and to none but Officers*, whither he went with the rest of them. He appeared among them, and took the Rank of an Officer. These Facts, together with his Declaration, all proved by two Witnesses, were, I think, properly considered by two learned Judges, not as a bare Confession after the Fact, but as an Evidence upon the Spot, and in the very Scene of Action.---See more relating to Confessions in *Foster*'s Reports, Page 241, 242, 243, 244.

Berwick was convicted upon the Evidence of the Officers and of the other Witness.

This Prisoner was about 32 Years of Age, and was a Housekeeper in *Manchester*, and a considerable Dealer in chequ'd Linnen, where he kept a Shop, and had a good Trade; but not being so diligent as young Tradesmen should be, and loving his Pleasure too well, 'tis thought he was running behind-hand in the World; and that not being able to settle his Accounts with his Creditors, was the principal Reason that induced him to take on with the Rebels.

The Commission he bore was a Lieutenancy in the *Manchester* Regiment, given him by the Pretender; to whom he had been well recommended as a Man of undaunted Courage and Resolution, firm to his Party, staunch in his Principles, and of a bold, enterprizing Disposition, of which he discovered manifest Tokens on every Opportunity that offered.

He was executed also on *Kennington-Common*, with *Townley* and the rest, according to the Sentence, on *Wednesday* the 30th of *July*, 1746, and his Head was put into Spirits, and sent to *Manchester* or *Carlisle*, to be put up in one of those Places; his Body being delivered to his Friends to be buried.

XXXIV. The Trial of David Morgan, of *Monmouth*, but late of *Derby*, Esq. for High-Treason, at St. *Margaret's-Hill, Southwark, July* 18, 1746.

The Names of the Jury.

James Glover,	*Ralph Godfrey,*	*Thomas Symonds,*
Joseph Brookes,	*William Barnard,*	*John Jeffries,*
John Mason,	*John Voice,*	*Henry Rowed,*
Joakin Faulk,	*Thomas Clement,*	*John Clement.*

THE King's Counsel opened the Indictment (which was the same as against all the rest), and proceeded, and called the following Witnesses to support the same against the Prisoner.

Sollicitor General. Call *Edward Tew* (which was done accordingly) who appeared in Court, and was sworn.——Pray, Mr. *Tew*, inform my Lord and the Jury what you know relating to the Prisoner at the Bar.

Tew. I live at *Preston* next Door to the Sign of the *Joyners-Arms*, and when the Rebel Army was there, I assisted my Neighbour to wait on some Company that were at that House, most of whom were Officers belonging to the Rebels.

King's Counsel. Can you recollect ever having seen the Prisoner there?

Tew. I remember him very well, for I waited on him at Dinner, when Lord *Elcho* and he dined there together.

King's Counsel. Do you remember any Discourse that passed?

Tew. The Prisoner asked Lord *Elcho* what Number of Men the Young Pretender [which the Prisoner called Prince] had landed with him.

King's Counsel. And what Answer did he make?

Tew. He said, not above half a dozen; but the Number soon increased when the Clans heard he was landed; and also that they had 17 Pieces of Cannon.

King's Counsel. And what further Discourse passed between them?

Tew. The Prisoner asked Lord *Elcho* what Religion the Pretender professed?

King's Counsel. And what was the Reply?

Tew. My Lord *Elcho* shook his Head, and said he could not very well tell; but he believed his Religion was to seek.

King's Counsel. And what passed then?

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* The like Evidence was given in most of the Trials after the Rebellion of 1715, and admitted by the Judges upon the Commission in the North this Summer. See the Cases of *Layer* and Sir *William Perkins* in the State Trials.

† *J. Foster*'s Reports, p. 9. ‡ *Foster*, p. 10.

§ Upon further Consideration I doubt there was too much Refinement in this Distinction. See 1. Disc. c. 3. S. 8. *Foster*, page 232.

‖ The like Evidence was held sufficient upon the Commission in the North this Summer; upon the Authority of the Judges Opinions previous to the Trials of *Greg* and *Francia*. See *Foster*'s Discourse on High-Treason, Chap. 3. S. 8.

Tew. The Prisoner asked if they had ever beat up for Volunteers in *England*, and Lord *Elcho* said they had not; and the Prisoner advised him to beat up for Volunteers, and said it would be an easy Matter to march forwards for *London*, for that there was not above 3000 Soldiers between there and *London*, and most of them were Dragoons, besides a few undisciplined Troops that were raised by Lord *Gower* and Lord *Cholmondeley*, who would make but little Opposition.

King's Counsel. Well, Sir, go on.

Tew. I know nothing more that is particular that passed at that Time; but the next Morning the Prisoner came, and asked for Lord *Elcho*.

King's Counsel. What Appearance did he make then?

Tew. He was in a white Cockade, and a Sword by his Side; and I saw him several Times walking up and down the Town with the Rebel Officers.

King's Counsel. Did you see the Young Pretender?

Tew. He marched at the Head of the Regiment, and did not lodge (as I have heard) but two or three Doors from the House where the Prisoner at the Bar lodged.

King's Counsel. What Number of People do you think the Young Pretender's Army consisted of?

Tew. The Talk in Town was, that they were 6000 strong: There was a great many, but as to the Number I cannot be positive.

King's Counsel. Do you imagine he was forced into the Rebels Service?

Tew. He was under no Force that I saw, for he appeared all along to be one of the Heads of them, and all of them seemed to have a great Regard to what he proposed, particularly about the Proposal he made for beating up for Volunteers.

King's Counsel. Will you ask this Witness any Questions?

Prisoner to *Tew.* I desire, Sir, that you would give the Court an Account how you came to know that my Name is *Morgan*.

Tew. I cannot say now that your Name is *Morgan*, but I am very positive to your Person.----I know your Face very well, and if I was not well assured that you are the very same Man, I would not swear it.

King's Counsel. Was the Young Pretender at that House?

Tew. I do not know; but they said that he lodged a few Doors farther.

JOHN BARRY sworn.

King's Counsel. John Barry, I desire you would inform the Court and Jury what you know relating to Mr. *Morgan*, the Prisoner at the Bar.

Barry. I came out of *Monmouthshire* with my Master and the Prisoner at the Bar, in the Month of *November* last, and at the Town of *Preston* we joined the Rebel Army. About a Mile on this Side of *Preston*, my Master and the Prisoner left their Horses, and walked to *Preston* on Foot to avoid any Suspicion of what their Design was.

King's Counsel. And what Part did the Prisoner at the Bar act; and how did he behave during the Time you was with the Rebel Army?

Barry. I saw him ride with the Rebel Army, from *Preston* to *Manchester*, and he was very active in encouraging the Rebel Officers and Soldiers. After that I saw the Prisoner at *Ashborn*, and he said there that he would not leave the Army as long as he lived.---I cannot say that he bore any Commission as an Officer: If he did, it is more than I know.

BENJAMIN BOWKER called and sworn.

King's Counsel. Mr. *Bowker*, acquaint my Lord and the Gentlemen of the Jury, what you know of Mr. *Morgan* the Prisoner.

Bowker. Upon the 29th of last *November*, I had this Paper delivered to me *(holding a Paper in his Hand, and looking at it)*. It is a Paper ordering me to search for Arms.

King's Counsel. What are you, Sir?

Bowker. I am a Deputy-Constable of *Manchester*.

King's Counsel. Who gave you that Paper?

Bowker. The Prisoner at the Bar and Mr. *Wallis*, who was one of the Head-Constables.

King's Counsel. Then the Prisoner was with Mr. *Wallis*, when you had that Paper delivered to you?

Bowker. Yes, he was.

King's Counsel. What were the Contents of the Paper?

Bowker. It was a Warrant signed by *Murray* the Pretender's Secretary, to search for all the Arms I could find; and if any Body refused to deliver up and surrender their Arms, they were to suffer military Execution against their Goods and Effects.

[*Then this Paper was delivered by Mr.* Bowker *to the Clerk of the Arraigns, and was read in Court; but it is so very treasonable, that it is improper to insert it. The Preamble called the Pretender's Son Regent of* England, Scotland, *and* Ireland, *and required all whom it may concern, to pay due Obedience to that Order.*]

King's Counsel. What, did you get any Arms of the Town's Peop *Manchester?*

Bowker. I did, and carried them to the Prisoner's Lodgings, and left them there, though I did not see him, but I asked for Esquire *Morgan*; and one of the Servants belonging to the House told me he would be there presently.

King's Counsel. Do you know any thing farther?

Bowker. I do not: I have spoke all that I can recollect.

King's Counsel. Call *Samuel Maddox* next, and swear him.

SAMUEL MADDOX sworn.

King's Counsel. Mr. *Maddox*, inform the Court where you first saw the Prisoner at the Bar.

Maddox. I saw Mr. *Morgan*, the Prisoner at the Bar, at *Manchester*, when he was joined with the Rebel Army; he had a white Cockade in his Hat, and a Sword by his Side, and publickly declared that he was of the Pretender's Party.

King's Counsel. Did he march away from *Manchester* with the Rebels?

Maddox. He marched with them to *Derby*; and there being an Information given that some Arms were secreted from the Rebels, he gave Orders for a Party of the Rebel Army to go and search for them.

King's Counsel. Did he go with that Party?

Maddox. Not to my Knowledge: I saw Capt. *James Dawson** deliver him a Pair of Pistols.

King's Counsel. Whilst the Rebels were at *Manchester*, was not there some Talk of the Prisoner's being made Colonel of the *Manchester* Regiment, as it was called?

Maddox. I was in the Room at Mr. *Croxson's*, at the Dog at *Manchester*, when the Proposal was made for the Prisoner to be Colonel of the Regiment; but he refused it, and said, Mr. *Townley* was much fitter than he for such an Office; and then it was agreed amongst those that were present, that Mr. *Townley* should be Colonel; and he was declared so, and had the Pretender's Son's Commission.

King's Counsel. You say you saw him march from *Manchester* to *Derby*?

Maddox. Yes, I did; he marched as a Gentleman Volunteer, and was very active, and did all in his Power to promote the Interest of the Rebels.

(Mr. Maddox *was cross-examined by the Prisoner.)*

Prisoner. You talk so very exactly, I desire to know if you ever made any Memorandums of what passed?

Maddox. I did, but I have not got those Memorandums, for I delivered them to that Gentleman *(pointing to the Sollicitor of the Treasury's Clerk)*.

Prisoner. Are you sure they have never been altered?

Maddox. I am very sure they never were by my Direction; since they have been out of my Custody I have never seen them. I have made no use of them to refresh my Memory, for I can remember the Particulars very well without them.

King's Counsel. Call Captain *Vere*, and swear him. *(Which being done, he stood up.)*---Pray, Captain, inform us what you know of the Prisoner.

Vere. On the 3d of *November* I saw the Prisoner at Sir *Peter Davenport's* at *Macclesfield*, with several of the Rebel Officers; and I have seen him at several other Places march with the Pretender's People. I knew him very well, for he abused me, and called me a great Scoundrel, because he said I had prevented a Gentleman from getting a Commission under Sir *Daniel O'Carrol*.

King's Counsel. Are you positive the Prisoner is the same Person you saw at *Macclesfield*, and in the Pretender's Army?

Vere. I am sure he is the very same; I saw him at several Places, particularly I remember to have seen him about a Mile out of *Derby*, riding with the Pretender on a bay Horse.

King's Counsel. When was you at *Macclesfield?*

Vere. I saw him there on the 3d of *November*, and on the 5th I saw him at *Derby*; and I am sure he is the very same Man, because I know him very well.

Mr. How called and sworn.

King's Counsel. Mr. *How*, do you know Mr. *Morgan?*

How. Yes, I know him very well: This Gentleman *(pointing to the Prisoner)* who stands by me, is Mr. *Morgan*.

King's Counsel. What do you know of him?

How. He lodged at my House, and was accounted a principal Man amongst the Rebels, and they called him the Pretender's Counsellor.

King's Counsel. How do you know that he was a principal Man?

How. Because he seemed more active than any of them. He paid me the Reckonings when he used to dine with the Rebel Officers. He paid me a Guinea and three Shillings, and gave all Directions about every thing.

King's Counsel. Had you any Discourse with him?

How. Yes, I had; when the Rebels were at *Derby*, he asked me if I was surprized at their being there so soon? I told him, that I had expected them as that Night.

King's Counsel. What did he say then?

How. He said it was more than they expected themselves; and if I had heard such News, he was sure that the Devil had brought it me.

King's Counsel. And what do you know farther?

How. I have seen the Prisoner since he has been taken up.

King's Counsel. Where have you seen him?——*How.* In *Newgate*.

King's Counsel. Had you any Discourse with him there?

How. Yes, I had.

King's Counsel. Then relate it to the Court and Jury; speak all that you can remember.

How. I came to Town on Business, and being informed that Mr. *Morgan* was in *Newgate*, I went there out of Curiosity to see him; when I came there I spoke to him, and he seemed glad to see me; and asked me kindly how I did; and we drank together, and had some Discourse.

King's Counsel. What did that Discourse relate to?

How. I said I was very sorry to see him a Prisoner in such a Place.

King's Counsel. And what did he say to that?

How. He said he should soon be at *Derby* in spite of King *George*, or any body else.

The Prisoner's Defence.

Prisoner's Counsel. My Lord, and Gentlemen of the Jury, I cannot speak so exactly to the Evidence that has been given against this unhappy Gentleman, as I could wish, because I have not had my Brief above half an Hour. If my Instructions be right, I will take upon me to say, that we shall produce Evidence of good Credit and Reputation, who will prove, that this Gentleman, the Prisoner, was forced into the Service of the Rebels, and at several Times, and several Places, endeavoured to make his Escape from them; which he at last effected, and was seized, after he had made his Escape, by a Magistrate, and committed Prisoner. And to prove that the Prisoner did make his Escape, I shall call Mr. *Chatterton*, who is the Master of the House where the Prisoner lodged at *Ashborn*, in *Derbyshire*.

* *Dawson* was the Day before convicted of High-Treason, being one of the Rebel Captains.

Mr. CHATTERTON being called and ſworn.

Priſoner's Counſel. Sir, do you know any Thing of the Priſoner's endeavouring to make his Eſcape from the Rebel Army? — *Chatterton.* Yes.

Priſoner's Counſel. And how did he propoſe to make it?

Chatterton. He was to go out of Town one Morning about one or two o'Clock, and ordered me to call him at that Time.

Priſoner's Counſel. And did you call him?

Chatterton. I did; but he did not care to riſe then, for fear he ſhould be ſtopt (in endeavouring to get away) by the Rebel Guard, who were poſted all about the Town. He ſaid, that about five in the Morning would be the moſt proper Time, for then the Rebel Pipes would begin playing, and they would be all buſy, and that was his only Time to make his Eſcape from them.

Priſoner's Counſel. And did he go away from your Houſe, and out of *Aſhborn* Town?

Chaterton. Yes, he went away, and aſked me to go with him as a Guide to ſhew him ſome Bye-way to *Stone*; and ſaid, it would be very proper for us to get to ſome Farm-houſe, and hide ourſelves, leſt the Rebels ſhould ſend in Search of him, and if we ſhould be taken after he had got away, and brought again to the Rebel Army, he did not know what might be the Conſequence.

Priſoner's Counſel. Did you go with him as a Guide, Sir?

Chatterton. When he propoſed it to me, I ſaid, Mr. *Morgan*, it is impoſſible for me to leave my Houſe, for we are all in a Hurry, and therefore you cannot expect I ſhould go; but I will ſend a Man with you that will do as well.

Priſoner's Counſel. And you did ſend a Man with him?

Chatterton. I ſpoke to a Man who worked Labouring-work with me, who I knew was well acquainted with the Country, and he agreed to go; and they both ſet out of *Aſhborn*, and the firſt News that I heard afterwards, was, that the Priſoner and my Man were both ſeized on Suſpicion of being of the Rebel Army. And what I heard was very true; ſo I went to the Gentleman by whoſe Order they were apprehended, and enquired about the Matter, and told him how the Affair was, juſt in the ſame Manner I have informed this honourable Court; but his Worſhip would not diſcharge my Man 'till I had given Security for his Appearance, which I was obliged to do; ſo he was ſet at Liberty, and the Priſoner at the Bar was kept in Cuſtody.—This is all that I know of the Matter.

(*Here the Priſoner's Counſel reſted his Defence, there being no other Witneſſes to examine on his Behalf.*)

Court to Priſoner. You have heard, Sir, what has been ſworn; whatever you have to ſay in your Defence, now is your Time to ſpeak it, and the Court will hear you.——(*And then the Priſoner ſpoke to the following Effect, after the Cryer had made Proclamation for Silence.*)

Morgan. I have heard what has been ſworn againſt me by the Witneſſes on the Behalf of the Crown; and I appeal to the Court and the Jury, if there are not the greateſt Improbabilities in the World in the Evidence they have given againſt me. I would ſpeak particularly to what happened at *Mancheſter*. The Deputy Conſtable ſwears, That I gave him an Order to ſeize all Arms he could find, and to bring them to my Quarters: Mr. *Maddox* ſwears, That at a Conſultation amongſt the Officers at *Mancheſter*, I was propoſed for Colonel of the Regiment, which I refuſed, becauſe I thought Mr. *Townley* was more fit for ſuch a Command than myſelf.

Now can any reaſonable Man imagine that I, who had refuſed to be the Chief Commander of the Regiment, would do the ſervile Office of going up and down the Town in Search for Arms?

Every Gentleman of the Army (and I ſee ſeveral in this Court) very well know, that to go on ſuch an Errand, would ill become any Officer of a ſuperior Rank; and as to my own Part, I am ſure I could not have done any ſuch Buſineſs.

I do not deny my being at ſeveral Places with the Rebels; and if I had been indulged with a longer Time to prepare for my Trial, I ſhould have made appear very clearly, that I was taken Priſoner by the Rebels, and detained with them much againſt my Inclination; for there was no reſiſting Force.

My Landlord, Mr. *Chatterton*, has made it plainly appear to this honourable Court, that I made my Eſcape as ſoon as it was in my Power; and if I could have done it ſooner, or have had an Opportunity to get away from them, I ſhould have been very glad to have embraced it.

As to my Capacity as one bred to the Law, I confeſs I never pretended to much Knowledge that Way, and therefore was a very improper Perſon to counſel the Chief of the Rebels; for my Advice, I am ſure, could be of little Service to him.

There were Abundance of Gentlemen of Fortune ſeized as well as myſelf, who were obliged to go with the Army, till they found Means to eſcape as I did. I had been to pay a Viſit to a Gentleman at *Etherton-Hall* in *Cheſhire*, and I was ſeized by the Rebels, and they took my Horſes from me.

The Laws of *England* are very juſt and equitable; and they ſay, that every Man ſhall be tried by his Neighbours, of the ſame State and Condition with himſelf.

God help me, I am deprived of that Benefit, and I am now amongſt Strangers, who know nothing of me: They are upon their Oaths, and muſt give Credit to the Witneſſes; but I hope, and do not in the leaſt doubt, that they will do me Juſtice.

I have ſerved the Crown of *England* in two Campaigns with ſome Reputation. And I believe no Gentleman belonging to the Army, who knows me, will deny what I now tell this honourable Court. I chearfully gave all the Aſſiſtance I could in the public Service, and I was always glad when my poor Endeavours were crowned with Succeſs.

Here have been many Witneſſes examined againſt me, and it is very impoſſible that I ſhould confute them, becauſe of the ſhort Time allowed me.

I think it a very great Hardſhip that I ſhould be the laſt tried of all theſe Gentlemen, becauſe I could have brought ſeveral of them to prove my Behaviour both at *Mancheſter* and in other Places, was quite different from what the King's Witneſſes ſpeak of; but as they are convicted, they cannot give any Teſtimony for me, and that Aſſiſtance I might have had, can now be of no Uſe to me.

If I was to ſpeak it with my laſt Breath, I muſt deny that I went voluntarily into the Rebellion; but as the Evidence for the Crown is ſo ſtrong againſt me, I muſt ſubmit to the Determination of this honourable Court, and I ſubmit myſelf accordingly.

(*When the Priſoner had done ſpeaking, Mr. Sollicitor General ſtood up, and made a Reply, which was to the Effect following:*)

Sollicitor General. I ſhould not have troubled your Lordſhips, or the Jury, with ſaying one Word more relating to the Priſoner that is now before you; but I find it neceſſary, from what has been offered in his Defence, to obſerve, that he has complained of many Hardſhips.

He ſeems to think it a great Grievance, that his being laſt tried has deprived him of many Advantages; but, in my Opinion, he has had a better Chance to defend himſelf, becauſe it gained him more Time to get his Witneſſes ready, and to prepare for his Defence.

Can any Man imagine, that either of the Perſons who have been convicted (if Mr. *Morgan* had been firſt tried) would have appeared to clear him of the Charge that is laid againſt him? If they had done ſo, they would have been their own Enemies; for their Evidence would have been a plain Proof againſt themſelves, and convinced every body that they were in the Rebellion.

The Priſoner has no need to complain of any Hardſhips; he has been uſed with as much Lenity and Tenderneſs as any Man in his Condition ever was; and nothing that he has aſked, which the Law could grant, was ever refuſed him. He has had Counſel aſſigned him of his own chuſing, to enable him to make his Defence, a Copy of his Indictment in due Time, and therefore he could not have any Pretence of being ignorant of what he ſtood charged with; and I am ſure no one can ſay, but he has had a very fair and impartial Trial.

I think of all the Priſoners convicted, it is very evident, that the Priſoner's Caſe really appears the plaineſt of any; for of ſix Witneſſes, there are four who were not concerned in the Rebellion, who poſitively ſwear to his Perſon, and that he was the moſt active of any one in the Rebel Service; and Mr. *How* particularly ſwears, That he lodged at his Houſe, he gave Directions for every thing, and paid the Reckoning for himſelf and eight Officers who dined with him; and therefore he thought the Priſoner was one of the Heads of them:—Theſe were his Words.

Then there is Mr. *Bowker*, the Deputy-Conſtable of *Mancheſter*, and he comes and ſwears, That the Priſoner at the Bar, with one *Wallis* (who is one of the Head Conſtables of *Mancheſter*, and *Bowker*'s Principal) came to him with a Paper ſigned by the Pretender's Secretary, ordering him to ſearch for all Arms, and carry them to the Lodgings of *David Morgan*, Eſq. which he did accordingly, for in Caſe of Refuſal, he, and all thoſe who refuſed to deliver up their Arms, were threatened with military Execution. This Witneſs is poſitive to the Perſon of the Priſoner; and I think there can be no plainer Proof of High-Treaſon than what has been ſworn.

As to what Mr. *Chatterton* has ſworn of the Priſoner's Eſcape from the Rebels, and leaving *Aſhborn*, I admit to be Matter of Fact, but this plainly makes againſt the Priſoner; for when he found their Affairs were deſperate, he was willing to ſhift for himſelf, and went away privately from them, purpoſely that he might not be ſeized by the King's Forces. He had been among the Rebels a conſiderable Time before this happened, and if (as he pretends) he was detained againſt his Will, he undoubtedly had frequent Opportunities of leaving them; but that you find he never did, till his own Preſervation and Safety required it.

As to his Complaint of Hardſhips, there is no one here that ever intended him any; but the Jury muſt go according to the Evidence; and I am ſure that no Evidence in the World could have brought a Fact more home to the Priſoner than they have done this: And I doubt not but the Evidence that has been given will have a due Weight with the Jury, and that they will find him guilty of the Indictment.

The Jury, without going out of Court, brought the Priſoner in Guilty.

July 22, 1746.

All the Priſoners who then ſtood convicted were brought to the Bar to receive Judgment; and their Counſel, Serjeants *Wynne* and *Eyre*, took two Exceptions in Arreſt of Judgment.

1. That the Teſte of the Commiſſion is not ſet forth in the Caption of the Indictment, and conſequently, for aught appears on the Record, the Commiſſion might iſſue before the Commencement of the Act, on which this Commiſſion is grounded: And if ſo, the whole Proceeding is *coram non Judice*.

To this it was anſwered by the Attorney General, and agreed by the Court, that the Juriſdiction of the Court doth ſufficiently appear on the Record. The Act of Parliament is undoubtedly the Foundation of this Proceeding: The Act, and this Commiſſion grounded on it, are recited in the Caption: And it is expreſly alledged, that the Commiſſion did iſſue by Virtue of the Act; which could not be true, unleſs the Commiſſion was ſubſequent to it.

Their ſecond Exception, and on which they ſeemed chiefly to rely, was, that the Act impowers the Crown to iſſue Commiſſions for trying Perſons *then in Cuſtody, or who ſhall be in Cuſtody for High-Treaſon, in levying War before the firſt Day of* January *next*, and it is not alledged in the Indictment that the Priſoners were in Cuſtody at the Time of the Indictment: And conſequently it doth not appear on the Record, that the Court hath any Juriſdiction over the Priſoners *.

To this it was anſwered by the Attorney General, and agreed by the Court, that it doth ſufficiently appear on the Record as it now ſtands, though not indeed on the Indictment, that the Priſoners are in Cuſtody; the Record alledgeth that the Priſoners, at the Time of their Arraignment, being brought to the Bar in the Cuſtody of the Sheriff to whoſe Cuſtody they had before been committed for the Cauſe aforeſaid, were aſked, &c.

† The Common Commiſſion of Gaol Delivery extendeth only to Priſoners in actual Cuſtody; and yet it was never thought neceſſary to alledge in the Indictment that the Defendant was then actually in Priſon: And if this Exception was to prevail, it would impeach all the Judgments that ever have been given at any Seſſions of Gaol Delivery.

That the Act on which the *Preſton* Rebels were tried runs thus in the very Words of this Act, all the Indictments at that Time were as theſe are, and this very Exception was then taken and over-ruled.

* See the Caſe of *Æneas Macdonald* afterwards.

† V. 12 Mod. 449. the ſame Point.

Lord Chief Juſtice *Lee* produced a Note he took at that Time in the Caſe of the * *King* and *Oxburgh*; the ſame Exception was then taken and over-ruled upon the Reaſon laſt before given.

Judgment was then given as in Caſes of High Treaſon.

Mr. Serjeant *Eyre* afterwards, *viz. Auguſt* 2d, took an Exception that bears ſome Affinity to the laſt in behalf of *Donald Mac Donald* and ſome others who then ſtood convicted, and were brought to the Bar to receive Judgment: It was, that it doth not appear that the Priſoners were apprehended; and ſaith he, in fact they were not apprehended, but ſurrendered. Whereas the Act of Parliament, on which the Commiſſion is grounded, ſpeaks only of Perſons that ſhall be apprehended and in Cuſtody.

This fine-ſpun Objection was likewiſe over-ruled. The Surrender was as much upon Compulſion, as the Submiſſion of a Perſon who cries for Quarter in the Heat of Battle is. In both Caſes, the Submiſſion is by reaſon of a ſuperior Force, and for Fear of immediate Death

David Morgan was about 51 years of Age, born in *Wales*, and bred to the Law, and had frequently (as a Barriſter) attended the Courts at *Weſtminſter Hall*, and elſewhere. He was a Perſon of a very mean Look, and ſeldom kept Company with any Gentlemen of his Neighbourhood; and if it had not been for his Eſtate, he might have ſtarved, for he was ſo very lofty, and of ſo bad a Temper, that Nobody but ſuch as were beholden to him cared to employ him. This *Morgan* was poſſeſſed of a very good Eſtate in St. *Leonard's Shoreditch*, but he let it all run to Ruin, becauſe he would not pay the Ground-Rent.

The Rebels called *Morgan* the Pretender's Counſellor, and his Advice was conſulted on every Occaſion. Even after he was condemned, he was haughty and inſolent beyond Expreſſion; and the very Afternoon before his Execution, he grumbled to pay the Cook who dreſſed his Dinner, and ſaid ſhe was very extravagant in her Demands.

He read to his Fellow Priſoners above twenty Minutes at the Gallows, and died very unconcerned.

The Morning (about Six o'Clock) before he went to Execution he ordered Coffee to be made, and bid them take care to make it very good and ſtrong, for he had never drank any ſince he had been in that Priſon fit to come near a Gentleman; and becauſe it was ready before he was unlocked, he ſeemed angry, and in a great Paſſion.

He was executed with the others on *Wedneſday*, *July* 30, 1746, and his Body delivered to his Friends to be buried.

The Nine that were executed at *Kennington Common*, *July* 30, 1746, were *Francis Townley*, Col. of the *Mancheſter* Regiment; *Thomas Theodorus Deacon*, *James Dawſon*, *John Berwick*, *George Fletcher*, and *Andrew Blood* (or *Blyde*), Captains in the *Mancheſter* Regiment; *Thomas Chadwick*, Lieutenant; *Thomas Syddall*, Adjutant to the ſame; and *David Morgan*, a Volunteer in the Pretender's Army; of theſe, *Fletcher*, *Berwick*, *Chadwick*, and *Dawſon*, declared themſelves Members of the Church of *England*; *Townley* and *Blood* died *Papiſts*; all their Speeches were filled with Treaſonable Expreſſions, not fit to be repeated (as beforementioned): But we ſhall take notice what a ſtrange enthuſiaſtick Sort of Religion *Syddall* and *Deacon* were of, as they mentioned the Church they belonged to in their dying Speeches; and Mr. *Morgan*'s Declaration as to his Faith.

Thomas Syddall the *Peruke-maker* ſays, "I die a Member not of the "Church of *Rome*, nor yet that of *England*, but of a pure Epiſcopal "Church, which hath reformed all the Errors, Corruptions and Defects "that have been introduced into the Modern Churches of Chriſtendom: "A Church which is in perfect Communion with the Ancient and Uni"verſal Church of Chriſt, by adhering uniformly to Antiquity, Uni"verſality and Conſent; that glorious Principle, which if once ſtrictly "and impartially purſued, would, and which alone can, remove all the "Diſtractions, and unite all the divided Branches of the Chriſtian "Church. This only Catholick Principle is agreed to by all the "Churches, Eaſtern and Weſtern, Popiſh and Proteſtant; and yet un"happily is practiſed by none, but the Church in whoſe Communion "I die. May God in his great Mercy, daily increaſe the Members "thereof! And if any would enquire into its Primitive Conſtitution, "I refer them to our Common-Prayer-book; which is entitled, *a Com*"*plete Collection of Devotions, both publick and private, taken from the* "*Apoſtolical Conſtitutions, the Ancient Liturgies, and the Common Prayer-book* "*of the Church of England, Printed at* London, 1734."

Mr. *Thomas Theodorus Deacon* ſaid, in his Speech, "I profeſs I die a "Member not of the Church of *Rome*, nor yet of that of *England*, but "of a pure Epiſcopal Church, which has reformed all the Errors, Cor"ruptions and Defects that have been introduced into the Modern "Churches of Chriſtendom: a Church, which is in perfect Communion "with the Ancient and Univerſal Church of Chriſt, by adhering uni"formly to Antiquity, Univerſality and Conſent; that glorious Princi"ple, which if once ſtrictly and impartially purſued, would, and which "alone can, remove all the Diſtractions, and unite all the divided "Branches of the Chriſtian Church. This truly Catholick Principle "is agreed to by all Churches, Eaſtern and Weſtern, Popiſh and Pro"teſtant; and yet unhappily is practiſed by none, but the Church in "whoſe Holy Communion I have the Happineſs to die. May God, "of his great Mercy, daily increaſe the Members thereof! And if any "would enquire into its Primitive Inſtitution, I refer them to our Com"mon Prayer-book; entitled as abovementioned."—This Book of Devotion was ſuppoſed to be wrote by Dr. *Deacon*, the Phyſician at *Mancheſter*, Father of the above.

The Speeches of the Rebels were ſuſpected to be wrote by Mr. *Creake*, a Nonjuring Clergyman; (ſome ſaid one of their Biſhops) at leaſt he had a hand in them.

Counſellor *Morgan* in his Speech ſaid, "To conclude, my Brethren "and Fellow Subjects, I muſt make Profeſſion of that Religion I was "baptized, have continued, and ſhall, through divine Permiſſion, die "in, which is that of the Church of *England*; and which I hope, will "ſtand and prevail, againſt the Malice, Devices and Aſſaults of her "Enemies; as well thoſe of the Church of *Rome*, as thoſe, equally "dangerous, the Followers of *Luther* and *Calvin*, covered under, and "concealed in, the ſpecious Bugbears of Popery and Arbitrary Power. "This my Faith, I have fully ſet forth in a Poem of two Books, in"titled, *the Chriſtian Teſt, or the Coalition of Faith and Reaſon*; the firſt "of which I have already publiſhed, and the latter, I have bequeathed "to the Care of my unfortunate, but very dutiful Daughter, Mrs. *Mary* "*Morgan*, to be publiſhed by her, ſince it has pleaſed God I ſhall not "live to ſee it. To theſe Poems I refer, which I hope will obviate all "Cavil to the contrary."

XXXV. The Trial of Alexander Mac Growther, at the Town Hall, *St. Margaret's Hill*, *Thurſday*, *July* 31, 1746, for High-Treaſon.

THIS Morning the Right Honourable the Lord Chief Juſtice *Lee*, the Right Honourable Lord Chief Juſtice *Willes*, Mr. Juſtice *Wright*, Mr. Juſtice *Foſter*, Mr. Baron *Reynolds*, and Mr. Baron *Clive*, came into Court, and being ſeated, the Cryer made Proclamation for Silence; and the Keeper brought *James Nicholſon*, a Lieutenant in the Duke of *Perth*'s Regiment, and *Donald Mac Donald*, otherwiſe *David Mac Donald*, otherwiſe *Daniel Mac Donald*, a Captain in *Cappock*'s Regiment, to the Bar, and they deſired to retract their former Plea; which the Court having granted, they pleaded Guilty, and hoped the Court would recommend them to his Majeſty's Mercy.

Alexander Mac Growther was then called, and put to the Bar, and for his Trial put himſelf upon God and his Country, and after making ſome Exceptions, a Jury was ſworn to try him.

The Counſel for the King having opened the Indictment, that the Priſoner was a Lieutenant in the Duke of *Perth*'s Regiment, they proceeded to call their Witneſſes, and Mr. *Allen* was called and ſworn accordingly.

Solicitor General. Pray, Sir, acquaint the Court of all that you know of the Priſoner.

Mr. *Allen.* There are two *Mac Growthers*, but this is the oldeſt, and he was a Lieutenant in the Duke of *Perth*'s Regiment; and the firſt Time he was in Arms in the Pretender's Service was the latter End of laſt *Auguſt*. He was a Tenant to the Duke of *Perth*, and accepted a Commiſſion in the Rebel Service; he was called Lieutenant in *Perth*'s Regiment by the Officers and Soldiers, and marched in his *Highland* Dreſs with the Rebels from their firſt beating up for Volunteers in *Scotland*. He was at *Edinburgh*, and ſeemed very glad when the Pretender had got Poſſeſſion of the City, and encouraged the Soldiers to be diligent, for that there was no Fear of Succeſs, and if they were hearty, vigilant and active, he did not doubt but they ſhould ſucceed. He wore a white Cockade at *Edinburgh*, a Dirk by his Side, had Piſtols in his Girdle, and a blue Bonnet, and the *Highland* Rebels paid a great Reſpect to him. He was at *Perth* when Poſſeſſion was taken of that Town by the Pretender's Party, and always acted there as an Officer; and at every Place where the Rebels came was very warm in their Cauſe, bidding the Rebels under his Command keep a good Heart, and fear nothing.——He ſpoke this at the Battle of *Preſton Pans*; and every Attack they made, he ſpirited up his Brother Officers, and deſired them to keep a good Look-out, and take care the Soldiers did their Duty.

Mr. *Maddox* was next called and ſworn, who depoſed, That he ſaw the Priſoner at *Carliſle*, in his *Highland* Dreſs, at the Time when his Royal Highneſs the Duke beſieged the City;—that he was in a *Highland* Plaid, a Bonnet, a White Cockade and Dirk, and was called Lieutenant *Mac Growther*, and greatly eſteemed by the Rebels.

The Captains *Vere* and *Nevet*, who are Officers in the King's Service, depoſed, That when the Rebels ſurrendered themſelves, they had Orders from his Royal Highneſs the Duke to examine all the Rebel Officers; and when they examined the Priſoner, Mr. *Mac Growther*, he owned that he was an Officer (a Lieutenant) in the Duke of *Perth*'s Regiment; and that he gave in his Name as an Officer;—and all the Witneſſes agreed, that the Priſoner was under no Reſtraint, but acted as voluntarily as the other Rebel Officers.

Priſoner's Defence.

The Priſoner's Counſel inſiſted, that the Duke of *Perth* had compelled him to enter into the Rebellion, and had threatened him, if he refuſed to join them, to burn his Houſe to the Ground, to deſtroy all his Cattle and Stock of Corn, and to lay waſte all that belonged to him;—and to prove this they called four Witneſſes, who, in general, depoſed, That ſeveral of the Duke of *Perth*'s Men came and threatened him, the Priſoner, with Deſtruction, if he refuſed joining the Rebel Forces; and to bind him with Cords; and that being compelled, he was forced to join them to ſave himſelf from Ruin.

The Evidence on both Sides being cloſed, my Lord Chief Juſtice ſummed up the Evidence to the Jury; and as the Proof was very ſtrong, and it appearing that he marched with the Rebels, and enliſted at the Beginning of the Rebellion, and continued with them 'till the Surrender of *Carliſle*, the Jury (without going out of Court) found him Guilty.

Alexander Mac Growther's Case, *July* 31, 1746 ‡.

IN the Caſe of *Alexander Mac Growther*, there was full Evidence touching his having been in the Rebellion; and his acting as a Lieutenant in a Regiment in the Rebel Army called the Duke of *Perth*'s Regiment. The Defence he relied on was, that he was forced in.

And to that Purpoſe he called ſeveral Witneſſes, who in general ſwore, that on the 28*th* of *Auguſt* the Perſon called Duke of *Perth*, and the Lord *Strathallan*, with about Twenty *Highlanders*, came to the Town where the Priſoner lived. That on the ſame Day three ſeveral Summons were ſent out

* Upon the Trials of the Lords *Kilmarnock*, *Cromartie* and *Balmerino*, to guard againſt this Objection, the Warrants for their Commitment were returned by the Lieutenant of the *Tower*, read and entered on the Journal.

‡ *Foſter's* Reports, p. 13.

by

by the Duke requiring his Tenants to meet him, and to conduct him over a Moor in the Neighbourhood, called *Luiny Moor*. That upon the third Summons the Priſoner, who is a Tenant to the Duke, with about Twelve of the Tenants appeared; that then the Duke propoſed to them that they ſhould take Arms and follow him into the Rebellion. That the Priſoner and the reſt refuſed to go; whereupon they were told, that they ſhould be forced, and Cords were brought by the Duke's Party in order to bind them; and that then the Priſoner and Ten more went off, ſurrounded by the Duke's Party.

Theſe Witneſſes ſwore that the Duke of *Perth* threatened to burn the Houſes, and to drive off the Cattle of ſuch of his Tenants as ſhould refuſe to follow him. They all ſpoke very extravagantly of the Power Lords in *Scotland* exerciſe over their Tenants; and of the Obedience, (even to the joining in Rebellion) which they expect from them.

Lord Chief Juſtice *Lee*, in ſumming up, obſerved to the Jury, that there is not, nor ever was, any Tenure which obligeth Tenants to follow their Lords into Rebellion *.

And as to the Matter of Force, he ſaid, that the Fear of having Houſes burnt, or Goods ſpoiled, ſuppoſing that to have been the Caſe of the Priſoner, is no Excuſe in the Eye of the Law for joining and marching with Rebels.

The only Force that doth excuſe, is a Force upon the Perſon, and preſent Fear of Death; and this Force and Fear muſt continue all the Time the Party remains with the Rebels. It is incumbent on every Man, who makes Force his Defence, to ſhew an actual Force, and that he quitted the Service as ſoon as he could; agreeable to the Rule laid down in *Oldcaſtle*'s Caſe, 1 *Hale* 50. that they joined *pro timore Mortis & receſſerant quam cito potuerunt.*

He then obſerved that the only Force the Priſoner pretends to, was on the 8*th* of *Auguſt*; and that he continued with the Rebels and bore a Commiſſion in their Army 'till the Surrender of *Carliſle*, which was on or about the 30*th* of *December*.

The Jury without going from the Bar found him Guilty. But he was reprieved, and not executed.

N. B. All the Judges that were in Town were preſent, and concurred in the Points of Law.

N. B. Many of the *Scotch* Priſoners made Force their Defence, and produced the ſame Sort of Evidence as *MacGrowther* did; and the ſame Directions in point of Law were given as in his Caſe. And the Matter of Fact whether Force or no Force, and how long that Force continued, with every Circumſtance tending to ſhew the Practicability or Impracticability of an † Eſcape, was left to the Jury on the whole Evidence.

* *N. B.* If Threats of this Kind were an Excuſe, it would be in the Power of any Leader in a Rebellion to indemnify all his Followers.

† See in *Foſter*'s Reports, 1 Diſcourſe, Chap. ii. S. 8. p. 216.

XXXVI. The Proceedings at *St. Margaret's Hill, Southwark*, relating to Alexander and Charles Kinloch (Brothers to Sir James Kinloch, Bart.), on *Auguſt* 23, *September* 2, *October* 28, 29, *November* 15, *December* 15 and 20, 1746. Before the Lord Chief Juſtice *Lee*, Lord Chief Juſtice *Willes*, Lord Chief Baron *Parker*, Mr. Juſtice *Wright*, Mr. Baron *Reynolds*, Mr. Juſtice *Abney*, Mr. Juſtice *Denniſon*, Mr. Baron *Clarke*, Mr. Juſtice *Foſter*, Mr. Baron *Clive*, Sir *Thomas De Veil*, Knt. and *Peter Theobald*, Eſq. relating to their Plea *of being born in* Scotland, *and ought to be tried according to the Laws of that Kingdom*, &c *.

Auguſt 23, 1746.

THIS Day Bills of Indictment were found againſt *Alexander Kinloch* and *Charles Kinloch*, and others of the Rebels to the Number of twenty-two. The Overt Acts were laid in different Shires in *Scotland*, according to the reſpective Caſes of the Priſoners. And then the Court adjourned to the 2*d* of *September* for the Arraignment of the Priſoners.

September 2, 1746. On this Day, (there being no other Judge in Town) Mr. Juſtice *Foſter* ſat with two other Commiſſioners, Sir *Thomas De Veil*, Knt. and *Peter Theobald*, Eſq. for the Arraigning the Priſoners. *Alexander Kinloch* and *Charles Kinloch*, and the reſt of the Priſoners, who were *Scotchmen* born, upon their Arraignment ſeverally delivered a Paper into Court whereof the following is a Copy:

"As I intend to inſiſt on the Benefit of the Act of Union, by which "all the Laws in *Scotland* at that time which concern private Right are "ſaved to the Natives of *Scotland*, and declared to be unalterable by the "Parliament of *Great Britain*, except for the evident Utility of the Sub-"jects within *Scotland*; and as I am a Subject born within *Scotland*, and "ſtand indicted for Treaſons charged to have been committed by me in "*Scotland*, I humbly beg that the Court will be pleaſed to aſſign me "Counſel and a Solicitor to adviſe me as to the Manner of Framing, and "the Uſe to be made of this Defence; and that the Court will be pleaſed "to indulge me in a few Days time to adviſe with them, before I am com-"pelled to plead; leſt by pleading I may be deprived of the Benefit of any "ſuch Defence."

Mr. Juſtice *Foſter* told the Priſoners that Copies of their Indictments having been delivered to them in due Time, they ought now to have been ready to plead ſuch Pleas as they would ſtand by; and that the Court expected they ſhould now plead accordingly. He told them withal, that if the Matter contained in their Papers would avail them at all, they would have the full Benefit of it upon Not Guilty: Since it amounts to no more than that their Caſes are not within the Act of the laſt Seſſion, by Authority of which Act alone this Court ſits. They then ſeverally pleaded Not Guilty.

The Caſe of Alexander Kinloch *and* Charles Kinloch, *October* 28, 1746.

PRESENT Lord Chief Juſtice *Willes*, Mr. Juſtice *Foſter*, and Mr. Baron *Clive*. *Alexander Kinloch* and *Charles Kinloch*, who were the firſt of the Priſoners concerned in the Paper delivered the Second of *September* that were brought to Trial, were ſet to the Bar; and they agreeing in their Challenges, one Jury was ſworn and charged with them by the Clerk of the Arraignments. The junior Counſel for the Crown opened the Indictment, and the Solicitor General in a few Words opened the Evidence.

When the Counſel for the Crown had proceeded thus far, the Chief Juſtice, before any Evidence was given, told the Priſoners Counſel, that he was informed they had ſome Objection to make in behalf of their Clients grounded on the Act of Union; which Objection he ſaid was proper to be ſpoke to before the Counſel for the Crown went into their Evidence. Whereupon Mr. *Joddrell*, one of the Priſoner's Counſel, ſtated his Objection, and ſpoke largely to it. The Chief Juſtice then ſaid, that the Objection being in nature of a Plea to the Juriſdiction of the Court, could not be made on the Iſſue of Not Guilty; nor could any Evidence in ſupport of the Objection be received upon that Iſſue; and therefore propoſed that a Juror ſhould be withdrawn; and that the Priſoners ſhould have leave to withdraw their Pleas of Not Guilty, and to plead this Matter ſpecially: and that the Attorney General might demur, and ſo the Point would come regularly before the Court.

Mr. Juſtice *Foſter* ſaid on this Occaſion, that when he aſſured the Priſoners, they would have the full Benefit of this Objection on their Plea of Not Guilty, he had no Intention of leading them into a Difficulty, which they could not get clear of, without the Indulgence of the Court. He thought they would be intitled *ex mero Jure* to the full Benefit of the Objection without ſuch Indulgence; and added, that the Principle he went upon was this, If there be any Weight in the Objection, it muſt be that the Caſe of the Priſoners is not within the Act of the laſt Seſſion, under which Act alone this Special Commiſſion is executed. And if it be not within that Act, it is a Caſe at Common Law; and conſequently, taking it to be a Caſe at Common Law, if no Overt Act be proved in the County where the Commiſſion ſits, and whence the Jury comes, the Priſoners muſt of courſe be acquitted.

Sir *John Strange*, of Counſel with the Crown, ſtrongly inſiſted, that in point of Law the Priſoners were intitled to the Benefit of the Objection on Not Guilty, if they could avail themſelves of it; and the Attorney General offered to wave all Advantage that might be taken againſt the Priſoners, if any Advantage could be taken; and preſſed that the Trial might go on upon the Iſſue joined by them, and that the Merits of the Objection might be now conſidered.

But it was otherwiſe ordered, and a Juror was withdrawn, and the Jury diſcharged upon the Motion of the Priſoners Counſel, and at the Priſoners Requeſt, and with the Conſent of the Attorney General. And the Priſoners withdrew their former Plea, in order that they might be ready the next Day with their Pleas to the Juriſdiction in Form. To which the Attorney General declared he would demur *inſtanter*.

And the Court adjourned to the next Day.

The Entry on the Record touching this Matter, is as followeth:

"Upon the Motion of *Charles Hamilton Gordon*, Eſq. and *Paul Joddrell*, "Eſq. being aſſigned as Counſel for the Defendants in this Cauſe, and by "their Conſent, and alſo at the Deſire and Requeſt, and by the Conſent "of the Defendants now at the Bar here, and alſo by the Conſent of Mr. "*Attorney General* on behalf of the King: It is ordered by the Court "here, that *Richard Toy* the laſt of the Jurors ſworn and impannelled in "this Cauſe be withdrawn out of the Pannel; and that the reſt of the Ju-"rors in this Cauſe be diſcharged; no Evidence whatſoever having been "given to the ſaid Jury in this Cauſe, either on the Part of the King or of "the Defendants. And it is further ordered by the Court here, that the "ſaid Defendants have leave to withdraw their Pleas of Not Guilty by "them formerly pleaded to the Indictment in this Cauſe, and have leave "to plead to the Juriſdiction of this Court: And that the ſaid Defend-"ants have Time 'till To-morrow to put in ſuch Plea. And that they "deliver Copies of ſuch Plea to Mr. *Sharpe*, Solicitor for the King in this "Cauſe, by Eight of the Clock this Evening. And thereupon the ſaid "Defendants do now here at the Bar withdraw their ſaid Pleas of Not "Guilty, in order to put in ſuch Plea to the Juriſdiction of this Court as "aforeſaid."

October 29, 1746. On this Day, preſent the ſame Judges as Yeſterday. *Alexander Kinloch* was firſt ſet to the Bar and again arraigned, whereupon he tendered a Plea ingroſſed on Parchment and ſigned by his

* We cannot find that any Trial of theſe two *Kinlochs* was ever printed; the Evidence againſt them (and the reſt tried at *St. Margaret's Hill*) being ſo very plain, nothing remarkable happened at their Trials. Their principal Objection being in nature of a Plea to the Juriſdiction of the Court, we ſhall inſert their Plea, the Entry on the Record, Demurrer, &c. relating to this Point, with a brief Account of the Arguments of the Counſel and Court, and Judge *Foſter*'s Argument on the Caſe, from his *Reports*, p. 15. *et ſeq.*

Counsel Mr. *Gordon* and Mr. *Fodrell*; to which the Attorney General demurred, and the Prisoner instantly joined in Demurrer.

" And the said *Alexander Kinloch* in his own proper Person comes, and " having heard the Indictment aforesaid read, and protesting that he is " Not Guilty of the Premisses charged in the said Indictment, for Plea " nevertheless saith, That he ought not to be compelled to answer to the " said Indictment: Because he saith that the Kingdom of *Scotland*, before " and until the Time of the Union of the two Kingdoms of *England* and " *Scotland*, was regulated and governed by the proper Laws and Statutes of " that Kingdom, and not by the Laws and Statutes of the Kingdom of " *England*; and that ever since the said Union of the said two Kingdoms " that Part of the Realm of *Great Britain* called *Scotland* hath been, and " yet is governed and regulated by the proper Laws of that Part of the " said Realm called *Scotland*, and not by the Laws of that Part of the said " Realm called *England*.

" And the said *Alexander Kinloch* further saith, That within the said King- " dom before the Union of the said two Kingdoms, and until the said " Union thereof, and within that Part of *Great Britain* called *Scotland* " ever since the said Union, there hath been, and now is a certain Court " called the Court of Justiciary; and that all and singular Offences of " High-Treason committed within the said Kingdom of *Scotland* before " and until the said Union, and within that Part of the Realm of *Great* " *Britain* called *Scotland* since the said Union by the Natives thereof, ap- " prehended or taken for such Offences there (except Peers of the Realm " of *Great Britain*), have been and of Right ought to be enquired of, heard " and determined in the said Court of Justiciary before the Justices of that " Court, or in some other Courts, or before other Justices within the said " Realm of *Scotland* before the Union, and within that Part of the Realm " of *Great Britain* called *Scotland* since the said Union; and not in any " Court, or before any Justices within the Realm of *England* before the " said Union, or within that Part of the Realm of *Great Britain* called " *England* since the said Union.

" And the said *Alexander Kinloch* further saith, That *Fochabars* in the " Shire of *Murray* in the said Indictment mentioned, the Place where the " said Offence contained in the said Indictment is supposed to have been " committed, before and until the said Union of the said two Kingdoms " was within and Parcel of the said Kingdom of *Scotland*, and ever since " the said Union was and now is lying within and Parcel of that Part " of the Realm of *Great Britain* called *Scotland*.

" And the said *Alexander Kinloch* further saith, That he was born within " that Part of the Realm of *Great Britain* called *Scotland* (to wit) at " *Fochabars* aforesaid; and that at the Time when the said Offence in the " said Indictment contained, is therein supposed to have been committed, " and long before that Time, and since, he the said *Alexander Kinloch* " was resident and commorant within that Part of *Great Britain* called " *Scotland* (to wit) at *Fochabars* aforesaid. And this he is ready to verify. " Wherefore the said *Alexander Kinloch* prays Judgment if the Court of " our Lord the King here will further proceed upon the Indictment afore- " said against him, and that he may be dismissed from the Court here of " and upon the Premisses, *&c.*

Demurrer.] " And the said Sir *Dudley Ryder*, Knight, Attorney-General of " our present Sovereign Lord the King, who for our said present Sovereign " Lord the King in this behalf prosecuted, as to the said Plea of him the " said *Alexander Kinloch* by him above pleaded as aforesaid, for our " said present Sovereign Lord the King saith, That the said Plea and " the Matter therein contained, are not sufficient in Law to preclude the " Court here from their Jurisdiction to hear and determine the High- " Treason mentioned and specified in the said Indictment, and above " charged upon him the said *Alexander Kinloch* in and by the said Indict- " ment. Wherefore for Want of a proper and sufficient Answer in " this Behalf, he prayeth Judgment, and that the said *Alexander Kinloch* " may answer in Court here to our said present Sovereign Lord the King " touching and concerning the Premisses aforesaid."

Joynder in Demurrer.] And the said *Alexander Kinloch* likewise.

The Prisoner's Counsel admitted, that his Case is within the Letter of the Act of the last Session, by Authority of which this Court sits: But insisted, that by the known Rules of Construction, if any great or manifest Inconveniences do arise from adhering closely to the Letter of the Act, the Court ought, and always doth depart from the literal Construction.

The Construction they insisted on was, that for Offences committed in *England*, Commissions might issue for hearing and determining the same in any County of *England*; and for Offences committed in *Scotland*, the like Commissions might issue into any County of *Scotland*, which would, they said, answer all the Ends of the Act mentioned in the Preamble; and would at the same Time avoid all the Inconveniencies which the Construction contended for in behalf of the Crown is attended with.

They then mentioned several Inconveniencies attending such a Construction of the Act: Some of which might possibly have merited the Attention of the Legislature at the Time the Act passed.

Mr. Attorney General in answer said, That the Rules of Construction as applied to Acts of Parliament grounded on Inconveniencies, whether imaginary or real, hold in no Cases but where the Meaning of the Act is doubtful: In plain Cases, where the Intention of the Legislature is evident, 'tis the Duty of the Court to put the Law in Execution, and to leave all Considerations of Inconveniencies to the Legislature. And if the Parliament had intended that different Commissions should issue for the Trial of Treasons committed in *England* and *Scotland* respectively, they would have said so: they would not have impowered his Majesty to issue Commissions into any County or Shire within the United Kingdom.

And the Objection he said is not new; it was made, but without Effect, in behalf of a *Scotchman* concerned in the Rebellion of 1715 * (1 Geo. I. c. 33.).

The Lord Chief Justice declared his Opinion, in which the other Judges present concurred, that the Prisoner's Birth, Residence and Apprehension in *Scotland* are Facts perfectly immaterial to the present Question. That they would have been so, if the Case had been at Common Law. For at Common Law every Man is triable, not where he was born, resided, or was apprehended, but where the Fact was committed: That these Facts being immaterial, and the whole Merits of the Objection appearing on the Face of the Indictment, the Prisoner might as well have Demurred to it, as pleaded in the Manner he hath done.

That in so plain a Case as this is, Arguments *ab inconvenienti* are of no Weight: The Law must take its Course: Inconveniencies in plain Cases are proper only for the Consideration of the Legislature.

His Lordship observed that the Words, *This Realm*, occur in four or five Places in the Act, and that in every Place where they do occur, except in the Clause in Question, they incontestably mean the United Kingdom of *Great Britain*, and can mean nothing else: And by no Rule of Construction can they be restrained in this single Clause, to that Part of the Kingdom called *England*.

The Court over-ruled the Plea, and ordered that the Prisoner should plead over to the Treason; and he pleaded Not Guilty. *Charles Kinloch* was then brought to the Bar, and being arraigned a second Time on the Indictment pleaded likewise Not Guilty. And both Prisoners agreeing to join in their Challenges, a Jury (the same Persons who were sworn and charged with them Yesterday) was sworn and charged with them. And they were both found Guilty, but not executed.

November 15, 1746. On this Day, Present the two Chief Justices, Mr. Justice *Wright*, Mr. Baron *Reynolds*, Mr. Justice *Abney*, Mr. Justice *Foster*, and Mr. Baron *Clive*. All the Prisoners who were convicted since the last Execution were brought to the Bar to receive Judgment. The two *Kinlochs*, *Alexander* and *Charles*, moved by (*Mr. Fodrell*) their Counsel in Arrest of Judgment: He took Notice of the Proceedings with regard to the Prisoners on the 28th and 29th Days of *October*, and insisted that their Trial on the 29th (a Jury having been sworn and charged with them on the 28th) was a Mis-trial, and the Verdict a mere Nullity.

He was proceeding to state his Reasons and Authorities, when Lord Chief Justice *Lee* interrupted him and said, that as there is a Variety of Opinions in the Books touching that Matter, which is really a Point of great Consequence, he thought it most adviseable to postpone the further Consideration of it to the next Adjournment, when he should desire the Assistance of all the Judges in the Commission. Then the Court, after passing Sentence on the others, adjourned to the 15th of *December*.

N. B. The Court being full, and the Bar crowded in Expectation of the Event of this Motion, Mr. Justice *Foster* thought it not improper to speak to the Purpose he spoke on the 28th of *October*. And he added, That from what was said by the Court on the 29th, he was confirmed in his Opinion, that the Prisoners might safely have pleaded the General Issue. For if, as was then admitted, the whole Merits of the Objection appear on the Face of the Indictment, the Prisoners undoubtedly might have had the Benefit of it in Arrest of Judgment. So that, *quacunque Viâ*, whether they could have been let into it on Evidence (as they certainly might), or in Arrest of Judgment, they were not ill advised in pleading the General Issue.

December 15, 1746. On this Day, Present the two Chief Justices *Lee* and *Willes*, the Chief Baron *Parker*, Mr. Justice *Wright*, Mr. Baron *Reynolds*, Mr. Justice *Abney*, Mr. Justice *Dennison*, Mr. Baron *Clarke*, Mr. Justice *Foster*, and Mr. Baron *Clive*—Mr. *Fodrell* argued in Behalf of the *Kinlochs* in Arrest of Judgment.

He admitted that there is a Variety of Opinions in the Books touching the Power of the Court to discharge a Jury sworn and charged in a Capital Case. And that the Practice during the Reign of King *Charles* the Second at least, went in favour of that Power. But he said that ever since the Revolution the contrary Practice hath uniformly prevailed. And even in the Time of *James* the Second, the Judges in Lord *Delmeré*'s Case (IV. State-Trials, 232.) declared, that a Jury sworn and charged in a Capital Case cannot be discharged, but must give a Verdict. And Common Justice, he said, requires, that when a Prisoner is brought upon his Trial, and a Jury is once sworn and charged with him, he is to stand or fall by the Event of that Trial; otherwise his Life may be brought in Jeopardy for the same Fact as often as the Court pleases, and even when he is not so well prepared for his Defence.

To shew that the Law and Practice before the Restoration was with his Clients, he relied on the Authority of Lord *Coke* in his 1st Inst. 227 b. and 3d Inst. 110. And to shew that the Judges since the Revolution concurred with Lord *Coke*, he cited *Carthew* 465; where it is reported to have been said by *Holt* at the Sittings in *Guild-Hall*, on the ninth Day of *November* 1698, in the Case of the King and *Perkins*, " That All the Judges " of *England* upon Debate among themselves had agreed, that a Jury " sworn and charged in a Capital Case cannot be discharged, though all " the Parties consent to it."

He said that he had seen a MS. Note of the same Resolution by the late Mr. Justice *Tracy*, which agrees in Substance with *Carthew*'s Report of it.

He observed, that according to *Carthew*'s Report and *Tracy*'s MS. the Judges at the same Time came to a Resolution, That in Criminal Cases, not Capital, a Juror may be withdrawn, or Jury discharged by consent of all Parties, but not otherwise.

That the Practice since that Time in Criminal Cases hath been conformable to this Rule. For this he cited the Cases of the King and *Morgan*, *Hillary* 9 *Geo.* II. on an Indictment for Perjury, and the King and *Jelf*, *Trinity* 7 *Geo.* II. an Indictment for Barratry; In both these Cases Lord *Hardwick*, he said, at the Sittings, refused to withdraw a Juror at the Prayer of the King's Counsel, because the Defendant's Counsel refused to consent to it, and cited this Resolution in *Carthew*. The Use he made of these two Cases was, that since this Regard hath been paid to the Authority of the Resolution in Criminal Cases, as reported by *Carthew*, he hoped the same Regard would be now paid to that touching Capital Cases.

As to the Matter of Consent, he observed that Consent may cure an Irregularity, but cannot justify the breaking through any of the funda-

* This was the Case of *William Hay* upon the Special Commission at *Carlisle*, in the Year 1716. The Objection was then introduced, not by way of Plea to the Jurisdiction, but by Demurrer. And the Court after hearing the Prisoner's Counsel adjourned to the next Day. And having considered the Arguments of the Prisoner's Counsel, agreed to over-rule the Demurrer. Which being intimated to his Counsel, he by Leave of the Court, and with the Consent of the Sollicitor-General, withdrew his Demurrer, and pleaded Guilty.

mental Principles of Law; eſpecially ſuch Rules as are in favour of a Priſoner who is anſwering for his Life. A Priſoner in this Circumſtance, is hardly *Sui Juris*; he may be over-awed or ſurprized into a Conſent, manifeſtly to his Prejudice: And therefore the Judges in the Reſolution cited from *Carthew* (on which he relied as an Authority in Point with him) threw the Circumſtance of the Conſent quite out of the Caſe.

Upon the whole, he concluded that Judgment ought to be arreſted.

To this it was anſwered by the Counſel on the Part of the Crown, (*Mr. Attorney General*, Sir *John Strange*, *Mr. Solicitor General*,) that except the Reſolution reported by *Carthew*, there is not a ſingle Authority in the Books which ſaith that a Juror may not be withdrawn, or the Jury diſcharged, even in Capital Caſes, with the Conſent of all Parties. That it was done in the Caſe of *Manſell* ſo long ago as the 26th of *Eliz.* (1. *Ann* 103, 104.) And all the Judges of *Serjeant's-Inn* in *Fleet-Street* then agreed, that it might be done; and had often to their Knowledge been done. That the Rule laid down by Lord *Coke* in his firſt and third Inſtitutes runneth in general Terms, and doth not indeed except the Caſe of Conſent; but that Caſe muſt be ſuppoſed to be excepted.

That it frequently hath been done ſince Lord *Coke*'s Time, even without Conſent, where the Circumſtance of the Priſoner, or the Demands of Publick Juſtice did require it. And for this they cited 2 *Hale*, 295, 296, 297. 1 *Vent.* 69. *Keil.* 46, 47. 52.

They ſaid they did not cite theſe Books with an entire Approbation of the Practice in every Inſtance in which it prevailed; for ſome of the Caſes, particularly *Whitebread*'s, (II. State Trials,) ought never to be drawn into Example; but only to ſhew what the Opinion of thoſe Times was.

That the Opinion of the Judges in Lord *Delamere*'s Caſe doth not affect the preſent Queſtion. For the only Queſtion propoſed to the Judges was, whether in the Trial of a Peer in the Court of the Lord High-Steward, the Court might, after Evidence given, adjourn the Peers Triers from Day to Day. The Judges did not preſume to anſwer that Queſtion, it being a Point of Judicature of which that Court alone was the proper Judge. But they did ſay, that in the Caſe of a Common Jury ſworn and charged, they ought to give their Verdict before they are diſcharged: Meaning only, that a Jury in a Capital Caſe cannot be adjourned and ſeparated after Evidence given, but muſt be kept together till they agree on their Verdict. The Occaſion which led them to ſay this ſheweth, that the Caſe of an Adjournment was what they had then in Contemplation, and not the Caſe of a total Diſmiſſion of the Jury. And ſo doth the Reaſon they give for the Practice; this, they ſay, is done *for fear of Tampering and Corruption*. In the Caſe of a bare Adjournment there may be Room for this Fear, but in the Caſe of a total Diſmiſſion, when no Verdict is to be given, there cannot.

They inſiſted on *Rookwood*'s Caſe (IV. State Trials) as a Caſe in Point. For had the Priſoner's Counſel taken Exceptions to the Indictment coming within the Reſtrictions of the Act of the 7th of King *William*, and had thoſe Exceptions been allowed, the Indictment muſt have been quaſhed, and the Jury, though ſworn and charged, muſt have been diſmiſſed; and yet it cannot be imagined that the quaſhing that Indictment, and diſcharging that Jury, would have diſcharged the Priſoner from anſwering to the Treaſon on a freſh Bill of Indictment.

As to the three Reſolutions reported by *Carthew*, the two laſt, they ſaid, are manifeſtly againſt Law, in the Latitude laid down in that Book. The King in a Civil Caſe may by his Prerogative withdraw a Juror, for he cannot be nonſuit; and it is frequently done in Informations in the Exchequer on account of the Revenue: And though the Court refuſed to do it in the Caſes of *Morgan* and *Jelfs*, cited on the other Side, yet in the Caſe of one *Wilkinſon*, *Paſchæ* 6 *Geo.* II. which was an Indictment for miſapplying Money raiſed on the Scavengers Rate, the Court did diſcharge the Jury at the Prayer of Mr. Juſtice *Abney*, then one of the King's Counſel, without the Defendant's Conſent.

It is objected, that a Priſoner may be drawn into a Conſent to his own Prejudice: But certainly a Priſoner may do much more than conſent, he may abandon all Defence, he may plead Guilty. He may on his Trial wave all his Challenges, and put himſelf on the firſt Twelve that ſhall appear. An Acceſſory cannot be brought to his Trial before the Principal is convicted or outlawed; (2. *Hale* 224.) But if he pleaſeth, he may wave that Privilege, and ſubmit himſelf to a Trial, and it ſhall not be Error, *becauſe he conſented*. Beſides, in the preſent Caſe, what was done was at the Prayer of the Priſoners, and, as the Court then took the Caſe, manifeſtly for their Advantage.

Caſes may happen, where the Court, *ex debito Juſtitiæ*, and out of Regard to the Priſoner, ought to diſcharge the Jury, (1 *Hale* 35.) and poſtpone the Trial. The Caſe put by Lord *Hale* of a Madman putting himſelf on his Trial is ſtrong to this Purpoſe. And other Caſes of the like kind may be put.

On the whole, they prayed Judgment for the King.

Sir *John Strange* cited a Record of *Hilary* 8. *H.* VII. *Rot.* 3. a Copy whereof he brought into Court. It was an Indictment for Murder, and Not Guilty pleaded. The Jury having heard all the Evidence, withdrew to conſider of their Verdict, and being returned, delivered their Verdict into Court in Writing. And being examined by the Court how they came by that Writing, confeſſed that it was delivered into their Hands by the Priſoner at the Bar as they paſſed by him. The Court thereupon diſcharged the Jury of the Priſoner, and committed them for this Miſbehaviour. And a new Venire was awarded. And the ſecond Jury brought him in Not Guilty.

The Arguments being long, and the Day far ſpent, the Court deferred giving their Opinion to the 20th.

December 20, 1746. On this Day, preſent the ſame Judges as on the 15th, the Court delivered their Opinions *ſeriatim*. And all except one *(Wright)* agreed that Judgment ought to paſs upon the Priſoners They agreed, That admitting the Rule laid down by Lord *Coke* to be a good general Rule, yet it cannot be univerſally binding: Nor is it eaſy to lay down any Rule that will be ſo. The Rule cannot bind in Caſes where it would be productive of great Hardſhip or manifeſt Injuſtice to the Priſoner.

In the preſent Caſe, the Priſoners were adviſed upon their Trial to object to the Juriſdiction of the Court: But having pleaded to Iſſue, it was ſaid that they were too late with that Objection. In order therefore to let them into the Benefit of this Objection, Liberty is given them, at their Requeſt, to withdraw their Plea of Not Guilty, before Evidence given, and to plead to the Juriſdiction. Now the Plea of Not Guilty being withdrawn, the Jury had no Iſſue to try, nor Evidence before them, and muſt of courſe therefore be diſcharged; and conſequently the Priſoners have no Right to complain of that which was a neceſſary Conſequence of an Indulgence ſhewn them by the Court.

The Judges who concurred in this Opinion paid very little Regard to the Reſolution reported by *Carthew*; not only for the Reaſons inſiſted on by the Counſel for the Crown, but becauſe, as no other printed Report of that Time taketh any Notice of this Reſolution, it is very doubtful whether there ever was any ſuch Reſolution or no; eſpecially ſince Mr. Baron *Clarke* informed the Court that he hath a MS. Report of the late Lord Chief-Juſtice *Eyre* of the Caſe of the King and *Perkins*, in which Caſe *Carthew* ſuppoſeth *Holt* to have reported this Reſolution.

The Caſe was thus: *Perkins* was indicted for Perjury in an Anſwer in Chancery: The Iſſue came on to be tried before *Holt* at the Sittings in *Guildhall* the ninth Day of *November* 1698. When the Bill was produced by the Counſel for the Proſecution in order to intitle them to read the Anſwer, it appeared that the Bill had never been filed, ſo that neither Bill or Anſwer could be read. *Holt* offered to ſtay till the Proſecutors could ſend the Bill to the Office and have it filed. But they foreſeeing that it could not be done in any reaſonable Time, their Counſel inſiſted on behalf of the Crown, upon withdrawing a Juror; *Holt* would not allow of it, and the Defendant was acquitted.

Holt upon this Occaſion ſaid, "I have had Occaſion to conſider of this "Matter. In Criminal Caſes, a Juror cannot be withdrawn but by "Conſent. And in Capital Caſes it cannot be done, even with Conſent."

This is the whole of the Caſe as reported by *Eyre*, not a Word of any Reſolution of the Judges on the Point. And *Holt*'s Manner of Expreſſion, *I have had Occaſion to conſider*, ſeemeth to imply that the Opinion he gave was the Reſult of his own Thoughts on the Subject.

With regard to *Tracy*'s MS. it was obſerved by Mr. Juſtice *Abney*, that *Tracy* was * not an *Engliſh* Judge at the Time the Judges are ſuppoſed to have come to theſe Reſolutions, or even ſo early as the Year 1698. And therefore he muſt have taken up the Matter upon Report at ſecond-hand.

They all agreed that the Opinion of the Judges in Lord *Delamere*'s Caſe doth not affect this Queſtion, for the Reaſons inſiſted on by the King's Counſel; and joined in condemning the Proceedings in the Caſe of *Whitebread* and *Fenwick*, as cruel and illegal.

The learned Judge *(Wright)* who diſſented, admitted that the diſcharging the Jury in the preſent Caſe was an Inſtance of great Indulgence towards the Priſoners. But he thought it ſafer to adhere to the Rule of Law, which is clearly laid down by Lord *Coke*, than upon any account to eſtabliſh a Power in Judges, which it is admitted hath been groſsly abuſed, and may be ſo again.

He obſerved, that *Manſell*'s Caſe was the firſt, and except the preſent, is the only Caſe wherein the Priſoner's Conſent appears to have been taken: And that the aſking the Priſoner's Conſent in *Manſell*'s Caſe plainly betrayeth a Conſciouſneſs in the Judges that the Thing was irregular, and could not be done at the Diſcretion of the Court.

Caſes he ſaid have been put where the Circumſtances of the Priſoner ſeem to require that ſuch a Power ſhould be lodged in the Court. And other Caſes may be put, where publick Juſtice ſeemeth to require the ſame. But theſe are particular and ſingle Inconveniencies. And the Policy of the Law of *England*, and indeed the true Principles of all Government, will rather ſuffer many private Inconveniencies than introduce one publick Miſchief.

He conſidered the Trial by the ſame Jury which is ſworn and charged with the Priſoner, as Part of the *Jus Publicum*; as a ſacred *Depoſitum* committed to the Judges, which they ought to deliver down inviolate to Poſterity. And concluded, that the Trial on the 29th being irregular, no Judgment ought to be given on that Conviction.

But Judgment was given as in Caſes of High-Treaſon.

Mr. Juſtice *Foſter* delivered his Opinion in this Caſe as followeth:

This Caſe hath been very well argued at the Bar; but the Counſel on both Sides went into the general Queſtion, touching the Power of the Court to diſcharge Juries ſworn and charged in capital Caſes, farther than I think was neceſſary.

The general Queſtion is a Point of great Difficulty, and of mighty Importance. And I take it to be one of thoſe Queſtions, which are not capable of being determined by any general Rule that hath hitherto been laid down, or poſſibly ever may be. For I think it is impoſſible to fix upon any ſingle Rule which can be made to govern the infinite Variety of Caſes which may come under this general Queſtion, without manifeſt Abſurdity; and in ſome Inſtances, without the higheſt Injuſtice.

I therefore chooſe to conſider the preſent Queſtion ſingly as it ſtandeth upon the Record, and to throw out of it every Conſideration that is foreign to it. And poſſibly by ſo doing, moſt of the Objections that have been made in the preſent Caſe may receive this ſhort Anſwer, That they are levelled at an improper Exerciſe of the Power, but do not reach the preſent Caſe.

The Queſtion therefore is not, Whether a Jury may be diſcharged after Evidence given, in order to the preferring a new Indictment better ſuited to the Nature of the Caſe; where, through the Ignorance or Colluſion of the Officer, or the Miſtake of the Proſecutor, the Fact laid varieth from the real Fact, or cometh ſhort of it in Point of Guilt?

This was frequently done before the Revolution, *(Keil.* 46. 52. *Comb.* 401.) and in one or two † Inſtances ſince. But this is not the preſent Queſtion.

Nor is the preſent Queſtion, Whether the Court may diſcharge a Jury ſworn and charged, where undue Practices appear to have been uſed to keep material Witneſſes out of the Way; (1. *Vent.* 69.) or where ſuch Witneſſes have been prevented by ſudden and unforeſeen Accidents?

* He was an *Iriſh* Judge at this Time.

† See *Anne Hawkins*'s Caſe, inf.

This likewiſe is not the Queſtion, and I give no Opinion on it; only let it be remembered, that Lord Chief-Juſtice *Hale* juſtifieth this Practice, (2. *Hale*, 295, 296, 297.) which he ſaith prevailed in his Time, and had long prevailed, by ſtrong Arguments drawn from the Ends of Government and the Demands of public Juſtice.

Nor is it now a Queſtion, nor I hope will it ever be a Queſtion again, Whether in a Capital Caſe the Court may in their Diſcretion diſcharge a Jury after Evidence given and concluded on the Part of the Crown, merely for Want of ſufficient Evidence to convict; and in order to bring the Priſoner to a ſecond Trial, when the Crown may be better prepared.

This was done in the Caſe of *Whitebread* and *Fenwick*, (II. State Trials) and it was certainly a moſt unjuſtifiable Proceeding. I hope it will never be drawn into Example.

Nor is the preſent Queſtion, Whether the bare Conſent of the Priſoner, unaſſiſted by Counſel, and conſenting to his own Prejudice, will render the Court quite blameleſs in diſcharging a Jury after Evidence on both Sides gone through and concluded?

This was done in the Caſe of *Manſell* (1 *Ann.* 103.) which hath been cited at the Bar. But I think it ought not to have been done; for notwithſtanding what the Record ſaith of the Uncertainty and Inſufficiency of the Verdict, the Truth of the Caſe was no more than this: The Jury were not agreed on any Verdict at all; and therefore nothing remained to be done by the Court, but to ſend them back, and to keep them together, 'till they ſhould agree to ſuch Verdict as the Court could have received and recorded; and the Priſoner ought not to have been drawn into any Conſent at all: For in Capital Caſes I think the Court is ſo far of Counſel with the Priſoner, that it ſhould not ſuffer him to conſent to any Thing manifeſtly wrong, and to his own Prejudice.

I thought proper to premiſe theſe Things, in order to clear the preſent Queſtion of every Conſideration which I take to be foreign to it.

And now I will ſtate what I take to be the preſent Queſtion: And that is,

Whether in a Capital Caſe, where the Priſoner may make his full Defence by Counſel, the Court may not diſcharge the Jury upon the Motion of the Priſoner's Counſel, and at his own Requeſt, and with the Conſent of the Attorney General before Evidence given, in order to let the Priſoner into a Defence, which, in the Opinion of the Court, he could not otherwiſe have been let into.

And I am clearly of Opinion that a Jury may in ſuch a Caſe be diſcharged. And that the diſcharging the Jury under theſe Circumſtances, will not operate ſo as to diſcharge the Priſoner from any future Trial for the ſame Offence.

It ſeems that an Opinion did once prevail, that a Jury once ſworn, and charged in any Criminal Caſe whatſoever, could not be diſcharged without giving a Verdict; but this Opinion (*Ray*, 84.) is exploded in *Ferrar*'s Caſe; and it is there called a *Common Tradition* which had been held by many learned in the Law.

My Lord *Coke* was one of thoſe learned Men who gave into this Tradition, as far at leaſt as concerneth Capital Caſes: And he layeth down the Rule in very general Terms, in the Paſſages which have been cited on Behalf of the Priſoners from his firſt and third Inſtitutes.

The ſame Rule is laid down in *Hale*'s Summary of the Pleas of the Crown (p. 269.); a very faulty, incorrect Piece, never reviſed by him, nor intended for the Preſs.

But as his Lordſhip, in his Hiſtory of the Pleas of the Crown, juſtifieth the contrary Practice, his Authority is clearly on the other Side of the Queſtion. And his Authority is the more to be regarded, becauſe he had ſeen and well conſidered the Paſſages cited from Lord *Coke*; though I believe the Rule, as it ſtandeth in his Summary, hath contributed not a little to the confirming many People in *Coke*'s Opinion.

My Lord *Coke* layeth down the Rule in very general Terms; but he hath not given us any of the Principles of Law or Reaſon whereon he groundeth it. He hath indeed, in his firſt Inſtitute, cited one, and but one Authority, in Support of it, and that Authority doth not, to my Apprehenſion, in the leaſt warrant it.

A Man was indicted for Larceny, (21 *E.* III. 18.) and upon his Arraignment pleaded Not Guilty, and put himſelf upon the Country: And afterwards, when the Jury was in Court, he prayed the Liberty to become an Approver, and this was denied him; for when Iſſue is joined, it ought to be tried. And he was tried, and found Guilty, and hanged.

This is the Whole of that Caſe. Here is not the leaſt Intimation given of any general Principle, that a Jury once ſworn and charged cannot be diſcharged without giving a Verdict; nor did the Court, as I apprehend, go upon that Principle: It went upon a Principle quite different, a Principle adapted ſolely to the Caſe then before the Court, which I ſhall mention preſently.

Indeed *Fitzherbert* (Corone 449.) who abridgeth this Caſe, doth ſay, that the Reaſon of the Judgment was, that the Inqueſt having been once charged, could not be diſcharged: Which poſſibly might induce Lord *Coke* to draw the ſame Concluſion from that Caſe.

But the Reaſon given by *Fitzherbert* is not the Reaſon given in the Book; nor doth it ſo much as appear by the Book that the Jury was ſworn. The Words of the Book are, "*Apres quant l' Enqueſt fuit icy*," afterwards when the Jury was here, or in Court, whether ſworn or not doth not appear by the Book. But whether the Jury was ſworn or not, there was not the leaſt Occaſion to reſort to any general Principle, *That a Jury once ſworn cannot be diſcharged*; becauſe there was, as I hinted before, another Rule at hand adapted to the Caſe of an Approver, which I think wholly governed that Caſe.

And the Rule was this; That a Perſon who had once pleaded to Iſſue, could not after that be admitted to a Confeſſion in order to ſave his own Life, by charging other Perſons ſuppoſed to be his Accomplices in the ſame Fact. For by once ſolemnly denying the Fact upon his Arraignment, he had, in the Opinion of thoſe Times, loſt all Credit, and ſo could not be received as an Evidence againſt other People.

This Rule is laid down by *Stamford*, (Pl. Cor. 144. B. Bro. Corone 42.) and it prevailed for a long Time: And 'tis obſervable, that *Brooke*, who abridgeth this very Caſe, carrieth the Reaſon the Court went upon no farther than the Law then went in the Caſe of an Approver: His Words are, "A Man was arraigned for Felony and pleaded Not Guilty, "and afterwards would have become an Approver, and was not ſuffered, "becauſe he had joined Iſſue before." Not becauſe the Jury was ſworn, and could not be diſcharged, but becauſe he had, on his Arraignment, denied the Fact.

Thus then ſtandeth the Caſe with regard to the ſingle Authority cited by Lord *Coke*: The Judgment did not go upon the general Principle laid down by him and *Fitzherbert*, but upon a Principle peculiar to the Caſe of an Approver.

It muſt be owned, that the Judges did in After-times abate of their Rigour with regard to the Caſe of Approvers: and did admit Perſons to the Liberty of approving, not only after Iſſue joined, but even after the Jury was ſworn and Evidence in part given; but ſeldom after the Evidence gone through and concluded; as appeareth from ſeveral Inſtances mentioned by Lord *Hale*. 2. *Hale*, 288.

But then it muſt be owned, on the other hand, that whenever they did ſo, they went in flat Contradiction to the general Rule laid down by *Coke* and *Fitzherbert*.

I will only add, with regard to this Point, That the admitting, or not admitting Perſons to become Approvers, was always conſidered as a Matter of mere Diſcretion in the Court; as a Matter of Grace and not of Right. And yet we ſee that in a Matter of mere Diſcretion, the Court did frequently, upon the ſpecial Circumſtances of the Caſe, diſcharge Juries after they were ſworn and charged, and had in Part heard the Evidence.

Theſe Inſtances therefore muſt be conſidered as ſo many Exceptions to the General Rule: Though I confeſs they do not come up to the Caſe of diſcharging one Jury, and bringing the Priſoner to his Trial by another.

But ſtill they ſhew that the Rule now contended for on the Part of the Priſoners cannot be true, in the Latitude the Words import. And I think they do in Part ſhew, what I hinted in the Beginning, that no General Rule can govern the Diſcretion of the Court on this Queſtion in all poſſible Caſes and Circumſtances.

But this will appear in a ſtronger Light in thoſe Caſes where the Circumſtances of the Priſoner appear on his Trial to be ſuch, as that the Trial cannot proceed without manifeſt Injuſtice to him.

A great Variety of Caſes might be put upon this Head. But as this is a Point which ought to be treated with great Caution, I think it ſafer to cite a Caſe which I find ſtated to my Hand, than to ſuppoſe and argue from any Caſes of my own.

The Caſe I mean is that put by Lord *Hale* (1. *Hale*, 35.) which was mentioned the laſt Time at the Bar.

"In caſe a Man in a Phrenzy happen by ſome Overſight to plead to "his Indictment, and put himſelf on his Trial; and it appeareth to the "Court on his Trial that he is mad, the Judge in Diſcretion may diſ-"charge the Jury of him; and remit him to Gaol to be tried after the "Recovery of his Underſtanding."

But without reſorting to Authorities in a plain Caſe, the common Senſe and Feeling of Mankind, the Voice of Nature, Reaſon and Revelation, all concur in this plain Rule, that no Man is to be condemned unheard; and conſequently no Trial ought to proceed to the Condemnation of a Man, who by the Providence of God is rendered totally incapable of ſpeaking for himſelf, or of inſtructing others to ſpeak for him. And common Senſe will at the ſame Time tell us, that the bare poſtponing a Trial under theſe Circumſtances, will not diſcharge the Priſoner from a future Trial, when his preſent Diſability ſhall be removed.

This Caſe is ſurely an Exception to any general Rule that the Wit of Man can lay down on this Point.

Another Caſe which I take to be an Exception to the general Rule contended for in Behalf of the Priſoners, is, when by the Indulgence of the Court, and the Conſent of the Attorney-General, the Trial of the Iſſue goeth off after the Jury ſworn and charged; in order to intitle the Priſoner to ſome Advantage in Point of Defence, which in the Rigour of the Law he could not otherwiſe be entitled to.

And this, I apprehend, appeareth from the Caſe of *Rookwood* (IV. State Trials), which alſo was cited at the Bar.

In that Caſe the Jury was ſworn and charged, and the Indictment opened by the King's Counſel. The Priſoner's Counſel then offered ſome Exceptions to the Indictment, apprehending, as they ſaid, that ſince the Act of 7th King *William* declareth that the Exceptions therein mentioned ſhall not be taken after Evidence given, the Priſoner, by a favourable Conſtruction of the Act, had Liberty to take Exceptions at any Time before Evidence.

The Court was unanimouſly of Opinion, that the Priſoner's Counſel had lapſed their Time for taking any Exceptions at all. That the proper Time for taking Exceptions is before Iſſue joined, or at leaſt before the Jury ſworn.

And yet it being a Caſe of Life, and on a new Act of Parliament, the Court did agree that in that Inſtance only, the Counſel ſhould be at Liberty, with the Conſent of the Attorney-General, to take their Exceptions; confining themſelves to the Exceptions mentioned in the Act, of which they could not have the Benefit in Arreſt of Judgment.

The Priſoner's Counſel declined to enter into their Exceptions under that Reſtriction, and ſo the Trial went on. But had Exceptions under the Reſtrictions of that Act been taken and allowed, the Indictment muſt have been quaſhed; and the Jury then ſworn and charged muſt have been diſcharged without giving a Verdict.

Lord Chief-Juſtice *Holt* did not come readily into the Expedient propoſed by the reſt of the Judges, of letting the Priſoner's Counſel into their Exceptions, even with the Conſent of the Attorney-General: And in the Concluſion declareth, that the Attorney could not conſent to it, (IV. State Trials, 666.) unleſs he would alſo conſent to diſcharge the Jury.

Theſe are his Words, as I have taken them from the printed Trial. His Lordſhip ſurely at that Time entertained no Doubt, that at the Prayer of the Priſoner and his Counſel, and with the Conſent of the Attorney-General, a Jury ſworn and charged in a Caſe of High Treaſon might be diſcharged. The other Judges preſent (who were the Lord Chief-Juſtice of the Common Pleas, the Lord Chief Baron, and four of the puiſne Judges) muſt certainly be of the ſame Opinion; otherwiſe they would never have given Way to the taking of Exceptions, which, if they had been allowed, muſt have ended in diſcharging the Jury; and at the ſame Time could not in the Nature of Things have operated, ſo as to diſcharge the Priſoner from anſwering to another Indictment for the ſame Offence.

It is ſaid, on the Authority of a very ſhort and imperfect Note in *Carthew*, That in leſs than two Years afterwards, all the Judges of *England*, upon

Debate

Debate among themſelves came to a Reſolution, that in Capital Caſes a Juror cannot be withdrawn, though all Parties conſent to it.

It was very properly aſked by the Counſel for the Crown, Upon what Occaſion this Debate among the Judges was had? Whether any Caſe was then depending in Judgment before them which gave riſe to the Conference, and which was to be governed by this Reſolution, and what were the particular Circumſtances of that Caſe, if any ſuch there was? Theſe Queſtions, I ſay, were very properly aſked. For the true Extent of all Rules of this kind, however generally they may be penned, is, and always will be, in a great meaſure, adjuſted by the Circumſtances of the Caſe under Conſideration, at the Time when the Rule appears to be given.

It ſeems Endeavours have been uſed to come at the neceſſary Light in theſe Particulars, but to no Purpoſe. Only it is ſaid upon the Authority of a MS. of a late learned Judge *(Tracy)*, that this Reſolution, among others, was taken upon a Conference among the Judges in relation to an Indictment againſt the then Sheriffs of *London* for a bare Miſdemeanour; but what were the Circumſtances of that Caſe, or what became of it, doth not appear. And therefore I freely own, this extrajudicial Opinion (for with regard to Capital Caſes it is extrajudicial) weigheth very little with me in the preſent Queſtion; and doth by no means ſhake the Authority of *Rookwood*'s † Caſe, which I take to be a Caſe *very* nearly in point with the preſent; and moreover was a Caſe where the Point did judicially come before the Court, and in which the Court had the Aſſiſtance of very able Counſel on both Sides of the Queſtion.

The only Difference between the Caſes is this: *Rookwood* could not have had the Benefit of his Exceptions without the Indulgence of the Court, and Conſent of the Attorney General; whereas the Priſoners at the Bar might, in my Opinion, have had the full Benefit of their Point of Law without either. I need not repeat what I ſaid on this Head the laſt Time I ſpoke of this Matter. But as a Doubt aroſe on that Point, the Expedient now under Conſideration was thought of. This Expedient the Court came into at the Prayer of the Priſoners and their Counſel, and with the Conſent of the Attorney General.

Not to bring the Priſoners Lives twice in Jeopardy, (which is one great Inconvenience of diſcharging Juries in Capital Caſes) but merely in order to give them one Chance for their Lives, which it was apprehended they had loſt by pleading to Iſſue.

Nor was it done to poſtpone their Trials to an unreaſonable Diſtance, when their Witneſſes might be dead or wearied out by a long and expenſive Attendance, (which is another great Inconvenience which may attend the diſcharging of Juries at Diſcretion, and was an Ingredient of great Hardſhip in the Caſe of *Whitebread* and *Fenwick)* but in order to bring them to a Trial with all the Speed that might be, in caſe their Plea ſhould be over-ruled. And accordingly they were tried the very next Day, as ſoon as Judgment was given on their Plea.

Upon the whole, my Opinion is, that all general Rules touching the Adminiſtration of Juſtice muſt be ſo underſtood, as to be made conſiſtent with the fundamental Principles of Juſtice. And conſequently all Caſes where a ſtrict Adherence to the Rule would claſh with thoſe fundamental Principles, are to be conſidered as ſo many Exceptions to it. The Caſes I have mentioned, and many others that might be mentioned, are Exceptions to the general Rule inſiſted on in behalf of the Priſoners.

The Caſe at Bar is I think an Exception to that Rule; and at the ſame time ſtandeth clear of the Inconveniencies mentioned by the Priſoners Counſel.

The diſcharging the Jury in this Caſe was *not* a Strain in favour of Prerogative, it was not done to the Prejudice of the Priſoners; on the contrary, it was intended as a Favour to them.

In that Light I ſay it was conſidered by the Court, in that Light it was conſidered by the Priſoners and their Counſel, and accordingl they prayed it; and in that Light *Mr. Attorney General*, with his uſual Candour, conſented to it.

And in that Light I know of no Objection in point of Law or Reaſon to it. And therefore I am of Opinion that Judgment ought not to be arreſted.

The Difference of Opinion in the Court relating to their Caſes, it is thought ſaved their Lives; for they were not executed, but pardoned, on Condition of being ſent abroad.

XXXVII. The Trial of James Bradshaw, at St. *Margaret*'s *Hill*, *Southwark*, *October* 27, 1746. for High-Treaſon.

JAMES BRADSHAW was indicted for High Treaſon, *&c.* The Counſel for the King opened the Indictment, that the Priſoner at the Bar ſtood indicted by the Name of *James Bradſhaw*, for High-Treaſon, in compaſſing and imagining the King's Death, adhering to his Majeſty's Enemies, and levying (with other falſe Traitors) a cruel and deſtructive War in theſe Kingdoms, &c. And the Treaſon was laid to be committed on the 10th of *November*, at *Carliſle*, in the County of *Cumberland*, in the nineteenth Year of his Majeſty's Reign, againſt the Duty of his Allegiance, againſt the King's Peace, and the Forms of the Statute, *&c.*

Then Sir *John Strange* ſet forth, that the Priſoner, contrary to his Allegiance to our Sovereign Lord King *George* the Second, met at *Manchеſter* to raiſe a Regiment, which the Pretender intended to diſtinguiſh by the Name of the *Manchеſter* Regiment, of which *Townley*, who was lately executed, was made Colonel, and that the Priſoner *Bradſhaw* accepted of a Captain's Commiſſion in the ſaid Regiment, and acted as ſuch; that afterwards he marched with the ſaid Regiment to *Derby* in a hoſtile Manner, and in a Highland Dreſs, armed with Piſtols and a Sword, a white Cockade on his Bonnet: That he paid his Company and exerciſed them: That afterwards he retreated with the Rebel Army from *Derby* to *Manchеſter*, and from thence to *Cliſton-Moor*, where he in a Skirmiſh headed his Men againſt the Duke's Troops: That when he came to *Carliſle* he often waited on the Young Pretender's Levee: That when the Rebels found themſelves cloſely purſued by his Royal Highneſs the Duke of *Cumberland*, there was a Counſel of War directly held amongſt them, which Part of their Army ſhould march for *Scotland*, and what Number ſhould ſtay in the Garriſon at *Carliſle*, to ſecure a Retreat for the reſt of the Rebels.

The Priſoner, to purſue his avowed Diſloyalty to the preſent happy Eſtabliſhment, deſired he might go on with the Rebels to *Scotland*, and accordingly did go with them in their Route to *Glaſgow*, was at the Battle of *Falkirk*, where was ſuch a Storm of Hail and Rain, that his Majeſty's Men could not prime or diſcharge their Pieces: From thence he marched with the Rebel Army to *Sterling*, thence to *Perth* and *Strathbogie*, and finally was at *Culloden Moor*, in the Lord *Elcho*'s Troop of Horſe, commonly called the Pretender's Life-Guards, where he was taken a Priſoner by his Majeſty's Troops.——To prove which he called the following Witneſſes.

Samuel Maddox being ſworn, ſaid, that Mr. *Bradſhaw*, the Priſoner, was at the *Bell* in *Manchеſter* (the Young Pretender being preſent) where was a Conſultation to raiſe a Regiment of Foot, for which Mr. *Murray*, the Pretender's Secretary, delivered a Commiſſion for that End; and that *Francis Townley*, a Roman Catholick Gentleman, was appointed Colonel of the ſaid Regiment, which was to be called the *Manchеſter* Regiment; and that Mr. *Bradſhaw* was nominated Captain, and himſelf (Mr. *Maddox)* was alſo appointed an Officer; that afterwards he enlиted ſeveral private Men and Volunteers into the ſaid Corps; that he ſaw the Priſoner march with the Rebel Army to *Derby*, and from thence back again to *Manchеſter* (when they found his Royal Highneſs the Duke of *Cumberland*'s Army was near them), and from thence to *Carliſle*, in a Highland Dreſs, with Piſtols and a Sword by his Side, and a White Cockade in his Bonnet: That at *Carliſle*, when the Young Pretender had ſent for the Officers of the *Manchеſter* Regiment, to take his leave of them, and to direct them how to act if attacked by his Majeſty's Forces, the Priſoner was there in the Chamber; but on account of ſome Miſunderſtanding between him and *Townley*, the Priſoner refuſed to ſtay behind with the Rebel Army at *Carliſle*, and deſired the Young Pretender would permit him to go on with them to *Scotland*; and that accordingly the Priſoner did march out of the Gates of *Carliſle* to go with the Young Pretender to *Scotland*.

James Patterſon being produced and ſworn, ſaid, that Mr. *Bradſhaw*, the Priſoner at the Bar, marched with the Rebel Army from *Manchеſter* to *Derby*, armed with Piſtols and Broad Swords, Drums beating, Pipes playing, Colours flying, and retreated with them from *Derby* to *Manchеſter*, and from thence to *Carliſle*, which Place he left (upon ſome Diſcontent with Col. *Townley*, who commanded the *Manchеſter* Regiment under the Young Pretender) to go in the Rebel Army, and then he engaged a Volunteer in Lord *Elcho*'s Troop of Horſe Guards, who were eſteemed the Life-Guards to the Young Pretender.

Henry Gibſon was alſo produced and ſworn, who ſaid, that he himſelf was unfortunately ſeduced into the Rebel Army, and entered into Lord *Elcho*'s Troop of Horſe Guards; that the Priſoner, Mr. *Bradſhaw*, marched with them as a private Man in the ſaid Corps; that the Troop was drawn up at the Battle of *Culloden*, and that he there ſaw the Priſoner on Horſe-back in the ſaid Troop, with Piſtols, and a broad Sword by his Side, and a white Cockade, and that he continued with the ſaid Troop till he was taken Priſoner by his Royal Highneſs the Duke of *Cumberland*'s Army.

Then Captain *Moore*, an Officer in the Duke of *Cumberland*'s Army was examined on Oath, and gave the Court the following Account of the Priſoner: That he ſaw the Priſoner (whom he had been acquainted with at *Manchеſter*) beyond the Wood of *Culloden Moor*, and told him, that he was ſorry to ſee him in ſuch bad Company, having had Orders from his Royal Highneſs the Duke of *Cumberland* to take an Account of all the Officers and Soldiers that ſhould be made Priſoners; that Mr. *Bradſhaw*

† See IV. State Trials, and *Holt*'s and *Tracy*'s Opinion in 1704, in the Caſe of *Anne Hawkins*, were as followeth:

Mr. Juſtice *Tracy*'s MS. having been cited in the foregoing Caſe by the Priſoner's Counſel, and taken ſome Notice of by the Court, I think it not amiſs to ſubjoin from the ſame MS. which I had not then ſeen, a Report of the following Caſe:

" At the Seſſions at the *Old Bailey* before *Eaſter* Term 1704, *Anne Hawkins* was indicted for breaking the Manſion-houſe of *Samuel Story* in the Night-time. It appeared " on Evidence that the Houſe belonged to the *African* Company; that *Story* was an Officer of the Company, and that he and many other Perſons, as Officers of the Com- " pany, had ſeparate Apartments in the Houſe in which they inhabited and lodged; and that the Apartment of *Story* was broke open. It was held by *Holt* Chief Juſtice, " myſelf, and Baron *Bury*, that the Apartment of *Story* could not be called his Manſion-houſe, becauſe he and the others inhabit in the Houſe merely as Officers and Servants " of the Company; and thereupon the Jury was diſcharged of this Indictment, and it was amended, and laid to be the Manſion-houſe of the Company."

The Record hath been looked into; it warranteth the Report of the learned Judge in the ſubſtantial Parts of it, though in ſome Points it is defective. Two Bills were in fact preferred againſt the Woman; the firſt for Burglary and Larceny in the Dwelling-houſe of *Samuel Story*, to which ſhe pleaded Not Guilty, and put herſelf upon the Country; the ſecond for Burglary and Larceny in the Manſion-houſe of the *African* Company, in which ſhe is charged to have committed the Burglary upon the ſame Day, and to have ſtolen the very ſame Goods, as in the former Bill.

It appeareth upon this ſecond Bill, that ſhe was acquitted of the Burglary and found guilty of the Larceny. But it doth not appear by any Entry on the firſt, that the Court proceeded on it farther than the receiving and recording her Plea, and remanding her to *Newgate*, probably 'till the ſecond amended Bill could be prepared and ſent to the Grand Jury. But certainly it is more reaſonable to impute this Defect to the Neglect of the Officer who omitted to make the proper Entry, than to imagine that the learned Judge was totally miſtaken in a plain Matter of Fact, falling within his own Knowledge.

Another Circumſtance which may beget ſome Doubt, might be, and probably was, owing to mere Accident. The firſt Bill is now found upon the File among the Indictments of the then next preceding Seſſions *(March* 8th 1703). But it ought to be remembered that neither *Holt*, *Tracy* nor *Bury* attended at that time; and that it appeareth by the Record, that they all did attend at the following Seſſions. At which Time, according to the Judge's Report, the Point came under Conſideration, upon Evidence given on the firſt Bill, and the ſecond amended by the Direction of the Court was preferred.

ſaid he was a Captain in the *Manchester* Regiment, but afterwards (on the Road to *Inverneſs*) he ſaid that he belonged to Lord *Elcho*'s Troop of Life-Guards.

After they had gone through the Witneſſes for the Crown, Mr. *Fodrell* and Mr. *Ford*, who were Counſel for the Priſoner, ſtood up and pleaded on his Behalf, admitting that what the Evidence for the King had ſaid was true, that the Priſoner did unfortunately engage himſelf in the Rebel Army, and did march with them from *Manchester* to *Derby*, and from thence retreated with them to *Manchester*, and ſo on to *Carliſle*, and then accompanied them to *Scotland*, until they came to *Culloden Moor*, where he was taken Priſoner; but that the unfortunate Gentleman at the Bar, had been troubled with an Inſanity of Mind, from his Youth, ſo that he was *Non Compos Mentis*, and conſequently, if they ſhould prove it, he could not be deemed guilty of the High Treaſon laid in the Indictment: For, ſaid they, he hath been melancholy from his Childhood, and in his Apprenticeſhip endeavoured to deſtroy himſelf by flinging himſelf out of the Window; and we ſhall be able to prove that once he did fling himſelf out of the Window, that he attempted to kill the worthy Gentleman his Maſter, that he hath been confined in a Madhouſe for theſe Lunatick Pranks, that after the Expiration of his Apprenticeſhip he married a fine Lady, whom he dearly loved, and on whoſe Death his Inſanity of Mind increaſed; that the Rebels eſteemed him no other than a Lunatick, firſt giving him the titular Name of a Captain in their *Manchester* Regiment, where he ſometimes marched in the Columns, and ſometimes rambled from them, and at other times a private Man in Lord *Elcho*'s Troop of Horſe, and ſometimes he was left behind. We ſhall likewiſe, ſays he, be able to prove to your Lordſhips Satisfaction, and the Court, that this unfortunate Gentleman, after the Death of his only Son, was in ſuch a mad Condition, that he was ſtrapp'd down to his Bed, and a Watch ſet over him, to prevent him from injuring himſelf, and thoſe about him; and quoted a Caſe from Lord Chief Juſtice *Hale*, wherein it is mentioned, that a Perſon inſane in Mind cannot be deemed Guilty of Treaſon or Felony.

Then *Thomas Buerdſell* was called and ſworn, who ſaid, that he ſerved his Apprenticeſhip with the Priſoner, to Mr. *Worral*, a *Manchester* Factor in *Lawrence-lane*, in *London*; that when he came out of his Time he went down to *Manchester* to ſet up for himſelf with a handſome Fortune; that in Part of his Apprenticeſhip he lay in the ſame Bed with the Priſoner, who uſed often to jump out of the Bed, and ſkip about the Room, like a Madman, and ſeveral times attempted to jump out of the Window; that he (the Evidence) was in danger of his Life, and particularly, one time he caught him by the Throat, in ſuch a manner as had like to have deſtroyed him, whereupon he complained to his Maſter, who ordered them ſeparate Beds: that at another time, his Maſter called him to an account, to ſettle the Books, and make up his Caſh, when the Priſoner attempted to ſtab his Maſter with a Penknife, and that he was diſcharged from his Maſter before the time of his Apprenticeſhip was out.

Croſs-Examined.

The Witneſs admitted that he did Buſineſs ſometimes very regular for his Maſter; and that he was deficient in his Caſh; but that he (the Witneſs) was obliged to put the Poker, Tongs, Fire-ſhovel, and Chairs out of the Room, to prevent him from doing any Miſchief, and that he uſed to walk in his Sleep.

Then the Judge aſked this Witneſs, if the Priſoner uſed to get drunk? which he could not deny.

John Davis was examined, and ſaid, he had known the Priſoner ſixteen Years; that he uſed to be out of his Mind in the Night, and heard him make a Noiſe inwardly; and that he was often ſtrapp'd down; but being croſs-examined by the Attorney General, he admitted that his being ſtrapp'd down was to prevent him from walking in his Sleep; and that the Priſoner uſed to help to fix the Straps, which in the Morning he uſed to unlooſe himſelf.

Charles Jernagan ſaid, that there were Iron Bars put in the Window to prevent the Priſoner from jumping into the Streets, and that he was often ſtrapp'd down for the like Conſequences. He often appeared in the Day-time melancholy, and had on him the Symptoms of a Man out of his Mind. The Witneſs (being croſs-examined) admitted, that he kept his Books regular, that he drew Bills of Exchange that were always honoured by his Correſpondents, who made no Heſitation on account of his Infirmity; but at other times he was attended by the Doctors for his Diſorder of Mind.

A Clergyman, Brother-in-law to the Priſoner's deceaſed Wife, ſaid the Priſoner was diſordered in his Mind, that he often laid with him, that he was ſtrapp'd down in the Night, to prevent him from doing Miſchief. That once he ſeized him by the Throat, and if he had not been a ſtrong Man, he would have killed him; and that he once jumped out of the Window and bruiſed himſelf.

Being croſs-examined by the Attorney General, if his being ſtrapp'd down was not to prevent his hurting himſelf in his Sleep, and if he did not uſe to walk in his Sleep? the Witneſs appeared puzzled to anſwer the Queſtion, 'till the Lord Chief Juſtice demanded a categorical Anſwer, Whether his Illneſs, or Inſanity of Mind, was any otherwiſe, than from Fits, or walking in his Sleep? The Witneſs, after being aſked the Queſtion ſix or ſeven times, with ſome Heſitation anſwered in the Affirmative.

Then Mr. *Reile*, a Country Farmer, was produced and ſworn, and ſaid the Priſoner came to his Houſe, ſeven Miles from *Manchester*, ſix Months before the Rebels came there, to be retired, and take Phyſick for his Illneſs; that he did ſeveral frantick Tricks that appeared to him to be the Acts of a Lunatick; but being examined by the Sollicitor-General, what particular Inſtances he could give, he ſaid, one Day he adviſed him to plow the Field the wrong way, but could not remember any other Acts of Frenzy; but inſiſted, that he uſed to walk up and down in the Day-time melancholy, and ſometimes walked in his Sleep.

Jane Richardſon was produced and ſworn, who depoſeth, That ſhe lived a Servant-maid with the Priſoner ſeveral Years; that he was very fond of his Wife, and that in his Frenzy he uſed to come into her Room, and without Provocation tear off her Cap, and pull her by the Hair of her Head; that he uſed to be diſtracted a Week together, ſometimes would go into his Wife's Chamber, when ſhe was in Bed, and pull off all the Cloaths, and fling them about the Room; and that at *Manchester*, he had jumped out of the Window; ſo that they contrived Straps to tie him down in his Bed.

[*Here ſhe opened a Handkerchief with two Setts of Straps, and ſhewed them to the Court.*]

Theſe Straps, ſays ſhe, I made myſelf; one Sett we kept at home, to tie him down in his Bed at Nights, to prevent him from hurting himſelf, or any Body elſe; and the other Sett he carried with him when he intended to lay Abroad; that when the Rebels came to *Manchester*, and ſome of them in his Parlour, ſhe went into the Room to aſk him how he did; upon which he got up, and pulled the Cap off her Head, and that ſhe thought him a Lunatick. She farther added, That his Wife, on her Death-bed, deſired, that ſhe (the Witneſs) would live with her Huſband, on account of his Weakneſs of Mind, to take Care of him; but on account of his rough Uſage to her, ſhe had ſome Thoughts of leaving him juſt before the Rebels came to *Manchester*: She likewiſe added, that the Priſoner's Illneſs had increaſed ſince the Death of his Child.

The Counſel for the Crown not being apprized that the Priſoner would make ſuch a Defence, occaſioned ſome Debate, whether they ſhould examine more Witneſſes, and then agreed they had a Right to examine Witneſſes ſo far as to prove the Priſoner *Compos Mentis*, from the time of entering into the Rebellion, to the time of his being taken Priſoner at *Culloden*.

Sir *John Strange* then called *Samuel Maddox*; but firſt obſerved to the Court and Jury, that to him the Priſoner appeared to be the wiſeſt Man in the *Manchester* Regiment, for nothing but Madmen would enter into ſuch a Rebellion againſt ſo good and merciful a Prince, who had violated no Man's Property, and who, during a long Reign, had never invaded the Rights and Liberties of the Subject; but if an Inſtance could be given of the Wiſdom of any of thoſe People, who had madly engaged in the Rebellion, it was the Priſoner, who refuſed to ſtay with the others at *Carliſle*, where there was all the Probability that could be of their being taken by the Duke of *Cumberland*, to be delivered up to the Juſtice of their Country, ſome of whom had already been executed, and more like to undergo the ſame Fate, which the Priſoner hoped to avoid by the Retreat he made with the Rebels into *Scotland*.

Samuel Maddox being re-examined, ſaid, That the Priſoner was his Captain, and inveigled him into the Rebel Army; that being ſhort of Money, and diſcontented, the Priſoner gave him a Guinea; that he never knew the Priſoner out of his Mind; that often he uſed to ſend to *Maddox*'s Maſter, who was an Apothecary, for Medicines that were cooling, which he apprehended to be for no other uſe, than after hard Drinking; that the Priſoner had ſometimes been afflicted with Fits, but never to continue ſo as to deprive him of his Senſes, ſo as not to know whether he was, or was not, engaging in a rebellious Act.

My Lord Chief Juſtice then ſummed up the Evidence in a very learned Manner, and explained the Quotations out of *Hale*'s Pleas of the Crown; and without going out, the Jury brought the Priſoner in Guilty.

James Bradſhaw, aged 29 Years, was deſcended from very ſubſtantial and reputable Parents, his Father being a large Dealer at *Manchester* in *Lancaſhire*, who having but an only Child, (this unfortunate Perſon) he gave him a liberal Education, by putting him to the Free School, where he learnt Writing and Arithmetick, and made a conſiderable Progreſs in the Claſſicks. His Father then ſent him up to *London*, *James* chuſing to be a Tradeſman rather than go to the Univerſity, of which he had his Choice; and accordingly was bound Apprentice to Mr. *Charles Worral*, an eminent *Manchester* Factor at the *Golden Ball* in *Lawrence-Lane* near *Cheapſide*, where he continued ſix Years, well reſpected by his Maſter and the Cuſtomers, being very diligent and obliging in the Buſineſs; and by the young Gentlemen in the Neighbourhood, and through the whole Circle of his Acquaintance was very well beloved, being a very facetious, good-natured young Fellow. In the ſixth Year of his Time, a young Lady, Daughter of Mr. *Waggſtaff*, a wealthy Gentleman of *Manchester*, coming to *London* to ſee ſome of her Acquaintance as well as the Faſhions and Curioſities of this Place, Mr. *Bradſhaw* had frequent Opportunities of viſiting her, and waiting upon her to all the gay and polite Places of Diverſion which this Place afforded; he at length informed her of his Affection for her, and that his Intentions were honourable; if ſhe could like him for a Huſband, he ſhould think himſelf the moſt happy Man in the World: After ſeveral Overtures and Addreſſes of this Sort, the young Lady kindly anſwered, that if both their Parents approved of it, ſhe would conſider on it; and Mr. *Bradſhaw* growing very much in her Favour, ſhe deſired him to write to *Manchester* about it, which he did accordingly; but before he received an Anſwer to his Letter, he had Advice that his Father, who had been ſome time in a bad State of Health, was ſo very ill, that his Life was deſpaired of. On this he determined to go down to *Manchester*; and acquainting his Maſter with his Intention, and of his Father's Illneſs, Mr. *Worral* generouſly conſented thereto; and moreover told him, that if his Father did not get over his Illneſs, or continued ſo long ill, that his Abſence might be prejudicial to the Buſineſs, he ſhould be at his Liberty with reſpect to ſerving out the Remainder of his Time and, that he ſhould be glad to ſee him well ſettled where there was a good eſtabliſhed Trade. Soon after his Arrival at *Manchester* his Father expired, and left him in Poſſeſſion of a conſiderable Fortune to carry it on; and after he had made a decent Burial for his Father, he then renewed his Addreſſes to Miſs *Waggſtaff*, and in a little time was married to her, with whom he had a handſome Fortune, and an accompliſhed Lady ſufficient to make any reaſonable or prudent Man happy, in the State of Matrimony.

Not long after he entered into Partnerſhip with Mr. *James Dawſon*, a *Manchester* Warehouſeman, near the *Axe-Inn* in *Aldermanbury*. In about two Years time he was ſo unfortunate as to loſe his Wife, which it was believed affected him ſo as ſometimes to cauſe an Inſanity of Mind, and at other times, in his lucid Intervals, he appeared a bright Wit; but he gave himſelf up to the keeping of Company, whereby he contracted an Acquaintance with Jeſuits and Popiſh Prieſts (for in thoſe Principles he had been always educated), from whom he imbibed the Principles of Jacobitiſm more ſtrongly, and from time to time contracted ſuch an Affection to the Cauſe of the Pretender and his Adherents, as to declare publickly (ſoon after the Pretender landed) amongſt his Aſſociates, that he would embrace the firſt

firſt Opportunity to ſerve the Cauſe. When the Pretender came to *Manchester*, he with ſeveral others of the ſame Principles, waited on that mock Prince, and tendered his Service to him; who finding Mr. *Bradſhaw* to be a young Gentleman of a good Family and Fortune, and of ſome Intereſt, conferred on him the Truſt of a Captain of a Regiment to be raiſed in *Manchester*, under the Command of Col. *Townley*, who was ſince executed on *Kennington-Common*, for High-Treaſon; and Mr. *Bradſhaw* had no ſooner got his Commiſſion, than he went about *Manchester*, and the neighbouring Villages, to recruit for the ſame Regiment, in which he had ſuch Succeſs, that he raiſed a Number of Men for the Service of the ſaid Pretender, by whom he was greatly careſſed, and at whoſe *Levee* he often attended, and was conſulted with in ſeveral of their Councils of War. He afterwards marched in a gallant Manner at the Head of his Company with the Rebels to *Derby*, and accompanied them in their Flight back to *Manchester*, when they heard the Duke was at their Heels, and from thence to *Carliſle*, where he waited (with the reſt of the Officers) on the Young Pretender to take his Leave of him, it being agreed, that ſome Part of their Army ſhould ſtay at *Carliſle* to ſecure a Retreat for the Rebels; and then he inſiſted that he would not ſtay behind under the Command of Col. *Townley*, with whom there was no good Harmony; for ſome Miſunderſtanding happened between them, on Account of a young Lady, which they had ſeverally addreſſed at a Ball, which was kept at the *Bull-Head Inn* in *Manchester*, for the neighbouring Gentry; and indeed this Animoſity was increaſed by the haughty Behaviour of Col. *Townley*, who now imagined the other to be under his Dominion, and uſed often to put Mr. *Bradſhaw* upon Duty that was diſagreeable to him.

What gave Mr. *Bradſhaw* the greateſt Diſquiet was, that when the Pretender propoſed to raiſe a Regiment of Horſe, of which *Townley* was to be Colonel, *Townley* was labouring for *Thomas Deacon* (executed with *Townley*, &c. at *Kennington*) to ſucceed him in the Command; and ſoon after the Rebel Army had left *Carliſle*, *Bradſhaw* went away incognito, and joined them again in *Scotland*, where he liſted himſelf a Volunteer in Lord *Elcho*'s Horſe, commonly called amongſt the Rebels the firſt Troop of Guards; and he continued with the Rebels in that Rank, until he was taken Priſoner at the Battle of *Culloden*.

As to Mr. *Bradſhaw*'s Conduct in general, even from the Time of his engaging in the Rebellion, and till within a ſhort Time of his Death, it muſt be confeſſed, that his Behaviour has been all of a Piece. Nothing but Infatuation could determine a Man to ſhut up his Shop, leave his Buſineſs and Effects, and ruin (with all honeſt Men) his Character, to follow a wicked and rebellious Multitude: And truly for what?——To be made a Captain!———Nay, it is Matter of Fact, that he was worth ſeveral thouſand Pounds, his Trade flouriſhing, and his Credit well eſtabliſhed in the World; yet was he ſo hearty in the good old Cauſe (as he called it), that he advanced Caſh out of his own Pocket to ſupport his ragged Company.

Soon after the Battle of *Culloden-Moor*, which put a happy End to this wicked and unnatural Rebellion, an Order was ſent from the Secretary of State's Office for bringing to *London* ſuch of the Rebels as had been moſt active in the Young Pretender's Service, and amongſt thoſe that were put on Ship-board was Mr. *Bradſhaw*: There he behaved with the greateſt Inſolence imaginable, and did not ſcruple voluntarily to tell thoſe Officers belonging to his Majeſty who had the Care of him, that they could not hurt him, for he was above their Cut, or Words which carried the ſame Meaning.

When the Veſſel on board of which they embarked arrived in the River, they were (*viz.* 43.) committed to the *New Gaol* in *Southwark*, by his Grace the Duke of *Newcaſtle*'s Warrant, and continued Priſoners there till the neceſſary Proceſſes were prepared for their Proſecution.

About the Time the *Manchester* Rebels were ordered for Execution (*Bradſhaw* being at that Time a Priſoner in the *New Gaol*, *Southwark*), the Night before they ſuffered, he ſpoke to Mr. *Townley* and Mr. *Berwick* in a diſreſpectful Manner, ſaying, I find you muſt ſhortly march into other Quarters. Mr. *Townley* made no Anſwer; but Mr. *Berwick*, always remarkable for his Jocularity, ſaid, "*Jemmy*, you need not triumph at "our Misfortunes, for, take my Word on't, you will find Mocking is "catching."

Bradſhaw, the Night preceding the Execution of the *Manchester* Rebel Officers, drank very freely, and ſeemed quite unconcerned at the melancholy Fate which was inevitably next Day to be the Conſequence of their wicked Undertaking. Mr. *Berwick* told Mr. *Chadwick*, that *Bradſhaw* ſeemed to reflect on them, rather than pity or condole with them. Mr. *Chadwick* replied, "What can you expect from him? I am only ſorry "that it reflects ſo much Diſhonour on us all, as to admit ſuch a Fellow "an Officer in the Regiment."

In the Morning of the Execution of the *Manchester* Rebels, about ſeven o'Clock, when the Sledges came in to draw the Priſoners to Execution, *Bradſhaw* was walking about the Gaol-Yard in his Morning Grown, with ſome Gentlemen, who came thither either out of Curioſity, or to take Leave of their dying Friends, and with a ſneering and ungentleman-like Air, ſaid, (pointing to the Sledges) "Don't you think theſe Things are "very well contrived? Upon my Word, they will do exceeding well for "the Purpoſe;"—and then raked amongſt the Straw in the Sledges, telling the Drivers, that if they did not get more Straw, the Lads (meaning the Priſoners) would be wet; and many other ſilly Expreſſions, which, if inſerted, the Reader would hardly credit.

When he was called upon his Trial, he appeared very gay, in a new Suit of Green Cloth Cloaths, and ſtood very unconcerned at the Bar, minding very little what was ſworn againſt him: But when the Evidence was cloſed, and ſummed up to the Jury, and they brought him in Guilty, he was quite thunder-ſtruck, and changed Colour very much, and was ſo feeble that he could ſcarcely walk from the Bar.

His Conviction and Condemnation made but little Alteration in him; for though he was not ſo ludicrous as he had been all along, he ſupplied that Part with an undaunted Aſſurance, and ill-grounded Hopes of a Reprieve, till his Maſter informed him on *Tueſday* Night, that all Endeavours that had been uſed to ſave his Life were ineffectual; and perſuaded him to make his Peace with God.

He was executed as a Traitor on *Friday*, *November* 28, 1746, at *Kennington-Common*.

XXXVIII. The Trial of Sir John Wedderburn, Bart. at St. *Margaret's-Hill*, *Southwark*, *November* 4, 1746, before the Lord Chief Juſtice *Lee*, Sir *Martin Wright*, Sir *James Reynolds*, Sir *Michael Foſter*, Knts. and Mr. Baron *Clive*, for High-Treaſon.

SIR *John Wedderburn*, Bart. was indicted for High-Treaſon; which Treaſon was laid to be committed on the 16th of *April*, in the 20th Year of his preſent Majeſty's Reign.

Andrew Johnſon ſaid, He ſaw Sir *John* with the Officers of Lord *Strathallan*'s Horſe, in plain Cloaths, and a Sword by his Side, after the Battle of *Preſton Pans*, free and not forced.

John Falkener ſaid, He ſaw the Priſoner at *Holyrood-Houſe*, amongſt the Officers in the Rebel Army, in plain Cloaths, with a Small-ſword by his Side.

Roger MacDonald ſaid, He ſaw the Priſoner at *Aberdeen*, in a plain Dreſs and Small-ſword (but no Cockade) with the Officers of Lord *Strathallan*'s Horſe, and that he lodged with Mr. *Johnſon* at *Aberdeen*, without a Billet.

James Mortimer ſaw him at *Aberdeen*, with the Officers of Lord *Ogilvie*'s Regiment, under no Reſtraint or Force.

John Bruce ſaid, That he paid Sir *John* Ten Shillings for Ale-exciſe, and Twelve Shillings for Malt-exciſe; and unleſs he had paid it to him, the Rebels threatened to ſeize his Copper; for which Exciſe he took Receipts, but did not produce them, becauſe he left them at Home.

Henry Edwards depoſed, That he ſaw the Priſoner the latter End of *October*, at old *Gordon* of *Glenbucket*'s Houſe at *Perth*; that Sir *John* declared, he was not concerned in the Rebellion, that he had a Commiſſion ſent to him to collect the Exciſe; but it was in his Father's Name, and that he would go to *Edinburgh* to get it rectified; and he accordingly did go to *Edinburgh*, and about the Middle of *November* returned to *Perth*, where a Drum went about the Town proclaiming, that all Brewers, and Dealers in Leather, Candles, and other exciſeable Goods, ſhould go to Sir *John* and pay the Exciſe, on Pain of Military Execution.

Then ſeveral Receipts for Money paid to him for Exciſe, were produced, and proved to be Sir *John Wedderburn*'s Hand-writing for Exciſe, dated progreſſively from the 25th of *November*, to the 8th of *January* following.

Alexander Ruſſell depoſed, That he ſaw the Priſoner, Sir *John*, at *Holy-Rood Houſe*, after the Battle of *Preſton-Pans*, in a plain Dreſs, and a Small-ſword by his Side, and that the Young Pretender iſſued an Order, forbidding any Body from carrying Arms, but thoſe who belonged to his Army; and that if Sir *John* had not belonged to the Rebels, he dared not wear a Sword.

Captain *Eyre* ſaid, The Priſoner acknowledged himſelf a private Man in the Pretender's Life-Guards.

Andrew Robinſon ſaid, He was a Servant to Major *Glaſgoe*, and ſaw the Priſoner at *Dundee* with the Rebels, and at *Burroughburgh*, going to the Young Pretender's Quarters; that the Priſoner collected the Exciſe from ſix Perſons in this Witneſs's Preſence.

John Adamſon ſaid, he paid Exciſe to the Priſoner twice; and that the Priſoner had a Guard with him at his Quarters, where he received the Exciſe Duty.

The Priſoner's Defence.

The Counſel for the Priſoner alledged, by the Seventh of *William* the Third, No Overt-Acts of High-Treaſon ſhall be proved, unleſs the ſame is laid in the Indictment; and the bare Collecting the Exciſe was no Overt-Act, without they could prove him armed in the Rebellion; that the Priſoner's Father did collect the Exciſe for his preſent Majeſty King *George* the Second; that the Rebels came and took his Horſe out of his Park, and that he went after them to get them back again, where they ſeized him, and detained him a Priſoner, and forced him to continue with them to collect the Exciſe.

George Waters, Working-maſon, was the firſt Witneſs examined for the Priſoner, and he depoſed, That the Rebels came to Sir *John*'s Houſe in *September* 1745, and took away three of his Horſes, for the Pretender's Service; when Sir *John* ſaid, That he would not let his Horſes go for ſuch a Uſe; and went to get them back again; and that ſome of the Rebels told him, if he would not give them freely, he himſelf ſhould go with them, and ſo forced him with them; that this Evidence went to ſee him, when he found him guarded by the Rebels, ſo cloſe, that he could not go out of the Room without Liberty from Lord *Strathallan*; that ſome time after he came to his Houſe, and ſtaid four Days at Home; that afterwards one hundred Men came armed, who guarded his Houſe and carried him away; that the Witneſs ſaid, he ſaw him at the *Dee*, carried away by the *MacIntoſhes*; that afterwards he came from the *Dee* to his Houſe, and ſtaid at his Houſe 'till the fifth of *February*, when forty or fifty Men came and preſſed him, and carried him to *Elgin-moore*, in the Middle of *March*. The Witneſs further ſaid, That his Brother was Collector of the Exciſe at *Inverneſs* for King *George*; that he had known the Priſoner two Years; that he always wore a Small-ſword, and that

that he was a Priſoner at his own Houſe every Day, from *November* to the Beginning of *February*.

David Hutchenſon depoſed, That he was a Servant to the Priſoner Sir *John Wedderburn*; that five armed Men came and ſeized ſeveral of his Horſes in his Park, and that his Lady went to them, and prevailed on them to releaſe a Mare; that they abuſed her and called her Rebel-Bitch; that they ſeized the Priſoner when he went after his Horſes, to get them back, and carried him to Lord *Ogilvie*'s; that the Priſoner returned, and a hundred armed Men came and retook him Priſoner, and threatened to ſtab him with their Bayonets.

The Jury, without going out, brought him in Guilty. *Death.*

Sir John Wedderburn's Caſe *.

"THE Overt-Acts were laid at *Aberdeen*, in the Shire of *Aberdeen*. It "was proved by two Witneſſes, that he was with the Rebels at "*Aberdeen*; and by thoſe and other Witneſſes, that he was at divers "other Places with them.

"The King's Counſel called Witneſſes, who proved likewiſe, that "he was appointed by the Pretender's Son, Collector of the Exciſe; "and that he did actually collect the Aſſize in ſeveral Places where the "Rebel Army lay, by virtue of that Appointment, for the Uſe of the "Rebel Army.

"The Priſoner's Counſel inſiſted, that this Sort of Evidence ought "not to be admitted. For though collecting Money for the Service of "Rebels is an Overt-Act of High-Treaſon, yet it not being laid in the "Indictment, no Evidence ought to be given of it; and they relied on "the Statute of 7 *K. W.* But in this they were over-ruled, upon the "Reaſons given in the Caſe of *Deacon* †."

Sir *John Wedderburn*, Bart. was the Son of *Alexander Wedderburn*, of *Aberdeenſhire*, whoſe Family have been long reſident in that Part of *Scotland*, ſeveral of whoſe Anceſtors are honourably mentioned in the *Scottiſh* Hiſtories, eſpecially Sir *David Wedderburn*, who was killed at the Battle of *Muſſelburgh*. The late Sir *Alexander*, Father to this unfortunate Gentleman, was greatly eſteemed for his known Attachment to the Revolution Principles, and the *Hanover* Succeſſion; inſomuch that the Government thought proper to make him a Receiver of the Exciſe, and other Duties, which, with a ſmall Eſtate he had near *Dundee*, enabled him to bring up a numerous Family; but being of a liberal and generous Spirit, he left the Eſtate incumbered, ſo that when Sir *John* arrived to his Honour of a Baronet, he had nothing to ſupport it; though on the Expectation of having an Eſtate to deſcend to him free, he married a young Lady of a reputable Family in his Neighbourhood; for on his Father's Death the Eſtate was deſtined to be ſold, in order to ſatisfy the Father's Debts; that when Sir *John* found nothing coming in order to ſupport his Family, he retired to a ſmall Farm, with a thatched Houſe and Clay Floor; which he occupied with great Induſtry, and thereby made a laborious but ſtarving Shift to ſupport a Wife and nine Children, who uſed to run about in the Fields bareſoot.

The extreme Poverty of Sir *John*, and his numerous Dependants, overcame Sir *John*'s Duty to all kind of Society, and the preſent happy Eſtabliſhment; and being tempted with a Commiſſion from the Pretender to collect the Exciſe, yet in ſome Meaſure forced to do it, Sir *John*'s Loyalty at laſt gave way to his Poverty; though it is admitted, that he never did any Acts of Violence to his Majeſty's Subjects, any other than receiving the Duties ariſing by the Exciſe, having never bore Arms, or cauſed any one to enliſt into the Rebel Service.

After Sir *John* was made a Priſoner, he was delivered to the Care of Captain *Eyre*, an Officer appointed by the Duke of *Cumberland*, to take charge of the Rebel Officers, who treated him with great Humanity, according to his Birth and Dignity; and conveyed him on board one of his Majeſty's Ships of War to the River *Thames*, from whence he was carried with the other Officers, to the *New-Gaol* in *Southwark*, where he was lodged in the Maſter-Side of the Gaol with Sir *James Kinloch*, Mr. *Hamilton*, and others, during which Time he behaved like a Gentleman; being plentifully ſupplied, and indeed flattered himſelf with being acquitted, as he thought he had not armed himſelf in the Rebellion, but was very much ſhocked when the Jury found him Guilty; and after Sentence of Death, his Behaviour was conſiſtent with the Character of a Gentleman, being ſenſible of his Error, and the Calamity he had brought on himſelf, his inoffenſive Lady, and innocent Poſterity.

He was executed at *Kennington-Common* as a Traitor, *Nov.* 28, 1746.

XXXIX. Proceedings at the Court of King's-Bench, *Weſtminſter*, 21 *Nov.* 1746, againſt Charles Ratcliffe, Eſq. on a Conviction and Attainder of High-Treaſon in *May* 1716, before ſpecial Commiſſioners of Oyer and Terminer ‡.

HE was concerned with his Brother, the late Earl of *Derwentwater*, in the Rebellion of 1715; and in *May* 1716, was convicted and attainted of High-Treaſon before ſpecial Commiſſioners of Oyer and Terminer, purſuant to the Act of the firſt of the late King. While he was under Sentence of Death, and probably before the Act of general Pardon of the third of the late King paſſed, *(See the 45th Section of the Act)* he made his Eſcape out of *Newgate*, and got over to *France*.

At the latter End of the Year 1745, he was, with ſome other Officers, *French*, *Scotch*, and *Iriſh*, taken on the Coaſt on board a *French* Ship of War; which was loaden with Arms, Ammunition, and other warlike Stores, bound, as was ſuppoſed, for *Scotland*, where the Rebels were at that Time in Arms.

On *Friday* the 21ſt of *November* 1746, he was brought to the Bar by virtue of a *Habeas Corpus*, directed to the Conſtable of the *Tower*, or his Deputy; and the Record of his Conviction and Attainder was at the ſame Time removed thither by *Certiorari*.

The *Habeas Corpus*, with the Return, and alſo the *Certiorari* and Record of the Conviction and Attainder being read, the Subſtance of the Record was opened to him in *Engliſh* by the Secondary on the Crown Side; who then aſked him what he had to ſay why Execution ſhould not be done upon him according to the Judgment. He prayed that Counſel might be aſſigned him, and named Mr. *Ford* and Mr. *Fodrell*; who were accordingly aſſigned his Counſel.

They prayed a few Days Time that they might have an Opportunity of knowing from the Priſoner himſelf the Truth and Merits of his Caſe, which was granted.

They alſo prayed a Copy of the Record, which was denied them. But the Officer, by the Direction of the Court, read over the Indictment a ſecond Time very diſtinctly, and the Priſoner's Counſel took Notes of it, and the Priſoner was ordered up on *Monday* next.

His Counſel moved for a Rule of Court that they might have Acceſs to their Client at all ſeaſonable Times. But his Solicitor admitting that he had obtained a Warrant from a Secretary of State to the ſame Purpoſe, the Court did not make any Rule in the Caſe; nor did the Counſel preſs it; but the Court declared, That if the Secretary's Warrant had not been obtained, they would have made ſuch Rule; for the Priſoner is now the Priſoner of this Court; and the Lieutenant of the *Tower* is, as far as concerneth the Priſoner's Caſe, a Miniſter of this Court, and ſubject to the Rules of it.

November 24, 1746. The Priſoner was brought to the Bar, and being again arraigned, he, *ore tenus*, pleaded that he is not the Perſon mentioned in the Record before the Court. The Attorney-General, *ore tenus*, replied, the Priſoner is the ſame *Charles Ratcliffe* mentioned in the Record, and this I am ready to verify; and Iſſue was joined.

The Priſoner's Counſel preſſed ſtrongly to put off the Trial of this Iſſue, upon an Affidavit of the Priſoner, which was ſworn in Court, that two material Witneſſes named in the Affidavit are abroad; one of them at *Bruſſels*, and the other at *Saint Germains*; and that he believeth they will attend the Trial, if a reaſonable Time be allowed for that Purpoſe. But the Court refuſed to put off the Trial, and a *Venire* was awarded returnable *inſtanter*. For, ſaid the Cout, this Proceeding is in Nature of an Inqueſt of Office, and hath been always conſidered as an inſtantaneous Proceeding; unleſs proper Grounds for poſtponing the Trial be laid before the Court. It was ſo conſidered in the Caſe of the King againſt *Barkſtead* and others *(Keil.* 13, 1 *Lev.* 61. 1. *Sid.* 72.) upon the ſame Iſſue as this is; a *Venire* was awarded, and a § Jury returned and ſworn *inſtanter* to try that Iſſue. It was ſo conſidered likewiſe in the Caſe of the ‖ King againſt *Roger Johnſon* in this Court, *Michaelmas* the Second of this King.

If Mr. *Ratcliffe* hath any thing to offer, which may give the Court reaſonable Grounds to believe that his Plea is any thing more than a Pretence to delay Execution, we are ready to hear him; the ſingle Iſſue is, whether he be or be not the Perſon mentioned in this Record. This is a Fact well known to him, and if he is not the Perſon, he might, if he had pleaſed, have made that Matter Part of his Affidavit; he may do ſo ſtill if he can do it with Truth, And if he refuſeth to give the Court this Satisfaction, touching the Truth of his Plea, the Court doth him no manner of Injuſtice in denying him the Time he prayeth.

As the Jurymen were called to the Book, the Priſoner challenged one of them, and inſiſted on his Right to a peremptory Challenge; but his Challenge was over-ruled. For though there are ſome Opinions in the Books *(S. P. C.* 163. *Co. L.* 157.) that in collateral Iſſues of this Kind, the Priſoner hath a peremptory Challenge, yet the later and better Opinion is, that he hath not; and the modern Practice hath gone accordingly.

* From *Foſter*'s Reports, p. 22.

† See the Caſes of *Rookwood* and *Lowick* in the Fourth Volume of State Trials.

‡ From *Foſter*'s Reports, p. 40.

§ See the Record in Dr. *Cameron*'s Caſe, Vol. X.

‖ See a Report of the Caſe in Judge *Foſter*'s Reports, p. 46. and 2 *Strange*, p. 824.

Chief

Chief Juſtice *Hale* (2. *Hale.* 267.) ſaith, "In caſe of an Iſſue joined "on Error in Fact aſſigned for reverſing an Outlawry, the Priſoner hath "no peremptory Challenge;" and in p. 378. of the ſame Book, it ſeemeth to be admitted as a general Rule, that in Inqueſts of Office (and the preſent Trial is in nature of an Inqueſt of Office) the Priſoner hath no peremptory Challenge. In *Barkſtead*'s Caſe cited before, (1 *Lev.* 61. 1 *Keb.* 244.) the Priſoners were not permitted to challenge peremptorily; and in the Caſe of *Roger Johnſon*, which hath likewiſe been already cited, the Court declared that the Priſoner had no peremptory Challenge.

The Jury being ſworn to try the Iſſue, the Indictment was read over to them in *Engliſh* for their Information as to the Name and Addition of the Priſoner; and the Evidence being concluded, the Jury withdrew for a few Minutes, and then returned with their Verdict, that the Priſoner at the Bar is the ſame *Charles Ratcliffe* that is mentioned in the Record.

Note. The Priſoner, during the Trial of this Iſſue, had the Aſſiſtance of his Counſel; who croſs-examined the King's Witneſſes, and obſerved fully upon the Evidence.

After the Verdict was brought in, the Priſoner's Counſel took notice of the Act of general Pardon paſſed in the third of the late King; and ſaid, that poſſibly their Client might upon Conſideration be found to be intitled to the Benefit of it; and concluded with a Motion, that the Court, before they award Execution, would give them ſome Time to conſider the Act, and to be informed by their Client touching the Circumſtances of his Caſe, that they might be able to ſubmit his Caſe to the Opinion of the Court, how far he is, or is not intitled to the Benefit of the Act.

But the Court declared, that the Priſoner having once pleaded in Bar of Execution, and that Plea having been falſified by the Verdict, his Plea is peremptory, and the Verdict concluſive; and nothing now remaineth but for the Court to award Execution.

Mr. Juſtice *Foſter* was ſatisfied that the Principle the Court went upon is a good general Rule, but he thought it not univerſally true. He conſidered the Caſe of a parliamentary Pardon as an Exception to it; for ſurely the Court will never, in any State of a Cauſe, award Execution upon a Man who plainly appeareth to be pardoned. And therefore he thought that if any Perſon, whether as Counſel for the Priſoner, or as *Amicus Curiæ*, will now ſhew that the Priſoner is intitled to the Benefit of the Act, he ought to be heard. But to this it was anſwered by the Chief Juſtice, That the Act of Pardon containing many Exceptions, both as to Perſons and Crimes, the Party who would take the Benefit of it muſt plead it ſpecially with all proper Averments; ſo as to ſhew that he is not within any of the Exceptions, according to the Reſolution (*Carth.* 131.) in the Earl of *Saliſbury*'s Caſe.

The Counſel for the Crown did not urge either of theſe Points againſt the Priſoner. And I have been ſince informed that, in favour of Life, they were determined to wave them; and were provided with Evidence, then attending in the Hall, to prove (which was the Truth of the Caſe) that the Priſoner, after his Attainder, made his Eſcape out of *Newgate*, which brought him within the Excepion in the 45th Section of the Act. And the Priſoner's Counſel being apprized of this by the Counſel for the Crown in a Converſation between them at the Bar, thought it in vain to preſs their Motion any farther. And Execution was accordingly awarded, and a Rule made that it be done on *Monday* the 8th of *December*. And a Writ was ordered to the Lieutenant of the *Tower* to deliver the Priſoner to the Sheriff of *Middleſex* on that Day; and another to the Sheriff to receive him, and to cauſe Execution to be done.

N. B. Since the Priſoner's Counſel, after ſufficient Time allowed them to inform themſelves of the true State of his Caſe, had nothing to offer to induce the Court to think that their Client was intitled to the Benefit of the Act, only that poſſibly upon further Conſideration, he may appear to be ſo intitled, there was certainly no Room to delay the awarding Execution upon ſo ſlight a Suggeſtion from the Bar. And Mr. *Ratcliffe* had no Injuſtice done him in that reſpect.

He was beheaded on *Tower Hill* on the Day mentioned in the Rule.

The Award of Execution in Mr. *Ratcliffe*'s Caſe was agreeable to the Precedent in the Caſe (*Cro. Jac.* 495. *Hutt.* 21.) of Sir *Walter Raleigh*. He was convicted and attainted at *Wincheſter* before ſpecial Commiſſioners, and being brought into the King's Bench by *Habeas Corpus*, Execution was there awarded on the former Judgment; Judgment not being pronounced afreſh, it having been pronounced before.

In the Caſes of *H. Stafford* (1 *H.* VII. 23, 24, 25. 1. *Lev.* 61. 1 *Sid.* 72.) and of *Barkſtead*, *Okey* and *Corbet*, (State Trials, Vol. VIII.) who were attainted by Act of Parliament, the Tenour of the Acts was removed by *Certiorari* into Chancery, and ſent thence by *Mittimus* into the King's Bench: and the Chief Juſtice pronounced the uſual Judgment as in Caſes of High-Treaſon.

There was no Proceeding of this Kind in the Caſe of the Duke of *Monmouth*, who was attainted by Act of Parliament 1 *Jac.* II. For the Action at *Sedgemoor* happened on the 8th of *July* 1685, which in that Year fell out to be the laſt Day of *Trinity* Term; and on the 15th he was executed. But that was a Time of great Heat and Violence, and few Things then done ought to be drawn into Example

N. B. The Act of the Third of the late King giveth the Party Liberty to take Advantage of it on the general Iſſue without ſpecially pleading the ſame; (2 *W.* and *M.*) and ſo doth that on which the Earl of *Saliſbury* relied. The Court therefore could not in the Earl's Caſe, ground itſelf on the Rule of Pleading laid down in *Carthew* *; though the Rule might poſſibly be mentioned *obiter* by ſome of the Judges. I think the true Ground the Court went upon, which indeed the Reporter himſelf ſeemeth to hint at but very darkly, was, that the Earl having been committed by the Houſe of Peers upon an Impeachment by the Commons for High-Treaſon, this Court cannot allow him the Benefit of the Act; it hath no Cognizance of the Crime he ſtandeth charged with; the Matter lieth before another and higher Judicature, and thither his Lordſhip muſt reſort.

And there he afterwards had the full Benefit of the Act without being put to plead it. For on the of *October* 1690, upon reading the Earl's Petition, ſetting forth that he had been long a Priſoner in the *Tower*, *notwithſtanding the late Act of free and General Pardon*, and praying to be diſcharged, the Lords ordered the Judges to attend on the *Monday* following to give their Opinions, whether the Earl be pardoned by the ſaid Act; on the 6th the Judges delivered their Opinions, that if his Offences were committed before the 13th of *February* 1688, and not in *Ireland*, or beyond the Seas, he is pardoned. Whereupon it was reſolved that he be admitted to Bail; and the next Day he was bailed, and on the 30th of *October* (See the Journals of the Lords) he and his Sureties were diſcharged from their Recognizances.

Charles Ratcliffe, Eſq. according to a Rule of the Court of *King's-Bench* †, was executed on *Little Tower-Hill*; whither, two Troops of Life Guards, and one Troop of Horſe Grenadier Guards, and a Battalion of Foot Guards, marched about eight in the Morning. The Horſe lined the Way from the Scaffold to *Iron-Gate*, and the Foot with ſome of the Horſe encompaſſed the Scaffold. About Ten, the Block, covered with Black, with a Cuſhion, and two Sacks of Sawduſt, were brought up, and the Block fixed; and ſoon after the Coffin of the unhappy Gentleman, covered with Black Velvet, and having eight Handles, but no Plate upon it, was placed on the Scaffold.

In the mean Time, Mr. Alderman *Winterbottom* and Mr. Alderman *Aſſop*, the two Sheriffs, with their Under-Sheriffs, met at the *Mitre Tavern* in *Fenchurch-ſtreet*, and from thence proceeded, the Under-Sheriffs in a Mourning-Coach, and the Sheriffs in their Chariots, to the lower End of the *Minories*, where they were met by their Officers, who marched before them till they came over-againſt the Victualling-Office, where they ſtopt, and then the Under-Sheriffs went down to the *Eaſt-Gate* of the *Tower*, which is next to *Iron-Gate*, when getting out of the Coach, they went up to the Gate, and ſeeing the Warders thro' the Gate, they demanded Admittance to the Lieut. Governor of the *Tower*; upon which the Gate was opened, and they went in, and in about ten Minutes returned, and went into the Mourning-Coach again, which waited for them; and in a ſhort time after, the Priſoner was brought in a Landau, out at the *Eaſt-Gate*, and then the Proceſſion began as follows; Firſt, the Sheriffs Officers, then the Mourning-Coach in which were the two Under-Sheriffs with their Wands; then the Landau with the Priſoner, and the Officers of the *Tower* who had him in Cuſtody; the Landau was guarded by a party of Foot-Guards with their Bayonets fixed. Thus they proceeded up *Little Tower-Hill*, till they came over-againſt the Victualling-Office, where the Sheriffs waited to receive him; and where the Priſoner got out of the Landau, and was put into the Mourning-Coach, which carried him about 100 Yards further, to a Booth built on purpoſe to repoſe himſelf in, and hung with Black, at the Foot of the Stairs of the Scaffold. When he got out of the Landau, ſeeing ſome Gentlemen he knew, he paid his Compliments in a very genteel Manner, and ſmiled, and coming to the Side of the Mourning-Coach, he aſked the Officers who ſtood to wait, whether he was to go in there? And being anſwered that he was, he only ſaid, *It is well*, and ſtepped in directly. Being come to the Booth, attended with the Sheriffs, he ſtaid there about ten Minutes, which he ſpent chiefly in his Devotions, ſpeaking but very little to any body. He then walked up upon the Scaffold with great Calmneſs, being dreſſed in a Scarlet Coat, with Gold Buttons, the Sleeves faced with black Velvet, Scarlet Waiſtcoat trimmed with Gold Lace, a Scarlet Pair of Breeches, and white Silk Stockings, and his Hat with a white Feather round it. He ſoon aſked for the Executioner, who coming to him, he took a Parcel of Gold out of his Pocket, and gave it him, ſaying, *I am but a poor Man, there's ten Guineas for you; if I had more I would give it you; and I deſire you to do your Execution ſo as to put me to the leaſt Miſery you can.* He then kneeled

* The Rule laid down in *Carthew* from *Plowden* is laid down in the ſame Latitude in many of the old Books; but it is to be obſerved, that the Acts of General Pardon in thoſe Times, had no Clauſes enabling the Party to avail himſelf of the Pardon on the General Iſſue without ſpecially pleading the ſame. The firſt Act which hath that Clauſe, that I have met with, is the Act of Oblivion (12th *Car.* II.) and all Acts of general Pardon ſince that Time have had Clauſes to the ſame Purpoſe. *Foſter.* p. 45.

† On *Nov.* 21, *Charles Ratcliffe*, Eſq. (who was taken on board a *French* Ship bound for *Scotland*, with *Fitz James's* Horſe) was brought under a ſtrong Guard from the *Tower* to the *King's-Bench Bar*, *Weſtminſter*, in order to prove him the Perſon convicted of High-Treaſon for the Rebellion in 1715; and who eſcaped out of *Newgate*; when his former Judgment was read to him; but he told the Court he was quite unprepared, and deſired longer Time, and prayed that Counſel might be aſſign'd him; accordingly the Court granted him Mr. *Jodrell* and Mr. *Ford* for his Counſel, and ordered him to be brought up to *Weſtminſter* the *Monday* following.

Accordingly, on that Day, *Nov.* 24, he was again brought to the Bar, but refuſed to hold up his Hand, or acknowledge any Juriſdiction over him, but that of the King of *France*, where he had lived about 30 Years, inſiſting on a Commiſſion he had in his Pocket from the *French* King; but on hearing his former Indictment and Conviction, which were read to him in *Engliſh*, he ſaid he was not the *Charles Ratcliffe* therein named, but that he was the Earl of *Derwentwater*; and his Counſel informed the Court, that this was the Plea he relied on; to which the Attorney General replied, with an Averment of his being the ſame *Charles Ratcliffe*; and thereupon Iſſue was joined. Then the Counſel for the Priſoner moved to put off his Trial, upon his own Affidavit (to which he had ſubſcribed himſelf the Count *de Derwentwater*), that two of his material Witneſſes were abroad. To which Affidavit the Counſel for the Crown objected, as not being intitled in the Cauſe before the Court, nor the two Witneſſes ſworn to be material, in the Iſſue then joined between the King and the Priſoner; and alſo, becauſe the Priſoner had not ſo much as undertaken to ſwear for himſelf that he was not the Perſon; which, as it was a Fact entirely in his own Knowledge, ought to be required of him, if he would intitle himſelf to this Favour from the Court; this being a Proceeding very different from the Trial upon a *Not Guilty*, in an original Proſecution on a Charge of High-Treaſon or other Crime, the Identity of the Perſon being the ſingle Fact to be enquired of, and a Caſe in which the Crown had a Right by Law to proceed in *inſtanter*. Upon this, the Priſoner amended his Affidavit as to the Witneſſes, but refuſed to ſupply it ſo far as to ſwear he was not the ſame Perſon. And the Court ſaid this was a new Precedent, there being no Inſtance of any Application to put off the Trial of a Queſtion of this Sort before; and that this was like an Inqueſt of Office, in Order to inform the Conſcience of the Court, and what the Publick had a Right to proceed in *inſtanter*: And therefore that the Priſoner ought to give all reaſonable Satisfaction to induce them to grant ſuch a Favour as he deſired, for that they could not in Conſcience and Juſtice to the Publick, indulge him, without a reaſonable Satisfaction, that his Plea was true. But the Priſoner ſtill refuſing to ſwear to the Truth of his Plea, the Jury were called, and after two or three of the Pannel were ſworn, Mr. *Ratcliffe* challenged the next that was called, as of Right, without aſſigning any Reaſon; but upon Debate of the Queſtion, How far he had right to challenge? the Court ſaid it had been determined before in all the later Caſes, and particularly in the Caſe of one *Jordan*, that the Priſoner in ſuch a Caſe as this had no peremptory Challenge: Upon which the reſt of the Jury were ſworn, and after a clear Evidence of the Identity of the Perſon on the Part of the Crown, the Priſoner producing none on his Part, the Jury withdrew about ten Minutes, and then found their Verdict, that he was the ſame *Charles Ratcliffe* that was convicted of Treaſon in 1716. Then the Attorney General moved to have Execution awarded againſt the Priſoner on his former Judgment; to which the Priſoner's Counſel objected, tendering a Plea of Pardon by Act of Parliament, in Bar of Execution. But the Court ſaid, as he had already pleaded ſuch a Plea as he choſe to rely on and ſtand by, and as that was found againſt him, nothing more remained for them to do at preſent, but to award Execution; and if his Counſel had any thing to offer on his behalf, they would have Time to do it before the Day of Execution: Then they ordered a Rule to be made for the proper Writs for his Execution on *Dec.* 8, and remanded the Priſoner to the *Tower*. *From his Caſe, printed at that Time.*

down before the Block, and putting his Hands together, made a ſhort Prayer, when two of the Warders of the *Tower* came to him, one of each Side of him; one of them took off his Wig, and the other put a white Cap upon his Head; and then the unhappy Criminal roſe upon his Legs, and with their Aſſiſtance pulled off his Coat and Waiſtcoat. He then turned about and took his Leave, in a reſpectful Manner, of the Sheriffs, and then untied the Collar of his Shirt, which was faſtened with a black Ribbon, and began to tuck the Collar of his Shirt down; but not being able to reach far enough behind, he deſired the Executioner to do it for him; which he did accordingly. Then, after ſaying a ſhort Prayer to himſelf, and croſſing himſelf ſeveral Times, he laid his Head down upon the Block; and deſired the Executioner to ſtrike far enough, adding theſe his laſt Words, *When I ſpread my Hands thus, do you take my Head off.* Which Signal he gave in leſs than half a Minute, when one Stroke of the Axe ſever'd his Head, except a Bit of Skin, which was cut aſunder at two or three Chops. The Body then fell down upon the Scaffold; and the Executioner ſearching his Pockets, found half a Guinea, a Silver Crucifix, and his Beads. Four Undertaker's-Men ſtood ready with a Piece of red Bays to receive the Head as it fell off, and the Body and Head were put into the Coffin, and conveyed in a Hearſe, to the *Nagg's-Head*, in *Gray's-Inn-Lane*, and ſoon after interr'd at St. *Giles's in the Fields*.

Thus fell this unhappy Man, aged 53, 30 Years within three Days after his Eſcape out of *Newgate*, Part of which Time he ſpent with the Pretender in *Italy*, but the greateſt part in *France*; where he married the Lady *Newburgh*, Relict of *Levingſton*, Lord *Newburgh*, a *Scots* Nobleman, by whom he had a Son, who was ſome time Priſoner with him in the *Tower*, and thought at firſt to be the Pretender's younger Son. He was the youngeſt Brother of *James* Earl of *Derwentwater*, who was beheaded in 1716; they both being taken at *Preſton*. They were the Sons of ſir *Francis Ratcliffe*, by the Lady *Mary Tudor*, natural Daughter to K. *Charles* II. by Mrs. *Mary Davis*.

Mr. *Ratcliffe* behaved with much more Decency at his Execution, than at the Bar of the *King's-Bench*, when the only Trial was, whether he was the ſame Perſon who was condemned for the Rebellion in 1715, and made his Eſcape out of *Newgate*: For there he behaved himſelf in an inſolent Manner, which did him no Service: But at his Execution he was calm and ſedate, and ſuffered with much Compoſure and Reſignation.

XL. Proceedings againſt Æneas Macdonald, alias Angus Macdonald, at St. *Margaret's Hill, Southwark, December* 10, 1747, and at the Court of *King's-Bench, Eaſter* Term, 21 *Geo.* II*.

IN the Year 1747, a Bill of Indictment was found againſt him under the ſpecial Commiſſion in *Surry* for the Share he had in the late Rebellion. The Indictment ran in the ſame Form as thoſe againſt the other Priſoners, without any Averrment *that he was in Cuſtody before the firſt of* January 1746. But the Counſel for the Crown were aware of the Exception taken in the Caſe of Mr. *Townley* and others, and that ſince the whole Proceeding againſt the Priſoner was ſubſequent to *January* 1746, the Anſwer then given would not ſerve the preſent Caſe. That Bill was therefore withdrawn before the Priſoner pleaded to it: And a new Bill, concluding with an Averrment *that he was apprehended* † *and in Cuſtody before the firſt of* January 1746, was preferred and found againſt him. On that Bill he was arraigned in *July* 1747, and his Trial came on the 10th of *December* following.

The Overt Acts charged in the Indictment were ſufficiently proved. And alſo that the Priſoner was apprehended and in Cuſtody before the firſt of *January* 1746.

The Counſel for the Priſoner inſiſted that he was born in the Dominions of the *French* King, and on this Point they put his Defence.

But apprehending that the Weight of the Evidence might be againſt them, as indeed it was, with regard to the Place of the Priſoner's Birth, they endeavoured to captivate the Jury and Byſtanders, by repreſenting the great Hardſhip of a Proſecution of this kind againſt a Perſon, who, admitting him to be a Native of *Great Britain*, had received his Education from his early Infancy in *France*; had ſpent his riper Years in a profitable Employment in that Kingdom, where all his Hopes centered. And ſpeaking of the Doctrine of natural Allegiance, they repreſented it as a ſlaviſh Principle, not likely to prevail in theſe Times; eſpecially as it ſeemed to derogate from the Principles of the Revolution.

Here the Court interpoſed and declared, that the mentioning the Caſe of the Revolution as a Caſe any way ſimilar to that of the Priſoner, ſuppoſing him to have been born in *Great Britain*, can ſerve no Purpoſe but to bring an *Odium* on that Great and Glorious Tranſaction. It never was doubted that a Subject born, taking a Commiſſion from a Foreign Prince, and committing High Treaſon, may be puniſhed as a Subject for that Treaſon, notwithſtanding his Foreign Commiſſion. (*Dyer*. 298. 300. 1 *Hale*, 68. 96.) It was ſo ruled in Doctor *Storey*'s Caſe: And that Caſe was never yet denied to be Law. It is not in the Power of any private Subject to ſhake off his Allegiance, and to *tranſfer it to a foreign Prince*. Nor is it in the Power of any Foreign Prince by Naturalizing or employing a Subject of *Great Britain*, to diſſolve the Bond of Allegiance between that Subject and the Crown.

However, as the Priſoner's Counſel had mentioned his *French* Commiſſion as a Circumſtance tending in their Opinion to prove his Birth in *France*, the Court permitted it to be read, the Attorney-General conſenting. It was dated the firſt of *June* 1745, and appointed the Priſoner Commiſſary of the Troops of *France*, which were then intended to embark for *Scotland*.

The Court, with the Conſent of the Counſel for the Crown, permitted the *Cartel* between *France* and *Great Britain* for the Exchange or Ranſom of Priſoners likewiſe to be read. And obſerved, that as it relateth barely to the Exchange or Ranſom of Priſoners of War, it can never extend to the Caſe of the Priſoner at the Bar, ſuppoſing him to be a Subject born. Becauſe by the Laws of all Nations, Subjects taken in Arms againſt their lawful Prince, are not conſidered as Priſoners of War, but as Rebels; and are liable to the Puniſhments ordinarily inflicted on Rebels.

Lord Chief Juſtice *Lee* in his Direction to the Jury, told them that the Overt Acts laid in the Indictment being fully proved, and not denied by the Priſoner, or rather admitted by his Defence, the only Fact they had to try was, whether he was a Native of *Great Britain?* If ſo, he muſt be found Guilty. And as to that Point, he ſaid the Preſumption in all Caſes of this Kind is againſt the Priſoner; and the Proof of his Birth out of the King's Dominions, where the Priſoner putteth his Defence on that Iſſue, lieth upon him. But whether the Evidence that had been given in the preſent Caſe (which he ſummed up very minutely) did or did not amount to ſuch Proof he left to their Conſideration.

The Jury found him Guilty, but recommended him to Mercy. He received Sentence of Death as in Caſes of High Treaſon; but was afterwards pardoned upon the Conditions mentioned afterwards.

Macdonald at the Suit of *Ramſay*.

While Mr. *Macdonald* lay under Sentence of Death, a Creditor of his, —— *Ramſay*, obtained Leave from my Lord Chief Juſtice at his Chambers to charge him in Cuſtody of the Sheriff, in an Action for a conſiderable Sum of Money; and accordingly he was ſo charged.

In *Eaſter*-Term, the 21ſt of the King, *Mr. Attorney General* acquainted the Court, that his Majeſty had given Orders for preparing a Pardon for Mr. *Macdonald* to paſs the Great Seal, upon Condition of his retiring out of his Majeſty's Dominions, and continuing abroad during his Life. And that one of the Secretaries of State had ſent his Warrant to the Keeper of the *New Priſon* to deliver Mr. *Macdonald* into the Cuſtody of a Meſſenger; but that the Keeper refuſed to obey this Warrant, alledging, that as his Priſoner ſtood charged in an Action at the Suit of Mr. *Ramſay*, he could not deliver him into the Cuſtody of a Meſſenger without incurring the Danger of an Eſcape. *Mr. Attorney* concluded with a Motion, that the Proceſs Mr. *Macdonald* ſtood charged with at the Plaintiff's Suit might be diſcharged.

He was ſupported in this Motion by Sir *John Strange* and the Solicitor General. It was ſaid by *Mr. Attorney*, but not ſtrongly inſiſted on, that a Perſon under an Attainder is *civiliter mortuus*; his Perſon and Eſtate are abſolutely at the Diſpoſal of the Crown; and conſequently he is not liable to Civil Suits. And to this Purpoſe he cited *Truſſel*'s Caſe. (1 *Leon*. 326. *Cro. Eliz*. 213.)

To this Point Mr. *Henley* and Mr. *Ford* for the Plaintiff inſiſted, and ſo the Court agreed, that the later Reſolutions have been, and the Law hath been long ſettled, that an attainted Perſon is liable to Civil Suits: but by the Rules of the Court he ought not be charged, without Leave of the Court, or of a Judge at his Chambers.

The Point reported by *Leonard* and *Croke* to have been adjudged in *Truſſel*'s Caſe came afterwards under Conſideration in Actions brought by other Perſons againſt *that very Man* (*Co. Ent*. 246. a. b. *Cro. Eliz*. 516. *Co. Ent*. 248. 2 *Ann*. 38. *Moo*. 753. 3. *Inſt*. 215.) and was ruled quite otherwiſe.

The Point chiefly inſiſted on by the Counſel on the Side of the Motion was, that to charge the Defendant in this Caſe, ſo as to make his Perſon liable, would be a Means of defeating the King's Pardon; becauſe he would be thereby diſabled to comply with the Terms of it. It would be in effect ſaying, that his Majeſty ſhall not grant a Pardon on theſe Conditions, he ſhall pardon abſolutely, or not at all.

To this Purpoſe they cited *Foxworthy*'s Caſe, reported in *Salk*. 500. 2. Ld. *Raym*. 848. *Far*. 153. And the Caſe of *Coppin* and *Gunner* in 2. Ld. *Raym*. 1572.

But the Court ſaid, We cannot judicially take notice of his Majeſty's Intentions touching the Pardon. The Crown, in caſe of Pardons, ſignifieth its Pleaſure finally and irrevocably by the Great Seal, and by that alone. A Pardon may not paſs at all, or it may be upon other Conditions than are ſuggeſted at the Bar, or it may be a free Pardon. And therefore till the Pardon is paſſed, it is too early for the Court to give any Opinion upon the main Queſtion. Accordingly the Court gave no Opinion; and *Mr. Attorney* took nothing by his Motion †.

Mr. *Macdonald* having afterwards made his Creditor Mr. *Ramſay* eaſy with regard to his Debt, the Action was withdrawn. And he was in *December* 1749, delivered into the Cuſtody of a Meſſenger by virtue of a Warrant for that Purpoſe from the Duke of *Newcaſtle*, one of his Majeſty's Principal Secretaries of State.

N. B. The Perſon of a Man under an Attainder is not abſolutely at the Diſpoſal of the Crown. It is ſo for the Ends of publick Juſtice, and for no other Purpoſe. The King may order Execution to be done upon him according to Law, notwithſtanding he may be charged in Cuſtody at the Suit of Creditors. But 'till Execution is done, his Creditors have an Intereſt in his Perſon for ſecuring their Debts. (6 *H*. IV. 6. b. 7. a.) And he himſelf as long as he liveth, (*Crom*. 113. a.) is under the Protection of the Law. To kill him without Warrant of Law is Murder; for which the Murderer is liable to a Proſecution at the Suit of the Crown, and likewiſe to an Appeal (*Bro*. Appeal 5.) at the Suit of the Widow. For though his Heir is barred by the Attainder, which corrupteth his Blood, and diſſolveth all Relations grounded on Conſanguinity, yet the Relation grounded on the matrimonial Contract continueth 'till Death.

* *Foſter*'s Reports, p. 59.

† *N. B.* The Rule in *Foxworthy*'s Caſe ſeems to have been over-haſty, and the Reaſons on which it is grounded appear to me to be inconcluſive: That in *Coppin* and *Gunner* ſeems more equitable; ſince it ſecured to the Defendant the Benefit of his Pardon, without Prejudice to the Plaintiff, who might reſort for Satisfaction to the Effects of the Defendant, if he could find any.

And if a Perſon under an Attainder be beat or maimed, or a Woman in the like Circumſtances raviſhed, they may, after a Pardon, maintain an Action or Appeal, as their Caſes reſpectively may require (3. *Inſt.* 215.) And though before a Pardon they are diſabled to ſue in their own Names, I make no doubt that they are intitled to proſecute, according to the Nature of their reſpective Caſes in the Name of the King; who will do equal Right to all his Subjects.

N. B. During the Trials of the Rebels at *St. Margaret*'s *Hill*, *Southwark*, under the Commiſſion of 1746, one of the Priſoners challenged peremptorily, and for Cauſe, ſo many of the Jurors, that there was not a ſufficient Number left on the Pannel to proceed on his Trial. In that Caſe the Court, *ore tenus*, (for it was, as hath been already obſerved, a Commiſſion of Goal Delivery as well as of Oyer and Terminer) ordered a new Pannel, and adjourned for ſeveral Days. On the Day of Adjournment the Sheriff returned a Pannel of the ſame Jurors that had ſerved through the whole Proceeding, thoſe who had been challenged by the Priſoner, or ſworn before, included. And a ſufficient Number appearing, he was tried.

The like Caſe happened on the Trial of one of the Aſſaſſins in King *William*'s Time. (IV. *State Trials*, 728, to 733) Mr. *Cook* on the 9th of *May* challenged in the like manner 'till the Jurors remaining on the Pannel were not ſufficient to make a full Jury; whereupon the Court, *ore tenus*, ordered a new Pannel, and adjourned to the 14th. On that Day his Counſel inſiſted that a new Pannel ought not to have been ordered; but that an *Habeas Corpora* with a *Tales* ſhould have been awarded, according to the Opinion in *Stanford* (*f.* 155). But the Court declared, that this being a Proceeding under a Commiſſion of Goal Delivery as well as Oyer and Terminer, they might, and indeed always do in the like Caſe, award a new Pannel if neceſſary, *ore tenus*, without Writ or Precept.

In a mere Commiſſion of Oyer and Terminer no Pannel is ordered 'till the Defendant hath pleaded to Iſſue, and Iſſue is actually joined; and then it is done by Precept in the Nature of a *Venire*. And if in ſuch Caſe there ſhould be a Want of Jurors, an *Habeas Corpora* with a *Tales* may, ſaid the Court, poſſibly iſſue; but no *Tales* can be granted upon a Commiſſion of Goal Delivery. And Mr. Juſtice *Powel* upon that Occaſion ſaid, that if the Sheriff had returned all new Men without regard to thoſe who appeared and were ſworn or challenged on the 9th, it had been well enough.

The Reaſon of the Adjournments in theſe Caſes was, that the Priſoners might have Copies of the new Pannels in due Time, purſuant to the 7th of King *William*; otherwiſe new Pannels might have been ordered returnable *inſtanter*.

The original Pannel in 1746 was upon great Deliberation ordered, ſitting the Court, *ore tenus*, as under the Commiſſion of Goal Delivery; though, as I have already obſerved, a Precept in common Form for holding the Seſſions had iſſued under the Seals of the three Chiefs and three ſenior Judges.

XLI. The Whole Proceedings in the Houſe of Peers, upon the Indictments againſt William Earl of Kilmarnock, George Earl of Cromertie, and Arthur Lord Balmerino, for High-Treaſon, in Levying War againſt his Majeſty: Begun on *Monday* the 28th Day of *July*, and continued on *Wedneſday* the 30th of *July*, and *Friday* the Firſt of *Auguſt*, 1746.

Die Martis, 24o Junii, 1746.

THE Duke of *Newcaſtle*, by His Majeſty's Command, acquainted the Houſe, That Bills of Indictment of High-Treaſon were Yeſterday found, by the Grand Jury of the County of *Surrey*, againſt *William* Earl of *Kilmarnock*, *George* Earl of *Cromertie*, and *Arthur* Lord *Balmerino*.

Ordered, That the ſaid Indictments be removed before this Houſe by *Certiorari*: And that a Writ or Writs of *Certiorari* be iſſued for that Purpoſe.

Then a Committee was appointed to inſpect the Journals of this Houſe upon former Trials of Peers in Capital Caſes; and to conſider of the proper Methods of Proceeding, in order to bring the Lords above named to a ſpeedy Trial: And to report to the Houſe, What they ſhall think proper thereupon.

Their Lordſhips, or any Five of them, to meet To-morrow, at the uſual Time and Place; and to adjourn as they pleaſe.

Ordered, That the Lord Chief Juſtice of the Court of King's Bench, the Lord Chief Juſtice of the Court of Common Pleas, and the Lord Chief Baron of the Court of Exchequer, do attend the ſaid Committee.

Die Jovis, 26o Junii, 1746.

THE Houſe being informed, That the Writ of *Certiorari*, iſſued for removing the Indictments of High-Treaſon, found by the Grand Jury of *Surrey* againſt *William* Earl of *Kilmarnock*, *George* Earl of *Cromertie*, and *Arthur* Lord *Balmerino*, was brought into the Houſe;

The ſaid Writ, Return thereof, and Indictments, were read.

The Lord *Monſon* acquainted the Houſe, That the Committee appointed to inſpect their Lordſhips Journals upon former Trials of Peers in Capital Caſes; and to conſider of the proper Methods of Proceeding, in order to bring the Lords abovementioned to a ſpeedy Trial, had agreed upon a Report: Which they had directed him to make to the Houſe, when their Lordſhips will pleaſe to receive the ſame.

Ordered, That the ſaid Report be received To-morrow; and the Lords to be ſummoned.

Die Veneris, 27o Junii, 1746.

THE Lord *Monſon* (according to Order) reported, from the Lords Committees appointed to inſpect the Journals of this Houſe upon former Trials of Peers in Capital Caſes; and to conſider of the proper Methods of Proceeding, in order to bring *William* Earl of *Kilmarnock*, *George* Earl of *Cromertie*, and *Arthur* Lord *Balmerino*, lately indicted of High-Treaſon, to a ſpeedy Trial; That the Committee have met, and inſpected the Journals of this Houſe, in relation to the Trials of Peers in Capital Caſes; and were attended by the Lord Chief Juſtice of the Court of King's Bench, the Lord Chief Juſtice of the Court of Common Pleas, and the Lord Chief Baron of the Court of Exchequer: And having heard the ſaid Judges upon the Conſtruction of the Act of the Seventh and Eighth Year of King *William* the Third, intituled, *An Act for regulating Trials in Caſes of Treaſon, and Miſpriſion of Treaſon*, and conſidered the Matter to them referred, have come to the following Reſolution, *viz.*

I. That it is the Opinion of this Committee, That, by virtue of the ſaid Act, upon the Trial of any Peer or Peereſs in any of the Caſes of Treaſon, or Miſpriſion of Treaſon, within that Act, all the Peers, who have a Right to ſit and vote in Parliament, ought to be ſummoned Twenty Days at leaſt before every ſuch Trial, to appear at ſuch Trial.

II. That it is the Opinion of this Committee, That ſuch Summons ought to be by Order of this Houſe, requiring, That every Peer, who hath a Right to ſit and vote in Parliament, do appear at, and attend ſuch Trial; and by Letters, to be wrote by the Lord Chancellor, or Speaker of the Houſe for the Time being, to each particular Peer: And that ſuch Order of the Houſe be fixed upon the Doors of this Houſe, and of *Weſtminſter-Hall*; and alſo be publiſhed in the *London Gazette*, at leaſt Twenty Days before ſuch Trial; and that ſuch Letters be ſent at leaſt Twenty Days before ſuch Trial.

III. That it appearing to this Committee, That the antient and uſual Method of ſummoning the Lords to attend upon Trials of Peers in Capital Caſes, in Parliament, has been, by ſending the Letters of Summons, to ſuch Lords as are not in Town, by the Poſt; it is the Opinion of this Committee, That the Letters, to ſuch Lords as are not in Town, be ſent by the Poſt, according to the antient Uſage.

IV. That it is the Opinion of this Committee, That the Houſe be moved to reſolve and declare, That ſuch Order, ſo fixed up and publiſhed as abovementioned, and ſuch Letters, ſo ſent as abovementioned, are a due Summons of the Peers in Caſes of Trials during the Sitting of Parliament, within the true Intent and Meaning of the ſaid Act of the Seventh and Eighth of King *William* the Third.

V. That it is the Opinion of this Committee, That every Lord, before he ſhall ſit or vote upon ſuch Trial, ought to take the Oaths, and make and ſubſcribe the Declaration required by Law to be taken and ſubſcribed by Lords, in order to their Sitting and Voting in Parliament.

VI. That it is the Opinion of this Committee, That, in the Letters to be wrote, purſuant to the Reſolutions abovementioned, Notice be taken, that the Lords are ſummoned, purſuant to the ſaid Act of the Seventh and Eighth Year of King *William* the Third; and that their Attendance is required at ſuch Trial, upon Pain of incurring the utmoſt Diſpleaſure of the Houſe; and that, in caſe the Lord, to whom any ſuch Letter is directed, ſhall be incapable of attending, by reaſon of Sickneſs, or other Diſability, he do ſend Two Witneſſes to atteſt the ſame upon Oath.

Then the ſaid Report was read by the Clerk.

And the Three Firſt Reſolutions, being read a Second time, were ſeverally agreed to by the Houſe; and ordered accordingly.

And the Fourth Reſolution being read, the Houſe was moved purſuant to the Direction of the Committee.

And thereupon,

Reſolved and *Declared*, That the Order for the Attendance of the Peers, who have a Right to ſit and vote in Parliament, fixed up and publiſhed as abovementioned, and ſuch Letters wrote by the Lord Chancellor, or Speaker of this Houſe, and ſent as aforeſaid, are a due Summons of the Peers in Caſes of Trials during the Sitting of Parliament, within the true Intent and Meaning of the ſaid Act of the Seventh and Eighth Year of King *William* the Third.

Then the Two laſt Reſolutions being read a Second time, were ſeverally agreed to by the Houſe; and ordered accordingly.

Ordered, That *William* Earl of *Kilmarnock* be tried on *Monday* the Twenty-eighth of *July* next, at Nine of the Clock in the Morning, upon the Bill of Indictment for High-Treaſon found againſt him: And that *George* Earl of *Cromertie* be tried on the ſame Day, at Ten of the Clock in the Forenoon, upon the Bill of Indictment for High-Treaſon found againſt him: And that *Arthur* Lord *Balmerino* be tried on the ſame Day, at Eleven of the Clock in the Forenoon, upon the Bill of Indictment for High-Treaſon found againſt him.

Ordered, That the Trials of the ſaid Peers be had in *Weſtminſter-Hall*.

Ordered, That an humble Addreſs be preſented to his Majeſty, to acquaint his Majeſty, That this Houſe hath appointed the Trials of *William* Earl of *Kilmarnock*, *George* Earl of *Cromertie*, and *Arthur* Lord *Balmerino*, to begin, in *Weſtminſter-Hall*, on *Monday* the Twenty-eighth Day of *July* next; and humbly to deſire, That his Majeſty will be graciouſly pleaſed to give Orders, That a Place be prepared in the ſaid Hall for the ſaid Trials; and alſo to appoint a Lord High Steward, to continue during the ſaid Trials.

Ordered, That the ſaid Addreſs be preſented to his Majeſty by the Lords with White Staves.

Ordered, That every Peer, who hath a Right to ſit and vote in Parliament, do appear at, and attend, the ſaid Trials: And that this Order be affixed on the Doors of this Houſe, and of *Weſtminſter-Hall*; and alſo be printed and publiſhed in the *London Gazette*, at leaſt Twenty Days before the ſaid Trials.

Ordered,

Ordered, That the Lord Chancellor do write Letters to all the Peers, requiring their Appearance and Attendance at the ſaid Trials, purſuant to the Directions contained in the foregoing Report.

Die Lunæ, 30° *Junii*, 1746.

THE Lord Chamberlain reported, That the Lords with White Staves had, according to Order, preſented to his Majeſty the Addreſs of this Houſe Yeſterday, for a Place to be prepared in *Weſtminſter-Hall*, for the Trials of the Peers indicted of High-Treaſon, and for the Appointment of a Lord High Steward: And that his Majeſty was pleaſed to ſay, He would give Orders accordingly.

Die Lunæ, 7° *Julii*, 1746.

UPON reading the Petition of *William* Earl of *Kilmarnock*, now a Priſoner in the *Tower* of *London*, praying, in regard he has Notice given him, that his Trial is appointed upon the Twenty-eighth Day of this preſent *July*, That their Lordſhips will pleaſe to appoint Mr. *George Roſs* to be his Sollicitor;

It is *Ordered*, That the ſaid *George Roſs* be aſſigned Sollicitor for the Petitioner, as deſired; and that he may have Acceſs to him at all ſeaſonable Times.

Upon reading the Petition of *George* Earl of *Cromertie*, now a Priſoner in the *Tower* of *London*, praying, That this Houſe will be pleaſed to appoint Mr. *Adam Gordon*, Attorney at Law, to be his Sollicitor;

It is *Ordered*, That the ſaid *Adam Gordon* be aſſigned Sollicitor for the Petitioner, as deſired; and that he may have Acceſs to him at all ſeaſonable Times.

Die Martis, 8° *Julii*, 1746.

THE Lord *Monſon* reported from the Lords Committees appointed to inſpect the Journals of this Houſe, upon former Trials of Peers in Capital Caſes; and to conſider of the proper Methods of Proceeding, in order to bring *William* Earl of *Kilmarnock*, *George* Earl of *Cromertie*, and *Arthur* Lord *Balmerino*, lately indicted of High Treaſon, to a ſpeedy Trial, That they had again met, and taken into further Conſideration the Matter to them referred; and were come to the following Reſolutions; *viz.*

That it is the Opinion of the Committee, That all the Lords, who ſhall attend the ſaid Trials, do attend the Houſe, to take the Oaths, in order to their Sitting and Voting upon ſuch Trials, on the *Thurſday* and *Friday* next preceding the Day appointed for the ſaid Trials.

That it is the Opinion of the Committee, That the ſaid Reſolution be printed and publiſhed in the *London Gazette*.

Which, being read twice by the Clerk, were agreed to by the Houſe; and ordered accordingly.

Die Mercurii, 9° *Julii*, 1746.

UPON reading the Petition of *Arthur* Lord *Balmerino*, now a Priſoner in the *Tower* of *London*, praying, That this Houſe will appoint Mr. *George Roſs* to be his Sollicitor;

It is *Ordered*, That the ſaid *George Roſs* be aſſigned Sollicitor for the Petitioner, as deſired; and that he may have Acceſs to him at all ſeaſonable Times.

Die Veneris, 11° *Julii*, 1746.

ON a Report made by the Lord *Monſon*, from the Committee beforementioned:

Ordered, That the Lord High Steward be directed to acquaint the Lords to be tried, and all other Perſons, who may have Occaſion to ſpeak to the Court, that they addreſs themſelves to the Lords in general, and not to the Lord High-Steward.

Die Martis, 15° *Julii*, 1746.

UPON reading the Petition of *George* Earl of *Cromertie*, now a Priſoner in the *Tower*, praying, in regard he is informed, ſeveral Reſolutions have been agreed to by this Houſe, in order to the ſpeedy Trials of the Petitioner, and others, that he may have Copies thereof, the Indictment found againſt him, the *Certiorari* for removing the ſame, and the Return thereof, or any other Proceedings that ſhall be agreed upon in relation to his Trial:

Ordered, That the Petitioner may have Copies of ſuch Proceedings as have been had in this Houſe concerning him; together with a Copy of the ſaid Indictment, *Certiorari*, and Return, as deſired.

Die Mercurii, 23° *Julii*, 1746.

ORDERED, That the Conſtable of his Majeſty's *Tower* of *London*, or the Lieutenant of the ſame, or his Deputy, do bring to the Bar of this Houſe in *Weſtminſter-Hall*, on *Monday* next, at Nine of the Clock in the Morning, the Bodies of *William* Earl of *Kilmarnock*, *George* Earl of *Cromertie*, and *Arthur* Lord *Balmerino*, now in his Cuſtody; together with Copies of their reſpective Commitments, ſigned by the ſaid Conſtable or Lieutenant.

Die Jovis, 24° *Julii*, 1746.

THE Lord *Monſon* reported, from the Lords Committees appointed to inſpect the Journals of this Houſe upon former Trials of Peers in Capital Caſes; and to conſider of the proper Methods of Proceeding in order to the Trials of *William* Earl of *Kilmarnock*, *George* Earl of *Cromertie*, and *Arthur* Lord *Balmerino*, lately indicted of High Treaſon; That the Committee have taken into further Conſideration the Matter to them referred; and have come to the following Reſolutions (amongſt others); *viz.*

That it is the Opinion of the Committee, That all Proclamations to be made in the Court in *Weſtminſter-Hall*, during the ſaid Trials, be made in the King's Name.

That it is the Opinion of the Committee, That the Three Lords, indicted of High Treaſon, be brought to the Bar of the Court in *Weſtminſter-Hall*, at the ſame time, in order to be arraigned.

That it is the Opinion of the Committee, That in caſe the Three Lords, indicted of High Treaſon, ſhould plead Guilty to their Indictments, the Houſe be immediately adjourned to the Chamber of Parliament; but if one or more of the ſaid Lords ſhould plead Guilty, and the other Not guilty, in that caſe, the Lord or Lords ſo pleading Guilty be forthwith remanded, in Cuſtody of the Chief Governor of the *Tower* of *London*, to the ſaid *Tower*; and that the Trial of the other Lord or Lords pleading Not guilty do proceed.

Which Report, being read twice by the Clerk, was agreed to by the Houſe; and ordered accordingly.

Die Lunæ, 28° *Julii*, 1746.

THE Lords met in the Houſe of Lords in their Robes; and, after Prayers, adjourned into *Weſtminſter-Hall*.

The First Day in *Weſtminſter-Hall*.

ABOUT Eleven of the Clock, the Lords came from their own Houſe into the Court erected in *Weſtminſter-Hall*, in the Manner following:

The Lord High Steward's Gentlemen Attendants, Two and Two.

The Clerks Aſſiſtant to the Houſe of Lords; and the Clerk of the Parliament.

Clerk of the Crown in Chancery, bearing the King's Commiſſion to the Lord High Steward; and the Clerk of the Crown in the King's-Bench.

The Maſters in Chancery, Two and Two.

The Judges, Two and Two.

The Peers eldeſt Sons, Two and Two.

Peers Minors, Two and Two.

York and *Windſor* Heralds.

Four Serjeants at Arms with their Maces, Two and Two.

The Yeoman Uſher of the Houſe.

Then the Peers, Two and Two, beginning with the youngeſt Baron.

Then Four Serjeants at Arms with their Maces, Two and Two.

The Serjeant at Arms attending the Great Seal, and Purſe-Bearer.

Then *Garter* King at Arms, and the Gentleman Uſher of the Black-Rod, carrying the White Staff before the Lord High-Steward.

Philip Lord *Hardwicke*, Lord High-Chancellor of *Great Britain*, Lord High Steward, alone; his Train borne.

When the Lords were placed in their proper Seats, and the Lord High-Steward upon the Wool-Pack;

The Clerk of the Crown in Chancery having his Majeſty's Commiſſion to the Lord High Steward in his Hand, and the Clerk of the Crown in the King's Bench ſtanding before the Clerk's Table with their Faces towards the State, made Three Reverences; the Firſt at the Table, the Second in the Midway, and the Third near the Wool-Pack; then kneeled down; and the Clerk of the Crown in Chancery, on his Knee, preſented the Commiſſion to the Lord High Steward, who delivered the ſame to the Clerk of the Crown in the King's-Bench to read: Then riſing, they made Three Reverences, and returned to the Table. And then Proclamation was made for Silence; in this manner:

Serjeant at Arms. Oyes, Oyes, Oyes! Our Sovereign Lord the King ſtrictly charges and commands all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then the Lord High Steward ſtood up, and ſpoke to the Peers.

Lord High Steward. His Majeſty's Commiſſion is about to be read: Your Lordſhips are deſired to attend to it in the uſual Manner; and all others are likewiſe to ſtand up, uncovered, while the Commiſſion is reading.

All the Peers uncovered themſelves; and they, and all others, ſtood up uncovered, while the Commiſſion was read.

GEORGE R.

GEORGE the Second, by the Grace of God, of *Great Britain*, *France*, and *Ireland*, King, Defender of the Faith, and ſo forth. To our Right Truſty and Well-beloved Councillor *Philip* Lord *Hardwicke*, Baron of *Hardwicke*, in Our County of *Glouceſter*, Our Chancellor of *Great Britain*, Greeting. Know ye, That whereas *William* Earl of *Kilmarnock*, late of the City of *Carliſle*, in our County of *Cumberland*; *George* Earl of *Cromertie*, late of the Town of *Perth*, in the Shire of *Perth*; and *Arthur* Lord *Balmerino*, late of the ſaid City of *Carliſle*, in Our ſaid County of *Cumberland*; ſtand ſeverally indicted before Our Juſtices and Commiſſioners, aſſigned and conſtituted by Our Letters Patent under our Great Seal of *Great Britain*, bearing Date the Fifth Day of *June*, in the Nineteenth Year of our Reign, by virtue and according to the Form of the Statute, made in this Our preſent Parliament, intituled, *An Act for the more eaſy and ſpeedy Trial of ſuch Perſons as have levied, or ſhall levy, War againſt His Majeſty; and for the better aſcertaining the Qualifications of Jurors in Trials for High Treaſon, or Miſpriſion of Treaſon, in that Part of* Great Britain *called* Scotland; made to them, and to any Three or more of them; to deliver Our Gaol of Our County of *Surry* of the Priſoners therein being, or ſuch as ſhall or may be detained in the ſame, on or before the Firſt Day of *January*, in the Year of our Lord One thouſand Seven hundred and Forty-ſix, for or on Account of the High Treaſon mentioned in the ſaid Act, in levying War againſt Us within this Realm; and to inquire, by the Oath of good and lawful Men of the ſame County, of all ſuch High Treaſons, in levying War againſt Us within this Realm by the ſaid Priſoners, or any of them, or by any other Perſon or Perſons who are now in actual Cuſtody for or on Account of the ſame, or who are or ſhall be guilty of High-Treaſon, in levying War againſt Us within this Realm, and ſhall be apprehended and impriſoned for the ſame, on or before the ſaid Firſt Day of *January*, in the ſaid Year of our Lord One thouſand Seven hundred and Forty-ſix; and the ſame Treaſons to hear and determine, according to the Form of the ſaid Statute, by the Oath of Twelve Jurors, good and lawful Men of the ſaid County of *Surry*, of High-Treaſon, by them the ſaid *William* Earl of *Kilmarnock*, *George* Earl of *Cromertie*, and *Arthur* Lord *Balmerino*, committed and perpetrated in levying War againſt Us within this Realm; and conſidering, that Juſtice is an excellent Virtue, and pleaſing to the Moſt High; and being willing that the ſaid *William* Earl of *Kilmarnock*, *George* Earl of *Cromertie*, and *Arthur* Lord *Balmerino*, ſhould be heard, examined, ſentenced and adjudged before Us, in this Our preſent Parliament, touching and concerning the ſaid High-Treaſon whereof they ſtand ſeverally indicted as aforeſaid; and that all other Things which are neceſſary in this behalf, ſhould be in due Manner done and executed; and for that the Office of Steward of *Great Britain* (whoſe Preſence is required upon this Occaſion) is now vacant (as We are informed); We, very much confiding in your Fidelity, Prudence, provident Circumſpection,

Circumſpection, and Induſtry, have for this Cauſe ordained and conſtituted you Steward of *Great Britain*, to bear, execute and exerciſe (for this Time) the ſaid Office, with all Things due and belonging to the ſame Office in this behalf: And therefore We command you, that you diligently ſet about the Premiſſes, and (for this Time) do exerciſe, and execute with Effect, all thoſe Things which belong to the Office of Steward of *Great Britain*, and which are required in this Behalf. In Witneſs whereof, We have cauſed theſe Our Letters to be made Patent. Witneſs Ourſelf at *Weſtminſter*, the Twenty-eighth Day of *July*, in the Twentieth Year of Our Reign.

By the King Himſelf, ſigned with his own Hand.

Biſſe.

Serjeant at Arms. God ſave the King.

Then Garter, and the Gentleman Uſher of the Black Rod, after Three Reverences, kneeling, jointly preſented the White Staff to his Grace the Lord High Steward: And then his Grace, attended by Garter, Black Rod, and the Purſe-Bearer (making his proper Reverences towards the Throne), removed from the Wool-Pack to an armed Chair, which was placed on the uppermoſt Step but one of the Throne, as it was prepared for that Purpoſe; and then ſeated himſelf in the Chair, and delivered the Staff to the Gentleman Uſher of the Black Rod on his Right Hand, the Purſe-Bearer holding the Purſe on the Left.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. Oyes, Oyes, Oyes! Our Sovereign Lord the King ſtrictly charges and commands all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then the Clerk of the Crown, by Direction of the Lord High Steward, read the *Certiorari*, and the Return thereof; together with the Captions of the Indictments, and the Indictments certified thereupon, againſt the Earl of *Kilmarnock*, the Earl of *Cromertie*, and the Lord *Balmerino*, *in hæc verba:*

The *Certiorari* and *Return.* } GEORGE the Second, by the Grace of God, of *Great Britain*, *France*, and *Ireland*, King, Defender of the Faith, To Our Juſtices and Commiſſioners aſſigned and conſtituted by Our Letters Patent under our Great Seal of *Great Britain*, made to them, and to any Three or more of them, to deliver Our Gaol of Our County of *Surry* of the Priſoners therein being, or ſuch as ſhall or may be detained in the ſame, on or before the Firſt Day of *January*, in the Year of Our Lord One thouſand Seven hundred and Forty-ſix, for or on Account of the High-Treaſon mentioned in the Statute made in this Our preſent Parliament, intituled, *An Act for the more eaſy and ſpeedy Trial of ſuch Perſons as have levied, or ſhall levy War againſt his Majeſty; and for the better aſcertaining the Qualifications of Jurors in Trials for High-Treaſon, or Miſpriſion of Treaſon, in that Part of* Great Britain *called* Scotland, in levying War againſt Us within this Realm; and to enquire, by the Oath of good and lawful Men of the ſame County, of all ſuch High-Treaſons, in levying War againſt Us within this Realm, by the ſaid Priſoners, or any of them, or by any other Perſon or Perſons who are now in actual Cuſtody for or on Account of the ſame, or who are or ſhall be guilty of High-Treaſon in levying War againſt Us within this Realm, and ſhall be apprehended and impriſoned for the ſame, on or before the ſaid Firſt Day of *January*, in the ſaid Year of our Lord One thouſand Seven hundred and Forty-ſix, and the ſame Treaſons to hear and determine, according to the Form of the ſaid Statute, and to every of them, Greeting. We command you, and every of you, that all and ſingular Indictments for High-Treaſon, in levying War againſt Us within this Realm, whereof *William* Earl of *Kilmarnock*, late of the City of *Carliſle*, in the County of *Cumberland*; *Arthur* Lord *Balmerino*, late of the ſame Place; and *George* Earl of *Cromertie*, late of the Town of *Perth*, in the Shire of *Perth*; ſtand ſeverally indicted before you in our ſaid County of *Surry*; which ſaid Indictments now remain in your Power, or in the Power of ſome or one of you, with all Things touching the ſame, as fully and perfectly as the ſame were taken before you, by what names, Stiles or Titles ſoever the ſaid *William* Earl of *Kilmarnock*, *Arthur* Lord *Balmerino*, and *George* Earl of *Cromertie*, may be called or diſtinguiſhed in the ſame, you do, without Delay, deliver, under your Seals, or the Seals or Seal of ſome or one of you, to Us, in this Our preſent Parliament, together with this Writ. Witneſs Ourſelf at *Weſtminſter*, the Twenty-fifth Day of *June*, in the Twentieth Year of Our Reign.

Biſſe.

Return. } BY virtue of this Writ to us, and others, our Fellows, directed, we do deliver the within-mentioned Indictments for High-Treaſon; whereof the within named *William* Earl of *Kilmarnock*, *Arthur* Lord *Balmerino*, and *George* Earl of *Cromertie*, ſtand ſeverally indicted; which ſaid Indictments lately remained before us, and others our Fellows, but are now annexed to this Writ, with all Things touching the ſame, as fully and perfectly as the ſame were lately taken before us, and others our Fellows; to our preſent Sovereign Lord the King, in this preſent Parliament; together with this Writ, according to the Form of the ſaid Writ, as we are within commanded.

The Anſwer of Sir *William Lee*, Knight; Sir *John Willes*, Knight; and Sir *Thomas Parker*, Knight; Three of the Juſtices and Commiſſioners within mentioned.

W. Lee.
J. Willes.
T. Parker.

Surry. } BE it remembered, That at a Special Seſſions of Oyer and Terminer, and Gaol-delivery, of our Sovereign Lord the King, of and for the County of *Surry*, holden at the Borough of *Southwark*, in the ſaid County, on *Monday* the Twenty-third Day of *June*, in the Twentieth Year of the Reign of our ſaid preſent Sovereign Lord *George* the Second, by the Grace of God of *Great Britain*, *France*, and *Ireland*, King, Defender of the Faith, and ſo forth, before Sir *William Lee*, Knight, Chief Juſtice of our ſaid preſent Sovereign Lord the King, appointed to hold Pleas before the King himſelf; Sir *John Willes*, Knight, Chief Juſtice of the Court of Common-Pleas; Sir *Martin Wright*, Knight, one of the Juſtices appointed to hold Pleas before the King himſelf; Sir *James Reynolds*, Knight, one of the Barons of the Court of Exchequer; Sir *Thomas Abney*, Knight, one of the Juſtices of the ſaid Court of Common Pleas; Sir *Thomas Burnet*, Knight, one other of the Juſtices of the ſaid Court of Common Pleas; *Charles Clarke*, Eſquire, one other of the Barons of the ſaid Court of Exchequer; *Edward Clive*, Eſquire, one other of the Barons of the ſaid Court of Exchequer; Sir *Thomas Deveil*, Knight, and *Peter Theobald*, Eſquire, and others their Fellows, Juſtices, and Commiſſioners of our ſaid preſent Sovereign Lord the King, aſſigned by Letters Patent of our ſaid preſent Sovereign Lord the King, under his Great Seal of *Great Britain*, made by virtue of the Statute made in this preſent Parliament, intituled, *An Act for the more eaſy and ſpeedy Trial of ſuch Perſons as have levied, or ſhall levy, War againſt his Majeſty, and for the better aſcertaining the Qualifications of Jurors in Trials for High-Treaſon, or Miſpriſion of Treaſon, in that Part of* Great Britain *called* Scotland, to the ſaid Juſtices and Commiſſioners above named, and others, and to any Three or more of them (of whom our ſaid preſent Sovereign Lord the King willed, That any of them the ſaid Sir *William Lee*, Sir *John Willes*, Sir *Martin Wright*, Sir *James Reynolds*, Sir *Thomas Abney*, Sir *Thomas Burnet*, *Charles Clarke*, *Edward Clive*, and Sir *Thomas Deveil*, and others, in the ſame Letters Patent named and appointed, ſhould be one), to deliver the Gaol of the ſaid County of the Priſoners therein being, or ſuch as ſhall or may be detained in the ſame on or before the Firſt Day of *January*, in the Year of our Lord 1746, for or on Account of the High-Treaſon mentioned in the ſaid Statute, in levying War againſt our ſaid preſent Sovereign Lord the King within this Realm; and to inquire, by the Oath of good and lawful Men of the ſame County, of all ſuch High-Treaſons in levying War againſt our ſaid preſent Sovereign Lord the King, within this Realm, by the ſaid Priſoners, or any of them; or by any other Perſon or Perſons who are now in actual Cuſtody for or on Account of the ſame, or who are or ſhall be guilty of High-Treaſon, in levying War againſt our ſaid preſent Sovereign Lord the King, within this Realm, and ſhall be apprehended and impriſoned for the ſame on or before the Firſt Day of *January*, in the ſaid Year of our Lord 1746; and the ſame High-Treaſons to hear and determine according to the Form of the ſaid Statute, by the Oath of Sir *William Richardſon*, of *Bermondſey*, Knight; Sir *Abraham Shard*, of *Kennington*, Knight; Sir *Thomas Hankey*, of *Clapham*, Knight; Sir *Peter Thompſon*, of *Bermondſey*, Knight; *Joſias Wordſworth*, of *Adſcombe*, Eſquire; *Percival Lewis*, of *Putney*, Eſquire; *Samuel Atkinſon*, of *Croydon*, Eſquire; *John Copeland*, of *Camberwell*, Eſquire; *Charles Hoſkins*, of *Croydon*, Eſquire; *Joſeph Creſwick*, of *Stretham*, Eſquire; *William Clarke*, of *Southwarke*, Eſquire; *Joſeph Willoughby*, of *Croydon*, Eſquire; *Thomas Bevois*, of *Bermondſey*, Eſquire; *Elias Bird*, of *Rotherhith*, Eſquire; *Thomas Tarrant*, of *Southwarke*, Eſquire; *Edward Steavens*, of *Southwarke*, Eſquire; *Henry Robinſon*, of *Wandſworth*, Eſquire; *John Heathfield*, of *Croydon*, Eſquire; *Nathaniel Green*, of *Southwarke*, Eſquire; *Iſaac Eeles*, of *Lambeth*, Eſquire; *John Smith*, of *Lambeth*, Eſquire; *Hammett Richardſon*, of *Bermondſey*, Eſquire; and *Samuel Nicholſon*, of *Croydon*, Eſquire; good and lawful Men of the ſaid County, being then and there ſworn, and charged to inquire for our ſaid preſent Sovereign Lord the King, touching and concerning the Premiſſes in the ſaid Letters Patent mentioned; it is preſented, that the Bill of Indictment, to this Schedule annexed, is a true Bill.

Surry. } THE Jurors for our preſent Sovereign Lord the King, upon their Oath, preſent, That *William* Earl of *Kilmarnock*, late of the City of *Carliſle*, in the County of *Cumberland*, being a Subject of our ſaid preſent moſt Serene Sovereign Lord *George* the Second, by the Grace of God, of *Great Britain*, *France*, and *Ireland*, King, Defender of the Faith, and ſo forth, and not having the Fear of God in his Heart, nor having any Regard for the Duty of his Allegiance; but being moved and ſeduced by the Inſtigation of the Devil, as a falſe Traitor and Rebel againſt our ſaid preſent Sovereign Lord the King, his ſupreme, true, natural, lawful, and undoubted Sovereign Lord, entirely withdrawing that cordial Love, and that true and due Obedience, Fidelity, and Allegiance, which every Subject of our ſaid preſent Sovereign Lord the King ſhould, and of Right ought to, bear towards our ſaid preſent Sovereign Lord the King; and alſo deviſing, and, as much as in him lay, moſt wickedly and traitorouſly intending to change and ſubvert the Rule and Government of this Kingdom, duly and happily eſtabliſhed under our ſaid preſent Sovereign Lord the King; and alſo to depoſe and deprive our ſaid preſent Sovereign Lord the King of his Title, Honour, and Royal State, and of his Imperial Rule and Government of this Kingdom; and alſo to put and bring our ſaid preſent Sovereign Lord the King to Death, and final Deſtruction; and to raiſe and exalt the Perſon pretended to be the Prince of *Wales* during the Life of *James* the Second, late King of *England*, and ſo forth; and, ſince the Deceaſe of the ſaid late King, pretending to be, and taking upon himſelf the Stile and Title of, King of *England*, by the Name of *James* the Third, to the Crown, and to the Royal State and Dignity of King, and to the Imperial Rule and Government of this Kingdom, upon the Tenth Day of *November*, in the Nineteenth Year of the Reign of our ſaid preſent Sovereign Lord the King, at the City of *Carliſle* aforeſaid, in the County of *Cumberland* aforeſaid, with a great Multitude of Traitors and Rebels againſt our ſaid preſent Sovereign Lord the King, to wit, to the Number of Three thouſand Perſons, whoſe Names are as yet unknown to the ſaid Jurors, being armed and arrayed in a warlike and hoſtile Manner, *to wit*, with Colours diſplayed, Drums beating, Pipes playing, and with Swords, Clubs, Guns, Piſtols, and divers other Weapons, as well offenſive as defenſive, with Force and Arms did falſly and traitorouſly aſſemble and join himſelf againſt our ſaid preſent Sovereign Lord the King; and then and there, with Force and Arms, did falſly and traitorouſly, and in a warlike and hoſtile Manner, array and diſpoſe himſelf againſt our ſaid preſent Sovereign Lord the King; and then and there, with Force and Arms, in Purſuance and Execution of ſuch his wicked and traitorous Intentions and Purpoſes aforeſaid, did falſly and traitorouſly prepare, order, wage, and levy, a publick and cruel War againſt our ſaid preſent Sovereign Lord the King, then and there committing and perpetrating a miſerable and cruel Slaughter of and amongſt the faithful Subjects of our ſaid preſent Sovereign Lord the King; and alſo then and there, during the ſaid War, with Force and

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Arms did, with the said Traitors and Rebels so assembled, armed and arrayed, as aforesaid, falsly and traitorously, against the Will of our said present Sovereign Lord the King, enter into, and take Possession of, the said City of *Carlisle*, and the Castle thereto belonging within the same City (the said City and Castle being a City and Castle of our said present Sovereign Lord the King); and the said City and Castle, with Force and Arms, then and there did falsly and traitorously possess, hold, keep, maintain, and defend, against our said present Sovereign Lord the King, against the Duty of his Allegiance, against the Peace of our said present Sovereign Lord the King, his Crown and Dignity, and also against the Form of the Statute in such Case made and provided.

Witnesses, *David Gray*, *Hugh Douglass*,
John Vere, *Samuel Maddock*,
James Barclay, *Charles Campbell*, Esquire.

A true Bill. Sworn in Court.

The Caption of the Indictment against *George* Earl of *Cromertie* was read, in the like Form as that against *William* Earl of *Kilmarnock*; and then followed the Indictment; *viz.*

Surry. THE Jurors for our present Sovereign Lord the King, upon their Oath, present, That *George* Earl of *Cromertie*, late of the Town of *Perth*, in the Shire of *Perth*, being a Subject of our said present most Serene Sovereign Lord *George* the Second, by the Grace of God, of *Great Britain*, *France*, and *Ireland*, King, Defender of the Faith, and so forth, not having the Fear of God in his Heart, nor having any Regard for the Duty of his Allegiance, but being moved and seduced by the Instigation of the Devil, as a false Traitor and Rebel against our said present Sovereign Lord the King, his supreme, true, natural, lawful, and undoubted Sovereign Lord, intirely withdrawing that cordial Love, and that true and due Obedience, Fidelity, and Allegiance, which every Subject of our said present Sovereign Lord the King should, and of Right ought to bear towards our said present Sovereign Lord the King; and also devising, and, as much as in him lay, most wickedly and traitorously intending to change and subvert the Rule and Government of this Kingdom, duly and happily established under our said present Sovereign Lord the King, and also to depose and deprive our said present Sovereign Lord the King of his Title, Honour, and Royal State, and of his Imperial Rule and Government of this Kingdom, and also to put and bring our said present Sovereign Lord the King to Death and final Destruction, and to raise and exalt the Person pretended to be Prince of *Wales*, during the Life of *James* the Second, late King of *England*, and so forth, and, since the Decease of the said late King, pretending to be, and taking upon himself the Stile and Title of, King of *England*, by the Name of *James* the Third, to the Crown, and to the Royal State and Dignity of King, and to the Imperial Rule and Government of this Kingdom, upon the First Day of *December*, in the Nineteenth Year of the Reign of our said present Sovereign Lord the King, at the Town of *Perth* aforesaid, in the Shire of *Perth* aforesaid, with a great Multitude of Traitors and Rebels, against our said present Sovereign Lord the King; to wit, to the Number of a Thousand Persons, whose Names are, as yet, unknown to the said Jurors, being armed, and arrayed in a warlike and hostile Manner; to wit, with Colours displayed, Drums beating, Pipes playing, and with Swords, Clubs, Guns, Pistols, and divers other Weapons, as well offensive as defensive, with Force and Arms, did falsly and traitorously assemble and join himself against our said present Sovereign Lord the King; and then and there, with Force and Arms, did falsly and traitorously, and in a warlike and hostile Manner, array and dispose himself against our said present Sovereign Lord the King; and then and there, with Force and Arms, in Pursuance and Execution of such his wicked and traitorous Intentions and Purposes aforesaid, did falsly and traitorously prepare, order, wage, and levy a publick and cruel War against our said present Sovereign Lord the King, then and there committing and perpetrating a miserable and cruel Slaughter of and amongst the faithful Subjects of our said present Sovereign Lord the King; and also then and there, during the said War, with Force and Arms, did, with the said Traitors and Rebels, so assembled, armed, and arrayed, as aforesaid, falsly and traitorously, against the Will of our said present Sovereign Lord the King, enter into, and take Possession of, the said Town of *Perth* (the said Town of *Perth* being a Town of our said present Sovereign Lord the King), and the said Town of *Perth*, with Force and Arms, then and there did falsly and traitorously possess, hold, keep, maintain, and defend against our said present Sovereign Lord the King, against the Duty of his Allegiance, against the Peace of our said present Sovereign Lord the King, his Crown and Dignity, and also against the Form of the Statute in such Case made and provided.

Witnesses, *Hugh Ross.*
David Gray,
John M'Kay,
James Logie.

A true Bill. Sworn in Court.

The Caption of the Indictment against *Arthur* Lord *Balmerino* was read in the like Form as that against *William* Earl of *Kilmarnock*; and then followed the Indictment; *viz.*

Surry. THE Jurors for our present Sovereign Lord the King, upon their Oath, present, That *Arthur* Lord *Balmerino*, late of the City of *Carlisle*, in the County of *Cumberland*, being a Subject of our said present most Serene Sovereign Lord *George* the Second, by the Grace of God of *Great-Britain*, *France*, and *Ireland*, King, Defender of the Faith, and so forth, not having the Fear of God in his Heart, nor having any Regard for the Duty of his Allegiance, but being moved and seduced by the Instigation of the Devil, as a false Traitor and Rebel against our said present Sovereign Lord the King, his supreme, true, natural, lawful, and undoubted Sovereign Lord, intirely withdrawing that cordial Love, and that true and due Obedience, Fidelity, and Allegiance, which every Subject of our said present Sovereign Lord the King should, and of Right, ought to bear towards our said present Sovereign Lord the King; and also devising (as much as in him lay) and most wickedly and traitorously intending to change and subvert the Rule and Government of this Kingdom, duly and happily established under our said present Sovereign Lord the King; and also to depose and deprive our said present Sovereign Lord the King of his Title, Honour, and Royal State, and of his Imperial Rule and Government of this Kingdom; and also to put and bring our said present Sovereign Lord the King to Death and final Destruction; and to raise and exalt the Person pretended to be Prince of *Wales*, during the Life of *James* the Second, late King of *England*, and so forth, and since the Decease of the said late King, pretending to be, and taking upon himself the Stile and Title of King of *England*, by the Name of *James* the Third, to the Crown, and to the Royal State and Dignity of King, and to the Imperial Rule and Government of this Kingdom, upon the Tenth Day of *November*, in the Nineteenth Year of the Reign of our said present Sovereign Lord the King, at the City of *Carlisle* aforesaid, in the County of *Cumberland* aforesaid, with a great Multitude of Traitors and Rebels, against our said present Sovereign Lord the King; to wit, to the Number of Three Thousand Persons (whose Names are, as yet, unknown to the said Jurors), being armed and arrayed in a warlike and hostile Manner; to wit, with Colours displayed, Drums beating, Pipes playing, and with Swords, Clubs, Guns, Pistols, and divers other Weapons, as well offensive as defensive, with Force and Arms, did falsly and traitorously assemble and join himself against our said present Sovereign Lord the King; and then and there, with Force and Arms, did falsly and traitorously, and in a warlike and hostile Manner, array and dispose himself against our said present Sovereign Lord the King; and then and there, with Force and Arms, in Pursuance and Execution of such his wicked and traitorous Intentions and Purposes aforesaid, did falsly and traitorously prepare, order, wage, and levy a publick and cruel War against our said present Sovereign Lord the King, then and there committing and perpetrating a miserable and cruel Slaughter of and amongst the faithful Subjects of our said present Sovereign Lord the King; and also then and there, during the said War, with Force and Arms, did, with the said Traitors and Rebels, so assembled, armed, and arrayed, as aforesaid, falsly and traitorously, against the Will of our said present Sovereign Lord the King, enter into, and take Possession of, the said City of *Carlisle*, and the Castle thereto belonging within the same City (the said City and Castle being a City and Castle of our said present Sovereign Lord the King), and the said City and Castle, with Force and Arms, then and there did falsly and traitorously possess, hold, keep, maintain, and defend, against our said present Sovereign Lord the King, against the Duty of his Allegiance, against the Peace of our said present Sovereign Lord the King, his Crown and Dignity, and also against the Form of the Statute in such Case made and provided.

Witnesses, *Hugh Douglass*,
John Vere,
James Berclay,
David Gray,
James Logie.

A true Bill. Sworn in Court.

Lord High Steward. Is it your Lordships Pleasure that the Judges have Leave to be covered?

Lords. Ay, ay.

Clerk of the Crown. Serjeant at Arms, make Proclamation for the Lieutenant of the *Tower* to bring his Prisoners to the Bar.

Serjeant at Arms. Oyes, oyes, oyes! Lieutenant of the *Tower* of *London*, bring forth your Prisoners, *William* Earl of *Kilmarnock*, *George* Earl of *Cromertie*, and *Arthur* Lord *Balmerino*, to the Bar, together with Copies of their respective Commitments, pursuant to the Order of the House of Lords.

Then *William* Earl of *Kilmarnock*, *George* Earl of *Cromertie*, and *Arthur* Lord *Balmerino*, were all brought to the Bar, by the Deputy-Governor of the *Tower*, having the Ax carried before them by the Gentleman-Gaoler, who stood with it, on the left Hand of the Prisoners, with the Edge turned from them. The Prisoners, when they approached the Bar, made three Reverences; and then fell upon their Knees at the Bar. The Deputy-Governor of the *Tower* also delivered in the Copy of the Commitment.

Lord High Steward. Your Lordships may rise.

Then the Prisoners rose up, and bowed to his Grace the Lord High Steward, and to the House of Peers; which Compliment was returned them by his Grace, and the Lords.

L. H. S. Let the Copy of the Commitment be read.

Which was read as follows:

Thomas Holles, Duke of *Newcastle*, Marquis and Earl of *Clare*, Viscount *Haughton*, Baron *Pelham* of *Laughton*, Knight of the Most Noble Order of the Garter, one of the Lords of his Majesty's Most Honourable Privy Council, and Principal Secretary of State, *&c.*

THESE are in his Majesty's Name to authorize and require you to receive into your Custody the Bodies of *William* Earl of *Kilmarnock*, *George* Earl of *Cromertie*, and *Arthur* Lord *Balmerino*, herewith sent you, for High-Treason, in levying War against his Majesty; and to keep them safe and close, until they shall be delivered by due Course of Law: And for so doing, this shall be your Warrant. Given at *Whitehall*, the Twenty-seventh Day of *May* 1746, in the Nineteenth Year of his Majesty's Reign.

HOLLES NEWCASTLE.

To the Right Honourable the Lord *Cornwallis*, Constable of his Majesty's *Tower* of *London*, and in his Absence to the Lieutenant of the said *Tower*, or his Deputy.

This is a true Copy of the original Warrant.

CORNWALLIS.

Then Proclamation having been again made for Silence, the Lord High Steward spake to the Prisoners as follows:

L. H. S. *WILLIAM* Earl of *Kilmarnock*, *George* Earl of *Cromertie*, *Arthur* Lord *Balmerino*, your Lordſhips are brought before the moſt auguſt Judicature in this Kingdom, in order to receive your ſeveral Trials, upon different Charges of High-Treaſon againſt you, returned before this Houſe.

As the Crimes, whereof you ſtand accuſed, are of the moſt heinous Nature, ſo the Accuſations againſt you are grounded upon no ſlight Foundations: They are no leſs than Indictments for levying War, and raiſing a Rebellion againſt his Majeſty, found by a Grand Jury of Gentlemen, of great Worth and Conſideration, in the County of *Surry*, upon Evidence produced before them.

But though your Charge is thus weighty and ſolemn, it is ſtill but a Charge, and open to all ſuch Defences as the Circumſtances of your ſeveral Caſes, and the Rules of Law and Juſtice will admit.

The Law is the ſolid Baſis and Support of the King's Throne: It is the great Bulwark of the Property, the Liberty, and Life of every Subject; and it is the Security of the Privileges and Honours of the Peerage. By this Meaſure, which is uniform and equal to every Member of the Community, your Actions, which are now called in Queſtion, are this Day to be examined and judged.

If your Lordſhips are innocent, this will be one Ground of a reaſonable Confidence in your preſent unhappy Circumſtances: But to this Conſideration your own Thoughts cannot fail to add another; I mean, that the Rules of this Law are to be expounded and diſpenſed to you by this illuſtrious Aſſembly, the whole Body of the Peers of *Great-Britain*, in whoſe noble and diſcerning Minds nothing can have Weight but Evidence and Juſtice: Guilt alone can take place againſt you, and Innocence alone can acquit you.

Your firſt Conſideration will be, What Pleas to put in to theſe Indictments: If your Lordſhips ſhall put yourſelves upon your Trials, you may reſt aſſured, from the Motives I have already mentioned, that they will be legal, fair, and impartial; and as you ſtand here to anſwer for your Eſtates, your Lives, your Honours, and your Poſterity, it is incumbent upon you to recollect yourſelves, and to call up all thoſe Succours of Reaſon, Diſcretion, and Temper, which you are Maſters of.

There is a Circumſtance in your Caſe which is new, and makes it unneceſſary for me to ſay much, by way of Admonition, concerning your Defence: Your Lordſhips are the firſt of your Rank and Quality who have been brought to Trial upon Indictments for High-Treaſon, ſince the Act made in the Reign of our great Deliverer King *William* the Third, for regulating of Trials in Caſes of High-Treaſon, and Miſpriſion of Treaſon.

It has been the peculiar Happineſs of this Nation, ſince the Revolution, that our Princes have had that Confidence in the Affections of their People, and the Intereſts of both are become ſo evidently the ſame, that the regal Sanction has, ſince that Period, been graciouſly granted to Laws for the Security of the Subject, which were in vain wiſhed for in former Reigns.

However injuriouſly that Revolution has been traduced, whatever Attempts have been made to ſubvert this happy Eſtabliſhment founded upon it, your Lordſhips will now have the Benefit of that Law in its full Extent.

Before I conclude, I am by Command of the Houſe to acquaint your Lordſhips, and all other Perſons who ſhall have Occaſion to ſpeak to the Court, during theſe Trials, that they are to addreſs themſelves to the Lords in general, and not to any Lord in particular.

L. H. S. Your Lordſhips will do well to give Attention, while you are ſeverally arraigned upon your Indictments.

Here the Earl of *Kilmarnock* was arraigned, in the Form of the ſaid Indictment againſt him, by the Clerk of the Crown in the King's-Bench.

Clerk of the Crown. How ſay you, *William* Earl of *Kilmarnock*, are you guilty of this High-Treaſon whereof you ſtand indicted, or not guilty?

Earl of Kil. Guilty.

L. H. S. The Diſtance I am at from the Bar is ſo great, that I am not ſure whether I heard your Lordſhip right; and therefore deſire to aſk you, Whether you plead guilty, or not guilty?

Earl of Kil. Guilty, my Lords.

George Earl of *Cromertie* was arraigned in the ſame Manner, upon the ſaid Indictment againſt him.

Clerk of the Crown. How ſay you, *George* Earl of *Cromertie*, are you guilty of this High-Treaſon whereof you ſtand indicted, or not guilty?

Earl of Crom. Guilty.

L. H. S. Not perfectly hearing your Lordſhip's Anſwer, I muſt give you the ſame Trouble as I did the Earl of *Kilmarnock*, by aſking your Lordſhip the ſame Queſtion, Whether you plead guilty, or not guilty?

Earl of Crom. Guilty, my Lords.

Arthur Lord *Balmerino* was arraigned in the ſame Manner, upon the ſaid Indictment againſt him.

Cl. of the Cr. How ſay you, *Arthur* Lord *Balmerino*, Are you guilty of this High Treaſon whereof you ſtand indicted, or not guilty?

Lord *Balmerino.* Will your Lordſhips be pleaſed to hear me, and I will be very ſhort: I have only Two or Three Words to ſay: I will not take up your Time, my Lords.

L. H. S. Your Lordſhip is now arraigned; and the Indictment has been read to you: Now is your Time to plead.

Lord *Bal.* If I ſhould plead guilty, there is no occaſion to ſpeak after that.

L. H. S. This is not a proper Time to ſpeak to other Matters. It is my Duty to inform your Lordſhip of the Rules of Law, and Methods of Proceeding; which require that you ſhould firſt plead to the Indictment.

Lord *Bal.* Then, my Lords, you will oblige me to take up more of your Lordſhips Time than I intended; for I cannot plead guilty. I deſire to be heard: I will not take up your Lordſhips Time. I want an Anſwer to one Queſtion, and then I will plead.

L. H. S. If your Lordſhip has any thing material, you may mention it.

Lord *Balm.* My Lords, if there be any Fault in the Form of the Indictment, or if it is ſo faulty, that no Judgment can be given upon it, I want to know, Whether I can be indicted again.

L. H. S. If your Lordſhip has any Exception to take to the Indictment for Miſ-writing, Miſ-ſpelling, or any Informality of that Nature, now is your proper Time to offer ſuch Exceptions.

Lord *Bal.* My Lords, I am indicted by the Title of Lord *Balmerino*, of the City of *Carliſle*; and, I am ſure, that is no Title belonging to me: And I am indicted for being at the Taking of his Majeſty's City and Caſtle of *Carliſle* on the 10th of *November*; and I can prove, that, at that Time, I was not within Twelve Miles of it: Now, my Lords, Will that be of any Uſe to me? I can prove I was Twelve Miles off, when they ſay I was at *Carliſle*.

Cl. of the Cr. Serjeant at Arms, make Proclamation for Silence.

Serj. at Arms. Oyes, Oyes, Oyes! Our Sovereign Lord the King doth ſtrictly charge and command all manner of Perſons to keep Silence, upon Pain of Impriſonment.

L. H. S. My Lord *Balmerino*, you have made Two Objections of different Natures; the firſt of them is to the Addition of Place given to you in this Indictment; and the other goes to the Fact thereby charged upon you. As to the Firſt, I muſt inform your Lordſhip, that the Words *late of the City of* Carliſle *in the County of* Cumberland, are not made Part of your Title, but are only an Addition of Place, which the Law, for good Reaſons, requires to be inſerted by way of Deſcription of the Defendant in all Indictments; and it is moſt commonly taken from that Place, where the Crime is by ſuch Indictment charged to have been committed. As to your other Objection, it relates to the Fact alledged in the Indictment, and will depend upon the Evidence; which cannot be entered into till your Lordſhip has pleaded.

Lord *Bal.* Then, my Lords, though I could prove I was elſewhere, it would be of no Uſe to me at all.

L. H. S. Your Lordſhip miſtakes me; I do not tell you ſo; but only, that this your laſt Objection cannot be taken into Conſideration, till after you have pleaded, and the Evidence appears.

Lord *Bal.* I can make it appear, that I was not at *Carliſle* at that Time.

L. H. S. I have acquainted your Lordſhip according to my Duty, with the Method of Proceeding, and the proper Time for making uſe of your Objection. It muſt be left to your Conſideration, how far you think it for your Advantage to inſiſt upon it.

Cl. of the Cr. *Arthur* Lord *Balmerino*, Are you guilty of the High-Treaſon whereof you ſtand indicted, or not Guilty?

Lord *Bal.* Not Guilty, my Lords.

Cl. of the Cr. *Culprit*, How will your Lordſhip be tried?

Lord *Bal.* By God and my Peers.

Cl. of the Cr. God ſend your Lordſhip a good Deliverance.

L. H. S. Let the Lieutenant of the *Tower* take my Lord *Kilmarnock* and my Lord *Cromertie* from the Bar.

Theſe Two Lords were then taken from the Bar by the Lieutenant of the *Tower*; who returned again, and ſtood on the Right Hand of Lord *Balmerino*; the Gentleman-Gaoler ſtanding all the Time on his Left Hand, with the Ax turned from him.

Cl. of the Cr. Serjeant at Arms, Make Proclamation.

Serj. at Arms. Oyes, Oyes, Oyes! All manner of Perſons, that will give Evidence on behalf of our Sovereign Lord the King, againſt *Arthur* Lord *Balmerino*, the Priſoner at the Bar, let them come forth, and they ſhall be heard; for now he ſtands at the Bar, upon his Deliverance.

L. H. S. My Lords, The Diſtance of this Place from the Bar is ſo great, that I muſt deſire your Lordſhips Leave to go down to the Table, for the Convenience of Hearing.

Lords. Ay, Ay.

Then his Grace removed to the Wool-pack, and delivered the White Staff to be held by the Gentleman Uſher of the Black Rod; who, during the whole Trial, always received and delivered back the White Staff upon his Knee.

Sir *Richard Lloyd*, Counſel for the King.

May it pleaſe your Lordſhips,

ARTHUR Lord *Balmerino* ſtands indicted at your Lordſhips Bar for High-Treaſon; and the Charge againſt him, in the Indictment, is, That he being a Subject of our preſent moſt Serene Sovereign Lord King *George*, and not having any Regard for the Duty of his Allegiance, as a falſe Traitor and Rebel againſt our Sovereign Lord the King, his ſupreme, true, natural, and lawful, Sovereign, and withdrawing that cordial Love, and true and due Obedience, which every Subject of his Majeſty ſhould and ought to bear toward him; and wickedly and traitorouſly deviſing and intending to change and ſubvert the Rule and Government of this Kingdom, and to depoſe and deprive his Majeſty of his Title, Honour, and Royal State, and Imperial Rule and Government of theſe Kingdoms, and to put and bring him to Death and final Deſtruction, and to raiſe and exalt the Perſon pretending to be Prince of *Wales*, during the Life of *James* the Second, and ſince pretending to be, and taking upon himſelf the Stile and Title of, King of *England*, by the Name of *James* the Third, to the Crown, and to the Imperial Rule and Government of this Kingdom; that he did, upon the Tenth Day of *November*, in the Nineteenth Year of his preſent Majeſty's Reign, at *Carliſle*, in the County of *Cumberland*, with a Multitude of Rebels, armed, and arrayed, in a warlike and hoſtile Manner, with Arms, as well offenſive as defenſive, aſſemble themſelves together; and then and there did falſly and traitorouſly array themſelves, with Force and Arms, againſt our ſaid Lord the King; and then and there did levy a public and cruel War againſt the King, and make a miſerable and cruel Slaughter of his Majeſty's Subjects, and, with the ſaid Traitors and Rebels, ſo armed and arrayed, did enter into, and take Poſſeſſion of, the ſaid City and Caſtle of *Carliſle*, the ſame being a City and Caſtle of our ſaid Lord the King, and did falſly and

and traitorously keep and defend the same against our said Lord the King, against the Duty of his Allegiance, against the Peace of our said present Sovereign Lord the King, and against the Form of the Statute in such Case made and provided.

My Lords, to this Indictment he has pleaded, That he is not guilty: It is incumbent upon us, who have the Honour to serve the Crown in this Prosecution, to prove this Guilt upon him; and then nothing remains for us, but to pray your Lordships Judgment accordingly.

Mr. Serjeant *Skinner*, the King's Serjeant.

My Lords,

I AM Counsel, in this Cause, for the King, against the unfortunate Peer at your Lordships Bar; who stands accused of a Crime, the highest which is known to the Laws of this Realm.

For High Treason comprehends all other Offences: Murder and Rapine accompany, and are closely connected with High-Treason; and Waste, Destruction, and Famine, are the Marks it leaves behind.

To be guilty of the lowest of these, as a single Offence, would be abhorrent to a Person of a noble Heart: To be guilty of each of these Offences, is such a Weight of Crime, as would depress and bear down a noble Mind: Yet such is the Case of that unhappy Person, who is guilty of the Crime of High-Treason.

I will not bring a railing Accusation against this unfortunate Lord: Indeed, the Offence cannot admit of Aggravation: But, when I consider the inevitable Ruin which must have befallen our Country, if these pernicious Designs had taken their Effect; the total Subversion of our Religious and Civil Liberties; I then cannot help lamenting that neither high Blood, nor those generous Sentiments of Gratitude and Humanity, which are usually implanted in a noble Breast, that these could not restrain a high-born Peer from engaging in those wicked Councils; the uniting in which is a Stain to his Honour, and will be a Mark of Infamy to his Posterity.

For the most grievous Thought, to this unhappy Lord, must be, That the Consequences of his Crime will affect his Descendants: He was their Root of Honour; he now derives to them Disgrace and Infamy.

But the Law in this proceeds with great Reason and Justice: The Punishment of the guilty Person alone may not be sufficient to deter Men from the Commission of this Crime: He may be so hardened, as to think his own Suffering to be light; but he may lament for the Fate of his Children and Family: Such likewise were the Laws of Nations the most famed for their Rule and Polity.

In this House, so eminently distinguished for Learning as well as Honour, I want no Apology, when I repeat the Opinion of the great *Roman* Lawyer and Orator, upon this Subject: *Tully* states this as an Objection; and I submit, that he gives an Answer, natural and affecting: His Words are:

Nec verò me fugit, quàm sit acerbum Parentum Scelera Filiorum Pœnis lui; sed hæc præclarè Legibus comparatum est; ut Caritas Liberorum amicieres Parentes Reipublicæ redderet.

Rebellion surely is the Sin of Witchcraft; otherwise what can engage a Person in an Attempt to destroy the Religious and Civil Liberties of his Country, tho' in the same Ruin he thus involves the Fate of himself and his Posterity? Our Religion is a reasonable Service; its Establishment is the Law of the Land; and for a Protestant Peer to endeavour to extirpate this our most holy Religion, and to introduce Superstition and Idolatry amongst us, is a Proposition as absurd as Transubstantiation: Our Civil Rights must have fallen a Sacrifice to the Ambition of *France*; for it was a vain Imagination, to think, that *France* would in earnest have set any King over us. Whoever is a *British* King, must, in Time, at least, act upon *British* Principles: From that Moment he is equally an Enemy to *France*, as any of the boldest or best of his Predecessors. *France* knows, and will pursue, her natural Interest: To make us Tributary, to make us Provincial, to destroy us as a Nation, was, and must, and can only be, the true Design of *France*.

But the Genius of the Nation exerted itself in the Cause of Liberty, under the Command of his Royal Highness the Duke; and when we consider our Misfortunes under former Leaders, and how the true *English* Valour prevailed, when animated and influenced by the Presence and Example of so great a Commander, we may justly apply to his Royal Highness what was said of *Scipio*, *Tantus Exercitus, quantus Imperator*.

Before I come to the particular Part, which the Lord at the Bar has acted; it may be necessary to give a short History of this unnatural Rebellion: And here the Names of the Two unfortunate Peers, who have just confessed their Guilt at your Lordships Bar, must often occur.

In *June* 1745, the Son of the Pretender landed in the West Highlands of *Scotland*: Few then were his Company or Followers; but the Cloud, which seemed, at first, to be no larger than a Man's Hand, quickly gathered, and blackened that Part of the Hemisphere. The first who appeared were the *Macdonalds* and the *Camerons*, Men famed for Rebellious Acts: They were soon joined by the Duke of *Perth*, the Marquis of *Tullibardine*, Lord *Elcho*, and Lord *George Murray*; and when they came to *Perth*, their Number was five thousand Men; from thence they marched to *Edinburgh*, and there they proclaimed the Pretender; and soon after, *September* the Twenty-first, followed the Battle of *Preston-Pans*. I wish that we could forget the Miscarriages of that Day!

In *October* the Pretender's Son was joined by another Body of Rebels, under the Command of the Earl of *Kilmarnock*: His Lordship made his first Appearance on the Banks of the River which divides *England* from *Scotland*: Here I wish, for the Sake of the Nation, and for his own Sake, that the noble Lord had made some Stop, and had well considered the Enterprize on which he was going: Could he have then foreseen the Calamities, which his rash Undertaking has brought upon his Native Country; could he have then beheld with his Eyes the Rapine, the Violence, and the Oppression, which have ensued; the Opposition of the Son to the Father, of the Brother to the Brother, and how all the Charities of one Man to another were destroyed; could he have foreseen his own shameful Retreat, and final Overthrow, his Feet had never passed the Banks of that River.

From thence they marched into *England*, laid Siege to *Carlisle*, and took it; and here again they proclaimed the Pretender: From thence they went to *Penrith*, and to many other Places in *England*, till they came to *Derby*: In this Town they heard, that his Royal Highness the Duke was advancing towards them. Here Rebellion grew pale; the Fame of the Duke's Approach made them retreat: Their March was expeditious; yet they left behind them so many Marks of their Cruelty and Barbarity, as if their only Design was to plunder and destroy.

His Royal Highness, with a Detachment, pursued the Rebels to *Clifton*; and it is doubtful, whether their Cowardice or Cruelty was here the most remarkable: They fled, and yet, in their Haste, they took Time to murder the King's Soldiers, who lay wounded on the Ground: From hence they got back to *Carlisle*, and from thence proceeded to *Dumfreys* and *Glasgow*. And here I must remember the noble Zeal and Firmness which the Magistrates and Citizens of *Glasgow* expressed for their Royal Master, Our most Gracious Sovereign: They paid, indeed, most heavy Exactions for this their Loyalty; which remain like so many Scars; but the Wounds were honourable.

From thence they marched to *Bannockburn*, and so to *Stirling*: Here they were joined by the Earl of *Cromertie*, and then laid Siege to *Stirling-Castle*: This occasioned the Battle of *Falkirke*: To this Place the Lord *Balmerino*, the Prisoner at the Bar, marched at the Head of his Regiment: Here the Rebels retired; but Victory was reserved for his Royal Highness. But, before I leave this Field, I must lament the Fate of a valiant Soldier and Commander; wounded, indeed, in the Field of Battle, but afterwards murdered in cold Blood: Let one more Mark of Infamy, at least, be fixed on this Rebellion, for this murderous Act, committed on so worthy and brave a Gentleman.

From *Falkirke* the Rebels retired to *Stirling*; from thence into the Highlands, those Hills of the Robbers: After some Time they joined again at *Inverness*; they attacked *Fort George*, then in the Possession of his Majesty's Forces, and took it; they took *Fort Augustus*, and demolished it; before *Fort William* they met with a Repulse: From thence they marched to *Culloden* Field; a bloody Field! where fell Rebellion, I hope, never to rise again. To point out the Conduct, to celebrate the Courage of his Royal Highness, to paint the Glory of that memorable Day, is an Attempt too bold: The Gratitude of the Nation, the united Thanks of the Parliament, and the Approbation of his Royal Father, shew the Greatness of the Merit by the Richness of the Reward.

My Lords, the particular Circumstances attending the Case of the unfortunate Peer at your Lordships Bar are considerable: *High-Treason* is an Offence foul and black in itself; it wants no Colouring to make it appear more deformed and hideous: But the Lord *Balmerino* has heightened every Feature of this Deformity: He was, in the Service of the King, a Captain in the Regiment commanded by the Lord *Shannon*; not only therefore by his Oath of Allegiance, as a Subject, but by his Military Oath, as his Majesty's Soldier, as a Soldier trusted by his Sovereign with a Command, he lay under the strongest Obligations to be faithful: But he betrayed this Trust; he deserted his Station, in the which Virtue bid him stand.

As a Reward for his Treachery, the Prisoner, my Lords, was advanced to be the Captain of the Second Troop of Life-Guards attending on the Person of the Pretender's Son: We shall shew, that soon after the City of *Carlisle* surrendered to the Rebels, the Prisoner entered that City at the Head of his Troop, with his Sword drawn, Colours displayed, and Drums beating; he, dressed in the Uniform of the Regiment, with a white Cockade in his Hat: He went the same Progress through the several Places in *England* with the Rebel Army, an Army of Locusts; as they went, they devoured the Land: Before them was Plenty, behind them Destruction and Desolation: He was present at the several Places and Times when the Pretender was proclaimed; and, on the Return of the Rebels into *Scotland*, he appeared in all Places at the Head of his Troop: He commanded them at the Battle of *Falkirke*; and with them he was defeated, and made a Prisoner, in the Field of *Culloden*.

To answer for these Treasons is this unfortunate Peer now brought to your Lordships Bar: An awful Tribunal! The Illustrious Judges who here preside, are under the strictest Obligation to do impartial Justice; for their only Oath is their Honour: To this Tribunal we submit the Cause of the King, and of our Country: We will endeavour to prove the Fact; and then we shall, with all Deference and Submission, expect your Lordships Judgment.

Mr. Attorney-General.

May it please your Lordships,

YOUR Lordships have heard the Nature of the Charge against the Noble Lord at the Bar, as it is laid in the Indictment; and have likewise heard the Rebellion, in which he was engaged, traced from its Rise to its happy Conclusion. There is little Room, in a Case so notorious, for me to trouble your Lordships in the Opening. But, as the Crime charged on the Noble Lord, is Part of that great Treason which was aimed against his Majesty's Throne and Royal Person, it may be incumbent on me to say something upon this very solemn Occasion.

And however disagreeable it must be, to prosecute and try a noble Person, one of your Lordships high Order, for a Crime of this Nature, publick Justice requires it, and it must be submitted to. Even your Lordships, from your great Regard to your King and Country, will be easy in the Discharge of that Part of it, which belongs to your Lordships.

As the Noble Lord has thought proper to plead Not guilty, and thereby put the Proof of his Guilt on the King's Counsel; there are Two Things that will fall under your Lordships Consideration: The one, relating to the Nature of the Crime; the other, to the Proof in Support of it.

As to the former, your Lordships can have no Trouble: It is a Charge of High Treason, in levying War against his Majesty; a Crime declared to be so by the express Words of the Statute of the Twenty-fifth of *Edward* the Third, framed on Purpose for the Ease and Safety of the Subject; to remove that Anxiety which attended the Obscurity of the Law, in a Point of the greatest Importance to themselves and their Posterity; and to reduce the Law of Treasons, which before lay hid in the Breast of the

Judges,

Judges, to a Certainty: Or, if that Law had never been made, This is one of thoſe Sorts of Treaſons that never did admit of a Doubt; and, if the Noble Priſoner had impartially conſulted his own Breaſt, it muſt have told him it never could.

As that Act makes it neceſſary to Conviction, that the Treaſon ſhould be proved by ſome Overt Act; it has been uſual, in Indictments for this Species of Treaſon, not only to charge the levying War generally, but to ſpecify thoſe Circumſtances of Hoſtility which uſually accompany it, as a kind of Overt Act; ſuch as joining himſelf to great Numbers of other Traitors, armed and arrayed with various Sorts of Weapons in a warlike Manner, with Colours diſplayed, Drums beating, and the like: Theſe Circumſtances are charged in the preſent Indictment; to which another more particular Overt Act is added, of entering, poſſeſſing, and detaining the City of *Carliſle* againſt his Majeſty.

If theſe Charges are proved, the Conſequence cannot be diſputed. This brings me to that which alone will demand your Lordſhips particular Attention; how this Charge is brought home, in Point of Evidence, to the Priſoner at the Bar.

And in this likewiſe, I believe I may venture to ſay, your Lordſhips will have no Difficulty; but you will have that great Satisfaction, of being perfectly clear in the Judgment you ſhall give.

The Charge is not of that Nature, which reſts principally in the Breaſt of the Offender, to be diſcovered and proved by a Variety of Circumſtances, ſet together and connected by Art, to find out the ſecret Deſigns of Conſpirators. It conſiſts in a great Number of Facts, done in open Day-light, in the Face of the World, avowed and juſtified, and in which the Noble Lord did not rely on the Secrecy of his Treaſon, but the Power of the Traitors, for his Defence.

Your Lordſhips therefore will permit me very ſhortly to point out ſome of thoſe Facts, which will be fully proved by the Witneſſes: I don't mean to enter into a Detail of what paſſed during the Courſe of the Rebellion; but only to touch on thoſe Matters, which will directly affect the Priſoner, and ſhew the particular Part he acted in this great Scene of Treaſon and Confuſion.

The Noble Priſoner ſeems to have engaged early in the Rebellion. Whether it was owing to that, or his former Attachments, he ſoon obtained a Truſt about the Perſon of the Pretender's Son; which could be repoſed in none but the moſt zealouſly affected to that Cauſe. He was made the Commander of the Second Troop of Horſe, called His Life-Guards.

In this Poſt, he accompanied the Rebel Army in their Firſt March into *England*, and entered *Carliſle*, at the Head of his Troop, in *November* laſt. In the ſame Command, he followed them through the Counties of *Cumberland*, *Lancaſter*, *Cheſhire*, *Staffordſhire*, and Part of *Derbyſhire*, till they came to *Derby*; and when they were ſtopped there by the Approach of his Royal Highneſs the Duke, and forced to fly before him by the Way they came, he kept with them in their Flight, and entered *Carliſle* a ſecond Time, with his Troop. He did not wait till his Royal Highneſs came up, but with the reſt of the Rebel Army, except the Garriſon, continued his Flight into *Scotland*. He went with them to *Glaſgow* and *Sterling*, was preſent at the Battle of *Falkirke*, and, tho' not perſonally engaged, was drawn up at the Head of his Troop, to ſupport the Rebels that were. He ſtill continued to attend the Rebellion in all its Stages, till the ſame great Commander, who gave the firſt Check to its Progreſs, put a final End to it at *Culloden*.

Your Lordſhips will ſee him, by the Evidence, in all the Places I have mentioned, cloathed in the Uniform of the Rebel Guards, with a white Cockade, his Sword drawn, heading, commanding, and leading his Troops, guarding the Pretender's Son, proclaiming the Pretender, entering and ſeizing his Majeſty's Towns, and acting as an Enemy in his Majeſty's Dominions, in open Defiance of the Laws, and to the infinite Miſchief of his Majeſty and his Subjects; and all this with a direct View of Dethroning his Majeſty, Extirpating his Royal Family, and Setting up a Popiſh Pretender in his Room.

The ſeveral Inſtances of his Lordſhip's marching with the Rebels in a hoſtile Manner, will be ſo many diſtinct Proofs of the Firſt Part of the Charge; and the particular Acts of his Entering and Continuing in *Carliſle*, in the ſame hoſtile Manner, will fully prove the Second.

I have ſtated all theſe Things, not becauſe they are all neceſſary to the Conviction of the Noble Lord, but for the clearer Manifeſtation of his Guilt. A very ſmall Part of theſe Facts would be ſufficient, if proved to your Lordſhips Satisfaction: Nor would it avail his Lordſhip, if we ſhould fail in the Proof of any Part of the Charge on the very Day it is laid in the Indictment, as the Noble Lord vainly ſeems to think. The preciſe Point of Time, as it is, in its own Nature, immaterial to the Guilt, is equally ſo in the Forms of our Law.

All that remains is to call the Witneſſes; which, I doubt not, will fully make out the Facts we have ſtated.

Sir *John Strange*. My Lords, we will now proceed to call our Witneſſes.

Lord *Balmerino*. My Lords, may I be heard? I thought, when a Perſon was indicted, if there was any one Article in the Indictment that was not good againſt him, that all the reſt was good for nothing.

Lord High Steward. You muſt hear the Evidence. This cannot now be determined, till the Evidence is heard.

Lord *Bal*. Will your Lordſhips pleaſe to examine them as to the Time of my being at *Carliſle*?

Lord H. S. The King's Counſel muſt proceed in their own Method, provided they proceed according to Law.

Lord *Bal*. My Lords, I humbly thank you for your Advice.

L. H. S. Would your Lordſhip have Counſel aſſigned you?

Lord *Bal*. No, my Lords; I don't want any.

Sir *John Strange*. Call *William M'Ghie*.

William M'Ghie ſworn.

Sir *John Strange*. Look at the Noble Lord at the Bar. Do you know him?——*M'Ghie*. Yes; I know him very well.

Sir *J. Strange*. Pray, will you acquaint my Lords, whether you ſaw him at any time, and where, in the Rebel Army?

M'Ghie. I ſaw the Noble Lord at *Carliſle*, going and coming.

Sir *J. Strange*. Do you mean the Noble Lord at the Bar?

M'Ghie. Yes, I do.

Sir *J. Strange*. Pray, do you recollect the Firſt Time of your ſeeing him?

M'Ghie. It was ſome time in *November* laſt; but the Day I am not very ſure of.

L. H. S. The Witneſs's Voice is ſo low, that ſome of my Lords deſire, That a Clerk may repeat what he ſays. Is it your Lordſhips Pleaſure; that one of your Clerks be appointed to ſtand by the Witneſs, and report to your Lordſhips what he ſays?

Lords. Ay, ay.

Then One of the Clerks was ſworn, truly to report what the Witneſs ſhould ſay; and ſtood within the Bar, near the Witneſs, and repeated his Anſwers.

Sir *J. Strange*. If it is your Lordſhips Pleaſure, I will begin the Examination again.

L. H. S. I deſire he may repeat again what he has ſaid.

Sir *J. Strange*. I aſk you, if you know the Noble Lord at the Bar?

M'Ghie. Yes; I do know the Noble Lord at the Bar.

Sir *J. Strange*. Will you pleaſe to acquaint their Lordſhips, at what time, and where, you ſaw his Lordſhip with the Rebel Army?

M'Ghie. I ſaw him at *Carliſle*, going and coming. The Firſt time I ſaw his Lordſhip there was in *November* laſt.

Sir *J. Strange*. Did not you ſee him before you came to *Carliſle*?

M'Ghie. I ſaw him before we came to *Carliſle*; I alſo ſaw him coming into *Carliſle*, and in *Carliſle*.

Sir *J. Strange*. What Company was he in then?

M'Ghie. He was in Company with the Rebels.

Sir *J. Strange*. How did he appear, and what Command had he then?

M'Ghie. I don't know whether he had a Command; but he was heading a Troop of Horſe.

Sir *J. Strange*. What Horſe were they called?--*M'Ghie*. I don't know.

Sir *J. Strange*. Were they Part of the Rebel Army?——*M'Ghie*. Yes.

Sir *J. Strange*. Did you ſee them enter into the City of *Carliſle*?

M'Ghie. Yes.

Sir *J. Strange*. Fix the Time as near as you can.

M'Ghie. It was about the Eighteenth of *November*, as near as I can gueſs.

Sir *J. Strange*. Can you tell what Number there was of them?

M'Ghie. I cannot really.

Sir *J. Strange*. Will you acquaint the Lords, whether the Noble Lord at the Bar had any Arms?

M'Ghie. He had Piſtols, and a Sword.

Sir *J. Strange*. Was his Sword drawn, or undrawn?

M'Ghie. I do not mind to have ſeen it drawn.

Sir *J. Strange*. Did you obſerve, whether he had any thing in his Bonnet or Hat, by way of Diſtinction?

M'Ghie. I do not mind that.

Sir *J. Strange*. Did you obſerve in what Manner the Noble Lord was dreſſed?——*M'Ghie*. In a common Dreſs.

Sir *J. Strange*. When you call it a common Dreſs, do you mean the Dreſs that the Officers wore, or his own Habit?

M'Ghie. I mean his own former Habit.

Sir *J. Strange*. Was there any thing particular in the Form of the Habit that the Officers of that Regiment wore?

M'Ghie. I do not mind any body, but himſelf.

Sir *J. Strange*. You ſaw him march at the Head of that Body going to *Carliſle*, after it was in Poſſeſſion of the Rebels?

M'Ghie. Yes; and I ſaw him in the Going back from *Derby*.

Sir *J. Strange*. I aſk you, Whether you obſerved the Noble Lord in *Carliſle*, after it was in Poſſeſſion of the Rebels, and after the Marching you talk of, and before the Rebels left *Carliſle*, to come Southwards?

M'Ghie. Yes; I ſaw him in *Carliſle* when the Rebels were there.

Sir *J. Strange*. Did you obſerve what he was doing then?

M'Ghie. Nothing, but riding on Horſeback.

Sir *J. Strange*. Was that with the Troop, or without?

M'Ghie. It was with the Troop.

Sir *J. Strange*. Did you obſerve whether his Sword was drawn?

M'Ghie. I did not.

Sir *J. Strange*. How long did the Rebels ſtay in *Carliſle*, before they marched Southwards?——*M'Ghie*. About Two Days.

Sir *J. Strange*. Did you obſerve the Noble Lord to go out of *Carliſle*?

M'Ghie. No; I was not South.

Sir *J. Strange*. Did you obſerve him then?

M'Ghie. I was in the Hoſpital; but when I came back again, I ſaw this Lord.

Sir *J. Strange*. Did you obſerve him to march out of *Carliſle*?

M'Ghie. Yes.

Sir *J. Strange*. What time was that?—*M'Ghie*. It was in *November*.

Sir *J. Strange*. What Diſtance of Time was there between their going and coming back? You can tell us when they marched back again?

M'Ghie. It was about *Chriſtmas*, or a Day or Two before it.

Sir *J. Strange*. Did you obſerve the Noble Lord coming into *Carliſle* upon the Return? Or do you only ſpeak of ſeeing him there?

M'Ghie. I ſaw him coming back again from *Derby* to *Carliſle*.

Sir *J. Strange*. Will you acquaint my Lords, whether you ſaw him at the Head of his Troop, or in what Manner?

M'Ghie. I ſaw him at the Head of a Troop of Horſe in *Carliſle*.

Sir *J. Strange*. What were they? Were they Part of the Rebel Army?

M'Ghie. Yes.

Sir *J. Strange*. Had they any Drums, Colours, and Muſick?

M'Ghie. They had both Colours and Drums, and Pipes playing.

Sir *J. Strange*. How long did my Lord ſtay at *Carliſle* upon his Return?

M'Ghie. Only one Night.—I am very ſure of it.

Sir *J. Strange*. Did the Noble Lord go out of *Carliſle* in the Manner you have mentioned, at the Head of his Troop?

M'Ghie. In the ſame Manner, riding at the Head of a Troop of Horſe.

Sir *J. Strange*. Will you acquaint my Lords, Whether, at the Time the Noble Lord was there, the Young Pretender was in *Carliſle*?

M'Ghie. Yes, he was there.

Sir *J. Strange.* Was he there when they first went into *Carlisle*, before they came Southward?

M'Ghie. No, he did not come till the next Day.

Sir *J. Strange.* Did you see the Pretender's Son the next Day?

M'Ghie. Yes.

Sir *J. Strange.* In what Manner did he enter *Carlisle?*

M'Ghie. He came in with Horse Life-Guards.

Sir *J. Strange.* Whose Life-Guards were they?

M'Ghie. The Young Pretender's.

Sir *J. Strange.* Who commanded those Guards at that Time, or any Part of them?

M'Ghie. I don't well know, there were so many commanded.

Sir *J. Strange.* Did you observe the Noble Lord at the Bar to command any?—*M'Ghie.* No, I did not.

Sir *J. Strange.* When they marched away from *Carlisle* for *Scotland*, did the Young Pretender go along with them?——*M'Ghie.* Yes.

Sir *J. Strange.* And did the greatest Part of the Rebel Army go with him?

M'Ghie. All, except those that were left at *Carlisle*, and those that were upon the Road.

Sir *J. Strange.* Was there a Garrison left at *Carlisle?*—*M'Ghie.* Yes.

Sir *J. Strange.* By whose Order?

M'Ghie. By Order of the Young Pretender.

Att. Gen. My Lords, we have done with this Witness: Will the Noble Lord ask him any Questions?

L. H. St. My Lord, if you would ask this Witness any Questions, now is your Time.

Lord *Bal.* I think, my Lords, he has contradicted himself: He says first it was in *November*, and then in *December*, and then in *January*.

L. H. St. If you want him to explain himself as to the Time, you may ask him any Question.

Lord *Bal.* What was done in *November?*

M'Ghie. The Rebels came first to *Carlisle* in *November*; and, when they came back, on their Return, it was *December*, about *Christmas*.

L. H. S. He applies *November* to your first coming to *Carlisle*, and *December* to your returning thither.

Lord *Bal.* I can't tell the time myself, unless I was at home to look at my Notes.

L. H. S. Will your Lordship ask him any more Questions?

Lord *Bal.* No, my Lords.

Sir *J. Strange.* I would beg Leave to ask the Witness one Question. He says there was a Garrison left in the City of *Carlisle*; I would ask him, Who that Garrison was to defend the Place against?

M'Ghie. Against his Majesty King *George*.

Hugh Douglas sworn.

Mr. Solliciter General. Look at the Noble Lord at the Bar, and see whether you know him.

Douglas. Yes, I know him.

Sol. Gen. Then give my Lords an Account, Whether you saw him in the Rebel Army at any Time; and when, and where, and what he did: And give your Account, as near as you can, in Order of Time.

Doug. I saw him at *Diddeston*, before the Pretender marched out of *Edinburgh*.

Sol. Gen. Now, go on: Where did you see him next?

Doug. I saw him at *Kelso*.

Sol. Gen. Where next?——*Doug.* At *Carlisle*.

Sol. Gen. In what Manner did he march along with them from these several Places to *Carlisle?*

Doug. He was Colonel of the Second Troop of the Pretender's Life-Guards.

Sol. Gen. Did he, during this March, command this Second Troop, or ride at the Head of them?

Doug. He commanded them, and rode at the Head of them.

Sol. Gen. How were they armed?

Doug. They had each a Carbine, a Brace of Pistols, and a Broad Sword.

Sol. Gen. Did you see him at *Carlisle?*

Doug. He marched from *Penrith* to *Carlisle*, and back again into *Scotland*, at the Head of the Troop of Life-Guards. I saw him all the Way.

Sol. Gen. What did you see him do at *Carlisle?*

Doug. I saw him at the Head of his Troop of Horse in the Street, when they were drawn up, upon coming in there.

Sol. Gen. Where did you see him else? Did you see him in the Return?

Doug. I saw at *Derby*, and at *Manchester*, in returning.

Sol. Gen. Did you see him any where else?

Doug. I saw him at *Falkirke*, and saw him march all the Way from *Penrith* to *Carlisle*, in returning.

Sol. Gen. Did you see him at *Carlisle*, on his Return?---*Doug.* Yes.

Sol. Gen. When you saw him at *Carlisle*, was he with the Rebel Army?

Doug. Yes.

Sol. Gen. Did you see him at the Head of his Troop?

Doug. Yes; I saw him at the Head of his Troop of Horse march from *Penrith* to *Carlisle*.

Sol. Gen. Did you see him, at any Time in that March, act as an Officer?

Doug. Yes, he acted so far as an Officer, that he rode at the Head of his Troop all the Way.

Sol. Gen. Did you afterwards see him?

Doug. Yes, I saw him at *Diddeston*.

Sol. Gen. Do you speak of your seeing him in Going, or in the Return?

Doug. I speak of the Return. I saw him at *Carlisle*, and at the Battle of *Falkirke*.

Sol. Gen. Did you see him engaged in that Battle?

Doug. No, he was not engaged; none of the Horse were engaged.

Sol. Gen. Did you see him with his Sword drawn?

Doug. All the Men had their Swords drawn; but I don't remember particularly as to him, whether I saw him with his Sword drawn, or not.

Sol. Gen. Did you see him there at the Head of any Troop of Horse?

Douglas. I saw him at the Head of the second Troop of Life-Guards at the Battle of *Falkirke*.

Solliciter General. Did you see him after that Time?

Doug. I don't remember that I saw him afterwards.

Sol. Gen. What Sort of Dress had he?

Doug. He had a blue Coat faced with Red, a Gold-laced Hat, and a Cockade.

Sol. Gen. What Colour was the Cockade?—*Doug.* White.

Sol. Gen. What was the Uniform of the Troop?

Doug. They all had blue Coats with red Facings, and Gold-laced Hats.

Sol. Gen. Had they all white Cockades?——*Doug.* Yes.

Sol. Gen. Had the Troop their Swords drawn?

Doug. Yes, at *Falkirke* they were all drawn up together, and every one had his Sword drawn.

At. Gen. Where was this Troop at the Battle of *Falkirke?*

Doug. They were drawn up together in a Field, with the Earl of *Kilmarnock*, and Lord *Pitsligo*.

At. Gen. Was a white Cockade any distinguishing Mark of belonging to the Rebel Army?

Doug. Every one who was in the Rebel Army had a white Cockade.

Lord High Steward. Will your Lordship ask this Witness any Questions?

Lord *Balmerino.* No, my Lords.

James Barclay sworn.

Mr. *Noel.* Look upon the Noble Lord, the Prisoner at the Bar. Do you know him?——*Barclay.* Yes.

Mr. *Noel.* Did you see him at any Time in *January* last?

Barclay. Yes, I did.

Mr. *Noel.* Where did you see him?——*Barclay.* At *Glasgow*.

Mr. *Noel.* I think you say you saw him at *Glasgow* in *January* last?

Barclay. Yes.

Mr. *Noel.* Who was he with at *Glasgow?*

Barclay. He was with the Pretender's Son.

Mr. *Noel.* Was he with any Forces, and what Forces, at *Glasgow?*

Barclay. He was Colonel of the second Troop of Guards.

Mr. *Noel.* Who did those Guards belong to?

Barclay. He was Colonel of the second Troop of the Pretender's Son's Life-Guards.

Mr. *Noel.* Were they called by any particular Name?

Barclay. They were called Mr. *Arthur Elphinston*'s Guards.

Mr. *Noel.* What *Elphinston?*

Barclay. He that is Lord *Balmerino* now, the Prisoner at the Bar.

Mr. *Noel.* How was he armed?

Barclay. He was armed with a Broad Sword, and a Brace of Pistols.

Mr. *Noel.* How did he march?—*Barclay.* At the Head of his Troop.

Mr. *Noel.* Where did you see him march?

Barclay. I saw him march out of *Glasgow* and *Kelso*.

Mr. *Noel.* Did he march out with his Sword drawn?

Barclay. I don't remember.

Mr. *Noel.* Had he Pistols?——*Barclay.* He had Pistols.

Mr. *Noel.* How was he dressed?

Barclay. He had a blue Coat turned up with Red, a Gold-laced Hat, and a white Cockade.

Mr. *Noel.* I desire to know what Cockades were worn by the Forces in the Service of the Pretender's Son?——*Barclay.* White Cockades.

Mr. *Noel.* Were they the distinguishing Mark of the Rebel Forces?

Barclay. Yes.

Mr. *Noel.* Did you see the Noble Lord at the Bar at *Bannockburn?*

Barclay. Yes, I saw him there several Times at the Head of his Troop.

Mr. *Noel.* Were they drawn up in any Form?

Barclay. They were drawn up at the Pretender's Lodging-Door.

Mr. *Noel.* Where was that?—*Barclay.* At one Mr. *Paterson*'s.

Mr. *Noel.* Was he armed then?——*Barclay.* Yes.

Mr. *Noel.* How was he armed?

Barclay. With a Broad Sword, and a Brace of Pistols.

Mr. *Noel.* Did you see him at any Time at *Stirling?*

Barclay. I saw him at *Stirling*; but not at the Head of his Troop.

Mr. *Noel.* I desire to ask one general Question, Whether, at all the Places where you saw him, he was armed, and with Troops belonging to the Pretender?——*Barclay.* Yes.

Sir *John Strange.* He says, he saw the Troop drawn up at the Pretender's Lodging-Door: I desire to know, Whether the Pretender's Son saw the Troops drawn up?

Barclay. I don't know whether he saw them drawn up; but I know he was there at that Time.

Lord High Steward. Would you ask this Witness any Questions?

Lord *Balmerino.* No, my Lords.

David Gray sworn.

Sir *Richard Lloyd.* Do you know the Prisoner at the Bar?

Gray. Yes, Sir.

Sir *Rich. Lloyd.* How long have you known him?

Gray. I have known him about six or seven Years.

Sir *Rich. Lloyd.* Do you remember him at any Time marching with any Guards or Soldiers with him?

Gray. Yes, I saw him march with a Troop of Horse.

Sir *Rich. Lloyd.* Where was that, and when?

Gray. After *Carlisle* was taken by the Rebels, I saw him marching Southward with the second Troop of Life-Guards.

Sir *Rich. Lloyd.* What, the Pretender's Life-Guards?—*Gray.* Yes.

Sir *Rich. Lloyd.* Whither were they marching?——*Gray.* Southwards.

Sir *Rich. Lloyd.* Did the rest of the Rebel Army march at that Time?

Gray. Yes, and the same Way.

Sir *Rich. Lloyd.* Was the Prisoner armed?——*Gray.* Yes.

Sir *Rich. Lloyd.* How was he armed?

Gray. With a Broad Sword and Pistols.

Sir *Rich. Lloyd.* What Dress was he in?

Gray. He was in Blue, turn'd up with Red.

Sir *Rich. Lloyd.* Whose Dress was that?

Gray. It was the Dress of all the Guards.

Sir *Rich. Lloyd.* What Diſtinction had he in his Hat?

Gray. Nothing but a white Cockade.

Sir *Rich. Lloyd.* Was that any Mark of Diſtinction?

Gray. No, it was no Mark of Diſtinction at all; for they all wore it.

Sir *Rich. Lloyd.* You ſay you ſaw his Lordſhip march Southward: Did you ſee him afterwards on his March Northward?

Gray. I ſaw him march from *Elgin* of *Murray* towards *Inverneſs*, a little before the Battle of *Culloden*.

Sir *Rich. Lloyd.* Was he then armed?——*Gray.* Yes.

Sir *Rich. Lloyd.* How was he armed?

Gray. In the ſame Form as he was before.

Sir *Rich. Lloyd.* How was he dreſſed?

Gray. In the ſame Cloaths he was before.

Sir *Rich. Lloyd.* Was he then at the Head of his Troop?

Gray. Yes, he was.

Sir *Rich. Lloyd.* Do you ſpeak of the ſame Life-Guards?—*Gray.* Yes.

Sir *Rich. Lloyd.* How long was it before the Battle of *Culloden* that you ſaw him at the Head of his Troop?—*Gray.* About ten Days.

Mr. Attorney General. I deſire he may explain who he meant, when he ſaid, they all wore a white Cockade.

Gray. The Rebel Army.

Lord *Bal.* I obſerve, that none of the Witneſſes who have been called, have made good the Charge againſt me, that I was at *Carliſle* on the 10th of *November*, nor for ſome time afterwards. I believe it will be to little Purpoſe to go any further; and am ſorry I have taken up ſo much of your Lordſhips Time; for I was of Opinion, that, if any Article in the Indictment was not good againſt me, all the Indictment fell.

Lord High Steward. What does your Lordſhip inſiſt upon? Do you inſiſt on the Day being miſtaken in the Indictment, or that you were not preſent at the actual Taking either of the Town or Caſtle of *Carliſle* by the Rebels?

Lord *Bal.* That I was not at *Carliſle*, either at the Taking of the Town or the Caſtle.

Mr. Serjeant *Skinner.* I beg Leave to call another Witneſs.

James Paterſon ſworn.

Serj. *Skin.* Look at the Noble Lord there: Do you know the Noble Lord?——*Pater.* Yes, I know the Noble Lord very well.

Serj. *Skin.* How long have you known him?

Pater. Ever ſince we marched from *Lauder*.

Serj. *Skin.* What Time was that?

Pater. I remember it was the firſt Night we marched from *Dalkeith*.

Serj. *Skin.* What Time was that you marched from *Dalkeith*?

Pater. I don't remember the Time particularly.

Serj. *Skin.* How long before *Chriſtmas* was it?

Pater. I can't ſay I remember how long it was before *Chriſtmas*.

Serj. *Skin.* Where was it this Noble Lord lodged?

Pater. He lodged at the ſame Houſe I happened to be in.

Serj. *Skin.* What Command had he at that Time?

Pater. I did not know that he had any Command then.

Serj. *Skin.* Do you remember his coming to *England*?——*Pater.* Yes.

Serj. *Skin.* Do you remember what Month that was?

Pater. No; I don't remember the Time exactly.

Serj. *Skin.* Do you remember being at *Long Town*?——*Pater.* Yes.

Serj. *Skin.* Was the Pretender's Son at *Long Town*?——*Pater.* Yes.

Serj. *Skin.* Was Lord *Balmerino* there?

Pater. He was there as a Witneſs to the proclaiming the Pretender.

Serj. *Skin.* Was you preſent when the Pretender was proclaimed? And was he there?——*Pater.* Yes.

Serj. *Skin.* In what Manner did the Noble Lord attend there, when the Pretender was proclaimed?

Pater. My Lord only appeared as one of the Volunteers with the Pretender's Life-Guards.

Serj. *Skin.* Was that Lord at the Bar with them?——*Pater.* Yes.

Serj. *Skin.* Was he at the Head of them then?

Pater. No; he ſtood only among the reſt.

Serj. *Skin.* What Dreſs had he on?

Pater. A blue Coat with red Facings.

Serj. *Skin.* What was the uniform Dreſs of thoſe Guards?

Pater. A blue Coat with red Facings.

Serj. *Skin.* Had he any Thing in his Hat?

Pater. Yes; he wore a Cockade.

Serj. *Skin.* What Colour was his Cockade?——*Pater.* White.

Serj. *Skin.* Was that wore by all the Pretender's Forces?—*Pater.* Yes.

Serj. *Skin.* Where did you ſee my Lord next?—*Pater.* At *Lancaſter*.

Serj. *Skin.* What was he doing there?

Pater. He was Witneſs to the proclaiming the Pretender there.

Serj. *Skin.* Were there any Guards there?

Pater. I remember very well all the Life-Guards were preſent there, and the Priſoner was with them.

Serj. *Skin.* How did the Priſoner at the Bar appear there?

Pater. He was at the Head of his Troop there.

Serj. *Skin.* How was he armed?

Pater. With a Brace of Piſtols and a Sword.

Serj. *Skin.* What Sort of a Sword was it?—*Pater.* A Highland Sword.

Serj. *Skin.* Was it drawn?——*Pater.* Yes.

Serj. *Skin.* Where did you ſee him next?

Pater. I remember to have ſeen him at the Battle of *Falkirke*.

Serj. *Skin.* Was he at the Head of any Forces there?

Pater. Yes; he was at the Head of his Corps there.

Serj. *Skin.* Was his Sword drawn then?——*Pater.* Yes.

Serj. *Skin.* Was the Troop engaged?—*Pater.* No; I think it was not.

Serj. *Skin.* Do you know what became of him afterwards?

Pater. I ſaw him frequently afterwards; but I can't tell any particular Place, but at the Battle of *Culloden*.

Serj. *Skin.* Where did you ſee him then?

Pater. I remember to have ſeen him drawn up at the Head of his Corps at the Battle of *Culloden*.

Serj. *Skinner.* Was his Sword drawn?

Pater. Yes, his Sword was drawn.

Serj. *Skin.* Did you ſee him any where afterwards?

Pater. I ſaw him afterwards at *Caſtle Grant*; I ſaw him come in there after the Battle of *Culloden*.

Serj. *Skin.* Was he taken Priſoner there?

Pater. As far as I can tell, my Lord ſurrendered there.

Mr. At. Gen. Do you remember to have ſeen the Noble Lord at *Carliſle*?

Pater. Yes, I remember to have ſeen my Lord march into *Carliſle* on their Retreat, at the Head of his own Corps.

Mr. At. Gen. We have done with this Witneſs: Will the Noble Lord aſk him any Queſtions?

Lord *Bal.* He might ſee me at *Long Town*, but not at *Carliſle* at the proclaiming the Pretender; for I was not there till a Fortnight after.

Mr. At. Gen. Did you ſee the Priſoner at *Carliſle*?

Pater. As far as I remember any thing in the World, I ſaw my Lord there.

Lord *Bal.* What was this Witneſs there?

Pater. My Lord, I was a Gentleman's Servant.

Lord *Bal.* I don't remember him: I want to know what Regiment this Man was in; or what he was; and what was his Buſineſs?

L. H. S. You hear what his Lordſhip ſays: What was you there?

Pat. I was a Gentleman's Servant in the Firſt Troop of Life-Guards.

L. H. S. Whoſe Life-Guards?

Pat. The Pretender's Guards: I was Servant to Mr. *Hume*.

Lord *Bal.* I was at *Long Town* then.

Roger M'Donald ſworn.

Mr. At. Gen. Give an Account, whether you ſaw the Priſoner march with the Rebel Army, at the Time of their firſt Setting-out, either in *Scotland* or *England*, and where.

M'Don. The firſt Time I ſaw him was at *Holyrood-Houſe*.

At. Gen. What did you ſee him do there?

M'Don. The only Thing that I obſerved was, That I ſaw the Priſoner with the Guards; but he was in no Place of Diſtinction.

At. Gen. What Guards?---*M'Don.* The Pretender's Guards.

At. Gen. Where did you ſee him with them?

M'Don. In the Court of *Holyrood-Houſe*.

At. Gen. Was the Pretender's Son at *Holyrood-Houſe* at that Time?

M'Don. He was at *Edinburgh* at that Time.

At. Gen. Where did you ſee him the next Time?

M'Don. The ſecond Time that I remember to have ſeen the Priſoner, was on the Retreat, coming from *Derby*, entering into the Town of *Manchеſter*, when the Horſe were formed at the Outſide of the Town of *Manchеſter*.

At. Gen. How did the Priſoner appear there?

M'Don. With his Sword drawn at the Head of his Squadron.

At. Gen. Was the Priſoner at the Bar at the Head of thoſe Rebels that were drawn up?

M'Don. Yes; I remember to have ſeen the Priſoner in particular.

At. Gen. Did he command any Part of the Rebel Army?

M'Don. Not to my Knowledge; but I remember to have ſeen him there.

At. Gen. Do you remember ſeeing him any where elſe?

M'Don. The next Time I particularly remember was, that I ſaw him at the Battle of *Falkirke*, after the Squadron was formed, and Lord *Elcho*'s Horſe were drawn up there.

At. Gen. Did you ſee the Priſoner command any Horſe there?

M'Don. The Squadron was not fully formed when I ſaw him; but I remember to have ſeen the Priſoner at the Bar at the Head of a Squadron of Horſe there.

At. Gen. Did you, at any Time ſee him marching out of *Elgin* of *Murray* to *Inverneſs*, at the Head of the ſame Squadron?

M'Don. I remember to have ſeen the Priſoner at the Head of the ſame Squadron at *Inverneſs*.

At. Gen. Did you ſee him in any particular Dreſs at that Time?

M'Don. I don't remember his Dreſs then; but at *Manchеſter* I remember it was a Suit of Blue turned up with red Cuffs.

At. Gen. Was it the Uniform Dreſs of any Part of the Pretender's Army?

M'Don. It was the Uniform Dreſs of the Pretender's Guards.

At. Gen. Was there any particular diſtinguiſhing Mark that he wore?

M'Don. I can't ſay I do remember any.

At. Gen. Had he a white Cockade?---*M'Don.* Yes; he had.

At. Gen. Was that the common diſtinguiſhing Mark of the Rebel Army?

M'Don. Yes; it was the diſtinguiſhing Mark. They all wore white Cockades; that was the general Thing that was worn.

At. Gen. We will trouble your Lordſhips with no more Witneſſes.

L. H. S. Will your Lordſhip aſk this Witneſs any Queſtions?

Lord *Bal.* No, my Lords; I am ſorry I have taken up ſo much of your Lordſhips Time.

L. H. S. The King's Counſel having gone through their Evidence, now is your Lordſhip's Time to make your Defence.

Lord *Bal.* My Lords, I have ſaid all that I have to ſay. I obſerve, that none of the Witneſſes have agreed upon the Day charged in the Indictment; and I have nothing elſe to ſay.

L. H. S. You ſay the Witneſſes have not proved, That your Lordſhip was at *Carliſle* on the particular Day laid in the Indictment: But the Witneſſes have proved, That they ſaw you in Arms at the Head of your Troop of Rebels at *Carliſle*. If your Lordſhip can diſprove that Fact, this is your Time to do it. Have you any Thing to ſay in Support of what you have obſerved, about the particular Day not being proved, as laid in the Indictment? I ſhould be glad to know upon what your Lordſhip would put your Defence. They have proved you to be in Arms at *Carliſle* in *November*.

Lord *Bal.* But not at the Taking of *Carliſle*; and I can prove, I was not there at the Time *Carliſle* was taken; but was twelve Miles off.

Mr. Serj. *Skinner.* The Witneſſes don't ſay he was at the Surrender of the Town; but he was in the Town after it was taken by the Rebels; and that he marched into the Town at the Head of his Troop. He was with them, on their March, at *Long Town* and *Lancaſter*, and ſeveral other Places; and, if we have made out any one Fact laid in the Indictment,

ment, it is sufficient, and, I hope, your Lordships will think the Treason is proved.

Mr. At. Gen. I beg your Lordships would spare me a few Words upon this Occasion: And, if I am right, I take the Prisoner's Objection to be this, That the Witnesses for the Crown have not proved the Facts to be committed on the precise Day laid in the Indictment.

Lord *Bal.* That is not the Case: You mistake it intirely.

L. H. S. My Lord *Balmerino* objects, That it is not proved he was at *Carlisle*, when it was actually taken by the Rebels.

At. Gen. Then I apprehend the Objection to be only this, That he was not there at the Taking of *Carlisle*.

Lord *Bal.* That is the Objection.

L. H. S. What have the King's Counsel to say to that Objection?

Mr. Serj. *Skinner.* My Lords, the Objection made by the Noble Peer at your Lordships Bar, is, That on the tenth Day of *November*, the Day laid in the Indictment, he was not at *Carlisle*; and that he was not at the Taking of that City and Castle.

My Lords, The Day laid in an Indictment is merely Matter of Form. Some Day, previous to the Indictment, must be laid; but the Proof is not tied up to that Time: Any Proof, before or after the Day, may be admitted; and it is sufficient, if it be before the Time of preferring the Indictment.

And suppose the Noble Lord was not present at the Time that the City and Castle of *Carlisle* were actually taken; yet it is proved, that he marched into the City armed, and at the Head of his Troop, the second Day after the Castle was taken; so that he was in the Possession of the City and Castle. And the Detainer of the King's Town or Castle is High Treason: And where many Acts of Treason are laid in an Indictment of High Treason, if any one Charge be made good the Person must be convicted.

I therefore submit, That there is no Weight in the Objection made by this Noble Lord.

At. Gen. My Lords, The Objection, if it can be of any Use to the Noble Lord, must be to shew, that the Evidence is not sufficient to induce your Lordships to find him guilty. The Indictment consists of a general Charge of levying War, together with the Circumstances of being arrayed and assembled in a warlike Manner against his Majesty, and the particular Fact of entering, possessing, taking, and defending the City and Castle of *Carlisle* against his Majesty. The former is fully proved; for every one of the Witnesses prove, he marched in the Rebel Army, arrayed in a hostile Manner, riding at the Head of the second Troop of the Pretender's Son's Horse-Guards. As to the other Fact, of his entering and taking of *Carlisle*; it is proved by three Witnesses, That the Prisoner came into *Carlisle*, at the Head of his Troop, when the Rebels were in Possession of it, and held it for the Pretender: Which is a full, positive Proof of that Fact.

But the Noble Lord objects, That he was not present at the Taking.

There are two clear Answers to this: One, That neither the Law, nor the Charge in the Indictment makes that necessary, if it appears that he did enter it, and was in Possession of it, in a hostile Manner.

Another is, That if that particular Fact was not at all proved, it could be of no Service to his Lordship, while there is another Act of Treason charged and proved.

By the Law, every Entry and Possession of the King's Town or Fortress in a hostile Manner, against the King, is High Treason; nor does the Law distinguish how that Entry and Possession is obtained, if it is done by Rebels, and in Opposition to the Royal Authority. His Lordship neither denies his Entry and holding the Possession for the Pretender, nor disputes the Weight of the Evidence that proves it: And it can do him no good, if it appeared never so clearly, that the Time of his personal Entry was not till after the Rebel Army had made themselves Masters of it.

But if this Fact was as doubtful as it is clear, the Evidence of the other Part of the Charge is certain and unobjected to; and there is nothing plainer, in Point of Law, than that the Proof of any one Overt Act, laid in the Indictment, is sufficient, though no Evidence is given of any others that are charged.

The Noble Lord, though he now seems to give it up, did object at first, That the Evidence did not prove the Treason on the Tenth of *November*, the Day charged in the Indictment. Lest that should have any Weight, I would only say, That it has been frequently adjudged, that, though a precise Day must be charged, the Day is immaterial in Point of Proof: So it was particularly in the Case of Sir *Henry Vane*, in the Time of King *Charles* the Second: He was indicted for High Treason; and it was laid in the Indictment, That the Facts were committed on a certain Day, in the Eleventh Year of King *Charles* the Second. It was only proved, that they were committed in the First Year of his Reign, and yet held it was sufficient to support the Indictment.

The Question, therefore, on the Whole, will only be, Whether treasonable Acts of Hostility have been proved upon the Noble Lord? And, as that can admit of no Doubt, neither can his being guilty of the Treason, charged on him by this Indictment, admit of any.

Sir *John Strange.* My Lords, I don't know whether it is necessary for all of us to speak in this Case. For my Part, I shall say but a Word or two. Here are several Acts of Treason that are alledged in the Indictment; and whoever hath given the Noble Lord, who is the Prisoner, to understand, that every particular Act must be proved (if any such Advice can have been given him) hath been mistaken; because it is clear and certain, in Point of Law, that though ever so many Facts are laid in the Indictment, yet, if there is legal Proof of any one of those Facts, which is High Treason, it is sufficient to found your Lordships Judgment, that the Person so proved guilty of any particular Fact, is to be adjudged guilty of High Treason.

Your Lordships, however, will be pleased to observe, how many particular Acts are laid in the Indictment, and whether they are not all proved. First, It is laid, That the Noble Lord at the Bar did, with many others, arm, array, and dispose himself in a warlike and hostile Manner against the King. This, my Lords, is clearly proved; for the Witnesses have told your Lordships, That he had the Command of the second Troop of the Pretender's Life-Guard, which was Part of the Rebel Army: That he marched at the Head of this Troop, with Drums beating, and Colours displayed: That he wore a particular Habit, which was Blue turned up with Red, a laced Hat, and a white Cockade, being the Uniform Dress of the Troop: And the being thus arrayed in this hostile Manner, my Lord *Hale*, in his first Volume, *H. P. C.* 150, 152. says, is levying War against the King; and this has been fully proved to your Lordships against this Noble Lord, the Prisoner at the Bar, by more than two Witnesses. His being present at several Places at the Proclaiming of the Pretender has been likewise proved to your Lordships: And we use it as a Circumstance to lead your Lordships Judgment, with what Intent he was thus armed and arrayed in a hostile Manner, which was plainly in order to dethrone his Majesty, and place a Pretender upon the Throne. This has been proved against the Noble Lord at the Bar to have occurred at two Places, where this Proclamation was made.

Another Circumstance which has been proved, is, his being drawn up and formed at the Battle of *Falkirke*; and though the Witnesses do not say, that that Party of the Pretender's Life-Guards was actually engaged upon this Occasion, yet, I humbly apprehend, that is not material. There can be no Doubt, in Point of Law, but that every body, who is so drawn up in a warlike and hostile Manner, is waging War, though every Party is not engaged. He was there drawn up with his Forces, with his Broad Sword drawn, and ready to engage at that Time. And, my Lords, we trace him from thence to the glorious Field of *Culloden*; and your Lordships observe, he was there an Officer, leading his Squadron, and commanding the second Troop of Life-Guards of the Pretender; and after the Disaster which befel them that Day, and for which we have great Reason to be thankful, the Noble Lord at the Bar surrendered himself to the King's Forces, as one of those engaged against the King at that Battle. My Lords, lay all these Things together, and your Lordships will see, it is no way necessary to prove, whether this Noble Lord was present at the first Taking of *Carlisle*, or not: Which seems to be the only Point on which the Noble Lord has rested his Defence.

But, my Lords, if it was necessary to shew that, I apprehend it is proved. The Taking of a Town or a City is not the Act of a single Man, but the Act of a great Number of Persons, got together for that Purpose; therefore, as to any Man, who was a Part of the Rebel Army, and went into the City of *Carlisle*, after it surrendered to the Rebels, and joined with them, it is an actual Taking of that City: For it was the Force and Terror without the City, and the appearing in the hostile Manner, already described, which occasioned the Surrender of the Place. Every one, therefore, who joined in this Force and Terror, is instrumental in the Taking of the Town. It is proved, that he entered into *Carlisle*, and was in Possession of the Town; it is proved, by more than one Witness, that he did it at the Head of the Pretender's Life-Guards: He lay there one Night, while the Rebels were in Possession of the Town, and then he marched out Southward. Then there is his returning back to *Carlisle*; taking Possession of it the second Time; his being there with the Young Pretender; his going away with him and the Rebel Army, and leaving a Garrison in the Town, to defend it against the King's Forces, when they should come up. My Lords, this, with Submission to your Lordships, is a strong and clear Proof, that he entered and took Possession of *Carlisle*, and kept it against the King, as laid in the Indictment; and whether he remained there a longer or a shorter Time, whether he lay one Night or twenty Nights in it, makes no Difference in Point of Law.

I don't observe, the Noble Lord lays much Stress upon the Tenth of *November*'s being laid in the Indictment, as the Day on which the Treason was committed; and therefore I forbear to trouble your Lordships upon it; for, to be sure, it does not signify, whether the Facts committed were on the Tenth of *November*, or any other Day.

My Lords, I apprehend every particular Act of Treason laid in the Indictment, against the Noble Lord at the Bar, is fully proved; and therefore I submit the Whole to your Lordships Judgment.

Mr. Sol. Gen. My Lords,——

Lord *Bal.* I am satisfied I was mistaken; and ask your Lordships Pardon, for taking up so much of your Time.

Mr. Sol. Gen. I was going to have said, That I did not apprehend it necessary for me to speak upon this Point from any Difficulty in the Objection. But as the Answer to the Objection depended not upon natural, but legal Reasoning, and established Forms, and as the Noble Lord had chose not to have the Assistance of Counsel in stating and enforcing his Objection, I would, for his Satisfaction, have said a Word or Two, not only to shew that the Matter is settled by the uniform Authority of all our Books, and many adjudged Cases; but to have explained why it has been settled, that the Treason must be laid in the Indictment to have been committed on a particular Day, and yet, at the Trial, need not be proved to have been committed on that precise Day. As he has declared himself satisfied, there is no Occasion to say any thing.

Then the Lord High-Steward returned back to his Chair.

Lord Pref. My Lords, I move your Lordships to adjourn to the Chamber of Parliament.

L. H. S. Is it your Lordships Pleasure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

L. H. S. This House is adjourned to the Chamber of Parliament.

The Lords and others returned to the Chamber of Parliament, in the same Order they came down: And after some Time, the House was adjourned again into *Westminster-Hall*; and the Peers being there seated, the Lord High Steward in his Chair, and the House resumed, the Serjeant-at-Arms made Proclamation for Silence, as usual.

L. H. S. Your Lordships were pleased, in the Chamber of Parliament, to come to a Resolution, That the Opinion of the learned and reverend Judges should be taken upon the following Question, *viz.* Whether it is necessary, that an Overt Act of High-Treason should be proved to have been committed on the particular Day laid in the Indictment? Is it your Lordships Pleasure, that the Judges do now give their Opinions on that Question?

Lords,

Lords. Ay, ay.

L. H. S. My Lord Chief-Juſtice.

L. C. J. Lee. The Queſtion propoſed by your Lordſhips is, Whether it be neceſſary, that an Overt Act of High-Treaſon ſhould be proved to be committed on the particular Day laid in the Indictment?

We are all of Opinion, that it is not neceſſary to prove the Overt Act to be committed on the particular Day laid in the Indictment: But as Evidence may be given of an Overt Act before the Day, ſo it may be after the Day ſpecified in the Indictment; for the Day laid is Circumſtance and Form only, and not material in Point of Proof: And this is the known, conſtant Courſe of Proceeding in Trials.

L. H. S. Lieutenant of the *Tower*, take my Lord *Balmerino* from the Bar.

Lord *Bal.* Will your Lordſhips be pleaſed to allow me to ſpeak two Words?

L. H. S. If you think fit, my Lord:

Lord *Bal.* Your Lordſhips may think I have had very bad Advice in this Caſe: But to do Juſtice to my Solicitor, Mr. *Roſs*, he laid my Caſe before Counſel; and he told me, they were of the ſame Opinion with what the King's Counſel have offered: But I myſelf had a Notion, that not being at *Carliſle* at the Time it was taken, I was not within the Indictment; and I thought there was ſomething in the Objection; and that was the Reaſon of my giving your Lordſhips ſo much Trouble. I am very ſorry for it; and aſk your Lordſhips Pardon.

L. H. S. Has your Lordſhip any thing further to offer?

Lord *Bal.* No, my Lords.

L. H. S. Lieutenant of the *Tower*, take my Lord *Balmerino* from the Bar.

Which was done accordingly.

L. H. S. Your Lordſhips have heard the Evidence, and every thing that has been alledged on both Sides; and you have alſo heard the Opinions of the learned and reverend Judges on a particular Queſtion ſtated to them. The Solemnity of your Proceedings requires, that your Lordſhips Opinions on the Queſtion of Guilty or Not Guilty, ſhould be delivered ſeverally in the Abſence of the Priſoner, beginning with the Junior Baron; and that the Priſoner ſhould afterwards be acquainted with the Reſult of thoſe Opinions by me. Is it your Lordſhips Pleaſure to proceed now to give your Opinions on the Queſtion of Guilty, or Not Guilty?

Lords. Ay, ay.

Then the Lord High Steward ſtood up uncovered; and beginning with the youngeſt Peer, ſaid,

L. H. S. Henry Arthur Lord *Herbert* of *Chirbury*, what ſays your Lordſhip? Is *Arthur* Lord *Balmerino* Guilty of the High-Treaſon whereof he ſtands indicted, or Not Guilty?

Whereupon *Henry Arthur* Lord *Herbert* of *Chirbury*, ſtanding up in his Place uncovered, and laying his right Hand upon his Breaſt, anſwered, Guilty, upon my Honour.

In like Manner the ſeveral Lords aftermentioned, being all that were preſent, anſwered as followeth:

Samuel Lord *Sandys*. Guilty, upon my Honour.
Richard Lord *Edgecumbe*. Guilty, upon my Honour.
William Lord *Fitz William*. Guilty, upon my Honour.
John Lord *Chedworth*. Guilty, upon my Honour.
Stephen Lord *Ilcheſter*. Guilty, upon my Honour.
Henry Lord *Monfort*. Guilty, upon my Honour.
William Lord *Talbot*. Guilty, upon my Honour.
Robert Lord *Raymond*. Guilty, upon my Honour.
John Lord *Monſon*. Guilty, upon my Honour.
John Lord *Hobart*. Guilty, upon my Honour.
Peter Lord *King*. Guilty, upon my Honour.
Matthew Lord *Ducie*. Guilty, upon my Honour.
Charles Lord *Cadogan*. Guilty, upon my Honour.
Robert Lord *Romney*. Guilty, upon my Honour.
Richard Lord *Onſlow*. Guilty, upon my Honour.
Allen Lord *Bathurſt*. Guilty, upon my Honour.
Samuel Lord *Maſham*. Guilty, upon my Honour.
Thomas Lord *Trevor*. Guilty, upon my Honour.
Buſſy Lord *Manſell*. Guilty, upon my Honour.
Herbert Lord *Montjoy*. Guilty, upon my Honour.
George Lord *Hay*. Guilty, upon my Honour.
James Lord *Somervile*. Guilty, upon my Honour.
George William Lord *Hervey*. Guilty, upon my Honour.
Francis Lord *Conway*. Guilty, upon my Honour.
Charles Lord *Butler* of *Weſton*. Guilty upon my Honour.
Fulwar Lord *Craven*. Guilty, upon my Honour.
Charles Lord *Cornwallis*. Guilty, upon my Honour.
John Lord *Berkeley* of *Stratton*. Guilty, upon my Honour.
John Lord *Ward*. Guilty, upon my Honour.
William Lord *Byron*. Guilty, upon my Honour.
James Lord *Strange*. Guilty, upon my Honour,
Edward Lord *Clifton*. Guilty, upon my Honour.
John Lord *St. John* of *Bletſoe*. Guilty, upon my Honour.
Francis Lord *North* and *Guilford*. Guilty, upon my Honour.
Hugh Lord *Willoughby* of *Parham*. Guilty, upon my Honour.
Edward Lord *Wentworth* of *Nettleſted*. Guilty, upon my Honour.
Richard Lord *Willoughby de Broke*. Guilty, upon my Honour.
Ferdinando Dudley Lord *Dudley*. Guilty, upon my Honour.
John Lord *Delawarr*. Guilty, upon my Honour.
Pattee Viſcount *Torrington*. Guilty, upon my Honour.
Simon Viſcount *Hartourt*. Guilty, upon my Honour.
Hugh Viſcount *Falmouth*. Guilty, upon my Honour.
Richard Viſcount *Cobham*. Guilty, upon my Honour.
John Viſcount *St. John*. Guilty, upon my Honour.
Henry Viſcount *Lonſdale*. Guilty, upon my Honour.
William Viſcount *Hatton*. Guilty, upon my Honour.
Thomas Viſcount *Weymouth*. Guilty, upon my Honour.
Charles Viſcount *Townſhend*. Guilty, upon my Honour.
Thomas Viſcount *Fauconberg*. Guilty, upon my Honour.
Richard Viſcount *Say* and *Seale*. Guilty, upon my Honour.
Price Viſcount *Hereford*. Guilty, upon my Honour.
Francis Earl *Brooke*. Guilty, upon my Honour.
Hugh Earl *Clinton*. Guilty, upon my Honour.
Thomas Earl of *Leiceſter*. Guilty, upon my Honour.
William Earl of *Bath*. Guilty, upon my Honour.
William Earl of *Harrington*. Guilty, upon my Honour.
Robert Earl of *Orford*. Guilty, upon my Honour.
Thomas Earl of *Effingham*. Guilty, upon my Honour.
Benjamin Earl *Fitzwalter*. Guilty, upon my Honour.
James Earl *Waldegrave*. Guilty, upon my Honour.
Robert Earl *Ker*. Guilty, upon my Honour.
William Earl *Graham*. Guilty, upon my Honour.
Thomas Earl of *Pomfret*. Guilty, upon my Honour.
George Earl of *Macclesfield*. Guilty, upon my Honour.
Philip Earl of *Harborough*. Guilty, upon my Honour.
Philip Earl *Stanhope*. Guilty, upon my Honour.
William Earl *Cowper*. Guilty, upon my Honour.
George Earl of *Halifax*. Guilty, upon my Honour.
John Earl *Granville*. Guilty, upon my Honour.
Charles Earl of *Tankerville*. Guilty, upon my Honour.
William Earl of *Dartmouth*. Guilty, upon my Honour.
William Earl of *Strafford*. Guilty, upon my Honour.
Robert Earl *Ferrers*. Guilty, upon my Honour.
Charles Earl of *Portmore*. Guilty, upon my Honour.
John Earl of *Dunmore*. Guilty, upon my Honour.
James Earl of *Findlater*. Guilty upon my Honour.
William Earl of *Home*. Guilty, upon my Honour.
William Earl of *Sutherland*. Guilty, upon my Honour.
George Earl of *Cholmondeley*. Guilty, upon my Honour.
Francis Earl *Godolphin*. Guilty, upon my Honour.
John Earl *Poulett*. Guilty, upon my Honour.
Henry Earl of *Grantham*. Guilty, upon my Honour.
William Earl of *Jerſey*. Guilty, upon my Honour.
William Henry Earl of *Rochfort*. Guilty, upon my Honour.
George Earl of *Warrington*. Guilty, upon my Honour.
Thomas Earl of *Scarborough*. Guilty, upon my Honour.
Baptiſt Earl of *Gainſborough*. Guilty, upon my Honour.
Willoughby Earl of *Abingdon*. Guilty, upon my Honour.
Auguſtus Earl of *Berkeley*. Guilty, upon my Honour.
John Earl of *Radnor*. Guilty, upon my Honour.
George Henry Earl of *Litchfield*. Guilty, upon my Honour.
Anthony Aſhley Earl of *Shafteſbury*. Guilty, upon my Honour.
Richard Earl of *Burlington* Guilty, upon my Honour.
Charles Earl of *Ailesbury*. Guilty, upon my Honour.
Francis Earl of *Doncaſter*. Guilty, upon my Honour.
Richard Earl of *Angleſey*. Guilty, upon my Honour.
John Earl of *Sandwich*. Guilty, upon my Honour.
Sackville Earl of *Thanet*. Guilty, upon my Honour.
Philip Dormer Earl of *Cheſterfield*. Guilty, upon my Honour.
Daniel Earl of *Winchelſea* and *Nottingham*. Guilty, upon my Honour
Harry Earl of *Stamford*. Guilty, upon my Honour.
Charles Earl of *Peterborow* and *Monmouth*. Guilty, upon my Honour.
John Earl of *Weſtmorland*. Guilty, upon my Honour.
Edward Earl of *Warwick* and *Holland*. Guilty, upon my Honour.
James Earl of *Northampton*. Guilty, upon my Honour.
Brownlow Earl of *Exeter*. Guilty, upon my Honour.
James Earl of *Saliſbury*. Guilty, upon my Honour.
Henry Bowes Earl of *Suffolk* and *Berkſhire*. Guilty, upon my Honour.
Henry Earl of *Lincoln*. Guilty, upon my Honour.
Henry Earl of *Pembroke* and *Montgomery*. Guilty, upon my Honour.
Edward Earl of *Derby*. Guilty, upon my Honour.
Thomas Marquis of *Rockingham*. Guilty, upon my Honour.
William Marquis of *Lothian*. Guilty, upon my Honour.
John Marquis of *Tweeddale*. Guilty, upon my Honour.
Henry Duke of *Chandos*. Guilty, upon my Honour.
Robert Duke of *Manchester*. Guilty, upon my Honour.
William Duke of *Portland*. Guilty, upon my Honour.
Thomas Holles Duke of *Newcaſtle*. Guilty, upon my Honour.
Evelyn Duke of *Kingſton*. Guilty, upon my Honour.
Peregrine Duke of *Ancaſter* and *Keſtevan*, Lord Great Chamberlain. Guilty, upon my Honour.
Archibald Duke of *Argyll*. Guilty, upon my Honour.
John Duke of *Montagu*. Guilty, upon my Honour.
John Duke of *Rutland*. Guilty, upon my Honour.
Charles Duke of *Marlborough*. Guilty, upon my Honour.
John Duke of *Bedford*. Guilty, upon my Honour.
Thomas Duke of *Leeds*. Guilty, upon my Honour.
Charles Duke of *Bolton*. Guilty, upon my Honour.
Charles Duke of *St. Alban's*. Guilty, upon my Honour.
Charles Noel Duke of *Beaufort*. Guilty, upon my Honour.
Charles Duke of *Richmond*. Guilty, upon my Honour.
Charles Duke of *Grafton*, Lord Chamberlain of his Majeſty's Houſhold. Guilty, upon my Honour.
William Duke of *Devonſhire*, Lord Steward of his Majeſty's Houſhold. Guilty, upon my Honour.
John Earl *Gower*, Lord Privy Seal. Guilty, upon my Honour.
Lionel Cranfield Duke of *Dorſet*, Lord Preſident of the Council. Guilty, upon my Honour.

Then the Lord High Steward, laying his Right Hand upon his Breaſt, ſaid;

Lord High Steward. My Lords, I am of Opinion, that *Arthur* Lord *Balmerino* is guilty of the High-Treaſon whereof he ſtands indicted, upon my Honour.

L. H. S. Your Lordſhips have unanimouſly found, that *Arthur* Lord *Balmerino* is guilty of the High-Treaſon whereof he ſtands indicted. Is it your Lordſhips Pleaſure, that he ſhould be called in, and acquainted therewith?—*Lords.* Ay, Ay.

Proclamation

Proclamation was then made for the Lieutenant of the *Tower* to bring the Priſoner to the Bar: Which was done in the ſame Order as before; and afterwards Proclamation made for Silence, as uſual.

L. H. S. Arthur Lord *Balmerino*, The Lords have conſidered of the Charge of High-Treaſon which has been brought againſt you; they have likewiſe conſidered the Evidence, and every thing which your Lordſhip has alledged in your Defence; and, upon the whole Matter, their Lordſhips have unanimouſly found, that you are Guilty of the High-Treaſon, whereof you ſtand indicted.

Lord Preſident. My Lords, I move your Lordſhips to adjourn to the Chamber of Parliament: Is it your Lordſhips Pleaſure to adjourn to the Chamber of Parliament?

Lords. Ay, Ay.

L. H. S. This Houſe is adjourned to the Chamber of Parliament.

Then the Lords returned, in the Order before mentioned, to the Chamber of Parliament: And the Houſe being there reſumed;

Ordered, That the ſaid Earls of *Kilmarnock* and *Cromertie*, and Lord *Balmerino*, ſhould be remanded Priſoners to his Majeſty's *Tower* of *London*, there to be kept in ſafe Cuſtody; and that they ſhould be brought to the Bar of the Houſe in *Weſtminſter-Hall* on *Wedneſday* next, at Eleven of the Clock in the Forenoon, that their Lordſhips might proceed in order to Giving of Judgment upon them.

Wedneſday, July 30, 1746. The Second Day.

THE Lords and others came from the Chamber of Parliament into *Weſtminſter-Hall*, in the ſame Order as on *Monday* laſt; and the Peers were there ſeated, and the Lord High Steward in his Chair.

L. H. S. The Houſe is reſumed. Is it your Lordſhips Pleaſure, that the Judges may be covered?

Then the Serjeant at Arms made Proclamation for Silence, as uſual; and afterwards the following Proclamation:

Serjeant at Arms. Oyes, Oyes, Oyes! Lieutenant of the *Tower* of *London*, bring forth your Priſoners, *William* Earl of *Kilmarnock*, *George* Earl of *Cromertie*, and *Arthur* Lord *Balmerino*, to the Bar, purſuant to the Order of the Houſe of Lords.

The Deputy Governor of the *Tower* brought the Priſoners to the Bar in the like Form as before; and then they kneeled down.

L. H. S. Your Lordſhips may riſe.

The Serjeant at Arms made Proclamation for Silence, as uſual.

Mr. Att. Gen. My Lords, it appears, That the Three Noble Lords at the Bar have been ſeverally indicted for High-Treaſon, in levying War againſt his Majeſty. They have ſeverally been arraigned; and, to their Indictments, Two of the Noble Lords, the Earls of *Kilmarnock* and *Cromertie*, have pleaded Guilty; and the other, my Lord *Balmerino*, has pleaded Not guilty, and put himſelf upon his Trial by his Peers. As to the Two Noble Lords, who have pleaded Guilty, I pray your Lordſhips Judgment againſt them, according to that Confeſſion; and, as to the Lord *Balmerino*, who hath pleaded Not guilty, and put himſelf upon his Trial by his Peers, your Lordſhips, upon hearing the Evidence, having found him Guilty, I alſo pray your Lordſhips Judgment accordingly againſt him.

L. H. S. William Earl of *Kilmarnock*, you ſtand indicted of High-Treaſon, in levying War againſt his Majeſty; to which you have pleaded Guilty, and are thereby convicted: What has your Lordſhip to ſay, Why Judgment of Death ſhould not paſs upon you, according to Law?

Here the Lord High Steward aſked Leave to go down to the Table: Which being done; Proclamation was made for Silence, as uſual.

EARL *of* KILMARNOCK.

My Lords,

I SHALL not attempt to ſay any thing in Juſtification of a Crime, which is of too heinous a Nature to be vindicated; and which any Endeavour to excuſe would rather aggravate than diminiſh. With unfeigned Humility I am ready to ſubmit to the Sentence I am too conſcious I have deſerved. I have already owned myſelf guilty; and, covered with Confuſion and Grief, I throw myſelf at his Majeſty's Feet for Mercy.

I ſhall plead no Excuſe for my Behaviour, in a Circumſtance which makes me ſo much the more unhappy, as it has effaced my former Character, and blotted out the Memory of my conſtant Attachment to his Majeſty's Intereſt all the preceding Part of my Life.

But, if a Man's former uniform Conduct can be any Evidence of his Principles, and Way of Thinking, I may appeal to mine. My Lords, I appeal to the World, if ever any Sentiment, of the Nature of the Crime I am now arraigned for, ever appeared in it; or if the contrary was not very conſpicuous through my whole Life and Converſation.

My Sphere of Action, indeed was narrow; but, as much as I could in that Sphere, it is well known, I always exerted myſelf to the utmoſt in every Part of his Majeſty's Service I had an Opportunity to act in, from my firſt Appearance in the World, to the Time I was drawn into this Crime, for which I now appear before your Lordſhips; in which I did not engage till very late, not till many Weeks after the Battle of *Preſton*.

While I was engaged, it was my conſtant Care, as far as it lay in my Power, to protect and prevent any Injuries to his Majeſty's faithful Subjects in their Perſons, Houſes, or Eſtates: For the Truth of which I can appeal to every Town and Country, through which I paſſed, or at any time halted in.

I had the ſame Regard for the Priſoners that were taken: And, I believe, Officers, private Men, and others, will vouch for me, That they had better Uſage, and their Condition was rendered more ſupportable, through my Means, though I never had any particular Charge of them. I muſt at the ſame time own, that all I did, or could do, in this Way, for the Service of particular Perſons, is no Atonement for the Blood I have been acceſſary to the Spilling of; nor do I plead it as ſuch, or at all in Defence of my Crime.

I have a Son, my Lords, who has the Honour to carry his Majeſty's Commiſſion; whoſe Behaviour, I believe, will ſufficiently evince, that he has been educated in the firmeſt Revolution Principles, and brought up with the warmeſt Attachment to his Majeſty's Intereſt, and the higheſt Zeal for his moſt Sacred Perſon, and the Title of his Illuſtrious Houſe to the Crown of theſe Realms.

That he was impreſſed with a firm and ſettled Opinion, That the Revolution was juſt and neceſſary; and that Civil and Religious Liberty and Property cannot be ſecured to the Nation, otherwiſe than by the ſtricteſt Adherence to theſe Principles, and maintaining and ſupporting the Succeſſion to the Crown, as it is by Law eſtabliſhed in the Perſon of his moſt Sacred Majeſty, and his Illuſtrious Houſe.

It was my chief Care to inſtruct him in theſe Principles from his earlieſt Youth; and to confirm him, as he grew up, in the Juſtice and Neceſſity of them to the Good and Welfare of the Nation. And, I thank God, I have ſucceeded: For his Father's Example did not ſhake his Loyalty; the Ties of Nature yielded to thoſe of Duty: He adhered to the Principles of his Family, and nobly expoſed his Life at the Battle of *Culloden*, in Defence of his King, and the Liberties of *Britain*; which I, his unfortunate Father, was in Arms to deſtroy.

I was inſtructed in the ſame Principles myſelf from my Infancy, by the beſt of Fathers, who diſtinguiſhed himſelf early on his late Majeſty's Acceſſion, by his Zeal and Activity in ſuppreſſing the Rebellion in 1715 (in which he contracted his Death, that followed ſoon after), as was well known then, and may ſtill be remembered by ſome of your Lordſhips. I then had the Honour to ſerve under him, as far as my Years would admit of, in the ſame Cauſe which my Family had always been remarkable for ſupporting, and which I have ever ſince ſtrictly adhered to, both in my Heart and Practice, till this unhappy Period.

My Lords, I am not one of thoſe dangerous Perſons, who can raiſe a Number of Men when they will, and command them on any Enterprize they pleaſe: My Intereſts lie on the South Side of *Forth*, in the well inhabited and well affected Counties of *Kilmarnock* and *Falkirk*, in the Shires of *Ayr* and *Stirling*. I have the Honour to ſpeak to thoſe who know the Map, the Situations of theſe Countries, and the Diſpoſitions of their People: Theſe Places are ſo well affected (and, perhaps, partly through my Means), that any Influence I, or any other, could have on them to the contrary, would be very ſmall; and if I could have had any, I did not uſe it on this Occaſion. Though I was, in the Months of *December* and *January* laſt, ſome Weeks at *Falkirk*, I did not raiſe a ſingle Man out of it; and though, immediately before that, I was a Week at *Glaſgow*, a few Miles, from *Kilmarnock*, I brought Nobody from thence. Theſe laſt, indeed, were much ſtrengthened in their loyal Principles by my Father's long Reſidence, and by my being much among them; and I uſed my Endeavours, with Succeſs, to confirm them in thoſe Sentiments, in a Viſit I made them laſt *September*; when I paſſed ſome Days with them, about the Time of, and after the Battle of *Preſton*: At that time I got them put in as much Readineſs to act for his Majeſty's Service, as the Law would then admit of; and procured their ſettling a Correſpondence with their neighbouring Boroughs of *Ayr* and *Irvine*, for their common Defence: which had ſo good an Effect, that the Town of *Kilmarnock* alone had ſoon a good Body of Militia on Foot, which marched into *Glaſgow* the Beginning of Winter.

I cannot omit to inform your Lordſhips, That, at the Battle of *Culloden*, I not only ſurrendered myſelf, but I ſurrendered when it was very eaſy for me to have eſcaped, as all that Body did with whom I was when they gave Way. Lord *Ancram*, to whom I made my Surrender, can acquaint your Lordſhips, That, when I came up to him, I was quite alone, at a very great Diſtance from thoſe I had left; and that I neither was running, nor purſued by any Enemy. But though I could have eſcaped, I did not chooſe it; becauſe the Conſequences, in an Inſtant, appeared to me more terrible, more ſhocking, than the moſt painful or ignominious Death. To throw myſelf into the Hands of a Foreign Power, the natural Enemy to my Country, with whom to have Merit, I muſt perſiſt in continued Acts of Violence to my Principles, and of Treaſon and Rebellion againſt my King and Country; I had already been too far engaged with thoſe, who were encouraged by that Power, to think of continuing in ſo criminal an Error; and therefore I choſe to ſurrender, and commit myſelf to his Majeſty's Mercy.

I beg leave to repeat what I ſaid before, That I did not mean to advance any thing in Excuſe, or even in Mitigation of my Crime: I only pray to be looked on, by your Lordſhips, as an Object of his Majeſty's Compaſſion; and, if I am ſo happy, I beg leave to implore your Lordſhips Interceſſion with his Majeſty for Mercy, in my Behalf. It is your Lordſhips Interceſſion, and that of my Countrymen alone, that I implore. I heard there was an Offer of Mediation made by a Foreign Prince at War with his Majeſty; and I heard it with an Indignation that ought to fire the Heart of every *Briton*, when a *French* King dares attempt to direct, or in any reſpect influence, the Counſels or Determinations of a King of *Britain*; or preſume to interpoſe between his Majeſty and his offending Subjects. I was but too far drawn in, and unhappily engaged, with thoſe who were aſſiſted and influenced by that Prince; and I never can ſufficiently teſtify my Sorrow and Repentance for it: But I would look on it as the higheſt Aggravation of my Crime, to hope, or even to wiſh for Favour through his Office, by whoſe Means chiefly, I believe, they were miſled, with whom I was acceſſary to the diſturbing the Peace of theſe Nations, and ſwerving from my Duty and Allegiance to his Majeſty, which all the former Part of my Life I had kept inviolable.

It is by *Britons* only, that I pray to be recommended to a *Britiſh* Monarch. If his Majeſty ſhall be pleaſed, from the ſteady Loyalty of my Family, from my Father's paſt Services, from my own conſtant Adherence to his Majeſty's Intereſt, from my preſent Anguiſh for having ever been concerned in this unnatural Rebellion, and from my undiſſembled Sorrow and Remorſe for it, which muſt attend me to my laſt Moments: If from theſe, but much more from his own unbounded Mercy, my Royal Maſter ſhall incline to ſpare that Life which I have juſtly forfeited, let me owe it to his Majeſty through the Interceſſion of your Lordſhips, who are Witneſſes to my Grief and Repentance.

But if Juſtice will not allow of Mercy, my Lords, I will lay down my Life with Patience and Reſignation: My laſt Breath ſhall be employed in the moſt fervent Prayers for the Preſervation and Proſperity of his Majeſty, and his Auguſt Houſe, and to beg his Forgiveneſs, and the Forgiveneſs of my Country.

Lord High Steward. George Earl of *Cromertie*, You ſtand indicted of High Treaſon, in levying War againſt his Majeſty; to which you have pleaded Guilty, and are thereby convicted: What has your Lordſhip to ſay, Why Judgment of Death ſhould not paſs upon you, according to Law?

EARL *of* CROMERTIE.

I HAVE now the Misfortune to appear before your Lordſhips, guilty of an Offence of ſuch a Nature, as juſtly merits the higheſt Indignation of his Majeſty, your Lordſhips, and the Publick: And it was from a Conviction of my Guilt, that I did not preſume to trouble your Lordſhips with any Defence. As I have committed Treaſon, it is the laſt Thing I would mean to juſtify it: My only Plea ſhall be, your Lordſhips Compaſſion; my only Refuge, his Majeſty's Clemency.

Under this heavy Load of Affliction, I have ſtill the Satisfaction, my Lords, of hoping, that my paſt Conduct, before the Breaking out of the Rebellion, was irreproachable, as to my Attachment to the preſent happy Eſtabliſhment, both in Church and State: And, in Evidence of my Affection to the Government, upon the Breaking out of the Rebellion, I can appeal to the then Commander in Chief of his Majeſty's Forces at *Inverneſs*, and to the Lord Preſident of the Court of Seſſion in *Scotland*, who, I am ſure, will do Juſtice to my Conduct upon that Occaſion.

But, my Lords, notwithſtanding my determined Reſolution in Favour of the Government, I was moſt unhappily ſeduced from that Loyalty in an unguarded Moment, by the Arts of deſperate and deſigning Men: And it is notorious, my Lords, that no ſooner did I awake from that Deluſion, than I felt a Remorſe for my Departure from my Duty; but it was too late.

Nothing now, my Lords, remains, but to throw myſelf, my Life, and Fortune upon your Lordſhips Compaſſion; but thoſe, my Lords, as to myſelf, are the leaſt Part of my Miſery.

I have involved an innocent Wife (no Party to my Guilt), and, with her, an unborn Infant, to ſhare its Penalty: I have involved my eldeſt Son, whoſe Infancy, and Regard to his Parent, hurried him down the Stream of Rebellion: I have involved alſo Eight innocent Children, who muſt feel their Parent's Puniſhment, before they know his Guilt.

Let them, my Lords, be Pledges to his Majeſty; let them be Pledges to your Lordſhips; let them be Pledges to my Country, for Mercy: Let the ſilent Eloquence of their Grief and Tears, let the powerful Language of innocent Nature, ſupply my Want of Eloquence and Perſuaſion: Let me enjoy Mercy no longer than I deſerve it; and let me no longer enjoy Life, than I ſhall endeavour to efface the Crimes I have been guilty of. Whilſt I thus intercede for your Lordſhips Recommendation to his Majeſty for Mercy, let my Remorſe for my Guilt, as a Subject; let the Sorrows of my Heart, as a Huſband; let the Anguiſh of my Mind, as a Father, ſpeak the reſt of my Miſery! Your Lordſhips are Men, you feel as Men; but may none of you ever ſuffer the ſmalleſt Part of what I ſuffer!

But, after all, if my Safety ſhall be found inconſiſtent with that of the Publick, and nothing but my Blood thought neceſſary to atone for my unhappy Crimes; if the Sacrifice of my Life, my Fortune, and Family, are judged indiſpenſable for ſtopping the loud Demands of publick Juſtice; if, notwithſtanding all the Allegations that can be urged in my Favour, the bitter Cup is not to paſs from me; not mine, but thy Will, O God, be done!

Lord High Steward. Arthur Lord *Balmerino*, When you were laſt at this Bar, I acquainted your Lordſhip, That upon your Trial, your Peers had unanimouſly found you guilty of the High Treaſon of which you ſtand indicted, whereby you are convicted: What have you to ſay, why Judgment of Death ſhould not paſs upon you, according to Law?

Lord *Bal.* My Lords, I have here a Paper in my Hand, which ſays, There are ſome Reaſons, why Judgment ſhould not paſs againſt me. I deſire your Lordſhips will let it be read.

L. H. S. Will your Lordſhip pleaſe to read it yourſelf?

Lord *Bal.* I deſire your Lordſhips would let it be read.

L. H. S. My Lords, This Paper, which is offered by my Lord *Balmerino*, cannot be read at the Table; but your Lordſhips may give Leave, that a Clerk may go down to the Bar, and read it for the Priſoner.

Lords. Ay, ay.

Clerk of the Crown reads the Paper; *viz.*

July 29th, 1746.

IT is conceived, that the late Act of Parliament, impowering his Majeſty to tranſport ſuch as are taken in Arms from one County to another, where they may be tried by the Courſe of the Common Law, did not take place, till after the Time that the Facts, implying Treaſon, were actually committed by the accuſed Priſoners; and, if ſo, the Grand Jury of *Surry*, or of any other County whatſoever, where theſe Acts of Treaſon are not alledged to have been committed, could not, agreeable to Law, find Bills againſt ſuch Priſoners: And it may, on that ſcore, be prayed, That the Indictment be quaſhed, or that an Arreſt of Judgment be thereupon granted.

Nat. Williamſon.

If the Bill, found by the Grand Jury, has any Flaw, ſo as to make it illegal, all the Superſtructure falls of Courſe.

Nat. Williamſon.

L. H. S. What has your Lordſhip to offer upon this Paper?

Lord *Bal.* I ſay, my Lords, if the Grand Jury of the County of *Surry* had not Power to find a Bill of Indictment againſt me, I can't have Judgment paſs againſt me; for I can't ſee, how the Indictment can be good.

L. H. S. Has your Lordſhip any thing more to offer?

Lord *Bal.* No, my Lords.

Lord High Steward. Your Lordſhips hear what is alledged by my Lord *Balmerino*.

Earl of *Bath.* I deſire my Lord *Balmerino* may be aſked, Whether he knows, that he is intitled to have Counſel, if he thinks fit?

L. H. S. Has not your Lordſhip been acquainted, before this Time, that you were intitled to have Counſel, if you thought fit to apply for it?

Lord *Bal.* Yes, my Lords; I was acquainted ſome Time ago, that I might have Counſel; but I have not had Time to ſpeak to any on this Paper. I received this Paper but within this half Hour from the Conſtable of the *Tower*.

L. H. S. If you were told, that you might have Counſel, why did not your Lordſhip apply for Counſel before?

Lord *Bal.* I told your Lordſhips the other Day, That I did not know I ſhould have Occaſion for Counſel. I have had no Counſel to adviſe me on this Paper. Do your Lordſhips think fit to allow me Counſel now?

L. H. S. Doth your Lordſhip now move for Counſel?

Lord *Bal.* Yes, my Lords, I do, upon this Point only.

The Lord High Steward went back to his Chair.

L. H. S. My Lords, By the Statute of the Seventh of King *William* the Third, for regulating Trials in Caſes of High-Treaſon, my Lord *Balmerino* might have had Counſel aſſigned him by your Lordſhips to make his full Defence, if he had thought fit to apply for that Purpoſe: And as he had long ago, by your Order, a Sollicitor aſſigned him, with Liberty of Acceſs to him at all ſeaſonable Times, he admits, that he was rightly informed concerning that Matter. It ſeems his Lordſhip did not think it proper to apply for Counſel before now, though he admitted, on *Monday* laſt, that he had had the Advice of Counſel upon his Caſe; but he has now moved your Lordſhips to aſſign him Counſel, to ſpeak to one particular Point offered by him in Arreſt of Judgment. As this is the State of the Proceeding, it is proper for your Lordſhips Conſideration, Whether before you appoint Counſel to argue a particular Point, you will not have that Point ſo far opened, as to ſee, whether there is any Colour in it, or not. This will beſt appear, by hearing one of the King's Counſel ſtate the Matter upon the Act of this Seſſion of Parliament, referred to by the Paper which was juſt now read; and then poſſibly my Lord himſelf may be ſo well ſatisfied, as not to inſiſt on having Counſel aſſigned to argue it.

Duke of *Newcaſtle.* As the Priſoner at the Bar has made his Objection, and moved an Arreſt of Judgment, I think one of the King's Counſel ought to have Liberty to be heard to that Matter. Your Lordſhips will then ſee, what Weight there is in the Objection inſiſted on by the Priſoner, and be the better able to determine about aſſigning Counſel to argue it. I am therefore of Opinion, that the King's Counſel ſhould be heard in the Manner propoſed by my Lord High Steward.

Earl *Granville.* By the known Rules and Uſage of Parliament, there can be no Debate in this Place; and therefore I move your Lordſhips to adjourn to the Chamber of Parliament.

L. H. S. Is it your Lordſhips Pleaſure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

L. H. S. This Houſe is adjourned to the Chamber of Parliament.

The Lords, and others, returned to the Chamber of Parliament in the ſame Order they came down; and, after ſome time, the Houſe was adjourned again into *Weſtminſter-Hall*; and the Peers being there ſeated, the Lord High Steward in his Chair, and the Houſe reſumed, the Serjeant at Arms made Proclamation for Silence, as uſual.

L. H. S. My Lord *Balmerino*, The Lords have, in their Houſe above, unanimouſly come to this Reſolution, That I ſhould aſk your Lordſhip, Whether you do now deſire that Counſel ſhould be aſſigned you; and that I ſhould acquaint you, that in caſe you do deſire it, their Lordſhips will aſſign you ſuch Counſel as you think fit to propoſe.

Lord *Bal.* Yes, my Lords, I do.

L. H. S. What Counſel does your Lordſhip deſire ſhould be aſſigned you?

Lord *Bal.* Mr. *Wilbraham* and Mr. *Forreſter*, my Lords.

Lord *Preſident.* I move, that your Lordſhips will adjourn to the Chamber of Parliament.

L. H. S. Is it your Lordſhips Pleaſure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

L. H. S. This Houſe is adjourned to the Chamber of Parliament.

Then the Lords went back, in the Order beforementioned, to the Chamber of Parliament.

And the Houſe being there reſumed;

Ordered, That Mr. *Wilbraham* and Mr. *Forreſter* be aſſigned Counſel for the Lord *Balmerino*, as deſired; and that they may have Acceſs to him at all ſeaſonable Times.

Ordered, That the Earls of *Kilmarnock* and *Cromertie*, and the Lord *Balmerino*, be remanded Priſoners to his Majeſty's *Tower* of *London*, and there kept in ſafe Cuſtody, until the further Order of this Houſe.

Ordered, That this Houſe will proceed further, in order to the giving Judgment againſt the ſaid Lords on *Friday* next, at eleven of the Clock; and that they be then brought to the Bar of this Houſe, in *Weſtminſter-Hall*, for that Purpoſe.

Friday, Auguſt 1ſt, 1746.

THE Lords, and others, came from the Chamber of Parliament into *Weſtminſter Hall*, in the ſame Order as on *Monday* laſt; and the Peers were there ſeated, and the Lord High Steward in his Chair.

Lord High Steward. My Lords, the Houſe is reſumed.

Is it your Lordſhips Pleaſure, that the Judges have Leave to be covered?

The Serjeant at Arms made Proclamation for Silence; and afterwards the following Proclamation:

Serjeant at Arms. Oyes, Oyes, Oyes! Lieutenant of the *Tower* of *London*, bring forth your Priſoners, *William* Earl of *Kilmarnock*, *George* Earl of *Cromertie*, and *Arthur* Lord *Balmerino*, to the Bar, purſuant to the Order of the Houſe of Lords.

The Deputy-Governor of the *Tower* brought the Priſoners to the Bar, in the like Form as before; and then they kneeled down.

Lord

Lord High Steward. Your Lordſhips may riſe.

Mr. *Wilbraham* and Mr. *Forreſter*, the Counſel aſſigned to the Lord *Balmerino*, attended.

L. H. S. My Lord *Balmerino*, when you were laſt at this Bar, you thought fit to move in Arreſt of Judgment; and deſired, that Counſel might be aſſigned you: Whereupon the Lords have been pleaſed to aſſign you ſuch Counſel as you propoſed. Does your Lordſhip now deſire that your Counſel may be heard?

Lord *Bal.* As your Lordſhips have been pleaſed to allow me Counſel, I have adviſed with them; and my Counſel tell me, there is nothing in that Paper, which I delivered in on *Wedneſday* laſt, that will be of any Uſe to me: So I will not give your Lordſhips any further Trouble about it.

L. H. S. If I underſtand your Lordſhip right, you do not deſire your Counſel ſhould ſpeak to that Matter.

Lord *Bal.* No, my Lords.

L. H. S. Do you deſire your Counſel ſhould be heard?

Lord *Bal.* I deſire they ſhould not plead.

L. H. S. My Lords, though the Priſoners have already been aſked what they had to ſay, why Judgment ſhould not paſs upon them according to Law; yet as they are now brought up at a ſubſequent Day, it is the regular Courſe to aſk them the ſame Queſtion over again; becauſe ſomething material may poſſibly have ariſen or occurred ſince the former Day.

William Earl of *Kilmarnock*, Has your Lordſhip any thing further to ſay, why Judgment of Death ſhould not paſs upon you, according to Law?

Earl of *Kilmarnock.* No, my Lords, I have nothing farther to offer.

L. H. S. George Earl of *Cromertie*, Has your Lordſhip any thing further to ſay, why Judgment of Death ſhould not paſs upon you, according to Law?

Earl of *Cromertie.* No, my Lords, I have nothing further to trouble your Lordſhips with.

L. H. S. Arthur Lord *Balmerino*, Has your Lordſhip any thing further to ſay, why Judgment of Death ſhould not paſs upon you, according to Law?

Lord *Balmerino.* No, my Lords; I only deſire to be heard a Moment. My Lords, I am very heartily ſorry, that I ſhould take up ſo much of your Lordſhips Time, and give you ſo much Trouble: It was not to delay Time, or to gain a few Days; but only as I believed there was ſomething in the Objection that would do me Service; and I beg your Lordſhips Pardon for the Trouble I have given you.

My Lords, I acknowledge my Crime, and I beg your Lordſhips will intercede with his Majeſty for me.

L. H. S. Make Proclamation for Silence whilſt Judgment is giving.

Serjeant at Arms. Oyes, Oyes, Oyes! Our Sovereign Lord the King doth ſtrictly charge and command all manner of Perſons to keep Silence whilſt Judgment is giving, upon Pain of Impriſonment.

Lord High Steward.

William Earl of *Kilmarnock*, *George* Earl of *Cromertie*, *Arthur* Lord *Balmerino*,

IN the Courſe of this ſolemn Proceeding, you have already been acquainted, That you ſtand convicted of the High-Treaſon charged upon you by the ſeveral Indictments on which you have been arraigned.

By this Conviction it is now finally determined, That your Lordſhips are guilty of that Crime, which not only the Laws of *Great Britain*, but of all other Countries, for the wiſeſt Reaſons, adjudge to be the higheſt.

As it gives the deepeſt Concern to every one of my Lords your Peers, to find Perſons of your Birth and Quality ſtained with ſo foul an Offence, ſo it muſt give them ſome Satisfaction, that all of you, in effect, have confeſſed it; two of your Lordſhips by expreſly pleading Guilty upon your Arraignment; and the other, by openly declaring himſelf ſatisfied with the Determination of this Houſe, upon the only Point on which his Defence was reſted. Charity makes one hope, that this is an Indication of ſome Diſpoſition to that Repentance which your Guilt ſo loudly calls for.

You, my Lord *Balmerino*, have ſince moved in Arreſt of Judgment; and their Lordſhips were pleaſed to aſſign the Counſel you deſired, to ſupport that Motion: But, upon adviſing with your Counſel, you have now voluntarily at the Bar withdrawn it, as being wholly without Foundation.

To attempt to aggravate Crimes of ſo deep a Dye, and in themſelves ſo incapable of Aggravation, againſt Perſons in your unhappy Circumſtances, would be a vain, as well as a moſt diſagreeable Taſk. And yet the Duty of that Place, in which I have the Honour to ſit, requires that I ſhould offer ſome Things to your Conſideration, to explain more fully the Neceſſity of that Juſtice which is this Day to be adminiſtered, and to awaken in your Minds a due Senſe of your own Condition.

If any Rebellion can be heightened by the Circumſtances attending it, it is that in which your Lordſhips have been engaged: A Rebellion againſt a King celebrated through the World for his mild and gracious Government; the whole Series of whoſe Reign has been diſtinguiſhed by the ſtricteſt Adherence to the Laws, and the moſt indulgent Care of the Rights of his People, unblemiſhed with any ſingle Inſtance of an Attempt or Deſign to violate either.

To overturn the Government of ſuch a King, you took Arms; and, in Conſequence of this, to deſtroy the pureſt Religion, and ſubvert the beſt Conſtitution, formed and eſtabliſhed upon the juſteſt Balance of Prerogative in the Crown, and Liberty in the Subject, for the Preſervation of the Whole.

What did your Lordſhips, who profeſs the Proteſtant Religion, and claim the Benefits of this Conſtitution, ſeek to introduce in the Room of theſe invaluable Bleſſings? In Religion, Popery, attended with its Train of Superſtitions, and inhuman Principles of Perſecution; in Government, Deſpotiſm and Tyranny; and to cement and ſupport this horrid Syſtem, an abjured Pretender, deriving his Principles of Religion and Civil Policy from *Rome* and *France*.

When I name *France*, I find myſelf obliged to remind your Lordſhips of one Circumſtance, which it will become you to reflect upon in your moſt ſerious Moments. The Time you choſe to arm againſt your Country, was, whilſt it ſtood engaged in a juſt and neceſſary War againſt that Crown, and *Spain*; a War, to preſerve its own Commerce and Independency; and its ancient natural Allies. Though ſome of your Lordſhips have thought it proper, at this Bar, to diſclaim that Connexion, or any Advantage from it; yet, with that ambitious and incroaching Power, you avowedly joined yourſelves; by this Aid, you endeavoured to effect the dreadful Change you meditated; and, to ſuch a Maſter, to enſlave this free Nation.

Nor were the other Countries of *Europe*, which have united themſelves againſt the pernicious Views of *France*, leſs eſſentially, though more remotely, intereſted in the Event. From *Great Britain* they derived their chief Aſſiſtance in this War: In her centered their Hopes of Support: But the Contrivers of this Scheme laid the Ax to the Root of the Tree; and, by endeavouring to deliver up this Kingdom a Province to *France*, ſtrove to cut off that Reſource, without which the Cauſe of publick Liberty muſt have ſunk for ever.

Thus widely ſpread were the Calamities, which this Rebellion was formed to introduce. By calling off the Arms of *Great Britain* to her neceſſary Self-defence, ſome Progreſs was made towards effectuating one Part of the intended Miſchief. How far it may be retrieved, and in what Manner, is ſtill in the Womb of Time, and in the Hands of Providence: But is it not aſtoniſhing that Men, who call themſelves *Britons* and *Proteſtants*, ſhould become the Dupes and Abettors of ſo execrable a Deſign? A Deſign to eraſe the very Foundations of true Religion and Freedom, and to turn the Riches and Strength of this Kingdom, through a Courſe of Ages ſo differently employed, into Inſtruments of the common Slavery?

After all this, to mention the Plundering and Devaſtation of particular Towns and Counties; the Miſeries brought upon private Perſons and Families; or the many Murders committed (for the Death of every loyal Subject killed in this Rebellion was a Murder); to mention theſe Things, though moſt important and moving in themſelves, after the other more extenſive Conſiderations, would make them appear of leſs Weight.

Some of your Lordſhips, in what you have been pleaſed to offer for yourſelves, have urged ſeveral Topics to excite Mercy and Compaſſion. Thoſe, if of any Moment, are only proper for that Place, where the Seat of Mercy muſt be acknowledged to be fixed. But, when Arguments of Compaſſion have been urged in Behalf of the Guilty, let us balance thoſe Arguments with a becoming Compaſſion for our Country, for thoſe who have ſuffered innocently by the Miſeries which this Rebellion brought upon it, and for thoſe who died glorioufly in its Defence.

Give me Leave to urge this a little further. Even the Sufferings of thoſe, who ſo far forgot their Allegiance, as to adhere to, or favour, this impious Cauſe, are in Juſtice to be charged only to the Account of ſuch as fomented and ſupported it. They who take Arms againſt a lawful eſtabliſhed Government, create the Neceſſity of all Acts requiſite to be done on the Side of that Government, in order to repel and ſubdue them; or which, in the Nature of Things, become unavoidable in the Courſe of ſuppreſſing them.

Upon ſuch a Subject it is more difficult to ſtop than to inlarge. But, whilſt I am endeavouring to raiſe in your Minds a juſt Senſe of the many Evils involved in your Crimes, permit me to intreat your Lordſhips to deal impartially with yourſelves, and to conſider ſeriouſly, what could be your Temptation to commit them.

Every one of you enjoyed the common Benefits of that legal and mild Government, which, in Violation of the moſt ſolemn Oaths, you ſought to deſtroy; and ſome of you had received particular Advantages from it. You, my Lord *Kilmarnock*, and my Lord *Cromertie*, have thought fit to appeal to your former Conduct as a Proof of your good Principles for the Support of the Revolution, and of our preſent happy Eſtabliſhment. With real Grief I lament that you ever deviated from thoſe Sentiments. If, as your Lordſhips would have us believe, they were ſincere, and proceeded from the Heart, What could poſſibly be your Inducement to this ſudden Apoſtacy? Your Lordſhips have left that a Blank in your Apologies; and I chooſe rather to leave it to be filled up by the Conſtructions of others, than to ſupply it myſelf.

Thus much I am warranted to ſay: No glittering Proſpect of Succeſs in the Beginnings of this Rebellion could tempt you. On the one hand, thoſe Beginnings were ſo weak and unpromiſing, as to be capable of ſeducing none, but the moſt infected and willing Minds, to join in ſo deſperate an Enterprize. On the other hand, it was impoſſible, even for the Party of the Rebels, to be ſo inconſiderate or vain, as to imagine that the Body of this free People, bleſt in the Enjoyment of all their Rights both Civil and Religious under his Majeſty's Protection; ſecure in the Proſpect of tranſmitting them ſafe to their Poſterity, under the Proteſtant Succeſſion in his Royal Houſe (of which they ſee ſo many illuſtrious Branches); I ſay, it was impoſſible that they could imagine, the Body of this free People, under theſe Circumſtances, would not riſe up, as one Man, to oppoſe and cruſh ſo flagitious, ſo deſtructive, and ſo unprovoked an Attempt.

Happy is it for ourſelves, happy for our Poſterity, that this was verified by the Event. The Rebels ſoon ſaw his Majeſty's faithful Subjects, conſcious both of their Duty and Intereſt, contending to outdo one another in Demonſtrations of their Zeal and Vigour in his Service. The Merchants and Trading Part of this great Metropolis, one of the moſt uſeful and reſpectable Branches of the Community, to their laſting Honour, aſſociated themſelves, at the Riſque of their private Fortunes, to ſupport the publick Credit of their Country. Men of Property, of all Ranks and Orders, crouded in with liberal Subſcriptions, of their own Motion, beyond the Examples of former Times, and uncompelled by any Law; and yet in the moſt legal and warrantable Manner, notwithſtanding what has been ignorantly and preſumptuouſly ſuggeſted to the contrary. The Clergy, with a Zeal becoming their holy Function, regulated by Chriſtian Charity, inſtructed their Hearers by their Doctrine, and led them by their Example, in Defence of the Crown, and of our common Liberties; of this Reformed Church, and conſequently of the Reformation itſelf.

The Rebels ſoon ſaw many of the Nobility and Gentry, from amongſt the firſt Families, the greateſt Eſtates, and the beſt Blood in the Kingdom, ſurrounding the Throne, ſoliciting to be permitted to hazard their Lives in this glorious Cauſe, and to be authorized, at their own Expence, to raiſe Forces for the Support of it.

But,

But, above all, they ſaw both Houſes of Parliament, the great Council of the Nation, the Repreſentative Body of this People, warmed with a truly *Britiſh* Spirit, and treading in the Steps of their Anceſtors, overcoming all Difficulties, and unanimouſly concurring in every Meaſure to ſtrengthen the King's Hands, and to maintain that Government, on which the very Being of Parliaments, and the Preſervation of this limited Monarchy, depend.

If theſe Enemies of our Peace had formed to themſelves any falſe Hopes of contrary Appearances, it muſt be owing to the higheſt Degree of Infatuation, that they were not ſoon convinced of their Miſtake. Great Reaſon have we to offer up our Thanks to Heaven, that they have been effectually diſappointed. Even your Lordſhips, if you will allow yourſelves to weigh your own Caſe in the juſt Balance of Religion and Conſcience, will find Cauſe to be thankful that the Meaſure of your Guilt was not ſuffered to be filled up and enhanced by the final direful Succeſs of it.

If, from any unforeſeen Accidents, not uncommon in military Operations, thoſe deluſive Hopes were for ſome time kept alive, it ſeems to have been judicially deſigned by Providence to render the more ſignal that Vengeance, which was reſerved for them at the Battle of *Culloden*. How much was owing, on that memorable Day, to the Bravery and Diſcipline of his Majeſty's Troops, to the animating Example, the intrepid Valour, and the wiſe Conduct of a Prince deſcended from him, is ſo deeply engraven on the Heart of every Member of this Great Aſſembly, that I could only repeat what their own grateful Minds have already ſuggeſted to themſelves, and repreſented to the Throne.

Then was experienced how much that Courage, which Virtue, true Loyalty, and the Love of our Country, inſpire, is ſuperior to the Raſhneſs and falſe Fire of Rebellion, accompanied with the Terrors of Guilt.

I will add no more. It has been his Majeſty's Juſtice to bring your Lordſhips to a legal Trial; and it has been his Wiſdom to ſhew, that, as a ſmall Part of his National Forces was ſufficient to ſubdue the Rebel Army in the Field, ſo the ordinary Courſe of his Laws is ſtrong enough to bring even their Chiefs to Juſtice.

What remains for me, is a very painful, though a neceſſary Part. It is, To pronounce that Sentence, which the Law has appointed for Crimes of this Magnitude;—a Sentence full of Horror! ſuch as the Wiſdom of our Anceſtors has ordained, as One Guard about the Sacred Perſon of the King, and as a Fence about this excellent Conſtitution, to be a Terror to Evil-doers, and a Security to them that do well.

The Judgment of the Law is, and this High Court doth award;

" That You, *William* Earl of *Kilmarnock*, *George* Earl of *Cromertie*, " and *Arthur* Lord *Balmerino*, and every of you, return to the " Priſon of the *Tower*, from whence you came; from thence you " muſt be drawn to the Place of Execution; when you come there, " you muſt be hanged by the Neck, but not till you are dead; for " you muſt be cut down alive; then your Bowels muſt be taken " out, and burnt before your Faces; then your Heads muſt be " ſevered from your Bodies, and your Bodies muſt be divided " each into Four Quarters; and theſe muſt be at the King's " Diſpoſal.

" And God Almighty be merciful to your Souls!"

L. H. S. Lieutenant of the *Tower*, Take the Priſoners from the Bar.

Which being done, Proclamation was made for Silence, as uſual.

L. H. S. My Lords, This Proceeding being at an End, nothing remains to be done here, but to determine the Commiſſion.

Lords. Ay, Ay.

L. H. S. Let Proclamation be made for diſſolving the Commiſſion of High Steward.

Serj. at Arms. Oyes, Oyes, Oyes! Our Sovereign Lord the King does ſtrictly charge and command all manner of Perſons here preſent, and that have here attended, to depart hence in the Peace of God, and of our Sovereign Lord the King; for his Grace my Lord High Steward of *Great Britain* intends now to diſſolve his Commiſſion.

Then the White Staff being delivered to the Lord High Steward by the Gentleman Uſher of the Black Rod, upon his Knee, his Grace ſtood up uncovered; and holding the Staff in both his Hands, broke it in two, and declared the Commiſſion to be diſſolved; and then leaving the Chair, came down to the Wool-Pack, and ſaid, Is it your Lordſhips Pleaſure to adjourn to the Chamber of Parliament?

Lords. Ay, Ay.

L. H. S. This Houſe is adjourned to the Chamber of Parliament.

Then the Lords and others returned in the ſame Order they came down.

And the Priſoners were carried back to the *Tower* of *London*.

XLII. The Whole Proceedings in the House of Peers, upon the Impeachment exhibited by the *Knights*, *Citizens*, and *Burgeſſes*, in Parliament aſſembled, in the Names of Themſelves, and of all the Commons of *Great Britain*, againſt Simon Lord Lovat, for High-Treaſon: The Proceeding in *Weſtminſter-Hall* being begun on *Monday* the 9th Day of *March*, and continued on *Tueſday* the 10th, *Wedneſday* the 11th, *Friday* the 13th, *Monday* the 16th, *Wedneſday* the 18th, and *Thurſday* the 19th Days of *March*, 1746-7.

Die Jovis, 11° *Decembris*, 1746.

A Meſſage was brought from the Houſe of Commons, by Sir *William Yonge*, and others, to acquaint this Houſe, That they, having Matters to communicate to their Lordſhips, of great Importance to the King and Kingdom, do deſire that their Lordſhips will continue ſitting for ſome Time.

To which the Houſe agreed.

And the Meſſengers were called in again; and acquainted by the Lord Chancellor, That the Lords will continue ſitting for ſome Time, as deſired.

The Houſe was adjourned during Pleaſure.

The Houſe was reſumed.

A Meſſage was brought from the Houſe of Commons, by Sir *William Yonge*, and others, as follows:

My Lords,

THE Commons of *Great Britain*, in Parliament aſſembled, having received Information of divers Treaſons committed by a Peer of this Realm, *Simon* Lord *Lovat*, have commanded me to impeach the ſaid *Simon* Lord *Lovat* of High-Treaſon: And I do here, in their Names, and in the Names of all the Commons of *Great Britain*, impeach the ſaid *Simon* Lord *Lovat* of High-Treaſon: And I am further commanded to acquaint your Lordſhips, That they will, with all convenient Speed, exhibit Articles to make good the Charge againſt him.

Die Mercurii, 17° *Decembris*, 1746.

A MESSAGE was brought from the Houſe of Commons, by Sir *William Yonge*, and others, who ſaid, he was commanded by the Houſe of Commons to deliver to this Houſe Articles of Impeachment of High-Treaſon againſt *Simon* Lord *Lovat*.—He ſaid, He was alſo commanded by the Commons to acquaint their Lordſhips, That they are ready to maintain their Charge: And he delivered in the ſaid Articles.

Which Articles being read:

The Duke of *Newcaſtle* acquainted the Houſe, That the ſaid Lord *Lovat* is already under Commitment for High-Treaſon in his Majeſty's *Tower* of *London*.

Then the following Order was made:

Whereas the Commons, aſſembled in Parliament, have this Day exhibited to this Houſe Articles of Impeachment of High-Treaſon againſt *Simon* Lord *Lovat*; It is *Ordered*, by the Lords Spiritual and Temporal, in Parliament aſſembled, That the ſaid Lord *Lovat* be brought to the Bar of this Houſe To-morrow at Two of the Clock in the Afternoon, to hear the ſaid Articles read; and to abide ſuch further Order, as this Houſe ſhall think fit to make concerning him.

To *Charles* Lord *Cornwallis*, Conſtable of his Majeſty's *Tower* of *London*, and, in his Abſence, to the Lieutenant of the ſaid *Tower*, or his Deputy.

4

Die Jovis, 18° *Decembris*, 1746.

THE Order being read, for bringing *Simon* Lord *Lovat* to the Bar of this Houſe, to hear the Articles of Impeachment of High-Treaſon, exhibited againſt him Yeſterday by the Houſe of Commons, read unto him;

The ſaid Lord *Lovat* was accordingly brought to the Bar, by the Deputy-Gentleman-Uſher of the Black Rod: Where he kneeled until the Lord Chancellor directed him to riſe.—Then

The ſaid Articles of Impeachment were read unto him: Which done, the Lord Chancellor aſked him, What he had to ſay thereunto; and informed him, That, if he had any Thing to requeſt of the Houſe, this was his proper Time.

Whereupon he acquainted the Houſe with his Infirmities occaſioned by old Age, and particularly alledged his Deafneſs, that he could not hear what the Contents of the ſaid Articles were: Wherefore, having a Petition prepared to make known to the Houſe his Requeſts, he deſired the ſame might be read: Which being delivered in, was read by the Clerk, and is as follows; *viz.*

To the Right Honourable the Lords Spiritual and Temporal, in Parliament Aſſembled,

The Humble Petition of Simon *Lord* Fraser *of* Lovat,

Sheweth,

THAT your Petitioner, by reaſon of his great Age, labours under many Infirmities and Weakneſs; and, being intirely ignorant of the Forms of Law, and Method of Proceedings in this Auguſt Court, is unable to make any Defence, or give in a proper Anſwer to the Articles of Impeachment exhibited againſt him, without the Aſſiſtance of able Counſel and Sollicitors.

That your Petitioner, during his cloſe Confinement in the *Tower* of *London*, for now near Five Months, has not been able to obtain One Shilling either out of his Eſtate or otherwiſe; which has been occaſioned, as your Petitioner has been informed, by ſome Grants of a very extraordinary Nature, and which your Petitioner hopes, ſhall never again, in this Iſland, be drawn into Precedent; authorizing and impowering other Perſons, Strangers to your Petitioner, to take Poſſeſſion of his Eſtate, and to levy the Rents thereof; while ſuch as had in their Hands any Money or Effects of your Petitioner's, were prohibited and reſtrained from paying any Part thereof to your Petitioner, or his Order.

That your Petitioner applied ſeveral Times to one of His Majeſty's Principal Secretaries of State, complaining of the Hardſhips your Petitioner ſuffered by Means of ſuch Proceedings; and your Petitioner is informed, that Two ſeveral Orders were made thereupon, in order to remove the ſaid Prohibitions and Reſtraints, and to recal the ſaid Powers ſo granted as above: But notwithſtanding thereof, your Petitioner is ſtill in

in the ſame deplorable Circumſtances, without any Money even to procure him the common Neceſſaries of Life, and is wholly indebted to General *Williamſon* for his Support.

That your Petitioner, when he was apprehended by a Party of his Majeſty's Troops in *Scotland*, had, in his Strong-Box, Money and Jewels to the Amount of Seven hundred Pounds and upwards, which they ſeized, and retain; inſiſting the ſame is lawful Prize.

Your Petitioner therefore humbly prays, that your Lordſhips, moved by your innate Goodneſs, may be pleaſed to aſſign your Petitioner ſuch and ſo many Counſel and Sollicitors as your Lordſhips ſhall think proper: That your Petioner may have a Copy of the Articles of Impeachment; and may not be ordered by your Lordſhips to begin and enter upon his Defence, while he remains ſtripped and deprived of all the neceſſary Means which the Law allows him for his Defence and Support; but that ſuch a reaſonable Time may be allowed your Petitioner to prepare and put in his Anſwer, that he may be enabled to receive Money ſufficient to retain and fee his Counſel and Sollicitors; without which, your Petitioner apprehends, he cannot have their Aſſiſtance and Advice: And that, for that Purpoſe, the Money and Jewels contained in the Strong-Box, and unjuſtly taken as above, may be immediately reſtored to your Petitioner, by your Lordſhips Order.

And your Petitioner ſhall ever pray, &c.

LOVAT.

The Counſel that Lord *Lovat* deſires may be aſſigned are, Mr. *Starkie* Mr. *Forreſter*, Mr. *Ford*, and Mr. *Wilmott*: And the Sollicitors are, Mr. *George Roſs*, Mr. *Hugh Fraſer*, and Mr. *Gooſtrey*.

The Petition being read, the ſaid Lord *Lovat* was aſked by the Lord Chancellor, If he had any Thing further to offer.

To which he anſwering in the Negative;

He was directed to withdraw.

And the Houſe taking the Requeſts of the ſaid Petition into Conſideration;

Ordered, That the ſaid Lord *Lovat* may have a Copy of the ſaid Articles of Impeachment exhibited againſt him: And that he do put in his Anſwer thereunto, in Writing, on or before *Tueſday*, the 13th Day of *January* next: And that Mr. *Starkie*, Mr. *Forreſter*, Mr. *Ford*, and Mr. *Wilmott*, the Counſel mentioned in the ſaid Petition, be aſſigned to aſſiſt him in preparing his Anſwer, and likewiſe in his Defence, in Matters of Law: And that Mr. *George Roſs*, Mr. *Hugh Fraſer*, and Mr. *Gooſtrey*, be alſo aſſigned Sollicitors for him: And that ſuch Counſel and Sollicitors may have Acceſs to him at all ſeaſonable Times: And that the ſaid Lord *Lovat* have Liberty to cauſe Search to be made, and Copies of Records and Journals to be taken out, in order to his Defence: And that he ſhall have Summons iſſued for ſuch Witneſſes as he ſhall ſend in the Names of, to be by him made uſe of at his Trial; which Witneſſes ſhall have the Protection of this Houſe for their ſafe Coming and Going, during the Time of the ſaid Trial.

Ordered, That the Lord Chancellor do acquaint the Lord *Lovat*, That it is expected by their Lordſhips, that he would ſend in the Names of ſuch Witneſſes as he ſhall deſire to be ſummoned, as ſoon as conveniently he can; and that, in Caſe he do not, he muſt not expect to be indulged with any further Delay on that Account.

Ordered likewiſe, That the ſaid Lord *Lovat* be permitted to receive the Rents and Profits of his Eſtate, by his Factors or Agents, in like Manner as if he was not under an Accuſation of High Treaſon: And that his Majeſty's Advocate for *Scotland* do take the proper Methods to carry this Order into Execution.

Then the ſaid Lord *Lovat* was called in again: And the Lord Chancellor acquainted him with what the Houſe had ordered.

And then he was a ſecond Time directed to withdraw.

Ordered, That Lord *Lovat* do ſtand committed to his Majeſty's *Tower* of *London*, to be there ſafely kept, in order to his Trial, till he ſhall be thence delivered by due Courſe of Law: And that no Perſon ſhall have Acceſs to him without the ſpecial Leave of the Houſe.

Ordered, That the Lord Chancellor do write Letters to all the Lords who have not been preſent in the Houſe either this Day or Yeſterday, in the uſual Manner, requiring their Attendance on the Service of this Houſe (all Excuſes ſet apart), on *Wedneſday*, the 21ſt Day of *January* next, on Occaſion of the Proceedings now depending in this Houſe againſt *Simon* Lord *Lovat*, who ſtands impeached by the Houſe of Commons of High Treaſon.

Die Martis, 23° *Decembris*, 1746.

A PETITION of *Simon* Lord *Fraſer* of *Lovat* was preſented, and read; praying, That he may be allowed to the 1ſt Day of *February* for anſwering the Articles of Impeachment exhibited by the Houſe of Commons againſt him; within which Time he hopes, that the Care and Diligence of his Agents in *Scotland* will, notwithſtanding the Seaſon of the Year, furniſh him with the Papers and Materials neceſſary for that End.

And thereupon Mr. *George Roſs*, one of the Petitioner's Sollicitors, being called in, and heard at the Bar, touching the Contents of the ſaid Petition;

He was directed to withdraw.

Ordered, That the ſaid Petition be rejected.

Ordered, That the Lieutenant of the *Tower* of *London*, or his Deputy, do bring the ſaid Lord *Lovat* to the Bar of this Houſe, on *Tueſday*, the 13th Day of *January* next, at Two of the Clock in the Afternoon, in order to the putting in his Anſwer to the Articles of Impeachment of High Treaſon, exhibited againſt him by the Houſe of Commons.

Die Martis, 13° *Januarii*, 1746.

THE Order of the Day being read, for bringing *Simon* Lord *Lovat* to the Bar of this Houſe, in order to the putting in his Anſwer to the Articles of Impeachment of High Treaſon, exhibited againſt him by the Houſe of Commons, he was brought to the Bar accordingly: Where he kneeled, till the Lord Chancellor acquainted him he might riſe. He then delivered in his Anſwer to the ſaid Articles: And the ſame was read.

Then the Lord *Lovat* was aſked by the Lord Chancellor, If he had any Thing further to offer. Whereupon he acquainted the Houſe, He had cauſed to be prepared two Petitions to their Lordſhips, which he conceived did concern the Juſtice as well as the Honour of the Houſe. And his Lordſhip delivering in the ſaid Petitions, the ſame were ſeverally read;

The firſt complaining, That the Order of this Houſe of the 18th of *December* laſt, relating to the Factory or Receiverſhip of the Petitioner's Rents, had not ben obeyed, ſo as to be made effectual to him; nor had the Contents of the Strong-Box taken from him, and now in Captain *Ferguſon*'s Poſſeſſion, been delivered to his Agent, as had been promiſed him: And praying, that Obedience to the ſaid Order might be compelled, and an immediate Reſtitution of the Money taken out of the ſaid Box; or that ſuch Order might be made concerning this Matter, as to the Houſe ſhould ſeem meet.

The other Petition ſetting forth; That Mr. *William Fraſer*, Writer to the Signet, who for many Years had acted as his chief Agent, and had the Management of his Eſtate in *Scotland*, was by his Direction come to Town; but could not have Acceſs to him without the Permiſſion of this Houſe: And praying, That the ſaid *Fraſer* might have Liberty to come to the Petitioner at all ſeaſonable Times.

Then the Lord *Lovat* was directed to be taken from the Bar.

Which done; The firſt Petition was again read: And, after Debate, and reading the ſaid Order, relating to the Receipt of the Rents and Profits of the ſaid Lord *Lovat*'s Eſtate,

Ordered, That the ſaid Petition be rejected.

Then the other Petition being likewiſe read;

Ordered, That the ſaid *William Fraſer* be permitted to have Acceſs to the Petitioner at all ſeaſonable Times, between the Hours of Ten of the Clock in the Forenoon, and Two of the Clock in the Afternoon, in the Preſence of ſuch Officer belonging to the *Tower* of *London*, as the Conſtable thereof ſhall appoint.

Ordered, That a Copy of the Anſwer of the ſaid Lord *Lovat* to the Articles of Impeachment of High Treaſon, exhibited againſt him by the Houſe of Commons, be prepared: And that, when the ſame has been carefully examined by the Clerk, it be ſent by a Meſſage to the Houſe of Commons, and left with that Houſe.

Ordered, That the ſaid Lord *Lovat* be conveyed back to the *Tower* of *London*, by the Lieutenant of the ſame, or his Deputy, to be there kept in ſafe Cuſtody, until he ſhall be thence delivered by due Courſe of Law.

Die Veneris, 16° *Januarii*, 1746.

A MESSAGE was brought from the Houſe of Commons by Sir *William Yonge*, and others, to acquaint this Houſe, That they have conſidered the Anſwer of *Simon* Lord *Lovat* to the Articles of Impeachment exhibited againſt him by the Knights, Citizens, and Burgeſſes, aſſembled in Parliament; and do aver their Charge againſt the ſaid *Simon* Lord *Lovat* for High Treaſon, to be true; and that the ſaid *Simon* Lord *Lovat* is guilty in ſuch Manner as he ſtands impeached: And that the Commons will be ready to prove their Charge againſt him at ſuch convenient Time as ſhall be appointed for that Purpoſe.

Die Jovis, 22° *Januarii*, 1746.

A PETITION of *Simon* Lord *Lovat*, ſtiling himſelf *Simon* Lord *Fraſer* of *Lovat*, was preſented, and read; praying, That Mr. *William Fraſer* may be appointed one of his Sollicitors, in the Room of Mr. *Hugh Fraſer*, he being neceſſarily required to go into the Country.

Ordered, That the ſaid Mr. *William Fraſer* be aſſigned the Petitioner's Sollicitor, in the Room of the ſaid Mr. *Hugh Fraſer*, as deſired: And that the ſaid Mr. *William Fraſer* may have Acceſs to the Petitioner at all ſeaſonable Times.

Ordered, That *Monday*, the 23d Day of *February* next be, and is hereby appointed for, the Trial of *Simon* Lord *Lovat*, in *Weſtminſter-Hall*, upon the Articles of Impeachment exhibited againſt him by the Houſe of Commons for High Treaſon.

And a Meſſage was ſent to the Houſe of Commons, by Mr. *Spicer* and Mr. *Edwards*, to acquaint them therewith.

Then the Houſe appointed a Committee to inſpect the Journals of this Houſe, relating to former Caſes of Impeachments; and to conſider of the proper Methods of proceeding on the Impeachment againſt *Simon* Lord *Lovat*; and to report to the Houſe what they ſhall think proper thereupon.

Die Lunæ, 2° *Februarii*, 1746.

THE Earl of *Warwick* reported from the Lords Committees appointed to inſpect the Journals of this Houſe, relating to former Caſes of Impeachments; and to conſider of the proper Methods of Proceeding on the Impeachment againſt *Simon* Lord *Lovat*; and to report to the Houſe what they ſhall think proper thereupon;

That the Committee had met, and inſpected the Journals of this Houſe, in former Caſes of Impeachments; and had conſidered the Matters to them referred; and had come to ſeveral Reſolutions: Which his Lordſhip reported. And thereupon ſeveral Orders were made, touching the Courſe of Proceeding to, and at the enſuing Trial, and for preſerving the Peace; and amongſt them as follows; *viz.*

Ordered, That an humble Addreſs be preſented to his Majeſty, to acquaint his Majeſty, That this Houſe hath appointed the Trial of *Simon* Lord *Lovat*, upon the Articles of Impeachment of High Treaſon exhibited againſt him by the Houſe of Commons, to begin in *Weſtminſter-Hall* on *Monday*, the 23d Day of this Inſtant *February*: And humbly deſire, That his Majeſty will be pleaſed to appoint a Lord High Steward, to continue during the ſaid Trial.

Ordered, That the ſaid Addreſs be preſented to his Majeſty by the Lords with White Staves.

Ordered, That the Counſel aſſigned the ſaid Lord *Lovat* may be preſent when he is at the Bar, in order to be heard touching any Point or Matter of Law, if any ſuch ſhall ariſe during the ſaid Trial.

Ordered, That the Witneſſes, which ſhall be produced by the Lord *Lovat* to be examined in his Defence, ſhall be examined upon Oath; which Oath ſhall be adminiſtered in the like Form as an Oath was directed by this Houſe to be adminiſtered to any Witneſſes, who ſhould be produced by the Earl of *Wintoun* at his Trial.

Ordered, That the Lord Great Chamberlain be deſired to take Care and give Order, that Accommodations be made in the Scaffold already erected in *Weſtminſter-Hall* for the Commons, as hath been uſed in Trials in *Weſtminſter-Hall* upon Impeachments.

Die Mercurii, 4° *Februarii*, 1746.

THE Lord Steward reported, That the Lords with White Staves had (according to Order) preſented to his Majeſty the Addreſs of this Houſe of *Monday* laſt, for the Appointment of a Lord High Steward, to continue during the Trial of *Simon* Lord *Lovat*; and that his Majeſty had been pleaſed to give Orders accordingly.

Ordered, That the ſaid Commiſſion for appointing a Lord High Steward ſhall be in the like Form as that for the Trial of the Lord Viſcount *Stafford*, as entered in the Journal of this Houſe the 30th of *November*, 1680, except that the ſame be in the *Engliſh* Language.

Die Mercurii, 18° *Februarii*, 1746.

A PETITION of *Simon* Lord *Fraſer* of *Lovat* was preſented and read; ſetting forth, That upon the Appointment of his Trial, he immediately diſpatched one of his Sollicitors to ſummon the Petitioner's material Witneſſes, who are at great Diſtances from each other, inhabiting in the Counties of *Inverneſs* and *Roſs*; but by reaſon of the Inclemency of the Weather, the Badneſs of the Roads, and other unavoidable Accidents, none of them are yet arrived, nor can poſſibly be got to *London* by the Time of Trial; and praying, That this Houſe will appoint ſome more diſtant Time for that Purpoſe.

And thereupon *William Fraſer* and *William Gooſtrey*, two of the Petitioner's Sollicitors, were called in, and heard at the Bar, to verify the Truth of the Allegations of the ſaid Petition: And being withdrawn,

Ordered, That the Time appointed for the Petitioner's Trial be, and is hereby, inlarged till To-morrow Fortnight, the 5th Day of *March* next.

Ordered, That a Meſſage be ſent to the Houſe of Commons, to acquaint them, That upon the humble Petition of *Simon* Lord *Lovat*, for putting off his Trial to a further Day, for the Reaſons therein alledged, the Lords have inlarged the Time appointed for the Trial of the ſaid Lord *Lovat* till *Thurſday* the 5th Day of *March* next.

And a Meſſage was accordingly ſent to the Houſe of Commons, by Mr. *Holford* and Mr. *Bennet*, to acquaint them therewith.

Die Lunæ, 2° *Martii*, 1746.

A PETITION of *Simon* Lord *Fraſer* of *Lovat*, with an Affidavit of *Hugh Fraſer* thereto annexed, were preſented to the Houſe, and read, as follows:

To the Right Honourable the Lords Spiritual and Temporal, in Parliament aſſembled;

The Humble Petition of Simon *Lord* Fraſer *of* Lovat,

Sheweth,

THAT your Lordſhips having appointed your Petitioner's Trial for the 23d of *February*, your Petitioner did lately take the Liberty humbly to repreſent the Impoſſibility he was under to prepare ſo ſoon for Trial, in reſpect his Witneſſes, from the Badneſs of the Road, were not then arrived; and your Lordſhips were pleaſed to indulge your Petitioner with a Delay till *Thurſday* next.

That *Hugh Fraſer*, whom your Petitioner had directed to ſerve your Lordſhips Summons upon your Petitioner's Witneſſes, arrived in Town, with ſundry of them, late on *Friday* Night, having duly ſerved your Lordſhips ſaid Order upon ſeveral other Perſons, who were all material Witneſſes for your Petitioner.

That *Thomas Fraſer* of *Struy*, and *Donald Fraſer*, alias *Down*, two of the Witneſſes, ſerved as aforeſaid, were prevented, by Sickneſs, from ſetting out as early as ſome of the reſt; but had declared to the ſaid *Hugh Fraſer* their Willingneſs to obey your Lordſhips Summons as ſoon as they were able to travel; which your Petitioner hopes may ſoon be the Caſe.

That *William Fraſer* of *Belloan*, *Alexander Fraſer* of *Belnain*, *Thomas Fraſer* of *Garthmore*, *Alexander Fraſer* of *Beloloyne*, and the Reverend Mr. *Donald Fraſer*, Miniſter at *Killearnan*, who are all material Witneſſes for your Petitioner, and without whoſe Teſtimony your Petitioner cannot ſafely proceed to Trial, have abſolutely refuſed to attend, though regularly ſerved with your Lordſhips Summons, as by Affidavit annexed appears; and that the Perſons, named as aforeſaid, are material and neceſſary Witneſſes, your Petitioner is ready to make Affidavit of; but being ſtrictly confined in the *Tower*, and no Perſon having Acceſs to him without your Lordſhips Order, he has no Opportunity ſo to do.

That under theſe Circumſtances, and that your Petitioner, without your Lordſhips Interpoſition, cannot compel the ſaid Perſons to attend his Trial, he is under a Neceſſity to apply to your Lordſhips for Relief, without which he muſt, as to the Charge in ſome of the aforeſaid Articles, remain defenceleſs, ſhould your Lordſhips in the Interim proceed to Trial.

Your Petitioner therefore humbly prays, your Lordſhips would be pleaſed to appoint a more diſtant Day for his Trial; and that your Lordſhips would be pleaſed to compel the ſaid *William*, *Alexander*, *Thomas*, *Donald*, and *Alexander Fraſers*, to attend your Petitioner's Trial at ſuch Time as your Lordſhips ſhall think fit; or to grant him ſuch other Relief, as to your Lordſhips, in your great Wiſdom, ſhall ſeem meet.

And your Petitioner ſhall ever pray.

LOVAT.

In the Houſe of Lords.

Upon an Impeachment for High-Treaſon againſt *Simon* Lord *Lovat*.

HUGH FRASER, of *Grays-Inn*, in the County of *Middleſex*, Gentleman, maketh Oath, That he this Deponent did, on the Tenth Day of *February* laſt, perſonally ſerve *Thomas Fraſer* of *Struy*, and on the twelfth Day of the ſaid Month of *February*, did alſo perſonally ſerve *William Fraſer* of *Belloan*, *Alexander Fraſer* of *Belnain*, *Thomas Fraſer* of *Garthmore*, *Alexander Fraſer* of *Beloloyne*, and *Donald Down*, alias *Fraſer*, with an Order of this Honourable Houſe, bearing Date the Sixteenth of *January* laſt paſt; whereby it was ordered, That the ſaid ſeveral Perſons, and others named in ſuch Order, ſhould attend this Houſe as Witneſſes for the ſaid *Simon* Lord *Lovat*, who ſtands impeached of High-Treaſon by the Houſe of Commons, by delivering to each of them a true Copy of the ſaid Order, and, at the ſame Time, ſhewing to each of them the ſaid original Order. And this Deponent further ſaith, That the ſaid *William Fraſer* of *Belloan*, *Alexander Fraſer* of *Belnain*, *Thomas Fraſer* of *Garthmore*, and *Alexander Fraſer* of *Beloloyne*, though ſerved with the ſaid Order as aforeſaid, abſolutely refuſed to obey the ſaid Order; and this Deponent verily believes will not attend the ſaid Trial: And the ſaid *Thomas Fraſer* of *Struy*, and *Donald Down*, alias *Fraſer*, were both at the Time of ſuch Service ſick, and unable to travel; and declared themſelves incapable of complying with the ſaid Order. HUGH FRASER.

Sworn the 2d Day of *March*, 1746. before me, at the Court of Requeſts.
M. THURSTON.

Afterwards the ſaid *Hugh Fraſer*, and Mr. *Gooſtrey*, one of the Priſoner's Sollicitors, were called in, and examined at the Bar: And being withdrawn,

Ordered, That the ſaid Petition be rejected.

Ordered, That the Lieutenant of the *Tower* of *London*, or his Deputy, do bring to the Bar of this Houſe, in *Weſtminſter-Hall*, on *Thurſday* next, at Ten of the Clock in the Forenoon, *Simon* Lord *Lovat*, in order to his Trial upon the Impeachment of High-Treaſon exhibited by the Houſe of Commons againſt him.——Then

A Meſſage was ſent to the Houſe of Commons by the former Meſſengers, to acquaint them that the Lords will be ready to go down into *Weſtminſter-Hall*, at the Time above-mentioned, in order to the Trial of the ſaid Lord *Lovat*.

Die Martis, 3° *Martii*, 1746.

A PETITION of *Simon* Lord *Fraſer* of *Lovat*, with the Affidavits of Mr. *George Roſs*, and Mr. *William Fraſer*, thereto annexed, were preſented and read as follows:

To the Right Honourable the Lords Spiritual and Temporal, in Parliament aſſembled;

The Humble Petition of Simon *Lord* Fraſer *of* Lovat,

Sheweth,

THAT nothing but the utter Impoſſibility the Petitioner and his Agents are under, of preparing his Defence againſt *Thurſday* the Fifth of this Inſtant *March*, could have induced him to trouble your Lordſhips with this ſecond Application for ſome Days further Time.

But none of your Petitioner's Witneſſes coming to Town till late on *Friday* Night laſt; and one of your Petitioner's Agents having received an Account by laſt Night's Poſt, that two other Perſons, who were ſummoned as Witneſſes for your Petitioner, ſet out from *Edinburgh* on the 24th and 25th of laſt Month, and are not yet arrived in *London*, but expected here by the End of this Week, your Petitioner cannot poſſibly be prepared to take his Trial before *Monday* next.

The Petitioner begs Leave further to repreſent to your Lordſhips, that in the preſent unhappy Situation of his Affairs, he has no Means of furniſhing himſelf with Money, either for applying to Counſel, bearing the Charge of his Witneſſes, or other neceſſary Expence, but from the Supply afforded him by his Agents, who have already advanced him conſiderable Sums for the above Purpoſes, which are already expended: That the Solemnity, and unavoidable Length of the Proceedings, making further Sums of Money ſtill neceſſary, the Petitioner is afraid that his Defence may ſuffer on that account, unleſs your Lordſhips are pleaſed, in Compaſſion to his preſent Difficulty, to give ſome kind of Encouragement to his Agents, to hope they ſhall be repaid what they already have, or may hereafter diſburſe on the Petitioner's Account; it being, by the Loſs of the Petitioner's Moveables, out of his own Power to give them any kind of Indemnification.

The Petitioner alſo prays your Lordſhips to aſſign Mr. *Charles Hamilton Gordon* to be one of his Counſel, in place of Mr. *Starkey*, who, on account of the bad State of his Health, has declined giving the Petitioner his Aſſiſtance.

May it therefore pleaſe your Lordſhips, in Conſideration of the Premiſes, to put off the Petitioner's Trial until the next *Monday*; and to make ſuch other Order upon this Application as to your Lordſhips ſhall ſeem meet.

And your Petitioner ſhall ever pray, &c.
LOVAT.

In the Impeachment of the Commons of *Great-Britain* againſt *Simon* Lord *Fraſer* of *Lovat*.

GEORGE ROSS, one of the Solicitors aſſigned by the Right Honourable the Houſe of Lords to the ſaid *Simon* Lord *Fraſer* of *Lovat*, maketh Oath, That ſince his Appointment, he has at different Times laid out and expended upwards of Six Hundred Pounds, out of his own Pocket, in Feeing of his Lordſhip's Counſel, bringing up his Witneſſes, and other Charges attending the ſeveral Steps already taken, towards preparing for the ſaid Lord's Defence, without receiving any Money or Security whatſoever for his Indemnification. GEORGE ROSS.

Sworn at the publick Office, 2d *March*, before
W. KINASTON.

In the Impeachment of the Commons of *Great-Britain*, againſt *Simon* Lord *Lovat*.

In the Houſe of Lords.

WILLIAM FRASER, Writer to his Majeſty's Signet, maketh Oath, That laſt Night he received Advice from *Edinburgh*, that *Thomas Fraſer* of *Struy*, and Mr. *Donald Fraſer*, two of the Witneſſes ſummoned

on

on the Behalf of Lord *Lovat*, are now upon the Road, and will be here by *Saturday* or *Sunday* next: Which Information this Deponent believes to be true. WILL. FRASER.

Sworn at the publick Office, 3d *March* 1746, before THO. BENNET.

Ordered, That the Trial of the Petitioner be put off to *Monday* next, as desired.

A Message was sent to the Commons, by Mr. *Burroughs* and Mr. *Allen*, to acquaint them, that this House, upon the Petition of the said Lord *Lovat*, for the Reasons therein contained, hath inlarged the Time of his Trial upon the Impeachment of High-Treason exhibited against him by the House of Commons, to *Monday* next, at Eleven of the Clock in the Forenoon; and that their Lordships will be ready to go down into *Westminster-Hall* at the Time above-mentioned, in order to his Trial.

Ordered, That the Lieutenant of the *Tower* of *London*, or his Deputy, do bring the said Lord *Lovat* to the Bar of this House in *Westminster-Hall*, at Ten of the Clock in the Forenoon, on *Monday* next, in order to his Trial upon the said Impeachment.

Monday, the 9th Day of March, 1746.

THE Lords met in the House of Lords in their Robes; and, after Prayers, adjourned into *Westminster-Hall*.

The First Day, in Westminster-Hall.

ABOUT Eleven of the Clock, the Lords came from their own House into the Court erected in *Westminster-Hall*, in the Manner following:

The Lord High-Steward's Gentlemen Attendants, Two and Two.

The Clerks Assistant to the House of Lords, and the Clerk of the Parliament, with the Clerk of the Crown in the Court of Chancery, bearing the King's Commission to the Lord High Steward.

The Masters in Chancery, Two and Two.

The Judges, Two and Two.

The Peers eldest Sons, Two and Two.

Peers Minors, Two and Two.

York and *Windsor* Heralds.

Four Serjeants at Arms, with their Maces, Two and Two.

The Yeoman Usher of the House.

Then the Peers, Two and Two, beginning with the youngest Baron.

Then Four Serjeant at Arms, with their Maces, Two and Two.

The Serjeants at Arms attending the Great Seal, and Purse-Bearer.

Then Garter King at Arms, and the Gentleman Usher of the Black Rod, carrying the White Staff before the Lord High Steward.

Philip Lord *Hardwicke*, Lord High Chancellor of *Great-Britain*, Lord High Steward, alone, his Train borne.

The Lords having taken their Places in the Court, according to their Degrees, the Lord High Steward being upon the uppermost Woolpack; and the Commons, and their Managers, being also in the Seats respectively prepared for them;

The Clerk of the Crown in Chancery, having his Majesty's Commission to the Lord High Steward in his Hand, standing before the Clerk's Table, with his Face towards the State, made Three Reverences, the First at the Table, the Second in the Midway, and the Third near the Woolpack; then kneeled down, and, on his Knee, presented the Commission to the Lord High Steward; who delivered the same back to him; who, rising, made Three Reverences, and returned with it to the Table: And then Proclamation was made for Silence in this Manner:

Serjeant at Arms. Oyes, Oyes, Oyes! Our Sovereign Lord the King strictly charges and commands all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then the Lord High Steward stood up, and spoke to the Peers.

Lord High Steward. His Majesty's Commission is about to be read: Your Lordships are desired to attend to it in the usual Manner; and all others are likewise to stand up, uncovered, while the Commission is reading.

All the Peers uncovered themselves; and they, and all others, stood up, uncovered, while the Commission was read; which is as follows: *viz.*

GEORGE *R.*

GEORGE the Second, by the Grace of GOD, of *Great Britain*, *France*, and *Ireland*, King, Defender of the Faith, and so forth, To Our right trusty and well-beloved Councillor *Philip* Lord *Hardwicke*, Baron of *Hardwicke* in Our County of *Gloucester*, Our Chancellor of *Great Britain*, greeting. Whereas *Simon* Lord *Lovat*, before Us in Parliament, by the Knights, Citizens, and Burgesses, in Our Parliament assembled, in the Name of the said Knights, Citizens, and Burgesses, and in the Name of all the Commons of Our Kingdom of *Great Britain*, is and stands impeached and accused of High-Treason, by him the said *Simon* Lord *Lovat* committed and perpetrated; We, considering that Justice is an excellent Virtue, and pleasing to the Most High, and being willing, that the said *Simon* Lord *Lovat* should, before Us in our present Parliament, according to the Law and Custom of this our Kingdom of *Great Britain*, and according to the Custom of Parliament, be heard, sentenced, and adjudged, touching and concerning the said High-Treason whereof he stands impeached and accused, as aforesaid, and that all other Things, which are necessary in this Behalf, should be in due Manner done and executed; and forasmuch as the Lords Spiritual and Temporal in our present Parliament assembled, have most humbly besought Us, that We would vouchsafe to appoint a Steward of *Great Britain* for this Time; We, very much confiding in your Fidelity, Prudence, provident Circumspection, and Industry, have, for this Cause, ordained and constituted you Steward of *Great Britain*, to bear, execute, and exercise, for this Time, the said Office, with all Things to the same Office in this Behalf due and belonging: And therefore We command you, that you diligently set about the Premises, and, for this Time, do exercise and execute, with Effect, all those Things, which belong to the Office of Steward of *Great Britain*, and which are required in this Behalf. In Witness whereof, We have caused these Our Letters to be made patent. Witness Ourself at *Westminster*, the Ninth Day of *March*, in the Twentieth Year of Our Reign.

By the King Himself, signed with his own Hand.

YORKE and YORKE.

Serjeant at Arms. God save the King!

Then Garter, and the Gentleman Usher of the Black Rod, after Three Reverences, kneeling, jointly presented the White Staff to his Grace the Lord High Steward: And then his Grace, attended by Garter, Black-Rod, and the Purse-Bearer (making his proper Reverences towards the Throne), removed from the Woolpack to an armed Chair, which was placed on the uppermost Step but one of the Throne, as it was prepared for that Purpose; and then seated himself in the Chair, and delivered the Staff to the Gentleman Usher of the Black Rod on his Right Hand, the Purse-Bearer holding the Purse on the Left.

Clerk of the Crown. Serjeant at Arms, Make Proclamation.

Serjeant at Arms. Oyes, Oyes, Oyes! Our Sovereign Lord the King strictly charges and commands all manner of Persons to keep Silence, upon Pain of Imprisonment.

Lord High Steward. It it your Lordships Pleasure, that the Judges have Leave to be covered?——*Lords.* Ay.

Then another Proclamation was made, as follows:

Serjeant at Arms. Oyes, Oyes, Oyes! Lieutenant of the *Tower* of *London*, bring forth your Prisoner to the Bar, according to the Order of the House of Lords to you directed.

Then *Simon* Lord *Lovat* was brought to the Bar by the Deputy-Governor of the *Tower*, having the Ax carried before him by the Gentleman Gaoler, who stood with it on the Left-Hand of the Prisoner, with the Edge turned from him. The Prisoner when he approached the Bar, made Three Reverences, and then fell upon his Knees at the Bar.

Lord High Steward. Your Lordship may rise.

Then the Prisoner rose up, and bowed to his Grace the Lord High Steward, and to the House of Peers: Which Compliment was returned him by his Grace, and the Lords.

And Proclamation being again made for keeping Silence,

The Lord High Steward spake to the Prisoner as follows:

Lord High Steward.

SIMON Lord *Lovat*, You stand impeached of High-Treason by the Knights, Citizens, and Burgesses in Parliament assembled, in the Names of themselves, and of all the Commons of *Great-Britain*; and your Lordship is now brought to the Bar of this House to receive your Trial upon that Impeachment.

The Weight of this Accusation, the solemn Manner of exhibiting and prosecuting it, and the Awfulness of this supreme Judicature, the most illustrious in the World, are Circumstances, that may naturally strike your Mind with anxious and alarming Apprehensions. Reasonable and well-grounded must those Apprehensions be, if they proceed from that greatest of all Terrors, a Consciousness of Guilt. But if your Lordship is innocent; if you have really preserved yourself untainted with the heinous Crimes laid to your Charge, as you have averred by your Answer; these very awful Circumstances, when duly considered, ought to have a contrary Effect, and to afford you Support and Consolation.

Your Lordship can never doubt of the greatest Fairness and Candour in the Management of a Prosecution carried on by the House of Commons, intrusted and highly concerned to preserve the Rights and Liberties of their Fellow-Subjects. Neither can you entertain the least Doubt of a just and impartial Trial, where the Law of the Land, and the Custom and Usage of Parliament (an essential Part of that Law), constitute the Rule of Proceeding; and the Decision and Judgment rest in the Breasts of these noble Lords your Peers, who are to try you upon that Honour, which is inseparable from them, and to judge you by that Law, which is the great Security of themselves and their Posterity.

It is my Duty to put your Lordship in mind of some Things, which may be of Use to you in the Conduct of your Defence; but in this I shall be the shorter, since, at your own Request, Counsel have been already assigned you, with whom you must be presumed to have advised.

Your Lordship must give due and patient Attention to the Reading of the Articles of Impeachment, and what shall be said by the Managers for the House of Commons, or offered in Evidence against you, without giving any Interruption: But when the Managers shall have finished the Examination, on their Part, of any Witness produced by them, you will have Liberty to cross-examine that Witness.

When the Managers for the Commons shall have gone through their Evidence, and closed what they shall think fit to offer by way of Charge, then will be your Lordship's Time to make your Defence. In doing this, you and your Witnesses will be heard with the greatest Attention and Equity.

But your Lordship must take Notice, that your Counsel are not to examine or cross-examine any Witness, nor to give you any Assistance, while Matter of Fact only is in question; but, if any Point or Matter of Law shall arise during this Proceeding, they will, according to the known Rules in such Cases, be heard to it in your Behalf; and, for that Purpose, are permitted to be present whilst your Lordship is at the Bar.

The Witnesses produced in your Defence, must be examined upon Oath, pursuant to a very just and wise Provision made by Act of Parliament in the First Year of the late Queen *Anne*, and according to the Form established by their Lordships in former Cases of Impeachments.

By Command of their Lordships, I am further to acquaint you, and all other Persons, who shall have occasion to speak to this Court, that they are to address themselves to the Lords in general, and not to any Lord in particular.

Before I conclude, I must beg the Indulgence of the House to add one Thing more. If your Lordship shall desire to have the Use of Pen, Ink, and Paper, to take Notes in order to your Defence, I presume it will be permitted; and if, in the Course of your Trial, you should happen to omit any Advantage which in Law and Justice ought to be allowed to you for your Defence, such is the Candour of my Lords your Judges, that I trust I shall meet with their Approbation in giving you Notice of it.

The

The Articles of Impeachment, and the Lord *Lovat*'s Anſwer thereunto, as alſo the Replication of the Commons to the ſaid Anſwer, were (by Command of the Lord High Steward) read, and the ſame are as follow.

Articles of Impeachment of High-Treaſon againſt Simon *Lord* Lovat.

WHereas the Imperial Crown and Government of theſe Kingdoms have been long, duly, and happily eſtabliſhed, in the Royal Family of his preſent moſt Sacred Majeſty, upon Principles equally conducive to the Honour and Safety of the Crown, and to the Protection and Liberty of the Subject; whereby ſettled Laws are made the common Meaſure of Juſtice to both, and a Prerogative wiſely calculated to promote the greater Good of the People, and anſwer the Exigencies of Government, has been aſcertained and ſecured:

And whereas the Reigns of his preſent Majeſty, and his Royal Father, have given the ſtrongeſt and moſt illuſtrious Proofs of the happy Effects of thoſe Principles, in the Exerciſe of their legal, mild, and equal Adminiſtration, under which every Subject, from the higheſt to the loweſt, has had his Religion, his Perſon, and his Property, fully protected by the moſt inviolable Obſervance of the Laws, which have had their free Courſe, without the leaſt Interruption on the Part of his Majeſty, or of his Royal Father:

Notwithſtanding which, there have been found many wicked and ungrateful Perſons, who have themſelves enjoyed all theſe Bleſſings in common with the reſt of their Fellow-Subjects, and yet have been weak and deſperate enough, from time to time, to contrive the Subverſion of this happy Eſtabliſhment, in order to introduce Popiſh Bigotry and Superſtition, inſtead of the Proteſtant Religion, and an Arbitrary, Tyrannical Power, inſtead of a Free Government; and as the only Means of eſtabliſhing and perpetuating thoſe great Evils, to place the Pretender to his Majeſty's Crown upon the Throne of this Kingdom; and, the more eaſily to obtain theſe Ends, have, from time to time, taken Advantage of the Diſtreſſes, which, in the Courſe of human Affairs, have happened to their Native Country, to ſet on foot and proſecute their traitorous Deſigns:

And whereas divers of the ſaid Traitors to his Majeſty have laid hold of the Opportunity ariſing from the juſt and unavoidable, but difficult and expenſive Wars, in which this Nation has been for ſome time engaged, to renew their Treaſonable Conſpiracies, for the bringing their wicked Purpoſes to Effect, by the Aſſiſtance of Troops and Money from his Majeſty's Enemies Abroad, and by raiſing a Rebellion at Home:

And whereas, by the Inſtigation of, and in Concert with the ſaid Traitors, a great Number of *French* Troops, accompanied by the Eldeſt Son of the ſaid Pretender, were ready, and had in part embarked, and actually ſet ſail, to invade this Kingdom, in the Year One thouſand Seven hundred and Forty-three; but were then prevented from accompliſhing their Deſign by the wiſe Precautions of His Majeſty, and the good Providence of Almighty God:

And whereas the ſame Traitors, reſtleſs and indefatigable in the Proſecution of their ſaid wicked and traitorous Purpoſes, hoping that the *French*, by the great Superiority of their Numbers in *Flanders*, might be able to invade this Kingdom, and, at the ſame time, to prevent the Return of his Majeſty's Troops from abroad, for the Defence of the Nation, did, in the Year One thouſand Seven hundred and Forty-five, encourage the ſaid Eldeſt Son of the Pretender to his Majeſty's Crown, to land, at that critical Juncture, in this Kingdom, who, in purſuance of ſuch Encouragement, did actually land in *Scotland*, and put himſelf at the Head of a large Body of armed Traitors, and commence and carry on, for a conſiderable Time, a cruel, unnatural, and bloody War againſt his Majeſty, within this Realm, which has at laſt been happily ſuppreſſed:

ARTICLE I.

SIMON Lord *Lovat*, being a Subject of his ſaid Majeſty, one of the ſaid Traitors and Rebels, and conſpiring and joining with them in their ſaid traitorous Deſigns, and having withdrawn that due Obedience, Fidelity, and Allegiance, which, as a loyal Subject, he owed, and of right ought to bear, to his ſaid preſent Moſt Sacred Majeſty, the only true, lawful, and undoubted Sovereign of this Kingdom, his true and natural Lord, did, upon the 31ſt Day of *December*, in the Year of our Lord 1743, in the Shire of *Inverneſs*, and, on the 28th Day of *October*, in the Year 1745, in the ſame Shire, and at divers other Days, Times, and Places, wickedly, maliciouſly, falſly, and traitorouſly, compaſs and imagine the Death of his ſaid Majeſty.

ARTICLE II.

AND for accompliſhing his ſaid wicked and traitorous Purpoſe, he, the ſaid *Simon* Lord *Lovat*, upon the ſaid 31ſt Day of *December*, in the ſaid Year 1743, in the Shire of *Inverneſs* aforeſaid, did traitorouſly correſpond with the ſaid Pretender, obtain and accept a Commiſſion from the ſaid Pretender, to be a Lieutenant General of his Forces, and another Commiſſion from the ſaid Pretender to be General of the *Highlanders*; and did alſo accept from the ſaid Pretender, a Patent or Grant, importing to create him the ſaid *Simon* Lord *Lovat* Duke of *Fraſer*; and then and there did traitorouſly conſpire and enter into an Aſſociation with many other Traitors, in order to raiſe a War and Rebellion againſt his Majeſty, within this Realm, and to obtain Troops, Money, and Succours from *France*, for that Purpoſe.

ARTICLE III.

AND the ſaid *Simon* Lord *Lovat* did further falſly and traitorouſly, at the Times and Place before particularly mentioned, and at divers other Times and Places, aſſemble himſelf, with divers other falſe Traitors and Rebels, againſt our ſaid Sovereign Lord the King, being armed and arrayed in a warlike Manner, and did raiſe, and cauſed to be raiſed and aſſembled, great Numbers of armed Men, his Majeſty's Subjects, for the Service of the ſaid Pretender, and his ſaid Son; and arrayed, and cauſed them to be arrayed, in a warlike Manner againſt his Majeſty, and did traitorouſly levy, and cauſe to be levied, a cruel and unnatural War againſt his Majeſty, within this Realm, at the Times and Place aforeſaid, in Favour of the ſaid Pretender.

ARTICLE IV.

AND for the more effectual bringing his ſaid Treaſons and traitorous Deſigns to Effect, he the ſaid *Simon* Lord *Lovat* did, in the Month of *November*, in the ſaid Year 1745, traitorouſly compoſe, write, and ſend, and cauſe to be compoſed, written, and ſent, a treaſonable Letter to the ſaid Eldeſt Son of the ſaid Pretender, then in Arms within this Kingdom, and joined by, and at the Head of, great Numbers of his Majeſty's Subjects, falſe Traitors and Rebels againſt his Majeſty, then alſo in Arms and Rebellion againſt his Majeſty within this Kingdom; in which Letter he the ſaid *Simon* Lord *Lovat*, among other Things, expreſſed the great Pleaſure it would give him to end his Days in the Service of the ſaid Pretender's ſaid Son; That he was reſolved to ſend to him his the ſaid Lord *Lovat*'s Eldeſt Son, to venture his Life in his Service, and deliver up his Clan to him; and further expreſſed and repreſented his own great Zeal and Attachment to the ſaid Pretender, and his ſaid Son, and their Cauſe and Intereſt, and the Service he had done, was doing, and intended to do, for the ſaid Pretender and his ſaid Son, with Intent and in order to confirm, animate, and encourage him the ſaid Pretender, his ſaid Son, his Adherents, and all the other ſaid Traitors, in the Proſecution of their ſaid Treaſons, and traitorous Deſigns.

ARTICLE V.

AND the ſaid *Simon* Lord *Lovat*, in further Proſecution of his ſaid Treaſons, did, at the Times and Place before-mentioned, and at divers other Times and Places, after the ſaid War and Rebellion began, and while the ſame was carrying on, traitorouſly compoſe, write, and ſend, and cauſe to be compoſed, written, and ſent, divers other treaſonable Letters and Papers to divers falſe Traitors, then openly in Arms in this Kingdom againſt his ſaid Majeſty, and to divers others of his Majeſty's Subjects, and other Perſons, to aſſure them of his own Zeal and firm Attachment to the Cauſe and Intereſt of the ſaid Pretender, and his ſaid Son, and to confirm, ſollicit, excite, and perſuade them to engage in, continue, and proſecute the ſaid War and Rebellion, and to promiſe and aſſure them of his Aſſiſtance therein.

ARTICLE VI.

AND the more effectually to attain the End of his ſaid Treaſons, and treaſonable Deſigns, the ſaid *Simon* Lord *Lovat* did, at the ſaid Times and Place, and at divers other Times and Places, traitorouſly aid and aſſiſt the ſaid Pretender's ſaid Son, and the ſaid other falſe Traitors and Rebels, in the carrying on the ſaid Treaſons, War, and Rebellion, and furniſh and provide them with great Quantities of Arms, Ammunition, Implements of War, Cloaths, and other Things uſeful and neceſſary for that Purpoſe; and alſo ſent his eldeſt Son, and many of his Name, Family, and Dependents, to the Aſſiſtance of the ſaid Pretender's eldeſt Son, and the ſaid other Rebels; and alſo gave them Advice, Directions, and Inſtructions, in the Proſecution of the ſaid Rebellion.

ARTICLE VII.

AND the ſaid *Simon* Lord *Lovat* further, at the Times and Place aforeſaid, and at divers other Times and Places, did unlawfully and traitorouſly hold, entertain, and keep Intelligence and Correſpondence, both in Perſon and by Letters and otherwiſe, with the ſaid eldeſt Son of the ſaid Pretender, well knowing him to be ſo; and alſo with divers other Perſons, who were employed by the ſaid Pretender's ſaid Son; and particularly with *John Murray* of *Broughton*, Eſq. *Donald Cameron* the elder, of *Lochiel*, *Donald Cameron* the younger, of *Lochiel*, *Alexander MacLeod*, Advocate, of *Edinburgh*, *John Roy Stuart*, Doctor *Archibald Cameron*, and divers others: All which Perſons were employed by the ſaid eldeſt Son of the ſaid Pretender in this Kingdom, in the ſaid Rebellion, the ſaid *Simon* Lord *Lovat* well knowing they were ſeverally employed.

All which ſaid Treaſons and Crimes above-mentioned were contrived, committed, perpetrated, acted, and done, by the ſaid *Simon* Lord *Lovat*, againſt our ſaid preſent Sovereign Lord the King, his Peace, Crown, and Dignity, contrary to the Duty of his Allegiance, and againſt the Laws and Statutes of this Kingdom.

Of all which ſaid Treaſons and Crimes, the Knights, Citizens, and Burgeſſes, in Parliament aſſembled, do, in the Name of themſelves, and all the Commons of *Great Britain*, impeach the ſaid *Simon* Lord *Lovat*.

And the ſaid Commons, by Proteſtations, ſaving to themſelves the Liberty of exhibiting, at any time hereafter, any other Accuſation of Impeachment againſt the ſaid *Simon* Lord *Lovat*; and alſo of replying to the Anſwer which he ſhall make to the Premiſes, or any of them, or to any Impeachment or Accuſation that ſhall be by them exhibited, according to the Courſe and Proceedings of Parliament; do pray, That the ſaid *Simon* Lord *Lovat* be put to anſwer all and every the Premiſes: And that ſuch Proceedings, Examinations, Tryal, and Judgment thereupon, may be had and uſed, as ſhall be agreeable to Law and Juſtice.

The Anſwer of Simon *Lord* Fraſer *of* Lovat, *to the Articles of Impeachment of High-Treaſon exhibited againſt him, by the Name of* Simon *Lord* Lovat, *by the Knights, Citizens, and Burgeſſes, in Parliament aſſembled, in the Name of themſelves, and all the Commons of* Great Britain.

THE ſaid Lord, ſaving and reſerving to himſelf all Benefit and Advantage of Exception to the Uncertainties and Inſufficiencies in the ſaid Articles contained, and alſo all Advantages and Privileges belonging to him as a Peer of this Realm, in Anſwer to the afore-mentioned Article ſays, That being as fully ſenſible as any *Britiſh* Subject of the many Bleſſings theſe Kingdoms have enjoyed under his preſent and late Majeſty's mild and equal Adminiſtration; and having, in the Rebellion of 1715, given the ſtrongeſt Proofs of his Zeal for, and Attachment to, his late Majeſty, and the Succeſſion of the Crown in his illuſtrious Family, againſt ſuch as had undertaken the Deſtruction of both; he cannot but lament his Misfortune, to have his Fidelity queſtioned at the End of his Days; and himſelf, when near worn out with Age and Infirmities, charged with intending

intending the Subversion of a Government he had, in the Strength and Vigour of his Age, exerted his utmost Power and Address to support. Under this heavy Pressure, attended with many other Calamities and Misfortunes, particularly his own Inability to manage his Defence, his only Resource is in your Lordships Justice, who will, he is well assured, regard only plain Facts, not as aggravated by Skill and Oratory, but as clearly and manifestly proved by the Testimony of credible and unexceptionable Witnesses.

Under this firm Persuasion, therefore, the said Lord, in Answer to the First and Second Articles, denies that he did wickedly, maliciously, falsely, and traitorously, compass or imagine the Death of his said present Majesty, or correspond with the Pretender, obtain or accept any Commission or Commissions, Grant, or Letters Patent, from the said Pretender, or traitorously conspire, or enter into any Association whatsoever, for raising a War or Rebellion against his said Majesty, within this Realm, or for obtaining Troops, Money, or Succours, from *France*, for that Purpose, in Manner and Form as by the said Articles is alledged.

To the Third Article, the said Lord denies, That he did assemble himself with any Traitors or Rebels; or raise, or cause to be raised or assembled, any armed Men, for the Service of the said Pretender, or his eldest Son; or array, or cause to be arrayed, any Person or Persons whatsoever against his said Majesty; or levy, or cause to be levied, any War against his said Majesty, in this Realm, in Manner and Form as in this Article is charged.

To the Fourth Article, the said Lord denies, That he did compose write, or send, or cause to be composed, written, or sent, any Letter, Paper, or Writing whatsoever, to the said Pretender's eldest Son, to any such Purport or Effect as by the said Article is supposed, or to any other Purport or Effect whatsoever.

To the Fifth Article, he denies, That he did compose, write, or send, or cause to be composed, written, or sent, any Letter or Letters, Paper or Papers, to any Person or Persons, to such Purport or Effect as by the said Article is alledged.

To the Sixth Article, he denies, That he ever did furnish or provide the said Pretender's eldest Son, or any Traitors or Rebels, with any Arms, Ammunition, Implements of War, or other Things useful or necessary, for the Purpose in the said Article mentioned: Nor did he send his eldest Son, or any of his Name, Family, or Dependents, to the Assistance of the said Pretender's eldest Son, or any Rebels whatsoever; nor encourage, advise, direct, or instruct any of them, in the Prosecution of the said Rebellion.

To the Seventh Article, the said Lord denies, That he ever did hold, entertain, or keep, any Intelligence or Correspondence with the said Pretender's eldest Son, either in Person or otherwise; nor did he entertain or keep any Correspondence with any other of the Persons mentioned in the said Article, or with any other Person employed by the said eldest Son of the Pretender, in the said Rebellion, knowing any thing of them to be so employed.

And as to all other Matters and Things in the said Articles contained, and which is not herein particularly answered (if any such there be), the said Lord avers, That he is not guilty of them, or any of them, in Manner and Form as laid in the said Articles, or in any other Manner or Form whatsoever: And humbly submits himself to your Lordships Judgment.

Replication of the Commons to Lord Lovat's *Answer.*

Die Veneris, 16° *Januarii*, 1746.

A MESSAGE was brought from the House of Commons, by Sir *William Yonge*, and others, to acquaint this House, that they have considered the Answer of *Simon* Lord *Lovat* to the Articles of Impeachment exhibited against him by the Knights, Citizens, and Burgesses, assembled in Parliament: And do aver their Charge against the said *Simon* Lord *Lovat* for High-Treason, to be true: And that the said *Simon* Lord *Lovat* is guilty, in such Manner as he stands impeached: And that the Commons will be ready to prove their Charge against him, at such convenient Time as shall be appointed for that Purpose.

Lord High Steward. The Distance of this Place from the Bar is so great, that I am obliged to ask your Lordships Leave to come down to the Table, for the Convenience of Hearing.

Lords. Ay, Ay.

Which was done accordingly.

L. H. S. Gentlemen of the House of Commons, You will be pleased now to proceed.

Sir WILLIAM YONGE.

My Lords,

AS I was commanded by the House of Commons to lay before your Lordships the Articles of Impeachment of High Treason against the noble Lord at the Bar, which have been just read,

So it now becomes my Duty to open the general Charge to your Lordships, together with some of the Inducements which prevailed with the Commons to think this Accusation necessary.

In the first Place, my Lords, I cannot omit observing, That as every Impeachment is said to be in the Name of all the Commons of the Land, so this may most emphatically be declared to be so, as I am confident there is not a single Subject of the United Kingdom of *Great Britain*, who has not demanded Justice against this notorious Offender; excepting a few Miscreants, who may still be intestine Enemies to his Sacred Majesty on the Throne, his Royal Family, and by necessary Consequence, to the Religion and Liberties of their native Country.

The Crime of High-Treason has at all times been considered, in the most civilized and in the most free Countries, as an Offence of the blackest Dye; and as such, the severest Punishments have been inflicted on such Offenders; and this, my Lords, with the greatest Reason and Justice.

Government was instituted for the Happiness and Security of Mankind, to rescue them from the Rapine and Disorder,

The Murders and Destructions, which must be the Consequences of Anarchy and Confusion.

Treason tends to destroy all Government, whether Monarchical, or that of a Commonwealth of any Denomination; to introduce Confusion and Bloodshed: And if he that murders one Man, is by the Laws of God and Man to be punished with Death, how much more every Rebel, every Fomenter and Abettor of Rebellion, who is a Murderer of Thousands?

By our Law, He that but imagines the Death of the King (in whose Person all the Bands of Society are united), and discovers his wicked Imagination by any Overt Act, is a Traitor: If this be proved against the Prisoner (as I doubt not it will be to your Lordships full Satisfaction), the noble Lord at the Bar is then a Traitor.

Raising Rebellion, and levying War, is another Species of Treason by our Law, or rather the plainest and most notorious Overt Act of imagining the Death of the King: And we doubt not to prove the noble Lord at the Bar to be a Rebel.

It is High-Treason by Statute, to correspond with the Pretender to his Majesty's Crown, or with the Sons of the Pretender, or those employed by them.

But we shall amply prove it to your Lordships, That the noble Lord at the Bar has boasted, that he received a Patent as Duke from the Pretender; an Authority as Commander in Chief of the *Highlands*; is a General Officer in the Pretender's Service; and that he has openly corresponded with the Son of the Pretender, and his Followers, then in open War against his Majesty within this Realm, and given them Harbour, Encouragement, and Assistance.

Your Lordships have, I am persuaded, given due Attention to the Preamble, as well as to the Articles that have been read.

The Commons have there asserted, That, most unfortunately for this Nation, we have amongst us an obstinate, bigotted, restless Faction, who are not, and will not be, contented with the Enjoyments of Liberty, Peace, and Prosperity:

But who are perpetually watching for every favourable Opportunity to overturn our Constitution, and the present happy Establishment.

This is not only their Principle, but has been their constant Endeavour, at different times, from the late glorious Revolution to the present Hour,

By Plots and Conspiracies, by fomenting frequent Rebellions, by inviting our Enemies to invade us, and by that detestable Crime of Assassination.

These Facts require no Proof. Our Annals will afford, and your Lordships Memories will furnish, numerous Instances of some or other of these Attempts.

But, my Lords, we shall, in the Course of our Proceedings, make it appear, That the noble Lord at the Bar, so long as Seven or Eight Years ago, joined in an Association with other Traitors, under their Hands and Seals, for dethroning his present Majesty, and placing the Pretender in his Stead.

Not contented with this, the Association so signed and sealed was transmitted by a faithful Hand to the Cardinal, then Prime Minister of *France*,

In order to excite those our natural Enemies to give their Assistance, and to invade this Country with a foreign Force, even at a time when we were in actual Peace with that Kingdom;

His Lordship, and the other Conspirators, justly imagining, That this might be a favourable Conjuncture, a War with *Spain* at that Time being commenced;

Wisely concluding, That when we were engaged with one Branch of the House of *Bourbon*, the other would not long be neuter.

So early was his Lordship in fomenting a Rebellion at home, and inviting an Invasion from abroad.

Nor was he only early in promoting, and active in supporting, but zealous in endeavouring to prevent the Extinction of the late Rebellion;

For, when the Rebels were broken, and their Chiefs Fugitives from the Victory at *Culloden*, his Lordship found Means to be present at a Sort of Council of War held by those Chiefs;

Where he earnestly encouraged them to reassemble the Remains of their scattered Troops, and to revive the War:

Which was resolved on, and might have happened, had not the Vigilance of his Royal Highness the Duke prevented its taking Effect, thereby shewing his own superior Abilities in using, as eminently as his Courage and Conduct in obtaining, Victory.

The noble Lord at the Bar was, at the Time of this Victory, within Fourteen Miles of *Inverness*.

What would have been the Conduct of any loyal Subject on this Occasion? Would he not have hastened thither, to congratulate his Royal Highness on the Success of that glorious Day?

What was the Conduct of the Prisoner at the Bar?

He received the Young Pretender, flying from his Defeat; embraced him with open Arms; assisted him in his Flight.

And the next News we hear of his Lordship is, that he fled from Justice himself, and appeared at the Meeting of the Rebel Chiefs I have just now mentioned.

This is the Substance of our Charge. And when I have said thus much, your Lordships will not be at a Loss for the strongest Inducements to the Commons to impeach. But, my Lords, there are other Inducements.

The Commons look upon it not only as their Duty, but as a Duty of the greatest Importance to this Nation, to take this Opportunity to let the World know, by the unanimous Voice of the Representatives of all the Commons of *Great-Britain*, their sincere and hearty Abhorrence of every Attempt to disturb his Majesty's auspicious Government, either from abroad, or at home:

To convince all the World, That we are determined to be a Free People, under our own King:

That we are determined to continue a Protestant Nation;

And that we never will suffer an arbitrary Government, or Popish Superstition, to be imposed on us by any Power whatsoever:

That we will give convincing Proof to all *Europe*, that we are not that dissatisfied, disaffected, turbulent People, they have been vainly made to believe,

By having adopted as Truths, all the seditious, discontented, and traitorous

traitorous Libels, which have at different Times, and on various Occaſions, been induſtriouſly ſcattered through the Nation;

And that our Enemies did fooliſhly and ignorantly imagine theſe Libels and Calumnies to be the general Senſe of the People.

Permit me, my Lords, to put you in mind, that That ſcandalous Declaration of the Young Pretender publiſhed at *Edinburgh*, which your Lordſhips, with the hearty Concurrence of the Commons, ordered to be burnt by the common Hangman, was but a ſhort Abſtract of thoſe very Libels.

This Belief of our Enemies was their Folly. The relying on it has proved, Thanks be to God, their Deſtruction.

Had they not been thus infatuated, would ſuch a Nation as *France* have attempted, or thought it poſſible, to over-run, much more to conquer, a brave and warlike People, with a Handful of Men, ſo poorly provided at firſt, and throughout ſo weakly ſupported?

To convince Mankind of theſe falſe and vain Imaginations, was one of the Inducements which prevailed with the Commons to vindicate the People they repreſent from theſe vile Aſperſions, in the moſt ſolemn Manner, in Preſence of your Lordſhips and this great Aſſembly.

But, my Lords, the Body of the People themſelves, from the higheſt to the loweſt, have vindicated their own Loyalty and Honour.

After a ſmall Body of the regular Troops had received a Check, when it was apprehended the Rebels would venture to march Southward, what a noble Spirit immediately aroſe throughout the Nation!

Not an artificial, falſe Clamour for Liberty, but the true old *Britiſh* Spirit of Liberty, the true REVOLUTION SPIRIT, that exerted and ſignalized itſelf, out of Hatred to Popery and arbitrary Power.

And, Thanks be to God, it ſtill remains in its full Vigour amongſt us; it cries aloud in our Streets for Juſtice againſt thoſe that would have made them Slaves and Papiſts; it cries aloud for Juſtice againſt the Priſoner at the Bar.

Calumnies of the like Nature preceded the great Rebellion in the Year 1715; and moſt juſtly may our preſent gracious King now ſay, in the Words of his Royal Father, of glorious Memory, to both Houſes of Parliament:

"My greateſt Comfort is, That I cannot reproach myſelf with having "given the leaſt Provocation to that Spirit of Diſcontent and Calumny "that has been let looſe againſt me, or the leaſt Pretence for kindling "the Flame of this Rebellion. Let thoſe whoſe fatal Counſels laid the "Foundation of all thoſe Miſchiefs, and thoſe whoſe private Diſcon-"tents and Diſappointments, diſguiſed under falſe Pretences, have be-"trayed great Numbers of deluded People into their own Deſtruction, "anſwer for the Miſeries in which they have involved their Fellow-"Subjects."

I have choſen to make this Quotation, becauſe it will appear to your Lordſhips, that the noble Lord at the Bar, ſince his being taken, has frequently declared,

That one of the Cauſes of his late Behaviour, was Revenge to the Miniſtry, for having taken from him the Command of an Independent Company, which he enjoyed.

Now, my Lords, if there is ſuch a Principle, that Men muſt be paid for being loyal, and hired to live free and happy,

Whom no Senſe of Religion, or Love to their Country, can engage,

Whom no Ties of Conſcience, Oaths, or Abjurations, can bind:

If there is ſuch a Principle, it is the loweſt, the baſeſt, and the meaneſt, as well as the moſt miſchievous and wicked, that can enter into the Heart of Man.

My Lords, the Commons have ſtill further Inducements for impeaching this *particular* Criminal.

Your Lordſhips have already done national Juſtice on ſome of the principal Traitors, who appeared in open Arms againſt his Majeſty, by the ordinary Courſe of Law.

But this noble Lord, who, in the whole Courſe of his Life, has boaſted of his ſuperior Cunning in Wickedneſs, and his Ability to commit frequent Treaſons with Impunity,

Vainly imagined, that he might poſſibly be a Traitor in private, and a Rebel only in his Heart,

By ſending his Son, and his Followers, to join the Pretender, and remaining at home himſelf, to endeavour to deceive his Majeſty's faithful Subjects:

Hoping, *he* might be rewarded for his Son's Services, if ſucceſsful; or his *Son* alone be the Sufferer for *his* Offences, if the Undertaking failed. Diabolical Cunning! Monſtrous Impiety!

My Lords, Secret Criminals of this Sort, and of all others, it is the peculiar Buſineſs of the Commons to explore, and to bring to Juſtice.

This is the *firſt* and *great Offender:* But ſhould hereafter other concealed Criminals appear, who encouraged and ſupported the late Rebellion; but who, either through the Cowardice of their Hearts, or Fondneſs for their Eſtates and Riches, durſt not join the Rebels,

I make no doubt, but the Zeal and Loyalty of the Commons will prompt them with equal Ardour, to bring them to condign Puniſhment.

Having thus opened to your Lordſhips the Nature of the Crimes of which the noble Lord at the Bar is accuſed, and ſeveral Inducements the Commons had for this Accuſation, it is needleſs for me to awaken your Lordſhips Attention, by enumerating the Miſeries which the late Rebellion occaſioned, or the utter Ruin which muſt have attended its Succeſs.

It is too freſh in your Lordſhips Memories to need any Aggravation: And I pray to God, that your Lordſhips, this Great Aſſembly, and the whole Nation, may for ever remember it.

It has too often been the Misfortune of this Country to have been involved in Civil Wars: A Calamity of all others the moſt to be dreaded.

In antient Times theſe unhappy Diviſions have ariſen from Conteſts between Princes and great Men, without the leaſt View to the Liberties, or the Benefit, of the People:

Let who would be Victors, they were ſure to be Slaves, and only fought for different Maſters.

The Power and Imperiouſneſs of *Rome* they were ſure to ſubmit to, while each Contender exerted his Intereſt there, for the Confirmation of his Title.

Henry the Seventh united the Two Branches of the contending Families: During his Reign, and thoſe that followed, the Commons began to grow rich, and conſequently powerful; they became jealous of their Liberties, and of their Property.

When they had ſomething of their own to loſe, they were too wiſe to riſk their Fortunes, or their Lives, in vain Quarrels of the Powerful and the Great: They ſhook off the Yoke of *Rome*; Laws were enacted to limit the Power of the Crown, and the Days of Freedom began to dawn.

Still there was another Struggle, when the Crown began to incroach upon thoſe Laws, and exert deſpotic Power: Theſe virtuous Struggles at firſt ſoon degenerated into Faction; Civil War and Anarchy enſued, and ended (as it always will) in the moſt abſolute Tyranny.

The Reſtoration re-eſtabliſhed the Form of our Government; and new Privileges were gained for the People.

But, in the next Reign, the impatient Luſt of Power, and the abject Bigotry of the Prince, produced the happy Revolution. The glorious Prince of *Orange* came to our Reſcue: The People received him with open Arms; and then, and not till then, was eſtabliſhed our preſent free Conſtitution.

Pardon, my Lords, this ſhort Deduction, and be pleaſed to reflect, how odious and deteſtable the late unprovoked Rebellion muſt appear.

A Rebellion calculated to overturn this Conſtitution, ſo hardly acquired, and ſo carefully preſerved, by all the ſucceeding Princes to this very Hour!

A Rebellion againſt our preſent indulgent Sovereign, whoſe Study has been the Happineſs of his People; under whom the boldeſt Rebel cannot complain of the leaſt Violence or Oppreſſion!

The Laws of the Land have had their full and free Courſe, except where their Rigour has been reſtrained by the Royal Mercy.

Under *ſuch* a Prince, and for the Deſtruction of *ſuch* a Conſtitution, has the noble Lord at the Bar conſpired and rebelled.

Be pleaſed then to remember the Depredations, the Bloodſhed, that ſpoiled and ſtained thoſe Countries through which the Rebels paſſed.

Let us remember the Diſtreſs of Public Credit, the Stagnation of Trade, the Loſs of our Manufacturers, the reaſonable, yet dangerous Apprehenſions, which ſeized on the Minds of all the loyal Inhabitants of theſe great and opulent Cities of *London* and *Weſtminſter*.

Let us remember the Loſs of the Lives, the Blood, and the Limbs, of thoſe gallant and brave Officers and Soldiers, who conquered, for our Sakes, in the famous Battle of *Culloden*. They are, and will be, a perpetual Memorial *for* whom, and *by* whom, they ſuffered.

Let us all remember theſe Calamities, and endeavour, as it is our Duty, to prevent the like Evils for the future, by doing Juſtice on Criminals; by putting a Stop to the Growth of Popery, that bloody Religion; by preventing the Education of our Youth in thoſe Principles, which the Priſoner at the Bar has inſtilled into his Son; and by leſſening the Power in thoſe Hands, which have ever been ready to diſturb this Government.

Theſe, or ſuch other Proviſions, as the Wiſdom of the Legiſlature ſhall ſuggeſt, are neceſſary to prevent the future Miſchiefs which may ariſe from the frequent Diſturbance of Government.

While we are in this State, 'tis in vain for this Country to hope to make the Figure ſhe ought to do, or retain her due Dignity among the States of *Europe*, or to preſerve the Peace, or hold the Balance, among foreign Powers.

If, while her Armies are employed abroad to humble the Pride of an aſſuming Nation, her Fleets to protect our Trade, or to annoy our Enemies,

If then our Troops are to be called Home to preſerve domeſtic Peace, and our Fleets to prevent Invaſions invited by theſe Patricides,

What Ally can depend on our Aſſiſtance? or what Pretence can we have to be Umpires in the common Cauſe of *Europe?*

Britain, united within herſelf, may, from her Situation, her Wealth, her Naval Power, and the Bravery of her Troops, juſtly claim that Title;

But divided, torn to Pieces by civil Diſcord, muſt fall under the ancient Reproach of this Country, and, while we are contending among ourſelves, become an eaſy Prey to our moſt inveterate Enemies.

Let us now, my Lords, turn our Thoughts from theſe gloomy Reflections, which the *Time* and *Circumſtances* of the late unhappy Rebellion of neceſſity muſt furniſh: And

Let us then call to Mind, with Thankfulneſs, the good Providence of God, which put an End to theſe Calamities, and a glorious Period to our Terrors.

Let us acknowledge, with Duty and Gratitude, all his Majeſty's Labours for the Safety and Happineſs of his People.

And let us remember, with Honour and Praiſe, his Royal Offspring, who, by his Courage and Conduct, has ſecured and eſtabliſhed his Majeſty's Throne, your Lordſhips Honours, our Liberties and Privileges, and the Proteſtant Religion.

Thus ended this wicked and unnatural Rebellion, of which the noble Lord at the Bar will appear to your Lordſhips to be one of the firſt Contrivers and Promoters, and a very conſiderable Support.

All I have ſaid, I know, will avail nothing with your Lordſhips, unleſs the Evidence we ſhall bring againſt the noble Lord at the Bar be clear and full, as we doubt not it will appear to be.

In Caſes where Life is concerned it is painful to be a Judge; it is uneaſy to be the Accuſers: But there is a Duty incumbent on both.

I know ſuch is the generous Compaſſion of your Lordſhips noble Hearts, that you will acquit with Pleaſure, but condemn with Reluctance.

And as I am perſuaded, from the Fulneſs of our Proofs, the latter will be your Lordſhips Judgment, give me Leave to add a few Words to leſſen that Concern, which your Lordſhips may feel as Judges, and we as Accuſers.

When I look on his Lordſhip at the Bar, I pity his Age and Infirmities; but, when I conſider that, at *his* Years, Pride, Vanity, Avarice, or Ambition, are ſo rooted in his Heart, as to tempt him to riſk his Honour and Eſtate, to ſacrifice the Religion and Liberty of his Country to thoſe mean Paſſions, that Pity is mixed with Indignation.

But when I reflect on his having been already pardoned for this very Crime;

That he has been amply rewarded by his Majesty's Royal Father, and intrusted by his present Majesty in preserving the Peace of those *Highlands* where he rebelled; I own I feel the strongest Resentment of such heinous Ingratitude.

The bringing his grey Hairs with Sorrow to the Grave seems to be a Distress to human Nature; but when we consider how different the Distress when that Expression was first used, and that the Prisoner at the Bar is not brought into that wretched Circumstance by the Misfortune or Loss of a darling Child, but by sacrificing his eldest Son to *his own* Ambition, and by endeavouring to save his own worthless Life by *his Son*'s Destruction, it must almost harden the most tender Breast.

One Word more, and I have done.

When your Lordships look towards the Bar, you will please to reflect, that had the Design of the noble Lord, who stands there, had its Effect,

It would probably have happened to many of your Lordships noble Body, who should not have perished in the Defence of your Country, to have stood in that very Place;

While his Lordship, with a Number of mock Peers, had sat in Judgment on your Lordships, for the very Crime for which he is now accused.

Thus far, my Lords, I have gone, in Pursuance of the Trust reposed in me by the Commons. I am now, my Lords, for myself, humbly to implore your Lordships Indulgence for any Errors I may have been guilty of, either in Matter, or in Words. If I have omitted any Thing material, I am sure it will be supplied by the great Abilities of those who are to follow me, and who will lay before your Lordships the particular Evidence to support our Charge.

Lord Coke.

My Lords,

I AM likewise commanded by the House of Commons to assist my Honourable Friend in maintaining the Articles of Impeachment against the noble Lord at the Bar: And, my Lords, if I commit any Errors in what I shall offer to your Lordships, I hope I shall meet with your Lordships Indulgence, and, in Return, I promise you they shall not be wilful. It is a Business, my Lords, to which I am an entire Stranger; nor should I have undertaken it in a Case of so high Importance, if I did not think, that my Duty to my Country, as well as my Allegiance to his Majesty, to which I shall ever be faithful, equally called upon me to be instrumental, if I could, to find out concealed Treasons, and to bring the Contrivers of them to Justice, as to have ventured my Person and Fortune, if necessary, when the Rebels were in the Field. What I shall chiefly endeavour to prove to your Lordships, is, that the last Rebellion was not the Effect of Chance only, entered into by a few rash, inconsiderate Men, without Thought or previous Design, but the Result of long-considered and well-weighed Consultations, and of Schemes not so ill concerted, as to make the Success either impossible, or without some Degree of Probability in them: And, my Lords, the Reason why I choose to mention this general Design to your Lordships is, that, though I am not very old, I have twice seen this Country in very great Danger from the Disbelief of *Jacobitism* prevailing in it. In 1743, I, with Grief, remember, when a Message was sent from the King to a certain Place in this Kingdom, that an Invasion was projected from *France*; what popular Declamations were made to shew, that the Scheme was impracticable, and that it ought to be looked upon only as a Terror thrown out by the Ministry; because, as there was neither the Colour nor Appearance of Truth in it, there could be no Reality. And, in the Beginning of the last Rebellion, there was a Disbelief prevailed even among those who ought to have been more certain of the Truth: But that was not the Case of the Prisoner at your Bar: He did believe it; he sent one of his chief Agents into *Lochaber*, to the Young Pretender, to go and receive his Commands, and ordered him to express the greatest Satisfaction at his being come over. He did not content himself with beginning the Rebellion then; but in 1736, an Association was sent by him to *Rome*, signed and sealed by many of the People of that Country, to invite the Pretender then to come over; and that was afterwards carried to *Paris*, and shewed to the Cardinal; and, I believe, met with Approbation at both those Places.

My Lords, I say nothing to aggravate the Case of the Prisoner at your Bar: He is already oppressed with Misfortunes enough, and it is not in my Nature, I hope, to add to them. Nor should I, my Lords, make the following Observation, did I not think myself obliged, in Justice to an unfortunate young Man, whom this noble Lord has forced into the Rebellion: He did write a Letter, that he was afraid the disobedient Behaviour of his Son, would bring down his grey Hairs with Sorrow to the Grave; and therefore it will not appear astonishing to you, that when he had forgot that tenderest Tie of human Nature, the Love of a Father to his Child, so far as to desire to save the wretched Remains of a Life almost worn out, by the Destruction of his own Son, that he should forget his Allegiance to the Son of a King who saved his forfeit Life; the Remainder of which he has since employed in endeavouring to overturn and destroy his Family, and the Government established in him. I shall therefore conclude with my Honourable Friend, in saying, that we are ready to make good our Charge against the Prisoner at the Bar.

Mr. Attorney-General (*Sir* Dudley Rider).

My Lords,

I HAVE likewise the Commands of the House of Commons to assist in the Prosecution of the noble Lord at the Bar.

The Charge hath been fully stated and opened by the Managers who have spoke before me. The Prisoner has denied every Part of it, and thereby put the Proof upon us to be made out; not, as he rightly says in his Answer to the Articles, by Facts aggravated by Skill and Oratory, but by credible and unexceptionable Witnesses, in a plain and legal Way; against which he will have the full Benefit of any just Defence he can make.

I shall therefore avoid dwelling upon those many Circumstances of Aggravation, either in respect to the Rebellion in general, or to the noble Prisoner's own particular Conduct in it, which will necessarily occur in the Progress of this Prosecution: The Honourable Managers, who have preceded me, have very properly pointed them out to your Lordships. They have had their Effect already; all that Effect which your Lordships Wisdom and Justice would suffer them to have; all that the Commons would wish them to have: They have awakened your Lordships Attention, if that could possibly be wanting in the least Degree on such an Occasion: They have balanced that Compassion, which the Age, Appearance, and Quality of the noble Prisoner, must naturally raise in your Lordships humane Breasts; that is, they have cleared the Way for that Justice which the Nation calls for, and the Commons of *Great-Britain* in Behalf of themselves, and the People whom they represent, now demand at your Lordships Bar.

All therefore that I shall offer for your Lordships Consideration, will be a plain Narrative of Facts, with the Nature of the Evidence to prove them, and some short Observations, to shew the Force of those Facts to maintain the Charge, which the Commons of *Great-Britain* have undertaken to make good.

The Facts will be very numerous, to be proved by a Variety of Witnesses and Writings; and therefore must necessarily, in the Course of the Evidence, lie intermixed. I shall, therefore, in the Opening, endeavour to disentangle them: and, that your Lordships Attention may be the more easily fixed, and the Facts, as they shall arise in the Evidence, be the more readily applied to the several Parts of the Charge, I shall divide them into three distinct Periods of Time.

Those which happened precedent to the Pretender's Son's Landing.

What happened after that Time, and before the Battle of *Culloden*.

What arose since that happy Event.

And within each of these Periods, your Lordships will find many Things, which it will much concern the Prisoner at the Bar to give a satisfactory Answer to.

The First will open to your Lordships a wicked and traitorous Scheme begun and carried on for many Years, for bringing over the Pretender, by the Assistance of a Foreign Force, in which his Lordship will appear to have had a principal Hand.

The Second will include the more immediate Scene of Action in the late wicked Rebellion, and the particular Parts which the Prisoner took in it.

The Third will shew him in the Circumstance of a Defeat, and the Measures he then thought proper to take; and, in every Part of this whole Scene, he will appear plotting, associating, and supporting all the Steps that were taken for subverting this happy Establishment, dethroning his Majesty, and substituting a Popish Pretender in his room.

To begin with the First of these Periods: And here I shall be under a Necessity of going some Years back, in order to lay before your Lordships a View of those traitorous Schemes that have been set on foot, and prosecuted for some Time past, in order to prepare the Way for, and bring on the late Rebellion.

As soon as the War with *Spain* was declared, the Pretender, and his Agents, thought that a favourable Opportunity offered to promote his Interest; and a Project was immediately set on Foot, by several of his Friends in the Northern Parts of *Scotland*, for bringing in the Pretender by the Assistance of *France*; and Seven of the Chiefs of them entered into an Association for that Purpose. The Prisoner at the Bar set himself at the Head of them, and himself, together with the Earl of *Traquair*, Sir *James Campbell* of *Auchinbreck*, *Cameron* of *Lochiel* the younger, *John Stuart*, Brother to Lord *Traquair*, Lord *Perth*, and Lord *John Drummond*, signed and sealed an Association in Writing, in which they engaged to venture their Lives and Fortunes, to restore, as they called it, the Pretender, whom they stiled their King, and his Family. They agreed to send one *Drummond*, alias *Mac Gregor*, of *Bochaldie*, a Relation and intimate Friend of the Prisoner's, to *Rome*, in order to have the Scheme for bringing over the Pretender digested there; and from thence carried to *Paris*, for completing the Execution of it. It was there to be delivered to Cardinal *Fleury*, then Prime Minister of *France*, with a Memorial, pressing, in the strongest Terms, for her Assistance.

In order to engage the *French* Court, he was to represent the great Interest and Strength of the Conspirators in the *Highlands*; to assure the Cardinal, that they could raise 20,000 *Highlanders* for the Service, and wanted nothing but a few *French* Troops, and some Money, to secure the Success. The Conspirators, at the same Time, sent over a List of many other Heads of Clans, who, they pretended, would join in the same Design.

Drummond accordingly went over, and carried with him the Association and List; and after he had obtained the Sanction of *Rome*, and the Pretender, he came to *Paris*, where he was introduced to the Cardinal by one *Semple*, whom they called Lord *Semple*, an Agent at that Place for the Pretender. He delivered the Association and List to the Cardinal, with an Assurance, that any of the Seven who had signed the Association would come over, and confirm it in Person, whenever he desired it.

Any Scheme to disturb the Peace of this Nation is but too acceptable to that Court at all Times. The Cardinal received it with great Attention and Encouragement, and promised their Assistance, as soon as the Conspirators could shew a reasonable Prospect of Success. *Drummond* continued at *Paris*, and kept a constant Correspondence with those who had joined in the Association. Nothing, however, appears to have been finally resolved on, till about the latter End of the Year 1742, or the Beginning of 1743, when the Court of *France*, finding how necessary it was to their Views of oppressing *Europe*, to take off the Weight of our Assistance from our Allies upon the Continent, thought it worth their while (though then at Peace with us) to enter seriously into this Design; and *Drummond* was, about that time, sent over hither by the Cardinal, to assure the Conspirators, and the rest of the Pretender's Friends in *Scotland*, that if they could procure Encouragement from *England*, they might depend upon being assisted by *France* with an Invasion the Autumn following.

Drummond came accordingly over to *Edinburgh*, where he had a Meeting with the Earl of *Traquair*, *Lochiel* the younger, and *Cluny*, and gave them an Account of his Negotiations, and particularly of his last Message and Promise from the Cardinal. Upon this it was agreed, that the Earl of *Traquair* should go immediately to *London*, and try what Encourage-

ment

ment he could meet with there. The Earl went accordingly, and *Drummond* accompanied him. The Earl, after some time spent in *England*, returned to *Edinburgh*, and assured his Friends there, that the People here were well inclined to the Pretender, and would join in the Design, provided they could depend upon Assistance from *France*.

About the same time *Drummond* went over to *Paris*, to satisfy the Cardinal of the Success of his Negotiation; and he gave him such Satisfaction, that a Project for an Invasion was soon after agreed on. The Plan was, that the *French* should send over 3000 Men, under the Command of Earl *Marshal*, who were to be joined with large Bodies of *Highlanders*, which the Conspirators had undertaken to raise. 1500 of the *French* were to go directly to *Inverness*, where the Prisoner at the Bar was to join them with his Clan of *Frasers*; the remaining 1500 were to land in the West, near Sir *James Campbell*'s, who was to go to the Isle of *Mull*, and raise the Clans there, who all together were to march and join the *Frasers*, and the other Body of *French*. At the same time 12,000 *French*, under the Command of Count *Saxe*, were to march to the Coast of *Flanders* and *France*, and from thence embark, and land in *England*, within two or three Days March of *London*.

As soon as this Scheme was agreed upon, *Drummond*, about the Middle of the Summer 1743, wrote Letters to the Earl of *Traquair*, to inform him of the Resolution that had been taken; to direct him to acquaint his Friends of it; and to assure them, that it would very soon be put in Execution. The Earl communicated this Intelligence to *John Murray* of *Broughton*, *Lochiel*, and several others, who immediately sent the same Mr. *Murray* to *France*, in order to settle Matters beforehand for the Execution of it. He went over accordingly; but the Death of the Cardinal, about that time, suspended the Prosecution of it for a little while. As soon as he arrived at *Paris*, he was assured by *Drummond* of the Cardinal's good Intentions and Zeal for the Pretender's Cause; and that nothing but his Death could have prevented the immediate Execution of it; and that the Cardinal's first Design was, that the Army under the Command of *Maillebois* should be employed in it; but that some Persons about the King of *France* had prevailed upon him to order that Army to march towards *Hanover*. *Murray* of *Broughton* was then introduced to Cardinel *Tencin*, and afterwards to M. *Amelot*, who assured him of the late Cardinal's Sincerity in the proposed Invasion; and that the *French* King had ordered him to acquaint the Gentlemen who had entered into the Association, that he had the Pretender's Interest very much at Heart, and would certainly execute the Scheme which had been settled, as soon as his Affairs would permit. M. *Amelot* at the same time entered into a Discourse concerning the Number of *Highlanders* that might be expected to join them.

With these Assurances *Murray* returned to *Edinburgh*, and made a Report of his Proceedings to the Earl of *Traquair*, Lord *Perth*, and others of the Pretender's Friends. *Drummond* was sent at the same time with the like Assurances to the Pretender at *Rome*, in order to engage him to send the Young Pretender to come and put himself at the Head of the Expedition. *Drummond* soon after came back to *Paris*, and from thence to *London*, in order to settle Matters here for the intended Invasion, and returned again to *Paris*; from whence he acquainted the Earl of *Traquair*, by Letter, that the *French* Court had now settled every Thing for the Invasion; that it would be executed immediately; and that the Pretender's Son was come from *Rome* to accompany it.

This was in *January* 1743: And in *February* following an Invasion was attempted by a large Embarkation from *Dunkirk*, where a great Number of Transports were got ready; many of the Troops actually embarked, with a Design to have come up the River of *Thames*; and a Fleet of Men of War actually sailed from *Brest* to support the Descent, or to divert our Fleet, while an Army of 12,000 Men might land without Interruption.

Nobody can have forgot how that Expedition was happily disappointed, by the good Providence of God, and the Vigilance of his Majesty; nor what Terror it struck while it was depending, at a Time that our own Troops were necessarily engaged on the Continent, in the Defence of our own and the Liberties of *Europe*, and consequently, when we had so few left to defend ourselves at Home.

After this Disappointment, no Letters appear to have come from *France* for a considerable Time; which made the Conspirators, and their Friends here, very uneasy; and the Earl of *Traquair* engaged *Murray* to go again to *Paris*, in order to know in what Situation their Affairs stood there: But before he was actually gone, a Letter came from *Semple*, to account for, and excuse the Miscarriage of the Invasion, and desiring that fresh Assurances might be sent from the Pretender's Friends both in *England* and *Scotland*, in order to engage the *French* Court in a new one.

This did not prevent *Murray*'s intended Journey; and in *June* 1744, he went over to *Paris*, where he was introduced to the Pretender's eldest Son, at the House of one *MacDonald* a Banker, and had soon after a second Meeting with him. The Young Pretender then assured *Murray*, That the *French* had been very serious in the Invasion, which had been disappointed by nothing but Wind and Weather, and other inevitable Accidents: But, however, he had the strongest Promises, both from the *French* King, and the Ministry, that the Scheme should be put in Execution the then next Summer, in the Year 1745. And as for himself, whether it was or not, he was determined to come over, if he brought but a single Footman with him: And though *Murray* represented to him the Rashness and Danger of such an Attempt, he was so fully satisfied of Assistance from the *Highlands*, whenever he appeared in Person, that he would, in all Events, come over at that Time.

Murray returned to *Scotland* from *Paris*, and communicated what passed to the Earl of *Traquair*, *Lochiel*, Lord *Perth*, and others of the Pretender's Friends; and at the same time brought along with him several Letters from the Pretender's Son, but with blank Addresses, in order to be delivered to such as it should be thought proper, when *Murray* came over; and they were accordingly soon after delivered to such as it was apprehended would make the best Use of them.

The Time, however, running out, and no Preparations yet appearing in *France* for an Invasion, the Pretender's Friends, who were acquainted with the Design, began to fear the *French* would deceive them; and in *June* 1745, *Murray* received a Letter from the Pretender's Son, in which, without taking Notice of any Invasion from *France*, he informs *Murray*, that he was determined himself to come to the Northern Part of *Scotland* immediately; and desired his Friends might be informed of it, and ready to join him, with all the Forces they could raise. He tells him, That it would be the latter End of that same Month; and appoints the Place where he designed to land, together with the Signals that were to be given and taken.

This Letter was immediately communicated to the Pretender's Friends in the North, and, amongst the rest, to the Noble Lord at the Bar. So unexpected a Resolution, without mentioning any Assistance from *France*, much surprised them. They thought it, as was natural, rash, precipitate, and dangerous, to come without Force; and therefore determined, most of them, if they could not prevent his Landing, to advise him to return, and wait till he could be better prepared. About a Fortnight after, the Pretender's Son actually arrived, and landed in the North-West Part of *Scotland*, upon the 25th of *July*, 1745.

Your Lordships will permit me now to make a little Stand. I have stated these Facts as a short View of the Commencement and Progress of several wicked and treasonable Correspondences, Plots, and Schemes, contrived and carried on from the Year 1740, for bringing over the Pretender, by the Assistance of the Power of *France*.

I have hitherto, my Lords, but just named the Noble Prisoner at the Bar in the Account I have given of them; and I have avoided it on Purpose, that when your Lordships should have before your Eyes, in one View, the general Plan of that Series of Treasons which have been contriving, and, in Part, executing, for so many Years, I might the more easily point out to your Lordships, as it were in a Map, the particular, precise Parts which the Noble Lord acted in them; which is what I shall now apply myself to.

And in order to do this the more clearly, and agreeable to the Evidence which will be produced, I shall be under the Necessity of going back to some yet earlier Parts of his Life; and which, my Lords, I should not do, if your Lordships would not necessarily, in the Course of the Evidence, see the Prisoner himself taking Pains to connect the early with the latter Parts of his Life, in order to prove the Uniformity and Consistency of his Conduct, all tending to, and uniting in, one great Centre, the overturning the Protestant Succession, excluding or dethroning his Majesty, and his Royal Father, and setting up the Pretender to their Throne in their room.

So long ago as the Reign of Queen *Anne*, when the Nation was involved in a War with *France*, and Invasions from thence were continually set on Foot, and it became material for the Pretender's Service to arm his Friends in the Northern Part of the Island, the Prisoner, who had been from his Youth bred to War, accepted of a Commission from the Pretender of a General Officer. It must be owned, that it does not appear, that the Prisoner made any particular Use of it; and the first Time any Opportunity did offer, when the Rebellion broke out on the Death of Queen *Anne*, the Noble Lord at the Bar did important Services to his late Majesty. He himself will likewise admit, that he was amply rewarded for them. But he seems very soon to have repented of those Services, even while he was in the full Possession of the Reward of them.

In 1719, when a *Spanish* Invasion was undertaken in Favour of the Pretender, and *Spanish* Forces were actually landed in the North, the Prisoner thought proper to engage in it; and, while the Earl of *Seaforth* was raising his Men to assist in it, the Prisoner himself wrote a Letter to that Earl, with a Promise to join him with his Clan; but before he had actually done it, that Attempt was defeated.

From that Time till the Year 1736, the Managers don't take upon themselves to state to your Lordships any Thing concerning his Conduct, but that general Account, which your Lordships will find him giving of himself in his own Letters, That he had, ever since he had the Use of his Reason, been the most faithful and zealous Subject to the Person and Interest of the Pretender.

But in that Year, when one *Roy Stewart*, who had escaped out of Prison, to which he had been committed for High-Treason, and been afterwards harboured in the Prisoner's House, then High-Sheriff of the County where he had been imprisoned, was going to the Pretender to *Rome*, the Noble Lord sent by him an Assurance to the Pretender of his constant Fidelity even to Death; and desired a Commission from him to be Lieutenant-General of the *Highlands*, and to have a Patent of Dukedom, which he had before solicited, expedited, and which he claimed as a Matter of Right for the Services he had done that Cause.

In the Year 1740, when an Invasion was projected, the Noble Lord was not only one of those that signed the Association, and corresponded with the Persons that negotiated it beyond Sea, but himself proposed it, and seems to have been the original Projector.

In the Year 1743, when the Invasion was actually resolved, and a Person of Figure and Interest was necessary to conduct it in the *Highlands*, the Prisoner was pitched upon as the most proper for that Purpose, and accepted two Commissions from the Pretender at *Rome* in *December* 1743, one to be Lord-Lieutenant of all the Counties North of *Spey*, and the other to make him a Lieutenant-General. He likewise, about the same time, obtained the Patent, which he had been long soliciting, for creating him Duke of *Fraser*.

And though the Disappointment of that Expedition prevented his immediate Use of those Powers, they did not lie idly by as a private Ornament to his Person, and to gratify his Vanity only: They were made use of by him to propagate the Principles of Treason and Rebellion; to sow the Seeds of Disloyalty to his present Majesty and his Government; to discipline his Dependents in the Service of the Pretender, and make them ready, whenever his Master's Projects were ripe for Execution.

He was, as your Lordships will see him expressing himself in his Letters, always the most zealous and active Partisan that the Pretender had in those Parts. He was, in his own Words, the Life and Spirit of the Pretender's Affairs in that Country: He made it, as he says, his sole Business to keep up the Hearts of his King's Friends, though it was both fatiguing, troublesome, and expensive; and appeals for the Truth of it to the Knowledge of all the Gentlemen in the Pretender's Interest in the North.

North. He did, as he expreſſes himſelf in another Letter, more Service to the Pretender's Cauſe, than any one of his Rank in *Britain*.

He conſtantly made it his Buſineſs, as he ſays in another, to promote his Maſter's Intereſt, and to engage faithful Subjects to him; ſo that he had done, as he expreſſes in a ſtill higher Strain of Language, more againſt this Government than would hang fifty Lords, and forfeit fifty Eſtates.

I have now pointed out to your Lordſhips the particular Share the Noble Lord will appear to have had in the Steps towards the late Rebellion; in which you muſt have obſerved him to be a moſt active Friend to it: I ſhall now open to your Lordſhips a State of the Facts that affect the Priſoner, ſince the Young Pretender's Landing, which was, as I mentioned, upon the 25th of *July* 1745.

Notice was immediately ſent of it to the Chiefs of the Clans known to be in his Intereſt; and the Priſoner at the Bar was one of the firſt to whom it was communicated. The Conſpirators, who expected an Attempt at the Head of a *French* Army, were ſurpriſed at his coming in a ſingle Ship, without Soldiers, and without any material Friends, or even many Servants accompanying him; and were at firſt ſhocked at the Danger of a Deſign ſo prematurely executed. However, ſome of the Clans came in ſoon; and the Priſoner at the Bar ſeems to have early determined to have done ſo too, not indeed at firſt in Perſon, which he excuſed from his Age, and ſuppoſed Infirmities, but by ſending his Son, at the Head of his Clan.

For that Purpoſe, he directed the Maſter of *Lovat* his Son, who was then at, or but juſt come from, the Univerſity of St. *Andrews*, to get ready: He likewiſe directed the Inferior Heads of the Clan of *Fraſers* to ſend in Liſts of their Numbers and Names; with ſevere Threats on ſuch as neglected, or gave him incorrect ones.

He ordered the Arms which he had in his Houſe to be cleaned and mended, Bell-Tents and Camp-Colours to be made, and the Arms of the *Fraſers* Family to be painted on them: He appointed his Son the Colonel, and directed his Tenants and Dependents to follow him, exhorted them to be true to the Pretender's Cauſe, and encouraged them with an Aſſurance of Succeſs.

The Men were brought together, and twice rendezvouſed; Officers were appointed, who were entertained in his Houſe and at his Table; where he uſed to call the Pretender's Son by the Name of Royal Prince, and Prince Regent, and drank to his Succeſs. He ordered the Pretender's Declaration to be read; and when the Perſon whom he had commanded to do it, declined it, he declared it was High-Treaſon to refuſe it. He provided the Men with Arms, Meal, Proviſions, and Money; ſent for Ribbands to make white Cockades for them; and had Taylors and other Workmen in his Houſe, to make them Caps, Bonnets, and Brogues. He went ſtill further; and, as ſome of his Dependents were unwilling to engage, he ordered the Firy Croſs, as it is called, to be ſent about his Country to force them. This is the laſt and moſt extreme cuſtomary, though illegal and cruel Sort of Proceſs, if I may ſo call it, that the *Highland* Chiefs uſe, to compel their Dependents to perform their arbitrary Commands; and is a general publick Denunciation of Plunder, Fire, and Sword, on all that do not obey; and ſeveral were actually forced into the Rebellion, by taking away their Plaids, Beds, and Cattle, and turning their Wives and Children out of Doors.

While he was uſing Threats to ſome, he tempted others, by the Promiſes of Rewards to their Wives, and Commiſſions to themſelves.

Soon after the laſt Rendezvous of the Men, the Earl of *Cromertie*'s Clan marched near the Priſoner's Houſe, in their Way to the Pretender's Son: The Earl, his Son, and ſome of the Officers called at the Houſe, where they were entertained as Friends: And the Priſoner told the Earl, that his Clan ſhould follow ſoon after, laying the Blame at the ſame time upon his Son, the Maſter of *Lovat*, that they were not yet ready.

The Priſoner, however, did not think fit, as yet, either by himſelf, or his Son, actually to join the Pretender. The Rebels were now but beginning to march Southward; the King's Troops were endeavouring to intercept them; and till they met, the Event, he thought, might be doubtful. The Rebels, however, eſcaped them; and upon the 17th of *September*, got Poſſeſſion of the Capital of that Part of the united Kingdom; and in a few Days afterwards, the unfortunate Battle of *Preſton-Pans* ſeemed, in the Opinion of thoſe deluded People, to turn the Scale in their Favour.

At that Time, one *Hugh Fraſer*, who had about a Year before been Secretary to the Priſoner, was at *Edinburgh*, where *William Fraſer*, a Relation of the Noble Priſoner's, happened then likewiſe to be: They had both heard of his Deſign of ſending the Maſter of *Lovat* into the Rebellion, and both were deſirous of preventing it: For which Purpoſe *William Fraſer* thought of an Expedient for getting the Maſter of *Lovat* out of the Way, by ſending him to *Holland* to compleat his Education; the Expence of which he was willing to be at. With this Meſſage *Hugh Fraſer* went to the Priſoner, and made him the Offer. My Lord *Lovat* at firſt ſeemed to yield to it; but at laſt told him, he was too far engaged; and was reſolved, that the Maſter ſhould go with his Clan to the Young Pretender.

The Priſoner had early Notice of the Battle of *Preſton-Pans*, and *Barriſdale*, one of the Heads of the Rebellion, came to his Houſe, and told him, he was going to raiſe more of the *Highlanders* for the Service. This Battle ſeems to have determined his Reſolution; and when *Hugh Fraſer* was to return to *Edinburgh*, he charged him with a verbal Meſſage to the Pretender's Son, to inform him, That his Age and Infirmities would not permit him to travel; and therefore hoped he ſhould be excuſed attending him in Perſon; but that he would ſend his Son, at the Head of his Clan, which would be a much greater Mark of his Loyalty. And the Meſſage was delivered accordingly.

The Rebels continued at *Edinburgh* till the 31ſt of *October*, when they were beginning their March towards *England*; but the Priſoner's Son not having yet joined them, it was thought neceſſary, that *John Murray* of *Broughton*, the Young Pretender's Secretary, ſhould write to the Priſoner to haſten his Men, and meet them at *Carliſle*. The Letter was wrote, and ſent, and ſoon after delivered by *Hugh Fraſer*, who at the ſame time repreſented to him the bad Condition of the Rebel Army, the State of his Majeſty's Forces, and the Arrival of the *Dutch* Troops; which he did, in order to prevent the Priſoner's going on with his Engagements: But the Priſoner told him, it was now too late to go back; and forbid him to mention any thing to his Son againſt it. He beſides told him, That he had put his Name down as a Captain-Lieutenant in his Son's Company, and ever after called him by that Title.

His Dilatorineſs, however, had made ſome of the Pretender's Friends uneaſy, and apprehenſive that he was playing a double Game; and as they thought it would be of great Service to their Cauſe, if the noble Priſoner would make a public Avowal of his taking Part with them, applied to him for that Purpoſe; and told him that a great deal depended upon his throwing aſide the Maſk: Upon which he pulled off his Hat, and threw it on the Ground, ſaying, There it is then.

In the Month of *November* he ſent a Letter to the Pretender's Son, to aſſure him of his Fidelity; and about the ſame time, two others to *Lochiel*, and *Murray* the Secretary, both of them to the ſame Effect.

Though the two firſt of theſe Letters appear by the Dates to have been wrote in *November*, and the latter probably at the ſame time, yet as the Rebels were then going into *England*, they don't ſeem to have been ſent till their Return. The Priſoner, in the mean time, went on with raiſing his Men, till it was univerſally known in that Country, that the Maſter of *Lovat* was to go at the Head of them, and join the Rebels.

My Lord *Loudon*, and the Preſident of the Seſſion, were then at *Inverneſs*, collecting a Body of Men to oppoſe them; and were then ſuperior to the Rebels in thoſe Parts. The Priſoner well knew, that the Deſign of the Maſter of *Lovat*'s joining the Rebels could not be unknown to them; and that they muſt ſuſpect, at leaſt, that he himſelf was at the Bottom of it. This made him afraid for his own Perſon, as ſoon as his Son began to march. Theſe Apprehenſions made him ſuſpend the Time of their March, till he could be better informed of the Meaſures the Lord *Loudon*, and the Preſident, would take in that Event, with reſpect to himſelf: And therefore, after he had once ordered them to march, and thoſe of his Country of *Firth* had actually begun it, and proceeded as far as *Strathannan*, in the Way to *Perth*, which the Rebels were then in Poſſeſſion of, his Courage began to fail, and he ſent Orders for their Return; which they immediately obeyed, excepting Twenty: And he thought it more prudent, before they finally marched, to ſend *Hugh Fraſer* to *Inverneſs*, to ſound the Inclinations of Lord *Loudon*, and the Preſident; and to repreſent to them, That the intended March of his Son was againſt his Inclinations, and contrary to his Commands; that his Son was obſtinate and diſobedient; and that it would be unjuſt that a Father ſhould ſuffer for an undutiful Child.

The Lord *Loudon*, and Preſident, took it to be, as it really was, a Pretence only, and the Effect of that double Part which the Priſoner was acting, till he thought it worth his while to throw off the Maſk in reality. They knew that a young Man of Nineteen Years old, that had lived at the Univerſity, and but juſt come home, could have no Power over his Father's Tenants and Dependents, but juſt ſo far as his Father gave it him; and that the Priſoner was himſelf the moſt abſolute Superior in all the *Highlands*: They therefore gave *Hugh Fraſer* to underſtand, there could be no Safety for the Father, while the Son was in open Rebellion.

Hugh Fraſer returned with this Anſwer to the Priſoner, and delivered at the ſame time a Letter from the Preſident to the ſame Effect. About the ſame time News came, that Lord *John Drummond*, with *French* Troops, was landed; which ſeems to have determined the Priſoner's Reſolution: And he told *Hugh Fraſer*, that the Threats of the Lord Preſident were but a Bugbear; and immediately gave the Maſter of *Lovat* his final Orders to march; which he inſtantly obeyed, and marched accordingly: And Lord *Loudon*, and Lord Preſident, found Means ſoon after to ſecure the Priſoner's Perſon, who was carried a Priſoner to *Inverneſs*; from whence, however, he ſoon after made his Eſcape.

The Maſter of *Lovat* was now got to *Perth*, at the Head of the Clan of *Fraſers*, whither *Hugh Fraſer* attended him, as his Captain-Lieutenant; and upon Notice from the Pretender's Son, who was then come as far as *Glaſgow*, in his Return from *England*, was ſent thither by the Maſter of *Lovat* for a Supply of Arms. *Hugh Fraſer*, on his Return from *Glaſgow*, was charged by *Murray*, the Pretender's Secretary, with a Packet, in which were incloſed three Letters, one from the Pretender's Son to the Priſoner, referring to a ſecond, incloſed from *Murray*, *Lochiel*, and *Clunie*, to him likewiſe; and a Third to the Maſter of *Lovat*. There were alſo three Commiſſions incloſed, two of which were dated at *Rome*, 23d *December* 1743, from the Pretender himſelf; one of which was, to make the Priſoner Lord Lieutenant of all the Countries North of *Spey*, and the other, to make him a Lieutenant-General.

The Rebels, as ſoon as they had collected all their Parties together, marched towards *Inverneſs*. His Royal Highneſs the Duke of *Cumberland* followed them, as faſt as the Seaſon of the Year and the Nature of the Country would permit, till he came up with them, and obtained that ſignal and compleat Victory, at the Battle of *Culloden*, upon the 16th of *April* 1746; when all the Noble Lord's Schemes of Grandeur and Power, and for a new Revolution, were put an End to at once.

I am now come, my Lords, to that laſt Period of Time, from the Battle of *Culloden*. The Priſoner was waiting, not very far off, the Event of that important Day. The Night after, the Pretender's Son came to *Gortuleg*, where the Priſoner then was, and had an Interview with him. The Noble Lord did not even then diſavow his Cauſe, but received him as his Prince; excuſed his not joining him in Perſon; and after the tendereſt Embraces, parted from him, as a faithful Subject to his Royal Maſter.

The Priſoner, as well as thoſe who had been in open Arms, was now obliged to fly. He knew his Guilt was the ſame; and therefore deſerved the ſame Treatment. The Rebel Army, and their Chiefs that eſcaped from the Battle, were now diſperſed; but ſome Correſpondence among them was kept up; and upon the 15th of *May* a Meeting was had, at a Place called *Mortleg*, where there were preſent the Priſoner, *Lochiel*, his Brother Dr. *Cameron*, *Murray* the Secretary, and ſeveral others. The End of the Meeting was, to conſider what was proper to be done for their common Safety.

The noble Priſoner met them himſelf, not as an innocent Perſon, to adviſe them to lay down their Arms, confeſs their Guilt, and beg for Mercy; not as a neutral Perſon, if Neutrality, in the Cauſe of our King, Religion, Liberty, and this happy Eſtabliſhment, can be attended with a leſs Degree of Guilt; but as one involved in the ſame common Crime and Calamity, as a Chief whoſe Age and Experience intitled him to the Lead; and he took it. He adviſed them to raiſe a ſufficient Number of Men to defend themſelves againſt the King's Troops, till they could make Terms for themſelves; and, after computing what each of thoſe preſent were capable of procuring, he propoſed the Number of 3500, of which each was to raiſe a certain Proportion: And he himſelf propoſed, That his Son ſhould raiſe 400; and deſired *Lochiel*, as he himſelf had not been in Arms, to anſwer for his Son. *Lochiel* did ſo; and all the Company agreed to the Propoſal; and there having been then lately come from *France*, 35,000 *Louidors*, it was likewiſe agreed, That each ſhould have Ten Days Pay for their Men out of it; which was immediately diſtributed; and the Share of the Maſter of *Lovat* was paid to the Priſoner's Servant. In Conſequence of this, about 400 Men, in the Whole, only were raiſed. But the Rebels made no Stand afterwards.

The Maſter of *Lovat* had afterwards a Meeting with his Father at *Kilbogie*, when the Maſter propoſed to ſurrender to his Majeſty; but the Priſoner diſſuaded him from it, and reflected upon his Son as a Perſon of mean Spirit to think of ſo diſhonourable an Action; and determined to fly himſelf, but with a Guard of about Twenty Soldiers, whom he took into Pay for his Defence. However, he was purſued and taken by a Party ſent by the Duke, under the Command of Captain *Ferguſon*, who treated him with great Humanity. During the Time of his being in his Cuſtody, they had frequent Converſations together concerning the Rebellion. He was aſked by the Captain, How he could act as he had done, after all the Favours he had received from the Government? He anſwered, It was not againſt the King, but the Miniſtry, he had acted; that they had taken away his Company: And when he was told, It was a bad Revenge to endanger his own Life and Fortune; his Anſwer was, Who could have thought but that they, meaning the Rebels, would have carried all before them? And that, if the Young Pretender would have taken his Advice, he might have laughed at the King's Forces; and none but a mad Fool would have fought that Day; that they might have gone into the Mountains, and lived on Butter and Cheeſe, and given the Duke Twelve Months Work: Beſides, that they were in daily Expectation of Aſſiſtance and Money from *France*.

The Priſoner was afterwards brought before Sir *Everard Falkener*. He did not think then of denying his Treaſon: On the contrary, gave the ſame Account of the Motive to it, which he had done to Captain *Ferguſon*; but with this Addition, That he reſented the Loſs of his Independant Company ſo much, that if *Kouli Kan* had come, he ſhould have been for him. He talked much of the King's Mercy, of the former Services he had done to his Royal Family; and that he could ſtill do greater than Twenty ſuch old Heads as his were worth. However, concluded with the following Paſſage out of *Virgil*,

——— In utrumque paratus,
Seu verſare dolos, ſeu certæ occumbere morti.

I have now, my Lords, gone through thoſe Three Periods of Time, which I propoſed; in which your Lordſhips have obſerved many Things of great Moment to the preſent Cauſe. The Managers have, with the greateſt Care, endeavoured, amongſt that great Extent of Evidence which has come to their Knowledge, to diſcover the Truth; and I have, with the utmoſt Fidelity, ſtated to your Lordſhips no Fact, but what I take to be ſo. I know, my Lords, how unjuſt it would be to endeavour to miſlead your Lordſhips: I know how idle and fruitleſs it would be to attempt it.

I have likewiſe endeavoured to throw all the Facts together in ſuch an Order that they may ſerve to give Light to each other, and eaſe your Lordſhips in the Attention you will give to the Evidence that will prove them.

I ſhall now, therefore, endeavour to give your Lordſhips a ſhort View of that Evidence. It will be of Two Sorts, Parol, and written Evidence. The former will conſiſt of a great Number of Witneſſes, concurring in the Account of the ſecret Preparations towards the Rebellion, the Steps taken in it; and many, in charging the noble Lord as the principal Actor in both. What they ſay, will be ſupported, confirmed, and illuſtrated, by the written Evidence.

As to the Firſt Sort, it will be tedious and unneceſſary for me to give your Lordſhips a Detail of the Names and Characters of each Witneſs, or the particular Facts they ſpeak to. It will be ſufficient to ſay in general, that I don't know of one Circumſtance that I have opened, which will not be fully proved by ſome or other of them; that ſome of the Witneſſes were principal Actors in the Steps leading to the Rebellion, as well as in the proſecuting of it; that ſome have been long acquainted with the Priſoner, ſeen his Life and Converſation, and had, from his own Mouth, the Truth of many of the Facts that preceded their own Time; and have attended his Perſon, and been Eye and Ear-witneſſes of many others; that others of the Witneſſes have heard and received his Commands, felt the Weight of his Power, or been employed by him in divers of thoſe Acts of Treaſon, wherewith he is charged; that all have had full Opportunities of knowing the Facts to which they will be called; and none have any Imputation on their Characters, but that of having ſome of them been Accomplices in the ſame Treaſon.

The written Evidence which the Managers have been able to collect and produce, conſiſts of Letters from and to the noble Lord. The former are of the Hand-writing of *Robert Fraſer*, one of his Secretaries, dictated and ſigned originally by himſelf, though the Signatures of ſome appear now torn off.

They were all written during the Rebellion, not at the Beginning, when the Priſoner, ſurpriſed by the ſudden Appearance of the Son of him, whom he had formerly called his King, might be drawn into Expreſſions of Affection and Zeal beyond his real Meaning, but after the Rebellion was grown to a great Height, and the noble Lord had full Time to look about him, to foreſee, weigh and balance all Conſequences to his Country, himſelf, and his Family; and, upon the Whole, had deliberately choſen the Side he took.

Of this Sort of Letters there will be many produced to your Lordſhips.

One of them written and ſent to the Pretender's Son himſelf, dated *November* 1745. The Signature, and ſome Parts of the Body of it, are torn off; but that will be ſupplied by a Copy under the ſame Secretary's Hand, taken by his Lordſhip's own Order.

Two others were written, about the ſame Time, to Mr. *Murray* the Pretender's Secretary, and to *Lochiel*.

Two of the reſt were written to the Priſoner's own Son.

Your Lordſhips will excuſe my mentioning a few Paſſages out of them, as a Specimen of the Whole. That to the Pretender's Son, which is itſelf, in the Articles, made a diſtinct Overt Act of Treaſon, is addreſſed to him by the Title of *Moſt Royal Prince*; and in the Concluſion calls him, *his Royal Highneſs*. It mentions the Priſoner's having been made a General Officer by the Pretender himſelf above Forty Years before; excuſes his Incapacity of ſerving him in Perſon, by his Age and Infirmities; and his Reſolution *to give him the next Mark of his Zeal, by ſending his eldeſt Son, the Bearer, to venture his Life in his Service, with a great Number of Gentlemen, and Heads of Families, of his Clan, and Eight hundred of his common People.*

The Letter to *Murray* is to engage him to become his Son's Patron at the Young Pretender's Court. It boaſts of the ſame Merit in ſending his Son and Clan, and ſets out his own long Services to the Pretender in the ſtrongeſt Light.

The Letter to *Lochiel* complains greatly of the Treachery, as he calls it, of an Honourable Perſon, in engaging on his Majeſty's Side, and of the Miſchief his Conduct had done to the Cauſe; and magnifies his own Clan and Services to the Pretender.

His Letters to his Son open the Secrets of his Heart; acquaint him with the Aſſociation he had formerly ſigned to venture his Life and Fortune to reſtore the Pretender; informs him of the promiſed Aſſiſtance of *France*, the Commiſſion from the Pretender to make him General of the *Highlands*, the more favourite Patent for a Dukedom; and ſets them all in a Light that would render him, as he ſays, *a Monſter of Ingratitude, if he was not attached to the* Pretender *more than ever.*

The reſt of his Letters are written in the ſame Strain, and founded upon the ſame Principles of Treaſon and Rebellion.

The Letters written to the Priſoner are, one from the Pretender's Son himſelf, referring to another written to him by *Lochiel*, *Murray* and *Clunie*; and one from the Priſoner's own Son.

The two former were written by way of Acknowledgment for his Services, and to engage him in an open perſonal Appearance on that Side, as the beſt Means to ſecure the Succeſs of their Cauſe; and will ſhew the Pretender's Son's Employment of thoſe Perſons, with whom the Priſoner treaſonably correſponded.

The Son's Letter is Part of a Correſpondence with the Father upon the Subject of the Rebellion, and was the Occaſion of the Letters beforementioned to have been written by him.

My Lords, I have now done with that general View of the Evidence, which I propoſed to give your Lordſhips. I would not anticipate what the noble Lord may ſay by way of Defence; but as the Evidence, on the Part of the Commons, will neceſſarily mention One Sort of Defence, which the Priſoner formerly made uſe of, when he apprehended his Perſon in immediate Danger from the Preſident and Lord *London*, on account of the *Fraſers* riſing to join the Pretender;

I can't help juſt taking notice of it here. His Pretence to them was, That his Clan was raiſed by his Son alone, without his Direction, and againſt his Command; and that the whole Conduct of the Clan of *Fraſer* was an Act of Diſobedience in his Son to him, as well as of Treaſon to his Majeſty; and that it would be hard, that a peaceable Father ſhould be anſwerable for the Guilt of his Son.

If this ſhould be any Part of the noble Lord's preſent Defence, I ſhall obviate it only ſo far, as to obſerve to your Lordſhips, That it is as falſe as it is unnatural, and will appear to be ſo, not only by the Parol Evidence we ſhall produce, but by every one almoſt of the Priſoner's own Letters, in which he takes to himſelf the whole Merit of his Son's Services, and values himſelf to the Young Pretender, according to the Strength and Zeal of his Clan.

What remains, my Lords, is only to make a few Obſervations, tending to ſhew, how the Facts and the Evidence I have been ſtating will maintain the particular Charges, which the Commons have undertaken to make good: For which Purpoſe it will be neceſſary very ſhortly to point out the preciſe Nature of the Charge itſelf.

It contains Three Species of Treaſon; Compaſſing the Death of his Majeſty:—Levying War againſt him within the Realm:—And Correſponding with the Pretender's Son, and his Agents.

As to the Firſt of theſe: The Wiſdom of this Conſtitution, foreſeeing that the general Happineſs muſt be moſt intimately connected with the Safety of that Royal Perſon, and providing againſt the remoteſt Dangers to which it may be expoſed, has made the very Imagination of the Heart, when directed to its Deſtruction, an Act of Treaſon: But as the Intent, by itſelf alone, can be known to none but the great Searcher of Hearts, it has, with equal Prudence and Juſtice, provided, that this Imagination muſt be diſcovered by ſome external Act, which, in the ordinary Language of the Law, is called an Overt Act.

The Commons have purſued, in their Impeachment, the Law in both reſpects. They have charged the Priſoner with that traitorous Imagination; and they have ſtated many Facts that manifeſt it, ſuch as, by the eſtabliſhed Rules of Law, have, in all Times, been held ſufficient.

The Overt Acts, particularly charged, are, His entering into an Aſſociation to raiſe a War and Rebellion againſt his Majeſty, by the Aſſiſtance of *French* Troops; his Correſponding with a Pretender to his Majeſty's Crown; His obtaining two Commiſſions from the Pretender, one to be General of the *Highlands*, and the other a Lieutenant-General of his Forces; his ſending a treaſonable Letter to the Pretender's Son,

with Expreſſions and Aſſurances of that Fidelity and Loyalty to his Father, which was due to his Majeſty alone; his ſending many other treaſonable Letters to his Fellow-Subjects, to engage and perſuade them to join and continue in that Rebellion, which was then begun and raged in the Northern Parts of this Kingdom; his aſſiſting the Pretender's Son with Arms, and ſending his own Son, with his Clan, into the Service of the Pretender.

Your Lordſhips will be beforehand with me, in diſtributing the various Matter I have before opened, to theſe ſeveral Heads: I would only obſerve, that, beſides the Evidence ariſing from the Witneſſes, which will appear in Perſon at your Lordſhips Bar, the Priſoner's own Letters are not only ſpecial Overt Acts of Treaſon themſelves, but will be the cleareſt Proof of the moſt material of the others.

When the Priſoner, in the Fulneſs of his Heart, opens himſelf to a Son, whoſe Parts and Proficiency were his own Pride, upon a Subject the moſt of all intereſting to both, to the future as well as preſent Happineſs of his Family, its Honours and Eſtate, your Lordſhips can have no poſſible Doubt of the Reality of that Aſſociation, thoſe Honours, thoſe Truſts, and that Attachment to the Pretender, on which he builds and communicates the Reſolution he had then taken.

When he writes to the Pretender's Son himſelf, then in the Capital of one Part of the United Kingdom, at the Head of an Army of Rebels, acting the Part of Royalty, and ſubduing his Majeſty's faithful Subjects, to boaſt of his former, and promiſing him future Loyalty, your Lordſhips muſt ſee, in the cleareſt Manner, what Side he had choſen, and whoſe Life and Throne he was ſtriking at.

As to the Treaſon of levying War, the Priſoner ſeems to have thought, that nothing but an open perſonal Appearance in Arms would bring him within that Sort of Guilt; and, in Fact, whether out of greater Caution on that account, or from peculiar Views of Management with the Pretender, or more probably from both, he ſeems ſtudiouſly to have avoided that particular preciſe Mark of Treaſon. But the Law, which, in Words, though not in Puniſhment, diſtinguiſhes, in ſome Sorts of Crimes, between Principals and Acceſſaries, makes no ſuch Diſtinction in this of the higheſt Nature; they are both, in Treaſon, equally criminal; and the various Acts of Encouragement, Perſuaſion, and Aſſiſtance, given and done by him, to thoſe who were perſonally engaged, do, in the Eye of the Law, as indeed they do in Reaſon, make their Guilt his own.

The laſt Species of Treaſon charged, is founded on the Breach of a late Act, made in the 17th Year of his Majeſty, on occaſion of the Invaſion attempted from *Dunkirk* in that Year, in Favour of the Pretender, and accompanied by his eldeſt Son. This Act extends the Treaſon made by the Act of the 13th of King *William*, of correſponding with the Pretender the Father, and his Agents, to a Correſpondence with his Sons, and their Agents.

The Proof of this Treaſon will be manifeſt to your Lordſhips, both from the written and parol Evidence. The ſame Letters, which afford ſuch concluſive Proof of the other Treaſons, are direct and immediate Proofs of this; beſides the perſonal Interview between the Priſoner and the Pretender's Son, and the many more perſonal Correſpondencies with the Pretender's Servants and Officers.

I have now, my Lords, finiſhed all that I propoſed to lay before your Lordſhips. The great Variety of Matter muſt be my Excuſe for the Length of it.

I am not under any Apprehenſion, that the Evidence will be inſufficient to convince your Lordſhips of the Juſtice of the Proſecution. I am more afraid, leſt your Lordſhips, and the World, ſhould inquire, Why all this Load of Evidence? when one of thoſe many Facts, fully eſtabliſhed, would be enough to convict the noble Lord of this higheſt of Crimes, and draw down upon him, from your Lordſhips, that heavieſt of Sentences, which is the Conſequence of it. If that Queſtion ſhould be aſked, the Anſwer I would give to it ſhould be ſhortly this:

The Managers did not think it conſiſtent with their Duty to the Commons of *Great Britain*, whoſe Commands they are to execute; that Regard they owe to your Lordſhips, at whoſe Bar they are to execute thoſe Commands; nor to the People of *Great Britain*, whom the Commons repreſent, and who are greatly intereſted in the Event of this Impeachment; to ſuppreſs any Part of that Evidence, extenſive as it is, which came to their Knowledge, material to the Priſoner's Cauſe.

The Commons have thought this a Matter worthy their own Interpoſition, and therefore have taken it into their own Hands, not to deprive the noble Lord of any legal Defence: The Candour of the Commons, and your Lordſhips Juſtice, will ſecure him againſt any Danger of that kind; not becauſe they wanted that Evidence, which would be ſufficient in the ordinary Courts of Juſtice; for far would it be from them to throw their Weight into the Scale of Evidence; but becauſe of the wide extenſive Part the Priſoner has had in this great Scene of Treaſon, as its Contriver, Promoter, and Finiſher, ſo far as Providence ſuffered it to go.

As to your Lordſhips, the Managers did not think it becoming them to prejudge your Opinion, or deprive your Lordſhips of that full Daylight in which the Crimes of this Lord appeared to them, and of that greateſt of all Satisfactions, which every Judge would wiſh to have, in every Cauſe, of being certainly right in the Sentence he is to pronounce.

As to the People ingeneral, it is of no ſmall Moment, that they ſhould be enabled to behold, in one View, the pernicious Schemes that have, for many Years, been concerting between *Rome*, *France*, and unnatural Traitors at Home, that they might ſee a Rebellion, which they have ſo lately and ſeverely felt, traced, in ſome meaſure, to its Source; and be fully convinced, that, whilſt they are themſelves enjoying, at their Eaſe, and too often aſleep, their Religion, their Liberties, and their Properties, under the Protection of the beſt of Princes, and the Influence of the wiſeſt Conſtitution, they have Enemies both abroad, and within their own native Country, who are conſtantly awake for the Subverſion of them all; and learn this certain Truth, which ſhould be imprinted, in everlaſting Characters, on the Mind of every *Briton*; That there is no effectual Security againſt thoſe determined and perpetual Enemies, but in a vigilant and firm Union of honeſt Men; and be perſuaded, that every Attempt to prevent, weaken, or diſſolve ſuch an Union, is little leſs than Treaſon in its Beginning, and, if it takes Effect, muſt end in a real ſucceſsful one, the worſt that can happen to this Land of Liberty, the total Deſtruction of this Royal Family, and of this happy Eſtabliſhment.

Sir JOHN STRANGE.

My Lords,

THE Managers do not think it neceſſary to take up any more of your Lordſhips Time, by way of general Opening of this Caſe; but propoſe to go directly to their Evidence: And the firſt Witneſs we deſire may be called, is *Robert Chevis*, of *Murtoun*, Eſq. a near Neighbour of the impeached Lord, but one at a very great Diſtance from his Way of Thinking or Acting.

Lord *Lovat*. My Lords, I have not had the Uſe of my Limbs theſe Three Years: I cannot ſee, I cannot hear; and I beg, if your Lordſhips have a mind I ſhould have any Chance for my Life, that you will allow either my Counſel or Sollicitors to examine my Witneſſes, and to croſs-examine thoſe produced on behalf of the Crown, and to take Notes.

Lord High Steward. What your Lordſhip ſays, if I underſtand you right, is, that, by reaſon of your Age and Infirmities, you cannot examine the Witneſſes yourſelf; but pray, that either your Counſel or Sollicitors might have Liberty to croſs-examine the Witneſſes againſt you, and to examine your own Witneſſes. It is my Duty to acquaint your Lordſhip with what is the known and clear Law in theſe Caſes; and I did acquaint your Lordſhip with it, in what I mentioned to you at firſt, that, by the Order of this Houſe, you had Counſel and Sollicitors aſſigned you, who had Liberty to aſſiſt you in all Matters of Law that might ariſe in the Courſe of your Trial; but that, by the known Rules of Law in Proceedings of this Kind, they have not Liberty to aſſiſt you in Matters of Fact, or in the Examination of Witneſſes. As to taking Notes, I have obſerved, that one of your Sollicitors has, during the Time that the Managers for the Houſe of Commons have been ſpeaking, taken Notes; and that has been allowed.

Lord *Lovat*. My Lords, It is impoſſible for me then to make any Defence, by reaſon of my Infirmities. I do not ſee; I do not hear; I came up to your Lordſhips Bar at the Hazard of my Life; I fainted away ſeveral times; I got up ſo early; I was up by Four o'Clock this Morning; and I am ſo weak, that, if I am deprived of the Aſſiſtance I aſk for, your Lordſhips may do as you pleaſe; and it is impoſſible for me to make any Defence at all, if you do not allow my Counſel or Sollicitors to examine the Witneſſes. I will therefore ſubmit myſelf to the Lords.

L. H. S. Gentlemen of the Houſe of Commons, You have heard what has been aſked by my Lord *Lovat*, with his Reaſons for it: Have you any thing to offer on that Head?

Sir *W. Yonge*. My Lords, It has been determined by your Lordſhips, That the Priſoner at the Bar cannot, in this Caſe, be allowed Counſel to aſſiſt him, except in Matters of Law: And, as that is known to be Part of the Law of the Land, whatever Inclination the Managers may have to indulge the noble Lord at the Bar, it is not in our Power to depart from the Law of the Land. We therefore hope your Lordſhips will excuſe us in not conſenting to what is contrary to the Law of the Land. We cannot do any thing of this kind without repairing to our own Houſe.

The Witneſs being produced.

Lord *Lovat*. My Lords, I object to this Witneſs being examined, becauſe he is a Tenant of mine; and I am informed, that my Tenant cannot be Evidence againſt me.

L. H. S. My Lord *Lovat*, There is no Rule of Law for that in *England*.

Lord *Lovat*. My Lords, I am told, that there is an Act of Parliament, that no Vaſſal, Tackſman, or Tenant, ſhall be a Witneſs againſt his Lord.

L. H. S. Your Lordſhip will pleaſe to name that Act of Parliament.

Lord *Lovat*. My Lord, I am told it is in the Firſt Year of King *George* the Firſt, Cap. 19.

Then the Clerk, by Direction of the Lord High Steward, read the Title of the Act of Parliament paſſed in the Firſt Year of his late Majeſty King *George* the Firſt, intituled,

"An Act for Encouraging all Superiors, Vaſſals, Landlords, and Tenants, in *Scotland*, who do and ſhall continue in their Duty and Loyalty to his Majeſty King *George*; and for Diſcouraging all Superiors, Vaſſals, and Landlords, and Tenants, there, who have been, or ſhall be, guilty of rebellious Practices againſt his ſaid Majeſty; and for making void all fraudulent Entails, Tailzies, and Conveyances, made there, for barring or excluding the Effects of Forfeitures, that may have been, or ſhall be, incurred there on any ſuch Account; as alſo for calling any ſuſpected Perſon or Perſons, whoſe Eſtates or principal Reſidence are in *Scotland*, to appear at *Edinburgh*, or where it ſhall be judged expedient, to find Bail for their good Behaviour, and for the better diſarming diſaffected Perſons in *Scotland*."

And alſo the Firſt Section, whereby it is Enacted,

"That if any of his Majeſty's Subjects of *Great Britain*, having Lands or Tenements in *Scotland* in Property or Superiority, has been, or ſhall be, guilty of High Treaſon, by holding, entertaining, or keeping any Intelligence or Correſpondence in Perſon, or by Letters, Meſſages, or otherwiſe, with the ſaid Pretender, or with any Perſon or Perſons employed by him, knowing ſuch Perſon to be ſo employed, or ſhall, by Bill of Exchange, or otherwiſe, remit or pay any Sum or Sums of Money for the Uſe or Service of the ſaid Pretender, knowing ſuch Money to be for ſuch Uſe or Service; and that whether the ſaid Facts or Things be done within or without this Realm, or has been, or ſhall be, adherent to the ſaid Pretender in this Realm, giving him Aid or Comfort in this Realm, or elſewhere; every ſuch Offender, who ſhall be thereof duly convicted and attainted, ſhall be liable to the Pains, Penalties, and Forfeitures for High Treaſon. All and every Vaſſal and Vaſſals in *Scotland*, who ſhall continue peaceable, and in dutiful Allegiance to his Majeſty, his Heirs and Succeſſors, holding Lands or Tenements immediately of the Crown, ſhall be veſted and ſeized, and are hereby Enacted and Ordained, to hold the ſaid Lands or Tenements of his Majeſty, his Heirs and Succeſſors, in Fee and Heritage, for ever, by ſuch Manner of Holding, as any ſuch Offender held ſuch Lands or

"Tenements

" Tenements of the Crown at the Time of the Attainder of ſuch Of-
" fender: And where Lands or Tenements, belonging to any ſuch
" peaceable and dutiful Subjects to his Majeſty, his Heirs and Succeſ-
" ſors, lie within any Regality or Conſtabulary in *Scotland*, the ſame
" ſhall be, and they are hereby, diſſolved from every ſuch Regality or
" Conſtabulary for ever: And, in like manner, all and every Tenant
" and Tenants in *Scotland*, who ſhall continue peaceable, and in dutiful
" Allegiance to his Majeſty, his Heirs and Succeſſors aforeſaid, bruick-
" ing and occupying any Lands, Milns, Mines, Woods, Fiſhing, or
" Tenements, as Tenant or Tenants, Tackſman or Tackſmen, from and
" under any ſuch Offender, ſhall, and they are hereby ordained to bruick
" and occupy all and every ſuch Lands, Mines, Milns, Woods, Fiſh-
" ings, and Tenements, for the Space of Two Years, or Crops, to be ac-
" counted from and after ſuch Attainder, freely, without Payment of any
" Rent, Duty, or Service, for the ſaid Two Years or Crops: And the
" Court of Exchequer in *Scotland* is hereby authorized and required, on
" Production of any ſuch Attainder, to reviſe, compound, and paſs Signa-
" tures, and that without paying any Compoſition, in favours of every
" ſuch Vaſſal or Vaſſals, and his, her, or their Heir or Heirs, of the ſaid
" Lands and Tenements above-mentioned reſpectively to be holden of his
" Majeſty, his Heirs and Succeſſors, in Fee and Heretage, for ever, and
" by ſuch Holdings as is above-mentioned, with Clauſes of *Novo Damus*,
" and (where ſuch Lands or Tenements hold Ward or Few *cum Mari-*
" *tagio*, or with Clauſes irritant) with Change of Holdings from Waird
" to Taxed-Waird, according to the Rules now obſerved in the Court of
" Exchequer in *Scotland*, diſpenſing with Recognition and Clauſes irri-
" tant in favours of the Crown in Time coming, in the moſt ample and
" beſt Form, to the End that Chartours and Infeftments may be there-
" upon duly exped."

And alſo the Ninth Section; whereby it is

" Provided always, and be it Enacted, by the Authority aforeſaid,
" That no Perſon or Perſons, who may reap, or have any Benefit or
" Advantage by the Attainder, Conviction, or Forfeiture, of any Perſon
" or Perſons, by virtue of this Act, ſhall be capable of being a Witneſs
" or Witneſſes, againſt any Perſon or Perſons, by whoſe Attainder,
" Conviction, or Forfeiture, any Benefit ſhall or may accrue to ſuch
" Witneſs or Witneſſes."

Lord High Steward. My Lord *Lovat*, are thoſe the Clauſes your Lordſhip means? or will you have any other Clauſe read?

Lord *Lovat.* My Lord, That is what I mean.

L. H. S. What your Lordſhip inſiſts upon ſeems to me to be, That, by this Act of Parliament, as you underſtand it, a Perſon who is a Tenant or Tackſman to any Lord, if his Lord is convicted of Rebellion, and ſuch Tenant remains peaceable, the Tenant is diſcharged from Two Years Rent of the Lands held by him. And by the Ninth Section, No Perſon can be a Witneſs, who may reap or have any Benefit by the Attainder of the Perſon he is to be a Witneſs againſt. I am not now going to give any Opinion upon that Section, neither is it proper that I ſhould; but it is neceſſary for me to inform your Lordſhip, that it is incumbent upon you to lay a Foundation of Fact, to ſhew, that the Perſon produced as a Witneſs is a Tenant or Tackſman under your Lordſhip, within the Deſcription of this Act of Parliament: And your Lordſhip may either prove this Fact, by calling Witneſſes of your own, for that Purpoſe; or by putting the Queſtion to the Perſon now produced by the Managers. Has your Lordſhip any Witneſs to prove this Fact; or will you examine the Gentleman produced upon a *Voire dire?*

Lord *Lovat.* I will aſk it of this Gentleman.

L. H. S. Gentlemen of the Houſe of Commons, Have you any Objection to my Lord *Lovat*'s aſking the Queſtion of this Witneſs?

Mr. Att. Gen. My Lords, We have no Objection to having that Queſtion aſked of the Witneſs.

L. H. S. As the Queſtion is to the Competency of the Witneſs, and he is to be examined touching that, he is not now to be ſworn as a Witneſs in Chief; but the Oath is to be adminiſtered upon a *Voire dire.*

Then the Witneſs was ſworn by the following Oath:

You ſhall true Anſwer make to all ſuch Queſtions as ſhall be demanded of you; and you ſhall ſpeak the Truth, the whole Truth, and nothing but the Truth.
So help you GOD.

L. H. S. My Lords, As my Lord *Lovat*'s Voice is low, whatever Queſtions his Lordſhip has to aſk of this Gentleman, your Lordſhips, I preſume, will (as you did upon a former Occaſion) let my Lord *Lovat* propoſe the Queſtion, and let the Clerk repeat it to your Lordſhips, and to the Witneſs. My Lord *Lovat*, You will now propoſe the Queſtion, and the Clerk will repeat it to my Lords, and the Witneſs.

Lords. Ay, ay.

Then one of the Clerks was ſworn to make true Report of what ſhould be ſaid by the Priſoner.

Lord *Lovat.* My Lords, I beg this Witneſs may be aſked, Whether he holds any Lands of me, or within my Regality, either by Tack, Leaſe, or otherwiſe?

Chevis. I hold my Lands of the Crown: I never had a Tack of Land of my Lord *Lovat.*

L. H. S. Do you hold any Lands, either by Vaſſalage, Leaſe, or Tack, from my Lord *Lovat?*

Chevis. I never had a Tack of Land from my Lord *Lovat.*

L. H. S. You are to anſwer to the Whole of the Queſtion, Whether you hold any Land, either by Vaſſalage, Leaſe, or Tack, of my Lord *Lovat?*

Chevis. I never had a Leaſe from my Lord *Lovat:* I was in Poſſeſſion of a Farm of his there, which, by his own Conſent, was given to other People; but I never had a Leaſe from him.

L. H. S. Did you hold that Land of my Lord *Lovat?*

Chevis. The Farm belonged to my Lord *Lovat.*

L. H. S. How did you hold it of him; by Tack, or Leaſe, or how?

Chevis. It was ceded to me by other People, who were in Poſſeſſion before me.

L. H. S. Did you hold it by Leaſe, or Tack, or in what Manner?

Chevis. I never had any Leaſe, or Tack, from the Lord.

Mr. Att. Gen. Do you now hold any Lands from my Lord *Lovat.*

Chevis. No, I hold none of him.

Mr. Att. Gen. Have you held any Lands of him ſince the Beginning of the Rebellion?

Chevis. I have held none ſince the Beginning of the Rebellion; nor been in Poſſeſſion of a Fur of Land under him.

Mr. Att. Gen. My Lords, I ſhould be glad to know of this Witneſs, whether he holds any Lands within the Regality of *Lovat.*

Chevis. No, I hold no Lands of my Lord *Lovat* there: I had that ſmall Farm I before mentioned.

Lord *Cholmondeley.* My Lords, The Queſtion put to the Witneſs, at firſt, was, Whether he held any Lands of my Lord *Lovat*, either as Vaſſal, Tenant, or Tackſman, according to the Deſcription mentioned in the Act of Parliament? And if he does, then he comes within the Deſcription there mentioned. He has told your Lordſhips, That he does not hold any Lands, by Tack or Leaſe, from my Lord *Lovat.* My Lords, I pray that the Queſtion may be now aſked him, Whether he holds any Lands of my Lord *Lovat*, either by Vaſſalage, Tack, or Leaſe?

L. H. S. Sir, You hear the Queſtion propoſed by the noble Lord. Do you hold any Lands under my Lord *Lovat*, as Vaſſal?——*Chevis.* No.

L. H. S. Do you hold any Lands under my Lord *Lovat*, as Tenant?

Chevis. No.

L. H. S. Do you hold any Lands under my Lord *Lovat*, as Tackſman?

Chevis. No.

Lord *Talbot.* My Lords, I deſire this Witneſs may be aſked, Whether he apprehends he can receive any Benefit under this Act of Parliament, by my Lord *Lovat*'s being convicted of High-Treaſon?

L. H. S. Sir, You hear the Queſtion aſked by the noble Lord.

Chevis. I never heard the Act of Parliament mentioned till this Day: I know of no Benefit I am to receive under it.

L. H. S. Do you know of any Benefit that you are to receive; or do you apprehend, that you can receive any Benefit from the Conviction of my Lord *Lovat?*——*Chevis.* No.

L. H. S. Do you hold any Lands at all within the Regality of *Lovat?*

Chevis. No.

Proclamation for Silence.

Lord *Lovat.* My Lords, I beg this Witneſs may be aſked, Whether he owes me any Money?

Mr. Att. Gen. My Lords, on Behalf of the Commons, we do object to that as an improper Queſtion, becauſe I muſt ſubmit it to your Lordſhips, that no Queſtion is proper to be aſked, but what tends to the Diſcovery of ſomething material to the Point in Controverſy. Now, my Lords, The Queſtion propoſed to be aſked, be it anſwered one Way or the other, cannot tend to prove any thing material to the preſent Purpoſe.

Lord Lovat *interrupting,*

L. H. S. My Lord *Lovat*, You are not to interrupt the Gentlemen of the Houſe of Commons: You ſhall be fully heard in your Turn.

Mr. Att. Gen. My Lords, I ſay your Lordſhips will not permit a Queſtion to be aſked, which is totally immaterial to the preſent Purpoſe: And, I apprehend, this Queſtion is totally immaterial, becauſe the Queſtions now to be put to the Witneſs are only for the Purpoſe of diſqualifying him to be an Evidence, which this Queſtion does not in the leaſt relate to; and be it anſwered the one Way or the other, it cannot tend to diſqualify the Witneſs: Whether it be anſwered Yea or No, it cannot tend to diſqualify the Witneſs.

Lord *Lovat.* My Lords, I beg, that the Witneſs may be aſked, Whether he receives any Rents, or other Profits, from thoſe Lands lying within the Regality of *Lovat?*

Mr. Att. Gen. My Lords, If this amounts to a Queſtion, to bring the Witneſs under the Deſcription of the Act of Parliament, it is a Queſtion that has been already put by your Lordſhips; and anſwered particularly and preciſely. If the Queſtion tends to any other Matter, I cannot conceive to what Purpoſe it is to be aſked. But, my Lords, it is incumbent on the noble Lord at your Bar, to mention what he intends to ſhew by the Queſtion he aſks.

L. H. S. My Lord *Lovat*, the Witneſs on this Examination hath ſworn, That he holds no Lands or Tenements under your Lordſhip, either as Vaſſal, Tenant, or Tackſman; and your Lordſhip would now have him aſked, Whether he receives any Rents, or other Profits, from any Lands lying within the Regality of *Lovat?* As what the Witneſs has already ſworn does fully anſwer all the Diſqualifications mentioned in the Act of Parliament which your Lordſhip has quoted, what do you intend by the preſent Queſtion?

No Anſwer being made by the Priſoner, *Robert Chevis*, of *Murtoun*, was ſworn in Chief.

Sir *John Strange.* My Lords, I deſire this Witneſs may inform your Lordſhips, How long he has been acquainted with the noble Lord at the Bar.—*Chevis.* From about the Year 1733.

Sir *John Strange.* Whether he has been acquainted with him ever ſince the Year 1733?—*Chevis.* Ever ſince.

Sir *John Strange.* Do you live near the noble Lord at the Bar?

Chevis. I live within Two Miles of him.

Sir *John Strange.* Whether he has not been often in his Company ſince the Year 1733?

Chevis. A great many times.

Sir *John Strange.* Whether he went to his Houſe frequently?

Chevis. Yes.

Sir *John Strange.* Whether he has had any Converſation, and what Converſation, with him, in relation to publick Affairs?

Lord High Steward *to the Witneſs (perceiving him to have a Paper in his Hand),*

L. H. S. What Paper is that in your Hand?

Chevis. Notes of my own.

L. H. S. Are they of your own Hand-writing?—*Chevis.* Yes.

L. H. S. To what Purpoſe did you take them?

Chevis. Only to refreſh my Memory.

L. H. S. Was that the only Reason you took them for?

Chevis. The only Reason.

Sir *John Strange.* My Lords, I beg this Witness may be asked, What was the general Turn of the Conversation of the noble Lord at the Bar?

Chevis. The general Turn of his Conversation was in Favour of the Pretender, and his Family.

Sir *John Strange.* Whether the Witness speaks of the Conversation so far back as the Year 1733?——*Chevis.* Yes.

Sir *John Strange.* Whether the Witness had ever any Conversation with the noble Lord at the Bar, in relation to the Year 1719?

Chevis. I had.

Sir *John Strange.* My Lords, I beg he will give an Account, What the noble Lord at the Bar has said to him, in relation to what was going to be done in the Year 1719?

Chevis. My Lord *Lovat* told me of a Letter he had written to the late Lord *Seaforth*; and that he had sent it by his own Lieutenant to Lord *Seaforth*, to encourage and desire him to come down with his Men; and that he, Lord *Lovat*, would join him with all his, in favour of the Pretender.

Notice being taken by some Lords, at the upper End of the Court, that they could not well hear the Witness, the Lord High Steward *directed the Clerk to repeat the Answers of the Witness as he delivered them: Which was done accordingly.*

Sir *John Strange.* Whether the noble Lord at the Bar acquainted him with his having sent such a Letter?

Chevis. He told me he had sent such a Letter by his Lieutenant.

Sir *John Strange.* My Lords, I beg he may be asked, whether he ever knew, from the noble Lord at the Bar, that That Letter was delivered, or not?

Chevis. Lord *Lovat* told me; that the Letter was delivered.

Sir *John Strange.* To whom did he say the Letter was delivered?

Chevis. He said the Letter was first shewn to *Chisholm* of *Knockford*; and after that it was delivered to my Lord *Seaforth*.

Sir *John Strange.* I shall be glad to know, whether my Lord *Lovat* said any thing to the Witness, in relation to any Affidavit that had been made concerning that Letter?

L. H. S. Gentlemen of the House of Commons, The Transaction now inquired of happened in the Reign of his late Majesty; and there is no Charge, in the Articles of Impeachment, of any High-Treason committed against his late Majesty: You will therefore open to my Lords, how you would apply the Evidence which you are now examining to.

Sir *John Strange.* My Lords, Your Lordships will please to observe, that, in the Answer of the noble Lord at the Bar, he does particularly mention his great Duty and Affection for his late Majesty, and his Behaviour from time to time, in that respect; and we are now introducing this particular Evidence, in regard to that Matter, by first taking it up so long ago as the Year 1719, to shew what was then the Disposition, Behaviour, and Conduct, of the noble Lord at the Bar.

My Lords, We say, that, in the Year 1719, there was that Letter written, with a View to assist the *Spanish* Invasion then intended, in favour of the Pretender: That that Letter was sent; but before it was delivered to the Person to whom it was addressed, there was a Communication of it, in the manner the Witness hath mentioned; and that Person gave proper Notice, and made Affidavit of it, which was sent up to the Government, giving an Account of it: And, by the great Dexterity of the Prisoner at the Bar, he got the Letter back again.

My Lords, The Use we make of this is to shew, that this is no new Matter, arising from the present Rebellion: But, by deducing it from the Year 1719, we shall make the noble Lord's Conduct to be one continued Act of Treason, consistent with the Article of the Charge.

L. H. S. Then I apprehend you apply this Piece of Evidence, to encounter and contradict the Allegation in my Lord *Lovat*'s Answer, which you have mentioned.

Then the Lord High Steward *repeated to the House that Allegation, out of the Prisoner's Answer.*

Sir *John Strange.* My Lords, That is what we propose to shew by this Evidence. The Witness has gone so far as to acquaint your Lordships, that That Letter, before it was delivered to the Person to whom it was addressed, was shewn to one *Chisholm* of *Knockford*. My Lords, I desire he may inform your Lordships, what the noble Lord at the Bar said was done, in consequence of that Communication.

Chevis. Chisholm made Affidavit of it, which was sent up to Court.

Sir *John Strange.* Did Lord *Lovat* acquaint you whether he heard of such Affidavit being transmitted?---*Chevis.* He did.

Sir *John Strange.* Did he tell you what he did upon that Occasion?

Chevis. That he went immediately to Court, and got himself introduced there. And Lady *Seaforth* being then in *London*, she applied to him to do something in favour of her Son; which he then absolutely refused, till her Son should return him that Letter; which being done, he shewed it to a certain Friend, who read the Letter, and who told him, That there was enough to condemn Thirty Lords there; and threw it into the Fire.

Sir *John Strange.* My Lords, I desire he will give an Account whether the noble Lord at the Bar said any thing at that Time, whether he had signed and sealed the Letter.

Chevis. He said he had not signed it; and therefore they could not fix him with it.

Sir *John Strange.* I desire this Witness may inform your Lordships, whether, when the noble Lord at the Bar told him, that he had not signed it, he said any thing further to him upon that Occasion, than that he had not signed it?

Chevis. He said, That he could not be fixed with it; and that That was the Way he intended to get off, by its not being signed.

Sir *John Strange.* I desire you will please to inform their Lordships, whether you remember the Time when *Roy Stuart* broke out of *Inverness* Gaol?

Chevis. Yes; it was in 1736.

Sir *John Strange.* Who was Sheriff at that Time?

Chevis. My Lord *Lovat.*

Sir *John Strange.* After *Roy Stuart* had escaped out of *Inverness* Gaol, where did he go to live? By whom was he entertained?

Chevis. He came to my Lord *Lovat*'s House, and was entertained there.

Sir *John Strange.* How long was he entertained there?

Chevis. Much about Six Weeks, to the best of my Remembrance.

Sir *John Strange.* Was you often at my Lord *Lovat*'s during these Six Weeks?—*Chevis.* Frequently.

Sir *John Strange.* Was you ever there when Lord *Lovat* and *Roy Stuart* were together?———*Chevis.* Very often.

Sir *John Strange.* Do you remember whether *Roy Stuart* was going abroad about that Time?

Chevis. He was going abroad then; and the Ship was prepared for him before he left Lord *Lovat*'s House; and he went in my Lord *Lovat*'s Chaise or Chariot.

Sir *John Strange.* I desire you will inform their Lordships, whether any Message was sent from the noble Lord at the Bar by *Roy Stuart*, and to whom?

Chevis. I heard the noble Lord at the Bar charge him with a Message to the Pretender.

Sir *John Strange.* What do you mean by charging him with a Message?

Chevis. To assure the Pretender, whom he called his King, of his Fidelity; and that he was determined to live and die in that Cause.

Sir *John Strange.* I beg that he may inform your Lordships, whether there was any Thing said at that Time in relation to any Commission or Patent.

Chevis. He charged him to expedite his sending his Commission of Lieutenant-General of the *Highlands*, and his Patent of a Duke.

Sir *John Strange.* I beg he may inform your Lordships, whether, at any other Time or Times, he heard the noble Lord at the Bar say any thing whether he had, or had not, succeeded in what he had sent for?

Chevis. About 1742, he owned to me, That he got his Commission and Patent to be a Duke.

Sir *John Strange.* What Commission did he tell you he had got?

Chevis. A Commission of Lieutenant-General of the *Highland* Clans.

Sir *John Strange.* From whom did he say he had received this Commission, and Patent to be a Duke?

Chevis. From his lawful Sovereign King *James* the Eighth.

Sir *John Strange.* Pray recollect yourself. Did he make use of that Expression which you have now repeated, that he had it from his lawful Sovereign King *James* the Eighth? Are you certain he did?

Chevis. Yes.

Sir *John Strange.* Did he tell you any thing what he would do, now he was invested with that Command, and had got such a Commission and Patent?

Chevis. He said, That he was in a Condition thereby to humble his Neighbours.

Sir *John Strange.* Have you at any other Time heard him speak of this Patent, or of this Commission?——*Chevis.* Several Times.

Sir *John Strange.* Is it often that you have heard him?

Chevis. Often.——He has told me, That he had a Right to it by his Services for that Family; and that he had the like Commission from the Pretender's Father from *St. Germains.*

Sir *John Strange.* I desire the Witness may inform your Lordships, whether, during the Time that the noble Lord at the Bar and *Roy Stuart* were together, they diverted themselves with composing any thing, and what.

Chevis. They did, in composing Burlesque Verses, that, when young *Charles* came over, there would be Blood and Blows.

Sir *John Strange.* You have not mentioned it in a poetical Manner: Pray, can you recollect the Lines?

Chevis. When young *Charley* does come o'er,
There will be Blows and Blood good Store.

Sir *John Strange.* I beg that you will acquaint their Lordships, whether this Verse, that you mention, is a Translation, or whether this is the original Language in which it was composed?

Chevis. It was framed in *Erse*; and this is the Substance of one Verse.

Sir *John Strange.* I beg this Witness may inform your Lordships, whether he has at any Time heard the Prisoner say any thing in relation to any Association?

Chevis. I have.

Sir *John Strange.* Please to tell the Time you heard this Discourse, and what the noble Lord at the Bar said.

Chevis. It was between 1737 and 1740.

Sir *John Strange.* What did you hear the noble Lord at the Bar say then?

Chevis. That there was an Association of the *Highland* Clans in favour of the Pretender, whom he called his lawful Sovereign King *James* the Eighth; and that he had entered into that Association, and would live and die in that Cause.

Sir *John Strange.* I beg he may be asked, whether, at the Time he is speaking of, one *Drummond* of *Bochaldie* was at Lord *Lovat*'s House.

Chevis. Drummond of *Bochaldie* was there much about this Time; and used to drink Success to the Association?

Sir *John Strange.* Do you remember *Bochaldie*'s being at *Castle-Downey*, and staying there any Time?

Lord High Steward. What Place is *Castle-Downey?*

Chevis. It is Lord *Lovat*'s Place of Residence.

Sir *John Strange.* My Lords, It is sometimes called *Beaufort*, and sometimes *Castle-Downey.* To whom does it belong?

Chevis. To my Lord *Lovat.*

Sir *John Strange.* Do you know whether you heard my Lord *Lovat* say any thing to *Bochaldie* at that Time?

Chevis. He mentioned an Invasion of *Britain* in favour of the Pretender.

Sir *John Strange.* What Year are you now speaking of?

Chevis. The Year 1739.

Sir *John Strange.* You say, That *Drummond* was then at Lord *Lovat*'s, staid there a considerable Time, and heard my Lord *Lovat* propose an Invasion of *Britain* in favour of the Pretender?

Chevis. I did.

Sir *John Strange.* Did you hear him propoſe it? And did you hear of any-body elſe he propoſed it to?

Chevis. I have heard the like was propoſed to *Cameron* of *Lochiel*, and others.

Sir *John Strange.* From whom have you heard it?

Chevis. From my Lord *Lovat* himſelf.

Sir *John Strange.* Do you remember any Thing to have happened at Lord *Lovat*'s about the Time of *Oſtend*'s being taken by the *French?*

Chevis. I was not there then; but he wrote a Letter to me, and told me, That the whole Coaſt of *Flanders* was now clear.

Sir *John Strange.* Did you hear my Lord *Lovat* ſay any thing in relation to the Coaſt of *Flanders* upon *Oſtend*'s being taken?

Chevis. I have heard him ſay as much as he wrote in that Letter.

Sir *John Strange.* What have you heard him ſay?

Chevis. That the Coaſt of *Flanders* was then cleared; and that the *French* would be over in one Night's Time, and carry all before them.

Sir *John Strange.* I ſhould be glad you would inform their Lordſhips, whether, at any Time in the Year 1745, Lord *John Drummond* was at *Caſtle-Downey*, or not?

Chevis. To the beſt of my Memory, he was about that Time at *Caſtle-Downey*.

Sir *John Strange.* I ſhould be glad you would inform their Lordſhips about what Time of the Year this was, whether it was Summer, or Winter?

Chevis. I think it was Summer; to the beſt of my Memory, between Summer and Harveſt.

Sir *John Strange.* I beg you will inform their Lordſhips, whether at any Time, and in what Month, in the Year 1745, the Maſter of *Lovat* came to my Lord's Houſe; or whether you ſaw him at my Lord's in 1745?

Chevis. I ſaw him there ſeveral Times in 1745.

Sir *John Strange.* Did you ſee him there when any Paper or Manifeſto was produced?

Chevis. I ſaw him there when the Manifeſto was produced.

Sir *John Strange.* At what Time was this?

Chevis. It was in *September* 1745. The Manifeſto came in a Packet incloſed to Lord *Lovat*.

Sir *John Strange.* What Manifeſto was it?

Chevis. The Pretender's Manifeſto and Declaration, which he ordered the Maſter immediately to read.

Sir *John Strange.* Was it read accordingly by the Maſter of *Lovat?*

Chevis. It was accordingly read.

Sir *John Strange.* What did Lord *Lovat* ſay when it was read, or before it was read?

Chevis. I objected to the Manifeſto's being read; and Lord *Lovat* told me I talked Treaſon.

Sir *John Strange.* Did he tell you what was his own Diſpoſition in regard to that Manifeſto, after it had been read?

Chevis. He told me, after reading the Manifeſto, That he was to join the Pretender's Party in that Cauſe; and that he would live and die in that Cauſe.

Sir *John Strange.* I beg the Witneſs may mention to your Lordſhips, whether the noble Lord at the Bar expreſſed his Opinion in relation to the good or ill Succeſs of it?

Chevis. He ſaid he thought Succeſs was morally ſure: As ſure as Light, as ſure as God was in Heaven, the Pretender would prevail.

Sir *John Strange.* I beg you'll recollect, and give my Lords the very Words. Did he ſay the Pretender?

Chevis. Not the Pretender; but his right Maſter.

Sir *John Strange.* What was the Expreſſion he made uſe of?

Chevis. As ſure as the Sun ſhined.

Sir *John Strange.* That who would prevail?

Chevis. That his Maſter (the Pretender) would prevail.

Sir *John Strange.* I beg you will inform their Lordſhips, whether any thing was offered to you upon that Occaſion?

Chevis. I was offered a Captain's Commiſſion.

Sir *John Strange.* By whom?---*Chevis.* By Lord *Lovat*, in that Service.

Sir *John Strange.* In what Service?

Chevis. In the Service of that Perſon, whom he called his lawful Prince.

Sir *John Strange.* My Lords, I beg he may inform your Lordſhips, whether my Lord *Lovat* ſaid any thing in relation to the Pretender, to recommend him to the Witneſs, at the Time he ſays Lord *Lovat* offered him a Commiſſion?

Chevis. I have often heard Lord *Lovat* ſay, That whoever looked the Pretender, his lawful King, in the Face, he would own he was his only rightful King, as he himſelf owned him to be.

Sir *John Strange.* I beg he may be aſked, whether he can recollect, during the Time of the late Rebellion, any Number of *Frafers* being aſſembled?

Chevis. I cannot ſay; for, after the Time of reading the Manifeſto, I did not viſit my Lord *Lovat*. I diſcontinued going to his Houſe.

Sir *John Strange.* For your own Sake, I deſire to aſk you, Did you accept of the Commiſſion offered you by Lord *Lovat* or not?

Chevis. I did not indeed; I refuſed it.

Sir *John Strange.* What Healths have you heard the Priſoner toaſt in your Company?

Chevis. Confuſion to the White Horſe, and all the Generation of them.

Sir *John Strange.* Are you certain you heard my Lord *Lovat* propoſe that Health?

Chevis. I have heard him propoſe it, and drink it.

Sir *John Strange.* What did you underſtand was the Meaning of that Expreſſion, Confuſion to the White Horſe?

Chevis. Confuſion to the preſent Royal Family: It could mean nothing elſe. It was in Alluſion to the Arms of the Family.

Sir *John Strange.* I ſhould be glad you would inform their Lordſhips, whether you know of any Meſſage ſent by my Lord *Lovat*, by *Drummond* of *Bochaldie*, beſides what he has mentioned; any Thing concerning the Reformation or Revolution?

Chevis. He was to execute the Meſſage, and that with reſpect to his Commiſſion and Patent.

Sir *John Strange.* With whom was he to execute that Commiſſion?

Chevis. With the Pretender, at *Rome*.

Sir *John Strange.* Did he, at that Time, ſay any Thing more to him; and what was it?

Chevis. He talked of the Aſſociation, and of the Invaſion.

Sir *John Strange.* Did my Lord *Lovat* ſay any Thing of Religion, at that Time?

Chevis. I heard him ſay frequently, he believed there was no true Religion in the World but one, which was the Church of *Rome*.

Sir *John Strange.* Was any Thing ſaid of the Revolution?

Chevis. He curſed the Reformation and the Revolution too.

Sir *John Strange.* What did he curſe the Reformation for?

Chevis. Becauſe, he ſaid, it brought a falſe Religion upon us; and the Revolution involved us in a Load of Debt.

Sir *John Strange.* Did he then propoſe any Scheme to get rid of this Grievance?

Chevis. The Scheme he propoſed was, by favouring the Invaſion, and by taking Part in it.

Sir *John Strange.* Did he ſay for what Purpoſe that Invaſion was to be?

Chevis. To reſtore the rightful King.

Sir *John Strange.* Did he name him?

Chevis. To reſtore his lawful Sovereign King *James* the Eighth.

Sir *John Strange.* I beg you'll give their Lordſhips an Account, whether you ever heard Lord *Lovat* ſay any Thing in relation to a Marriage contracted for his Daughter?

Chevis. I heard Lord *Lovat* ſay, that when his Daughter was married to *M'Pherſon* of *Clunie*, he took it to be an Acceſſion of Strength, by the adding one *Highland* Clan more to the Number.

Sir *John Strange.* Pleaſe to inform their Lordſhips, whether, through the Progreſs of the Rebellion, you heard the Lord *Lovat* ſay any Thing, as to what he would do with his Tenants that would not join?

Chevis. He ſaid, It was very eaſy for him to cut them off in a Moment, as he was in ſuch a Capacity now.

Sir *John Strange.* What did he mean by that?

Chevis. Any Tenant that ſhould oppoſe him, or any of the Clan, or Neighbours.

Sir *John Strange.* I beg you will inform their Lordſhips, what is the Power and Authority that Lord *Lovat* inſiſts to have over his own Clan? or whether they are under his Power and Command, or not?

Chevis. Lord *Lovat* certainly has the Power of an abſolute King over them.

Sir *John Strange.* Inform their Lordſhips, whether you apprehend the Command of the Clan is in my Lord *Lovat*, or his Son the Maſter?

Chevis. It is intirely in my Lord's own Hands.

Sir *John Strange.* Do you know what Age my Lord *Lovat*'s eldeſt Son is?---*Chevis.* Much about Nineteen.

Sir *John Strange.* Was he at Home at the Beginning of the Rebellion? or was he then at any other Place, and where, for Education?

Chevis. He was at *Saint Andrews*, the Place of his Education; and was called Home about that Time.

Sir *John Strange.* How long was that before Lord *Lovat* made his Son read the Manifeſto which you have mentioned? How long was he at Home before that?---*Chevis.* Not very long before that.

Sir *John Strange.* You ſay the young Gentleman was at *Saint Andrews*, and was ſent for Home by his Father; and that his Father ſet him to read the Manifeſto: Pray how long had the young Gentleman been at Home, before he was ordered to read the Manifeſto?

Chevis. It might have been about two Months, to the beſt of my Memory.

Sir *John Strange.* Do you think it was ſo long?

Chevis. I believe it might have been about two Months.

Sir *John Strange.* When my Lord *Lovat* offered you a Captain's Commiſſion, did he acquaint you who was to be your Colonel?

Chevis. He did not acquaint me, at that Time, who was to be my Colonel; but he ſaid he was in that Service in that Cauſe himſelf; and I underſtood, that I was to ſerve under him.

Sir *John Strange.* My Lords, As the Witneſs has informed your Lordſhips, that he did not go to Lord *Lovat*'s, after he told him it was High Treaſon to object to the reading of the Pretender's Manifeſto, I ſhall not examine him to any Thing ſubſequent in Point of Time to that; and therefore I ſhall not trouble your Lordſhips with aſking him any more Queſtions.

Mr. Attorney General. My Lords, I beg this Witneſs may inform your Lordſhips, whether he has heard any Thing of any Threats made Uſe of by the noble Lord at the Bar, to his Tenants, or Clan, to come down upon them, if they refuſed joining?

Chevis. I ſaw a Party of the *M'Donalds* in the Country; and I think they came to the Place where I lived; and I take the Deſign of them to have been, that they ſhould be there, to overawe the Country.

Mr. Attorney General. Who commanded that Party of the *M'Donalds?*

Chevis. M'Donald of *Bariſdale*.

Mr. At. Gen. Did you hear any Thing ſaid by my Lord *Lova* to *M'Donald*, concerning him or his Clan?

Chevis. He ſaid, in general, that, upon being inveſted with this Patent of Duke, he would be able not only to humble and keep in Awe hisown Clan, but his Neighbours.

Mr. At. Gen. I beg he may inform your Lordſhips, whether he knows any Thing of *Bariſdale*'s going about to the Clans, to encourage them to join?

Chevis. I ſaw him at Lord *Levat*'s Houſe the Day of the Rendezvous.

Mr. At. Gen. What did he do there?

Chevis. He ſpirited up the Country People, and carried them along to the Rendezvous.

Mr. At. Gen. Who was that?

Chevis. M'Donald of *Bariſdale*.

Mr. At. Gen. What do you know in relation to that Rendezvous?

Chevis.

Chevis. I saw the Rendezvous at a Distance, but I was not upon the Spot.

Mr. At. Gen. Who was at the Rendezvous?

Chevis. Four, or Five, or Six hundred Men.

Mr. At. Gen. Whose Men were they?

Chevis. The *Frasers.*

Mr. At. Gen. Under whose Command were they?

Chevis. I was told, they were under the Master's Command; but I was not personally present.

Lord High Steward. Gentlemen of the House of Commons, Have you done with this Witness?

Managers. My Lord, We have done with him.

Lord High Steward. My Lord *Lovat*, The Gentlemen of the House of Commons have gone through with their Examination of Mr. *Chevis:* Has your Lordship any Questions to ask him?

Lord *Lovat.* My Lords, He has said so many false and wicked Things, that I do not know what Questions to ask him, or where to begin.

Lord High Steward. Your Lordship will be pleased to propose the Questions; and then they will be asked of the Witness.

The Clerk repeated the Prisoner's Questions to the Witness.

Lord *Lovat.* My Lords, I pray he may be asked, Whether or no, since my Arrival here, and being before the House of Lords, and that many Witnesses had been summoned to give Evidence against me, whether this Witness did not go about to sollicit Witnesses against me? and whether he did not examine Witnesses himself?

Chevis. I refuse it.

Manager. You mean, you deny it.

Chevis. I deny it.

Lord *Lovat.* My Lords, I offer to prove it.

Lord High Steward. My Lord *Lovat*, Your Lordship must do that when you come to make your Defence: Your Lordship will then have an Opportunity, by Witnesses, to contradict or invalidate the Testimony of this, or any other Witness produced against you.

Lord *Lovat.* I beg this Witness may be asked, Whether he knows, or ever heard, that several People were threatened to be put in Prison, and were put in Prison, if they did not come up to be Evidence against me.

Chevis. I deny it.

Lord *Lovat.* I beg he may be asked, Whether he discovered to any Person belonging to the Government, the Declaration which he says he heard read at my House?

Chevis. In *September* 1745, I told it in common Conversation; but I never went to any of the Government, to inform them of it: The Rebellion broke out then immediately.

Lord *Lovat.* My Lords, I beg this Witness may be asked, Whether he ever said himself, or has heard others say, that the late Plot by the Master of *Lovat* against me, was to hang the old Man, and save himself?

Chevis. I never heard of such a Plot; but have often heard of a Plot of my Lord *Lovat*'s, to try to hang his Son the Master of *Lovat*, and save himself.

A Lord. My Lords, I don't doubt the Witness designs to pay the Money he owes to my Lord *Lovat*; but I pray he may be asked, whether he expects to be forgiven that Debt, if my Lord *Lovat* is convicted?

L. H. S. My Lords, While this Witness was examined upon a *Voire dire*, there was a Question proposed by my Lord *Lovat*, to be asked him, which was, Whether he owed my Lord *Lovat* any Money? That Question was objected to by the Gentlemen of the House of Commons, as not tending to discover any Thing material to the Point then in Question: And what is now proposed by the noble Lord, to be asked of the Witness, is, Whether this Gentleman owes my Lord *Lovat* any Money? and if he does, whether he expects to be forgiven that Debt, in case my Lord *Lovat* should be convicted?

Chevis. In regard of that Debt, it was condescended some Years ago, that my Lord *Lovat* should accept a Gentleman who was my Debtor, for the Payment of that Money.

L. H. S. Do you owe my Lord *Lovat* any Money?

Chevis. A mere Trifle: This which he speaks of was to be compensed another Way.

L. H. S. Whether the Debt be more or less, do you expect to save that Debt, or to be favoured in the Payment of it, if my Lord *Lovat* should be convicted?

Chevis. Not at all; I deny it.

A Lord. How long have you been in Town?

Chevis. Since *Tuesday* last about Noon.

A Lord. Whether have you lived at your own Expence since that Time; or who hath supported you?

Chevis. I did design to have lived at my own Expence; but I have been supported at the Expence of the Government.

[*Then the Witness withdrew.*

Mr. Sollicitor General (the Honourable William Murray, *Esquire).* My Lords, The next Witness we beg Leave to call, is *Robert Fraser*, late Secretary to my Lord *Lovat.*

Robert Fraser called in and sworn in Chief.

Proclamation made for Silence.

The Prisoner rising up, the *Lord High Steward* said, My Lord *Lovat*, Do you object to this Witness?---Lord *Lovat.* Yes.

L. H. S. What is your Objection?

Lord *Lovat.* He holds a Tack of Land of me.

L. H. S. Is it true? Do you hold a Tack of Land of his Lordship?

R. Fraser. No; I do not hold any Tack of Land of my Lord *Lovat.*

Lord *Lovat.* I am ready to prove it.

L. H. S. Gentlemen of the House of Commons, My Lord *Lovat* may have Liberty to examine a Witness, to prove that Fact. It has been frequently done after a Witness has been sworn in Chief. My Lords, at the Common Law, where a Witness is tendered by the Plaintiff to be sworn, the Oath to give Evidence in Chief is administered to him, unless the Defendant makes an Objection to his Competency, and then he may be examined touching that Objection, upon a *Voire dire:* But, after the Witness has been sworn in Chief, if any Objection is then made to him, he may be asked the same Question by virtue of his Oath in Chief, as he might have been asked upon a *Voire dire.* I have known it done both Ways. But, after the Witness has been examined by the Defendant to the Fact of the Objection, and has denied it upon his Oath, it is not usual to give the Defendant Liberty to call a Witness to prove it, in order to repel him from being a Witness, unless the other Side acquiesces in it.

Lord *Lovat.* I have sent for my Witness.

The House having waited some Time, my *Lord High Steward* asked the Prisoner, where his Witness was: Who said, he was at the Coffee-house; and a little Time afterwards said, My Lords, The Witnesses are all gone about an Hour ago, not expecting to be called.

Lord High Steward. How came your Witnesses to go away whilst your Trial is going on?

Lord *Lovat.* My Lords, They did not know they would be called To-day.

Mr. Sollicitor General. My Lords, The Objection made by the Noble Lord at the Bar having been positively denied by the Witness, and there being no Evidence here to contradict him, we hope we may proceed to examine him.

Mr. Attorney General. My Lords, We hope your Lordships will not permit the Prisoner at the Bar to suspend your Lordships Proceedings whenever he pleases: And we hope the Candour of the Managers, in not opposing his going into this Objection, after the Witness has denied it upon his Oath, shall not be extended to delay his Examination, under a Pretence of this Kind. The Witness produced denying the Objection upon his Oath, and there being no Evidence here to contradict it, we hope we shall be permitted to go on with the Witness. My Lords, The Managers were aware of this; nevertheless did not at first oppose any Indulgence to the Prisoner that might tend to Justice; but as it is now known what Point the Witness is called to, though I do not suppose the Witness capable of being influenced, yet if a bare Allegation of this Sort is sufficient to put off your Lordships Proceedings, I must submit it to your Lordships, whether it will not give an Opportunity of something to be done which ought not to be done.

Mr. *Noel.*

IT is with great Difficulty and Disinclination, that we can prevail upon ourselves to object to the utmost Candour that can be shewn to the Noble Lord at the Bar. My Lords, This is an Occurrence which, in my little Experience, I never knew to arise. My Lords, I apprehend the Way is, upon this Occasion, to ask the Questions of the Witnesses upon a *Voire dire.* The Noble Lord at the Bar made the Objection, and applied to the Witness for an Answer to that Question, who has positively denied it: If, after that, the Prisoner is to say, I can falsify what the Witness has now sworn; allow me Time for it; and your Lordships should indulge him with it in this Manner; there is Nobody but must be apprehensive of very dangerous Consequences attending it: For any Kind of Evidence may, by that Means, be prevented.

Lord High Steward. My Lords, The Gentlemen of the House of Commons may proceed in their Examination of this Witness; and my Lord *Lovat* will be at Liberty to ask what Questions he pleases, in his Cross-Examination; and will likewise be at Liberty to call Witnesses to prove this particular Fact in his Defence in another Shape; for he may prove this Fact, in order to impeach this Witness's Credit, and probably have as much Effect of it as if it had been properly taken Advantage of.

Mr. Sol. Gen. My Lords, I beg this Witness may be asked, when he first came to live in Lord *Lovat*'s Family; and how long he lived with him?

L. H. S. Sir, you hear the Question.

R. Fraser. I entered into Lord *Lovat*'s Service in *October* 1744.

Mr. Sol. Gen. How long did you continue with him?

R. Fras. I continued in his Service till his Lordship and I were taken Prisoners, the 7th of *June* last.

Mr. Sol. Gen. I beg you may inform their Lordships, whether, in the Month of *July* 1745, you knew of any Information that was given to my Lord *Lovat*, of an Intention of an Insurrection and Invasion; and what Intimation was given of it?

R. Fras. Some time after the 25th *July* 1745, I heard a Gentleman came to my Lord *Lovat*'s House, to tell him, That the Pretender's Son was landed somewhere about *Lochaber.* I heard my Lord *Lovat* say, He did not land like a Prince; that he had no Army with him, and only a few Servants.

Mr. Sol. Gen. What did my Lord *Lovat* say upon that Occasion? Was his Son at Home?

R. Fras. He was at Home, or was then sent for.

Mr. Sol. Gen. Do you know of any Person that was sent by my Lord *Lovat* to see the Pretender at that Time?

R. Fras. Not at that Time; I can't say that I knew of any.

Mr. Sol. Gen. Do you know of any Endeavours that were then used to raise Men upon my Lord *Lovat*'s Estate? And if you do, please to mention the Times.

R. Fras. I remember some time after he dictated a Letter to me, to be sent to Two of the Heads of the Tribes of the *Frasers.*

Mr. Sol. Gen. Name them.

R. Fras. James Fraser of *Foyers*, and *John Fraser* of *Ferraline.*

Mr. Sol. Gen. What was that Letter for?

R. Fras. To get Men ready to join the Master of *Lovat.*

Mr. Sol. Gen. Where were the Men to go with him?

R. Fras. The Letter does not particularize that.

Mr. Sol. Gen. Do you know of any body that was sent to take Lists of the Men to be raised?

R. Fras. I took the Lists of the Names of the Men. My Lord *Lovat*'s Chamberlain ordered me to make a List of the Names of all the Men capable of bearing Arms North of Loch *Ness.*

Mr. Sol. Gen. For what Purpose were those Lists made?

R. Fras. To the best of my Knowledge to join the Master of *Lovat*, with the Pretender.

Mr. Sol. Gen. Were such Lists made out with my Lord *Lovat*'s Privity, or by his Direction?

R. Fraser.

R. Fraſer. I am ſure he was acquainted with it.

Mr. Sol. Gen. How are you ſure he was acquainted with it?

R. Fraſ. Becauſe I went into the Room, and told him what I was doing; and that I was writing the Liſt.

Mr. Sol. Gen. What did he ſay to you upon that Occaſion?

R. Fraſ. I cannot remember now.

Mr. Sol. Gen. Pray, did my Lord *Lovat* ſee the Liſt after it was made out?

R. Fraſ. I can't tell; I returned it to *John Fraſer*, my Lord's Factor.

Mr. Sol. Gen. Do you know of any Meſſage that was ſent or paſſed between my Lord *Lovat*, and Lord *Loudon*, and Lord Preſident?

R. Fraſ. Yes.

Mr. Sol. Gen. What was it about?

R. Fraſ. Several Letters were ſent by my Lord *Loudon*, and my Lord Preſident, to my Lord *Lovat*, to diſſuade him from entering into the Rebellion.

Mr. Sol. Gen. What Anſwer did my Lord *Lovat* make to theſe Letters?

R. Fraſ. He ſaid his Son was ſo obſtinate as to enter into the Rebellion; but that he could not help it.

Mr. Sol. Gen. Was that Fact true? Was the Son ſo obſtinate?

R. Fraſ. No; I am ſure it was not true.

Mr. Sol. Gen. Why are you ſure it was not true?

R. Fraſ. Becauſe, whilſt I was preparing a Letter to the Lord Preſident, which my Lord *Lovat* dictated, wherein he acquainted them of his Son's Obſtinacy in going into the Rebellion (which Letter my Lord directed me not to let any body ſee), his Son the Maſter came in, and aſked me for the Letter; and I refuſing to give it him, the Son took the Letter out of my Hand.

Mr. Sol. Gen. Who took it out of your Hand?

R. Fraſ. The Maſter of *Lovat* took it out of my Hand; and, after reading it, ſaid, Good God, how is this! Accuſe me behind my Back! To call me ſtiff-necked and diſobedient! I will ſet the Saddle upon the right Horſe.

Mr. Sol. Gen. Pray repeat the Anſwer you made laſt.

R. Fraſ. The Maſter of *Lovat* ſaid, If this Letter goes, I will go, and put the Saddle upon the right Horſe, and will go and diſcover all to my Lord Preſident.

Mr. Sol. Gen. What did he mean by putting the Saddle upon the right Horſe?

R. Fraſ. That he would go and diſcover to my Lord Preſident, that his Father, my Lord *Lovat*, had forced him to do what he had done.

Mr. Sol. Gen. Did the Son ſay any Thing to my Lord *Lovat* upon that Occaſion?——*Fraſ.* Not that I know of. The Words *ſtiff-necked and diſobedient* were left out of the Letter.

Mr. Sol. Gen. How came theſe Words to be left out?

R. Fraſ. It was done by the Maſter of *Lovat*'s Order.

Mr. Sol. Gen. Did you hear any Thing that paſſed between Lord *Lovat* and his Son about his Backwardneſs in going into the Rebellion?

R. Fraſ. I heard him blame the Maſter of *Lovat* for being dilatory.

Mr. Sol. Gen. Dilatory in what?——*R. Fraſ.* In raiſing Men.

Mr. Sol. Gen. For what Purpoſe?

R. Fraſ. To join the Pretender's Son.

Mr. Sol. Gen. Do you know any Thing of Lord *Lovat*'s ſending for People, as Painters, or of any Sort, to prepare his Tents?

R. Fraſ. Yes; I myſelf wrote a Letter to his Agent at *Inverneſs*, who was a Painter.

Mr. Sol. Gen. By whoſe Order did you write that Letter?

R. Fraſ. By my Lord *Lovat*'s Order.

Mr. Sol. Gen. To what Purpoſe was the Letter wrote?—*R. Fraſ.* It was to order the Agent, or the Painter, to make ſome Bell-Tents.

Mr. Sol. Gen. What did the Painter do in Conſequence of that Letter?

R. Fraſ. He made them.

Mr. Sol. Gen. Did my Lord *Lovat* know of it?——*R. Fraſ.* Yes.

Mr. Sol. Gen. How do you know he did?——*R. Fraſ.* Becauſe I was with my Lord *Lovat* when the Man was making them.

Mr. Sol. Gen. What are Bell-Tents?

R. Fraſ. They are Lodges to keep Arms dry from the Rain.

Mr. Sol. Gen. Did you know of any Colours being made?

R. Fraſ. Yes; we had one Pair of new ones made, and another Pair mended.

Mr. Sol. Gen. About what Time was that? and what Month?

R. Fraſ. About the Month of *September*, I think.

Mr. Sol. Gen. Was it before the firſt Rendezvous?

R. Fraſ. I think it was after the firſt Rendezvous.

Mr. Sol. Gen. Can you give an Account of the Men being rendezvouſed, and whether it was done by my Lord *Lovat*'s Directions, or under his Authority?——*R. Fraſ.* They were rendezvouſed.

Mr. Sol. Gen. Where were they rendezvouſed?

R. Fraſ. Upon that Part of Lord *Lovat*'s Eſtate near *Caſtle-Downey*.

Mr. Sol. Gen. About what Time was this? in what Month?

R. Fraſ. In the Month of *Auguſt*.

Mr. Sol. Gen, What was the particular Purpoſe of their being reviewed then?

R. Fraſ. To ſee who was capable of bearing Arms, and who had any.

Mr. Sol. Gen. Were the Officers appointed then?

R. Fraſ. No, I believe not.

Mr. Sol. Gen. How do you know that the Priſoner was made privy to this Rendezvous?

R. Fraſ. Becauſe they came back to my Lord's Houſe afterwards.

Mr. Sol. Gen. Were they in Officers Dreſs?

R. Fraſ. They had white Cockades on.

Mr. Sol. Gen. How far was the Place of Rendezvous from Lord *Lovat*'s Houſe?——*R. Fraſ.* About a Quarter of a Mile.

Mr. Sol. Gen. Were the Perſons there Tenants to my Lord *Lovat*?

R. Fraſ. They were his Tenants.

Mr. Sol. Gen. What Arms had they?——*R. Fraſ.* I can't ſay: I had my Lord's Liberty to go there and ſee them; but I did not ſtay there.

Mr. Sol. Gen. Do you know of any other Rendezvous?

R. Fraſer. About a Fortnight afterwards there was another Rendezvous.

Mr. Sol. Gen. Do you know of any Ammunition, Muſkets, or Arms, that were given to the Men?

R. Fraſ. I don't know of any Arms that were given them. There was a Barrel of Powder ſent from *Inverneſs*.

Mr. Sol. Gen. By whoſe Order was that done?

R. Fraſ. By my Lord *Lovat*'s Order; I wrote the Letter.

Mr. Sol. Gen. What was done with that Powder?

R. Fraſ. It was diſtributed among the Men.

Mr. Sol. Gen. How do you know that it was done by my Lord *Lovat*'s Order?——*R. Fraſ.* Becauſe the Houſe-keeper being diſgraced, I got the Key of the Place where it was, and ſaw the Powder and Bullets there.

Mr. Sol. Gen. Was the Key delivered you for that Uſe?

R. Fraſ. I told my Lord of my having the Key.

Mr. Sol. Gen. Do you know of any Bonnets being provided?

R. Fraſ. There were Bonnets provided for them.

Mr. Sol. Gen. By whoſe Order?

R. Fraſ. By my Lord *Lovat*'s.

Mr. Sol. Gen. For what Purpoſe were they provided?

R. Fraſ. They were given to the Men.

Mr. Sol. Gen. Do you know where the Officers went after the laſt Rendezvous?

R. Fraſ. The Officers came back that Night.

Mr. Sol. Gen. Where did they come to?

R. Fraſ. They came to my Lord *Lovat*'s Houſe.

Mr. Sol. Gen. Had they Cockades?

R. Fraſ. They had white Cockades in their Bonnets.

Mr. Sol. Gen. Do you know for what Sign or Mark they wore white Cockades?

R. Fraſ. It was a Symptom of their being People to join the Pretender.

Mr. Sol. Gen. Do you know of any thing that happened at my Lord *Lovat*'s after the Battle of *Preſton-Pans*?

R. Fraſ. *Fraſer* of *Dallcraige* came to *Caſtle-Downey* with an Account of the Battle of *Preſton-Pans*.

Mr. Sol. Gen. What did my Lord *Lovat* ſay to him upon that Occaſion?

R. Fraſ. He ſaid, That his Men ſhould be ſoon ready to go South.

Mr. Sol. Gen. For what Purpoſe?

R. Fraſ. To join the Rebels, I underſtood.

Mr. Sol. Gen. Do you know of any Men paſſing by my Lord *Lovat*'s Houſe?

R. Fraſ. My Lord *Cromertie*'s Regiment paſſed by; and he and the *M'Donalds*, and ſeveral others, were entertained there that Night.

Mr. Sol. Gen. Did you hear any thing that paſſed upon that Occaſion? any thing that was ſaid by my Lord *Lovat* upon it.

R. Fraſ. Yes, that it was owing to the Maſter of *Lovat*'s Diſobedience, that the *Fraſers* were not ready as ſoon as any other.

Mr. Sol. Gen. Was there any thing elſe that paſſed then, or any particular Healths drank?

R. Fraſ. Yes, the Health of the Pretender's Son was drank.

Mr. Sol. Gen. By what Name?

R. Fraſ. By the Name of Prince *Charles*.

Mr. Sol. Gen. Pray at what time did the Maſter of *Lovat* go and join the Rebels?

R. Fraſ. It was between the 10th and 20th of *December* that he went. My Lord *Lovat* was taken Priſoner on the 10th or 11th of *December*, and eſcaped about the 19th or 20th; and at the ſame time the Maſter marched with the *Fraſers*.

Mr. Sol. Gen. Was my Lord *Lovat* extremely diſpleaſed at his Son's ſo marching? or did he diſapprove of it?

R. Fraſ. No.

Mr. Sol. Gen. Did he ſend Word for his Son to come back again?

R. Fraſ. He did afterwards ſend for him back, to raiſe more Men.

Mr. Sol. Gen. Do you know of any Perſon who was concerned in the Rebellion, that after the Battle of *Falkirke*, came to my Lord *Lovat*'s Houſe? and whether any thing paſſed in Company then, and what it was?

R. Fraſ. Yes; there was a *French* Gentleman came, that was ſaid to be the *French* Embaſſador.

Mr. Sol. Gen. Where did he come to?

F. Fraſ. To a Place belonging to my Lord *Lovat*.

Mr. Sol. Gen. When was that?

R. Fraſ. It was after their Retreat from *Stirling*.

Mr. Sol. Gen. Do you know who was there beſides?

R. Fraſ. There were ſeveral others, particularly *Lochiel*, *Keppoch*, *Cameron*.

Mr. Sol. Gen. Do you know of my Lord *Lovat*'s ſaying any thing to them about his aſſiſting them?

R. Fraſ. He told them, he hoped they would excuſe him, on account of his Age and Infirmities.

Mr. Sol. Gen. Did he ſay any thing to ſhew his Zeal for their Succeſs, as he did not go himſelf?

R. Fraſ. Yes; he ſaid, I cannot go myſelf; but I will ſend my only Son, the Darling of my Life.

Mr. Sol. Gen. Do you know of any thing that paſſed between my Lord *Lovat* and his Son after that?

R. Fraſ. Yes; the Maſter came to *Gortuleg*; and my Lord had lately received a Letter from one Mr. *Sheridan*, who had ſome Office under the Pretender's Son, complaining of my Lord's not getting his Men ready.

Mr. Sol. Gen. Do you know of any thing that paſſed between them in relation to the Men having Leave to go home?

R. Fraſ. Yes; my Lord was angry with the Maſter for giving them Leave.

Mr. Sol. Gen. Pray, how long was this before the Battle of *Culloden*?

R. Fraſ. This was in the Month of *February*.

Mr. Sol. Gen. Do you know any thing of the Pretender's Son's coming to my Lord's Houſe after the Battle of *Culloden*?

R. Fraſ. Yes; the very Night after the Battle, the Pretender's Son came to my Lord's.

Mr. Sol. Gen.

Mr. Sol. Gen. Was my Lord *Lovat* there then?——*R. Fraſ.* Yes.

Mr. Sol. Gen. Do you know any thing of what paſſed between them; or what my Lord *Lovat* ſaid to him?

R. Fraſ. He made ſome Apology for not joining him in Perſon.

Mr. Sol. Gen. Did he mention any thing to ſhew his Zeal for him, tho' he did not join him in Perſon?

R. Fraſ. He ſaid he had ſent his Son to join him, whom he loved more than himſelf.

Mr. Sol. Gen. Did he mention his having ſent any more?

R. Fraſ. Yes; he mentioned his having ſent his Clan.

Mr. Sol. Gen. Was the Excuſe accepted; or what did the Pretender's Son ſay to him?

R. Fraſ. I cannot tell particularly: I do not underſtand *French*, and they ſpoke in *French*

Mr. Sol. Gen. Did all the Converſation, which paſſed between them, paſs in *French*?

R. Fraſ. No; they ſpoke ſometimes *Engliſh*, and at other times they ſpoke *French*.

Mr. Sol. Gen. What Language was that Diſcourſe ſpoken in, which you have given an Account of as to Lord *Lovat*'s Son and Clan?

R. Fraſ. It was in *Engliſh*.

Mr. Sol. Gen. You have ſaid you did not underſtand all their Diſcourſe: Pray did you perceive any other Demonſtrations of Friendſhip that paſſed between them?

R. Fraſ. Yes; they embraced one another.

Mr. Sol. Gen. Do you know of any Conſultation or Meeting of the General Officers of the Rebel Army, which my Lord *Lovat* had at that Time?——*R. Fraſ.* Yes.

Mr. Sol. Gen. Who were preſent?

R. Fraſ. There were ſeveral Gentlemen preſent.

Mr. Sol. Gen. Name them.

R. Fraſ. There was *Cameron* of *Lochiel*, *John Murray* of *Broughton*, *Barriſdale*, *John Roy Stuart*, *Glenbucket*, and others.

Mr. Sol Gen. How long was this after the Battle of *Culloden*?

R. Fraſ. It was not very long.

Mr. Sol. Gen. How long was it?

R. Fraſ. A matter of Ten or Twelve Days.

Mr. Sol. Gen. Was there any body elſe there? Was the Young Pretender there?——*R. Fraſ.* No; he was not.

Mr. Sol. Gen. Do you know any thing of the Converſation that paſſed then, or the Reſult of the Conſultation?

R. Fraſ. No; I was turned out of the Room: I did not hear.

Mr. Sol. Gen. Do you know of any Money that was diſtributed? To whom was it diſtributed, by whom, and for what Purpoſe?

R. Fraſ. I ſaw the Pretender's Son's Treaſurer give Money.

Mr. Sol. Gen. For what Purpoſe was the Money given?

R. Fraſ. To raiſe Men.

Mr. Sol. Gen. Do you know what kind of Money was ſo given?

R. Fraſ. It was *French Louidors*.

Mr. Sol. Gen. Was you with the Priſoner till the Time he was taken? If you was, give an Account of his Retreat.

R. Fraſ. We ſtaid in an Iſland for a Month; and when we eſcaped, we were obliged to take a Boat to come down a Loch.

Mr. Sol. Gen. What was the Name of the Iſland?

R. Fraſ. The Iſland of *Morer*.

Mr. Sol. Gen. Had you been with Lord *Lovat* from the Time of the Battle of *Culloden* to that Time?

R. Fraſ. We were in the Iſland from the Beginning of *May* till the 7th of *June*.

Mr. Sol. Gen. With what View did my Lord *Lovat* come there?

R. Fraſ. To ſcreen him from the King's Troops, which were then in Purſuit of him, and ſeveral others of them.

Mr. Sol. Gen. Do you know of any thing that paſſed between the Maſter of *Lovat* and him at that Time?

R. Fraſ. I remember the Maſter propoſed it to him to ſurrender himſelf to the Duke; but my Lord *Lovat* adviſed him againſt it, and ſaid he could not do it conſiſtently with his Honour; and he did not think he had been ſo mean-ſpirited as to offer it.

Mr. Sol. Gen. Do you know any thing of any Advice that was given by my Lord *Lovat* about the Raiſing of Men?

R. Fraſ. Yes; my Lord *Lovat* was preſent at *Morer*, where they were ſpeaking of the Raiſing of Men.

Mr. Sol. Gen. Had the Priſoner any Guard that attended him whilſt he was in *Morer*?

R. Fraſ. Yes; he had a Guard of twenty Men to attend him.

Mr. Sol. Gen. Did they reſiſt any of the King's Forces that might oppoſe them?

R. Fraſ. Not that I know of.

Mr. Sol. Gen. By whom were they paid?---*R. Fraſ.* I paid them.

Mr. Sol. Gen. By whoſe Directions did you pay them?

R. Fraſ. By my Lord *Lovat*'s Directions.

Mr. Sol. Gen. Did you apprehend, that the Maſter of *Lovat* carried his Men into the Rebel Army without his Father's Permiſſion?

R. Fraſ. No; I am very ſure he could not.

Mr. Sol. Gen. Why are you ſure of it?

R. Fraſ. Becauſe my Lord *Lovat* is a very ſtrict Man; and none of his Children could have done it without his Conſent.

Mr. Sol. Gen. Had my Lord *Lovat* a Power over them?

R. Fraſ. Yes; he had a very great Power over them.

Mr. Sol. Gen. Pray, was the Guard my Lord *Lovat* had, armed?

R. Fraſ. Yes.

Mr. Sol. Gen. You ſay there was no Oppoſition given by them to any of the King's Forces?

R. Fraſ. No; I think there was two or three of them fired: But my Lord *Lovat* ſent me out to tell them not to fire.

Mr. Sol. Gen. Do you know any thing of my Lord *Lovat*'s ſoliciting a Commiſſion from the Pretender, to be Lieutenant-General of the *Highlands*, or a Patent to be Duke?

R. Fraſ. I remember, ſome time after I went into my Lord *Lovat*'s Service, which was the 18th of *October* 1744, I ſaw in the Deſk a Copy of an old Patent, which gave the Title of Duke to Lord *Lovat* only.

Mr. Sol. Gen. What other Papers did you ſee there?

R. Fraſ. Some time after I ſaw a new Patent, where the Title was to deſcend to the Heirs Male of the Family.

Mr. Sol. Gen. Did you hear from my Lord *Lovat* how he obtained the Patent?

R. Fraſ. I have heard my Lord *Lovat* ſay, That his Patent lay in the Hands of one *Drummond* in *France*.

Mr. Sol. Gen. Did he ſay what *Drummond*?

R. Fraſ. To the beſt of my Knowledge, he ſaid it was *Drummond* of *Bobaldie*.

Mr. Sol. Gen. Do you know any thing of any other Commiſſion which my Lord *Lovat* had?

R. Fraſ. Yes; I ſaw a Commiſſion for his being Lieutenant-General of the *Highlands*.

Mr. Sol. Gen. Where did you ſee that Commiſſion?

R. Fraſ. Lying upon a Table in my Lord's Room. I read it, and made a Copy of it by my Lord's Order.

Mr. Sol. Gen. Are you ſure whether he himſelf ordered you to copy it?

R. Fraſ. I am ſure he ordered me to make a Copy of it.

Mr. Sol. Gen. Had you any other Diſcourſe with him about it? Did you hear with what View he had got it?

R. Fraſ. No; I had no other than what I have now informed you of.

Mr. Sol. Gen. Do you know of any Complaint my Lord *Lovat* ever made about an Independent Company being taken from him?

R. Fraſ. I heard him complain, that the Court did not uſe him civilly in taking away his Company.

Mr. Sol. Gen. When did you hear him make that Complaint?

R. Fraſ. Frequently in Company, in ſpeaking upon the Subject.

Mr. Sol. Gen. Pray what did my Lord *Lovat* ſay upon that Occaſion?

R. Fraſ. I heard him ſay, That it was intirely owing to General *Wade*; and that he did not blame the Government.

Mr. Sol. Gen. Did he draw any Conſequences from that?

R. Fraſ. I have heard him ſpeak extraordinary well of his late Maſter King *George*.

Mr. Sol. Gen. What more did he ſay about this Treatment?

R. Fraſ. He ſaid, That the Court uſed him ſo ill, that he could not help doing what he was doing.

Mr. Sol. Gen. What was he then doing?

R. Fraſ. Raiſing Men to join in the Rebellion. He ſaid he had no Diſlike to his preſent Majeſty, but only to the Perſons who took away his Commiſſion.

Mr. Sol. Gen. Pray what do you apprehend was the Meaning of that Expreſſion of the Maſter of *Lovat*, that he would go to the Lord Preſident, and diſcover all?

R. Fraſer. I underſtood, that he meant, that he would go and join his Majeſty's Forces.

Mr. Sol. Gen. My Lords, We have done with the Examination of this Witneſs for the preſent. We ſhall have Occaſion, by-and-bye, to call him, to prove an Exhibit or Two.

Lord High Steward. My Lord *Lovat*, The Gentlemen of the Houſe of Commons have gone thro' their Examination of this Witneſs: Would your Lordſhip aſk him any Queſtions?

Lord *Lovat.* I am not able to aſk him any Queſtions.

Then the Witneſs, by Order of the Lord High Steward, withdrew; and the Lord High Steward returning back to his Chair, the Houſe was moved to adjourn to the Chamber of Parliament.

Lord High Steward. Is it your Lordſhips Pleaſure to adjourn to the Chamber of Parliament?——*Lords.* Ay, Ay.

The Houſe was accordingly adjourned to the Chamber of Parliament; and the Lords, and others, returned in the ſame Order, in which they came down: And the Houſe being there reſumed,

Ordered, That this Houſe will proceed further in the Tryal of *Simon* Lord *Lovat* in *Weſtminſter-Hall*, To-morrow, at Eleven of the Clock in the Forenoon: And

A Meſſage was ſent to the Houſe of Commons, by Mr. *Eld* and Mr. *Thurſton*, to acquaint them therewith.

Ordered, That the Lieutenant of the *Tower* of *London*, or his Deputy, do take back the ſaid Lord *Lovat*, and bring him again to the Bar of this Houſe in *Weſtminſter-Hall* To-morrow, at Eleven of the Clock in the Forenoon.

Tueſday *the* 10*th of* March, 1746.

The Second Day.

THE Lords, and others, came from the Chamber of Parliament into *Weſtminſter-Hall*, in the ſame Order as on *Monday*: Where the Commons, and their Managers, were in the Seats prepared for them reſpectively, as before: And the Lords took their Places in the Court; and the Lord High Steward in his Chair.

Lord High Steward. The Houſe is reſumed. Is it your Lordſhips Pleaſure, that the Judges have Leave to be covered?

Lords. Ay, ay.

Then the Serjeant at Arms made Proclamation for Silence; and afterwards the following Proclamation:

Serjeant at Arms. Oyes, Oyes, Oyes! Lieutenant of the *Tower* of *London*, Bring forth your Priſoner, *Simon* Lord *Lovat*, to the Bar, purſuant to the Order of the Houſe of Lords, to you directed.

The Deputy-Governor of the *Tower* brought the Priſoner to the Bar, in the like manner as before. And then he kneeled down.

L. H. S. Your Lordſhip may riſe.

Then the Lord High Steward aſked Leave to go down to the Table: Which was done.

L. H. S. Gentlemen of the Houſe of Commons, You may proceed in your Evidence.

Mr. *Noel.* My Lords, The next Witneſs we beg Leave to call in Support of the Charge, is *John Murray* of *Broughton*.

John Murray of *Broughton* came into Court.

Mr. *Noel.* My Lords, We deſire that he may be ſworn.

Lord *Lovat.* My Lords, I have Objections againſt this Witneſs. One or two I apprehend to be eſſential.

L. H. S. Make your Objections.

Lord *Lovat*. As I cannot read myſelf, I deſire your Lordſhips will give Leave to the Clerk to read them.

Clerk reads.

My Objection is, That he is attainted by an Act of Parliament made in the laſt Seſſion, Page 443; and that he did not ſurrender himſelf before the 12th of *July* laſt.

Mr. Att. Gen. My Lords, I obſerve, that the noble Lord at the Bar ſaid, That he had ſeveral Objections to the examining this Witneſs; and that One or Two of them were eſſential; but the noble Lord has not mentioned more than one. I preſume, my Lords, it would be proper that he ſhould name all his Objections at once, that the Managers may have an Opportunity of anſwering them all, and receiving your Lordſhips Judgment upon the Whole: Therefore, if he has any other Objections to offer, it would be proper he ſhould mention them now to your Lordſhips.

Lord *Lovat*. My Lords, I ſubmit it to your Lordſhips, that That is a very odd Propoſition. I give your Lordſhips an eſſential one now; and when that is anſwered, I have another. I am not to be directed by thoſe who are my Perſecutors.

L. H. S. My Lord *Lovat*, You are not to be directed by your Accuſers, but by the Lords who are your Judges; and the Courſe of Proceeding in this, and all other Courts, is, That a Perſon who objects to any Witneſs, ſhould name all his Objections at the ſame time; and it is the more material in this Court, as it tends to prevent the Trouble of making ſeveral unneceſſary Adjournments.

Lord *Lovat*. My Lords, As this Objection is very eſſential, I pray that it may be anſwered before I make another.

Lord *Talbot*. My Lords, If this is a material Objection to the Witneſs, then there will be no Occaſion for any other; but if it is an immaterial one, then your Lordſhips may go into any other; but the Way propoſed by the Managers may be very detrimental to the unhappy Perſon at the Bar.

L. H. S. Your Lordſhips hear what is propoſed; and the Queſtion is, Whether the Noble Lord at the Bar ſhall name all his Objections now, or take them up by One?

Sir *William Yonge*. My Lords, I ſhould hope, that, in any Courſe of Proceeding, where Objections of this Kind are made, they ſhould be made all together; for if they are made ſeparate, we muſt conſequently make diſtinct Anſwers to them all; which may oblige your Lordſhips to adjourn often to the Chamber of Parliament; which will create a great and unneceſſary Delay of Time: And, my Lords, there can be no Objection to his naming the Whole at once, ſince they will all be diſtinctly conſidered by your Lordſhips, and undoubtedly receive diſtinct Anſwers. I therefore humbly inſiſt, That he may be obliged to name all his Objections at once.

Mr. *Noel*. My Lords, What we are now upon, is no Point of Law at all: It is ſingly, Whether the noble Lord at the Bar, as is uſual, ſhould not name all his Objections at once? When he does name them, then to ſuch as are clear Points of Law, he muſt be heard by his Counſel: But, at preſent, my Lords, we are upon a Queſtion concerning the Courſe of Proceeding, Whether he ſhall name them all at once? that they may be taken into Conſideration at the ſame Time.

My Lords, One Thing ſtruck me in a very extraordinary Manner: It was ſaid by the noble Lord at the Bar, That he was not to be directed by his Perſecutors. My Lords, We are no Perſecutors; we perſecute no Man; we are entruſted by the Commons, who carry on this Proſecution againſt the noble Lord at the Bar for Treaſon; and we proſecute for the Preſervation of the King's Government, and the Laws of the Land.

Lord *Lovat*. My Lords, I ſaid I was not to be directed by thoſe who accuſed me. Your Lordſhips cannot expect, I can ſay what I have to offer in an eloquent Manner. My Lords, Should the Saving of a little Time be a Reaſon for taking away a Perſon's Life? I hope theſe will not act like the Parricides who took off the Head of both Kingdoms in a Day, by their Proſecution. I am a Peer of this Land; and I think no Excuſe of ſaving Time ſhould be allowed as a Reaſon to deſtroy me.

L. H. S. My Lord *Lovat*, The Lords will uſe all the Deliberation, and give you all the Time that is requiſite for your Defence; but I muſt beg your Lordſhip will have ſo much Conſideration as to keep your Temper, and not ſuffer yourſelf to be hurried into Paſſion; for that may greatly prejudice you in making your Defence. Your Lordſhip will find the Advantage in your Defence, by keeping your Temper.

Lord *Lovat*. I give your Lordſhip my humble Thanks: And, ſince your Lordſhips will not allow me Counſel, I have ſpoke the little Nonſenſe I had to ſay; but now your Lordſhips ſhall hear me ſay nothing out of Temper.

L. H. S. My Lord *Lovat*, The Queſtion now is, Whether you ſhall name all your Objections at once? I muſt acquaint your Lordſhip, That is the Rule in the Courts below, That if ſeveral Objections are made to a Witneſs, they are all named at once, in order to prevent unneceſſary Delays.

Lord *Lovat*. My Lords, To ſhew how much I deſire to ſave Time (tho', according to the Courſe of Nature, my Time can be but ſhort), I am ſo far from deſiring to give your Lordſhips Trouble, or to prolong Time, that I do inſiſt upon this Objection to the Witneſs, and rely upon it as the only material Objection.

Then the Lord High Steward directed the Act of the laſt Seſſion of Parliament, for the Attainder of ſeveral Perſons, and, amongſt others, of *John Murray* of *Broughton*, to be read: And the ſame was read accordingly by the Clerk at the Table.

L. H. S. Gentlemen of the Houſe of Commons, You hear the Objection made by my Lord *Lovat* againſt this Witneſs: Which is, That he ſtands attainted by the Act of Parliament juſt now read; and that he did not ſurrender himſelf before the 12th of *July*, the Day preſcribed by the Act. And this being a Queſtion of Law, he deſires to be heard by his Counſel to it.

Mr. Attorney General. My Lords, We have that which will appear to your Lordſhips, to be a plain and a clear Anſwer to it. It appears, that this is an Act of Parliament for attainting ſeveral Perſons, upon a certain Condition; which is, That if thoſe Perſons do not, before the 12th of *July* 1746, ſurrender themſelves to One of his Majeſty's Juſtices of the Peace, then every one, ſo not ſurrendering himſelf, ſhall be adjudged to be, and is thereby, attainted of High Treaſon. And our Anſwer to it is this, That the Condition has been complied with by Mr. *Murray*. I ſhall readily own, That, ſuppoſing the Condition had not been complied with, according to Law, in that Caſe Mr. *Murray*, being an attainted Perſon, could not be a Witneſs, unleſs he had been pardoned. But our Anſwer to that will be, That he hath ſurrendered himſelf; and the Surrender will appear upon Record; and the Manner of it is this: The laſt Term, Mr. *Murray* was brought by *Habeas Corpus* to the Bar of the Court of *King's-Bench*; and a Tranſcript of the Act of Parliament being by *Mittimus* and *Certiorari* brought into that Court; and Mr. *Murray* brought up, and perſonally appearing before the Juſtices of the Court of *King's-Bench*; and being aſked by them, What he had to ſay, why he ſhould not ſuffer Death, according to Law? upon a Suppoſition, that he was attainted upon that Act of Parliament; he pleaded in general, That he was one of the Perſons named in the Act; and that, long before the 12th of *July* 1746, to wit, on the 28th of *June* then laſt, he did, at *Edinburgh*, in due Manner, according to the Meaning of the Act, render himſelf to *Andrew Fletcher*, Lord Juſtice Clerk, and one of his Majeſty's Juſtices of the Peace: And he ſays, That the ſaid *Andrew Fletcher* had then Authority to admit him to make ſuch Surrender. He then ſtates, That on the ſaid 28th of *June*, in conſequence of this Surrender, he was committed by the Lord Juſtice Clerk to Priſon, according to the Directions of the Act of Parliament; and that he had ever ſince that Surrender remained in Cuſtody, and ſtill continues in Priſon, and is ready to take his Trial, and ſubmit himſelf to Juſtice. My Lords, He having pleaded this Plea, the Attorney General, by virtue of a Warrant from his Majeſty, confeſſed the Plea to be true: Upon which the Court of *King's-Bench* made a Record of it. He was remanded back to Priſon, and there remains to anſwer, according to Law, when he ſhall be called to an Account for this High Treaſon. My Lords, We have the Record, and beg it may be read.

Lord *Lovat*. My Lords, I object to the reading this Record, becauſe it is no Evidence againſt me; and I beg my Counſel may be heard to it. I am a Stranger to the Record, which is grounded only upon the Confeſſion of the Attorney General, unſupported by any Proof; and I deſire my Counſel may be now heard.

Mr. Att. Gen. My Lords, As to the Objection againſt reading this Record, I apprehend there is no Foundation for it. It is a Record of the Court of *King's-Bench*, concerning the Perſon to whom the noble Lord at the Bar has objected, as being attainted; and, upon the Face of the Record, it will appear, that he is not a Perſon attainted. As to what the noble Lord ſays, That he is no Party to the Record, It is true he is not; but it is a Record notwithſtanding. It is a Record upon the Point in Queſtion, to ſhew whether or no the Perſon who is propoſed as a Witneſs, is attainted: And there is no other Way by which he can have an Opportunity, in a Court of Juſtice, to avoid that Attainder, but by being brought into that Court, and aſked, What he has to ſay why Execution ſhould not be awarded againſt him, upon the Foundation of his being attainted by the Act? The Law gives him a Right to make his Defence againſt that Demand of Execution. He has done it, by averring a Fact of a Surrender, purſuant to the Act; and the Attorney General having confeſſed that Fact, it appears, that the Witneſs is not attainted; and the whole is (as it ought to be) entered on Record, which is the proper Evidence of his not being attainted; and therefore muſt be proper to be read to your Lordſhips, to anſwer an Objection, founded on a Suppoſition, that he is, though the Priſoner is not, nor could poſſibly be, a Party to it.

L. H. S. My Lord *Lovat*, You have heard what the Managers ſay: Do you now inſiſt upon the Objection to the Reading of the Record? or will you reſerve your Objection to the Witneſs till after the Record has been read?

Lord *Lovat*. I deſire, that it ſhould not be read.

L. H. S. Do you deſire, that your Counſel may be heard to that Queſtion, as a Point of Law?

Lord *Lovat*. Yes, I do.

Mr. Att. Gen. To be ſure, my Lords, if it is any thing, it is a Point of Law; but your Lordſhips will judge whether it is a Point of Doubt; and therefore deſerves to have Counſel heard to it.

L. H. S. If my Lord *Lovat* inſiſts upon it, his Counſel muſt be heard to this Point.

Mr. Forrester.

My Lords,

I AM, by your Lordſhips Order, aſſigned Counſel to the noble Lord the Priſoner at the Bar, to adviſe and aſſiſt him in Matters of Law. The Objection that the noble Lord has made to the reading this Record, is, That it is grounded upon a Plea of Mr. *Murray*, confeſſed by his Majeſty's Attorney General, to which the noble Lord is no Party; that Nobody is bound by that Confeſſion but the Crown; and conſequently, that it cannot be read againſt the noble Lord at the Bar. And, my Lords, I apprehend, that a Plea reſting merely upon the Confeſſion of the King, and which, in Fact, may or may not be true, ought not, in point of Law or Juſtice, to conclude any Party but the Crown, in whom alone reſided the Power of confeſſing it.

My Lords, I am ready to acknowledge, that the Law of *England* gives the greateſt Credit to Proofs by Matter of Record; and that they are Proofs of the higheſt Nature: But, my Lords, there is a great Difference between Records grounded upon the Confeſſion of the Party, and Records upon Verdicts.

The Reaſon is, That in Records grounded upon Confeſſion, the Party may come in, and ſuggeſt a Thing that is true or falſe: And it would be extremely hard, in regard to Third Perſons, who may be injured by it; I ſay, it would be extremely injurious, if they had no Method to be let in, to falſify a Plea thus confeſſed. But where a Record is grounded upon a Verdict, and Judgment given thereupon, the Caſe is very different, becauſe there is always a full Hearing before a Court of Juſtice; the

the Facts are proved by Teſtimony of the Witneſſes; and the Jury give their Verdict upon ſuch Proofs: So that both the Matters of Fact and Law, if any ariſe, being fully debated and determined, it is highly reaſonable ſuch Proceedings ſhould be concluſive, upon the Maxim, *Expedit reipublicæ ut ſit finis litium*; ſince, if it was not, every Fact might be called in queſtion over and over again; and ſo Courts of Juſtice would never come to an End of the Buſineſs before them. My Lords, The Diſtinction that I make is not purely of my own Imagination; your Lordſhips will find it in the beſt Writers on the Crown Law. My Lord *Coke*, in his *Third Inſt.* fol. 231. and Lord Chief Juſtice *Hale*, in the Firſt Volume of his *Hiſtory of the Pleas of the Crown*, fol. 361. tells us, That if a Tenant in Fee aliens his Lands, and then is attainted of Treaſon, by Verdict upon an Indictment, ſuppoſing the Offence committed before the Alienation, the Alienee cannot falſify the Attainder, upon a Suppoſition, that there was no Treaſon committed before the Alienation; but that, had the Attainder been by Confeſſion, the Alienee might falſify the Attainder in the very Point of the Treaſon, there being nothing concluſive done by the Alienor. This, my Lords, I apprehend is extremely ſtrong to the preſent Purpoſe: Your Lordſhips will be pleaſed to obſerve how far it goes; it reſpects the Crown in point of Intereſt, the Lands actually forfeited to and veſted in the Crown by the Attainder; which yet being grounded only on the Confeſſion of the Party, cannot operate to injure a Third Perſon, but he may ſet it aſide, and recover his Lands again, notwithſtanding the Record by which it appears, that the Alienor committed Treaſon, and ſold the Lands after the Treaſon actually committed. My Lords, I am aware of an Objection that may be made: It will perhaps be ſaid, That it was in the Power of the Crown to have fully eſtabliſhed Mr. *Murray*'s Credit, by taking another Method, that of granting him a Pardon; which would have removed all Objection. My Lords, I grant it would; and had it been done, the noble Lord at the Bar, nor his Counſel, would not have troubled your Lordſhips with any Objections. But, my Lords, there is a very wide Difference between the two Methods: A Pardon takes away, as Lord *Hobart* expreſſes, both *pœnam & reatum*; it obliterates the Crime as much as if there had been no Crime at all; and when that has been once declared by the Crown, it is concluſive to all People: A Pardon removes all Objections to the Perſon, and to his Character. But the preſent Caſe is extremely different; for the Subſtance of *Murray*'s Plea, tho' confeſſed by the Attorney General, ſtill remains a Matter of Doubt, and a Matter of Evidence. My Lords, That Mr. *Murray* appeared in the Court of *King's-Bench*, that he pleaded he was the Perſon named in the Act, ſo far is true, and ſo far I allow: But, my Lords, notwithſtanding he pleaded that he ſurrendered on the 28th *June*, and was then committed to Priſon, this may be falſe; Evidence might have been produced to the contrary; and, upon that Evidence, it might have appeared, that he did not ſurrender before the 12th of *July*.

My Lords, ſhould that happen to be the Caſe, in what Condition would a Third Perſon be, was this Proceeding to be concluſive againſt him? It is a Maxim in Law, that *Actus legis nemini facit injuriam*. The Maxim holds equally ſtrong as to the Acts of the Crown; and, if our Books are not ſo explicit on the latter as the former Head, their Silence proceeds from the great Modeſty of our Laws, which, as they repoſe the higheſt Truſt in the Honour and Juſtice of the Crown, won't ſuppoſe its Prerogative will ever be turned to the Subject's Detriment: And indeed right Reaſon tells us, that neither the Acts of the Crown, or of any Party whatſoever, ought to affect a Third Perſon, who was a Stranger to them, and who has had no Opportunity of controverting them.

My Lords, I would trouble your Lordſhips with a very ſhort Caſe to illuſtrate what I am contending for: A Copyholder is attainted, and flies, and the Land eſcheats to the Lord: Suppoſe that he is afterwards taken, and brought up into the Court of *King's-Bench*, and there pleads, that he is not the Man; and that Plea is confeſſed by the Attorney General; would this be Evidence againſt the Lord, who had acquired a Property in the Land by Eſcheat? Would he be concluded by that Proceeding? Would the Tenant, by ſaying, I have pleaded I am not the Man, and the Attorney General has confeſſed it, avail himſelf againſt the Lord? My Lords, here is to be an Intereſt diveſted out of a Perſon by a mere Confeſſion of the Parties, in a Proceeding to which he is a Stranger, and was never admitted to litigate: And as the Lord by Eſcheat would not be concluded in the Caſe I juſt now put, I do not ſee any Diſtinction can be made between that and the preſent.

The noble Lord at the Bar has a Right to object to every Perſon attainted; and that Right cannot be taken away by any Proceeding between other Perſons, to which he is no Party.

My Lords, the Caſe is rather ſtronger here; becauſe, by the ſame Reaſon that Mr. *Murray* is enabled to be a Witneſs, by having pleaded, that he ſurrendered within the Time limited by the Act, and that Plea confeſſed by the Attorney General, if a Perſon actually attainted by Verdict and Judgment (which is the higheſt Kind of Attainder) ſhould, upon any Occaſion, be brought up to the Court of *King's-Bench*, and aſked why Execution ſhould not be awarded againſt him, that he ſhould deny, as happened in *Oxey*'s Caſe, his being the ſame Perſon, and that Denial be confeſſed by the Attorney General, this Man, whom the Law diſables by his Attainder for an Offence of the higheſt Kind, from giving Teſtimony in any Caſe, the Attorney General would, by his bare Confeſſion, reſtore to Credit, and enable to give Evidence in any Caſe.

This would be inveſting the Attorney General with a legiſlative Power; and that, I believe, your Lordſhips will ſcarcely think proper or reaſonable.

Mr. Ford.

My Lords,

I AM likewiſe aſſigned of Counſel for the Noble Lord at the Bar. And the Queſtion before your Lordſhips is, Whether the Record, now produced, can be received in Evidence to repel the Objection that ariſes from the late Act of Parliament to Mr. *Murray*'s Evidence?

By that Statute, he is actually attainted, unleſs he ſurrendered before the 12th of *July* 1746; and, if attainted, it is admitted by the Gentlemen of the Houſe of Commons, that he is incapable of being a Witneſs.

My Lords, the great Conſequence of Queſtions of this Nature is obvious to every one, the Juſtice of all judicial Determinations depending intirely on the Veracity of Witneſſes, who are to prove the Facts, upon which ſuch Determinations are to be founded: And there can ſcarcely ariſe a Queſtion relating to Evidence of greater Importance to any Man, than the preſent to the noble Lord at the Bar, whoſe Eſtate, Life, and Honours, depend on the Evidence that may be received againſt him; and therefore your Lordſhips will be particularly cautious that he ſhall not be affected by any but legal, unexceptionable Witneſſes.

As to the Record now offered to be read, it conſiſts only of a Plea by Mr. *Murray*, that he ſurrendered in due time; which Mr. Attorney General has thought proper to confeſs. And it is argued, That this Plea and Confeſſion are proper Evidence, that ſuch Surrender was made, and the Proviſion of the Act, ſo far as concerns Mr. *Murray*, abſolutely defeated.

My Lords, how far ſuch a Proceeding may bind the Crown is not material in the preſent Queſtion; but whether it ſhall conclude the noble Priſoner, who is an abſolute Stranger to it, and who never had any Opportunity of conteſting the Truth of the Fact, is of the utmoſt Importance. The Attorney General, by his Office, proſecutes and defends the Cauſes of the Crown, and, as ſuch, may make many Admiſſions to bind the Crown; but it would be extremely inconvenient, if ſuch Admiſſions ſhould conclude any body elſe. In ſome Caſes they are totally diſregarded; and therefore, if things are confeſſed as Errors in a Record, which appear not to be Errors, the Court, where ſuch Record is depending, is bound to give Judgment againſt ſuch Confeſſion, and according to Law.

So, if a Matter of Fact is offered to be admitted, which the Court knows to be otherwiſe, it ſeems to be their Duty to reject ſuch Admiſſion; and therefore ſuppoſe, upon the Statute of *Edw.* VI. one outlawed for Treaſon ſhould be brought into the *King's-Bench*, in order to have Execution awarded upon the Outlawry, and ſhould plead what the Court knows to be falſe, That he ſurrendered himſelf within the Year to the Chief Juſtice, according to that Statute, and the Attorney General ſhould be diſpoſed to confeſs it, ought not the Court to reject ſuch an Admiſſion? Or muſt they be concluded by what is well known to be untrue? Certainly the Court would not ſuffer ſuch an Attempt to prevail.

In the preſent Caſe, there is nothing offered to your Lordſhips to prove Mr. *Murray*'s Surrender, but the Record of what paſſed between him and the Attorney General in the King's Bench; and if this Record is permitted to be read, tho' the Contents of it ſhould be abſolutely untrue, yet, when once read, it will be concluſive Evidence of the Fact it imports, and no Proof can be admitted to contradict it; and, if it is Evidence to be received on this Occaſion, it muſt be Evidence in all Courts, and on all Occaſions, where a Queſtion may ariſe about Mr. *Murray*'s Attainder.

My Lords, Mr. *Murray* may have Eſtates, which by the Cuſtom of the Manors where they lie, or by the Grant of the Crown, may belong to the Lords of thoſe Manors. If his Surrender was not made in proper Time, all ſuch Eſtates are forfeited to ſuch Lords; and yet, if this Record is to be admitted, it will be Evidence, that cannot be contradicted by them, and muſt diveſt thoſe Rights and Eſtates, which, by this Attainder, they were lawfully intitled to.

But the Miſchief of permitting ſuch a Record to be read will not ſtop here: For Purchaſers likewiſe muſt be concluded by it; and therefore, though Lands may have been long ſince ſold and enjoyed, under a Title ariſing from an Attainder of the ſame Nature with Mr. *Murray*'s, yet, if this amicable Proceeding between the Attorney General and the Party attainted, is to prevail, no Purchaſer, even at any Diſtance of Time, can be ſecure.

In this Light, the Point ſeems of very extenſive Conſequence; For it is to give the King's Attorney Power to do more by the Admiſſion of a Fact, which perhaps may not be true, than the King, by a Pardon, can effect: For the King's Pardon cannot reſtore Lands forfeited to others; whereas, if the preſent Attempt ſhould ſucceed, the Rights and Titles of Strangers may be deſtroyed, though never ſo juſtly founded.

My Lords, whether Mr. *Murray* ſurrendered, or not, is a Matter of Fact capable of Proof, is a Fact of the utmoſt Importance to the Priſoner; and therefore, as the Rule of Law is general, That nothing done or tranſacted between Two Perſons ſhall prejudice a Third, who does not concur in the Act, nor has an Opportunity of contradicting it, the preſent Record, which, for any thing apparent, may be an entire Fiction, ought not to be received.

And, my Lords, ſuppoſing there was a Poſſibility of proving this Fact by Matter of Record, yet, by the conſtant Rule of Evidence, the Record produced ſeems improper to be read; becauſe it is not the beſt Evidence the Nature of the Thing will admit of, and, for that Reaſon, is not the proper Record to prove the Point in Queſtion.

That the Judge or Juſtice, to whom Mr. *Murray* ſurrendered himſelf, made a Record of ſuch Surrender, cannot be doubted. It was his Duty ſo to do, and muſt be preſumed to have been done; and therefore, if this Fact is proper to be proved by any Record, the Original made by ſuch Magiſtrate, who took the Surrender, ought to be produced.

My Lords, it may be ſaid, this Record in Queſtion imports an Admiſſion by the proper Officer of the Crown, of a Fact which he muſt be ſuppoſed to have inquired into, and has therefore admitted, becauſe he finds it to be true.

My Lords, this Anſwer might have been given, if Mr. Attorney had, at this Bar, offered originally to confeſs the ſame thing.—And ſuppoſe the Record, now attempted to be read, had never exiſted; and, upon an Objection to Mr. *Murray*'s Teſtimony, the Attorney General had ſaid, Here, I have the King's Warrant to confeſs, that he ſurrendered before the 12th of *July*;—would your Lordſhips have received ſuch an Admiſſion?—Would you conclude yourſelves by the Confeſſion of a Fact, without knowing whether it was ſo, or not?—Would the Court have ſuffered the Force of an Act of Parliament to have been defeated by ſuch an Acknowledgment?---Or, would not clear and poſitive Proof have been required of an actual Surrender?

My Lords, if it could, upon what Reaſon can ſuch a Confeſſion in the *King's-Bench*, in an inferior Court, in the Abſence of the Priſoner, who

who may be prejudiced by it, be received in Evidence againſt him?---If it is true that Mr. *Murray* ſurrendered in proper Time, it may be eaſily proved; if it is not, the preſent Method, by which it is attempted to be proved, is a certain one to draw the Court into an Error about it.---Your Lordſhips muſt perceive the Danger of allowing ſuch a Proceeding; how miſchievous it may be to the Priſoner, to Lords of Manors, to Purchaſers, to all Strangers, who never can have an Opportunity of diſputing the Truth of it:---And therefore, whatever Effect it may have between the Crown and Mr. *Murray*, it is humbly ſubmitted, that it ought not to be read againſt the Lord at the Bar.

Mr. HAMILTON GORDON.

My Lords,

I HAVE likewiſe the Honour to attend your Lordſhips, as one of the Counſel for the noble Lord at the Bar, whoſe Province it is to lay before your Lordſhips, and enforce, with all humble Submiſſion, what may occur to them in his favour in point of Law: But the Two learned Gentlemen, who have gone before me, have ſpoken ſo fully, and diſcharged their Duty ſo well, that I ſhould treſpaſs upon your Lordſhips Time, and alſo do them Injuſtice, if I conſumed much of it. Beſides, my Lords, I am too diffident of my own Abilities to ſpeak long upon a Queſtion, which is involved in the particlar Laws of this Country; and therefore I ſhall, with your Lordſhips Indulgence, confine my Endeavours to ſerve my Client, to a few general Obſervations, which, I humbly think, muſt naturally occur to every Man upon that Point, which the noble Lord at the Bar has taken the Liberty to propoſe to your Lordſhips by way of Objection.

The noble Priſoner at the Bar has objected, That Mr. *Murray* is not a competent Witneſs againſt him; or, in other Words, that, according to the Rules of Law, his Evidence ought not to be received. And, to maintain that Poſition, he has laid down another, namely, That the Record of the Court of *King's-Bench*, which proceeds ſingly upon the bare Admiſſion of his Majeſty's Attorney General, unſupported by any Proof, ought not to be read as Evidence of Mr. *Murray*'s Surrender, ſo as to qualify him to give Evidence upon this Trial.

As to the Firſt, I humbly apprehend it to be wholly unneceſſary to uſe any Arguments to prove, that, if thoſe Proceedings in the *King's-Bench* did not ſtand in the Way of the noble Lord at the Bar, Mr. *Murray* muſt, of courſe, have been rejected as an incompetent Witneſs.

It remains therefore only to be conſidered, Whether ſuch Proceedings, tranſacted only between the Crown and Mr. *Murray*, can affect the Intereſt of a Third Perſon.

My Lords, the Conſequences of this Queſtion are of the greateſt Importance to the Subjects in general; and although the noble Lord is more immediately concerned in it, yet if it ſhould be determined, that this is proper Evidence to affect him, the like Evidence muſt be received againſt every other Subject of *Great Britain*; for the Law cannot diſtinguiſh between him and others: And I beg leave, my Lords, to ſay, that it appears from the Authorities, which have been cited by the other Gentlemen, and which have always been conſidered as of the greateſt Weight in this Country, that the Admiſſion of the Attorney General, or any other, cannot affect a Third Perſon; and I take it, my Lords, to be a general eſtabliſhed Rule, that the Intereſt of one cannot be affected by the Admiſſion of another.

My Lords, I apprehend, that my Lord *Coke*'s Senſe of this Matter is ſo extremely clear and obvious, that it requires no Explanation; and ſo is the Opinion of another great Lawyer, my Lord Chief Juſtice *Hale*.

My Lords, the Law gives an Opportunity to falſify the Verdict of Twelve Men, where a Third Party, from the Want of it, may be injured only in a pecuniary Matter; how much more reaſonable is it therefore, that this kind of Agreement ſhould be ſet aſide, and held of no Conſequence, in a Caſe where the Life, Fortune, and Honour, of a noble Lord is concerned?

My Lords, I would humbly aſk, What Kind of Acquittal was this? Not an Acquittal by Verdict, the legal Acquittal in this Kingdom; but by a bare Conſent; a Conſent that ſurely has not Force enough to repeal an Act of Parliament.

My Lords, the only Way the Act of Parliament left for Mr. *Murray* to avoid the Conſequences of an Attainder, was the Performance of a Condition; that is, ſurrendering himſelf within a Time limited.

Now, I would ſuppoſe that this Act had been a Deed granting an Eſtate on a certain Condition, muſt not that Condition have been performed truly and effectually? Certainly it muſt, by the Rule laid down by Lord *Coke*. Shall not Acts of Parliament, therefore, be as ſtrictly complied with as common Deeds and Conveyances? Surely the Gentlemen of the Houſe of Commons will hardly deny it. Conſequently the Attorney General could not, by any Conſent of his, make this Record in the *King's-Bench* tantamount to an actual Surrender.

Suppoſe, my Lords, the Act had attainted Mr. *Murray* of Felony inſtead of Treaſon, could this Admiſſion of Mr. Attorney General have deprived the Lord of the Lands which would have eſcheated to him? No, my Lords, it could not, if any Regard is to be paid to the Rule laid down in 5 *Coke* 96. That the Eſtates of Third Perſons ſhall not be diveſted by colorable or covinous Payments, but by ſuch as are true and effectual. And what are Payments but Performances of Conditions? And the ſame Law that guides one, will the other.

The Fact is not as the Record ſtates it; the Attorney General's Conſent, which is the *Fiat* for this Record, was a Conſent after the Impeachment of the noble Lord. I wiſh it rather had preceded it.

My Lords, if Mr. *Murray* had held by Copyhold from the noble Lord at the Bar, and had been attainted, the noble Lord would have been intitled to the Eſcheat or Forfeiture of thoſe Lands; and no Admiſſion of the Attorney General's could defeat him of it, any more than it could in the Caſe of a Forfeiture of Lands in a County Palatine, where the Grantee of the Crown became intitled to the Benefit of it. Shall therefore, my Lords, ſuch Admiſſion be permitted to affect the Life, Honours, and Fortune of the noble Lord at the Bar? or, indeed, of any other in his unhappy Situation? No, ſurely; for it is againſt the common known Principles of Law, and of Reaſon too, that a Man ſhall be attainted as to ſome Circumſtances, and free from Attainder as to others; that he ſhall be incapable to hold his Lands or Chattels, and yet be reſtored in Credit, ſo as to affect the Life of an Innocent Man; for ſuch, till Conviction, every one is, by Law, preſumed to be: I ſay, my Lords, this is a Conſtruction ſo unprecedented and new, that, we hope, it will never receive the Sanction of your Lordſhips.

My Lords, I hope your Lordſhips will never countenance the Admiſſion of ſuch an Evidence, an Evidence who is ſo ſtrongly agitated by the Hope of Pardon, and Fear of Puniſhment, that, to procure the one, and avoid the other, he may give up all Senſe of Honour, Humanity, and Juſtice.

My Lords, as the learned Gentlemen, who ſpoke before me on the ſame Side, have made it unneceſſary for me to add any thing more, I ſhall not give your Lordſhips any further Trouble at preſent; and I beg your Lordſhips Pardon for that which I have already given you. But, if any Reply ſhould be neceſſary to what ſhall be offered by the Gentlemen of the Houſe of Commons, I hope we ſhall have your Lordſhips Indulgence.

Lord High Steward. Gentlemen of the Houſe of Commons, You may proceed.

Mr. ATTORNEY-GENERAL.

My Lords,

THE Managers do not diſpute the Priſoner's Right to any good Objection againſt the Competency of the Witneſs, or inſiſt, that it is not equally proper before your Lordſhips on this Impeachment, as it would be on a Trial in the ordinary Courts of Juſtice. But they diſpute the Validity of the Objection, upon its own proper legal Foundation.

As the Objection is to the Reading this Record, the mere Stating of the Queſtion will be an Anſwer to it, and obviate or refute every Argument uſed in ſupport of it.

The original Objection was againſt Mr. *Murray*'s being examined as a Witneſs, upon the Suppoſition of his ſtanding attainted of High-Treaſon by the late Act, in not ſurrendering within the Time preſcribed. The Managers allowed the Conſequence, if the Allegation of his Attainder were true, as that would render him infamous, not as it would prove him guilty of Treaſon; for the Guilt alone, without the Attainder, would not render him incompetent, it being a clear eſtabliſhed Point, that even a *particeps criminis* may be a Witneſs, to prove the Guilt of thoſe who joined with him in the ſame Crime: And your Lordſhips, in the late Trial of the Lord *Balmerino*, admitted that Sort of Evidence. But the Managers anſwered the Objection, by denying the Attainder; and produced this Record, to ſhew the Surrender purſuant to the Act, which attaints him only on Condition of his not ſurrendering within the Time limited. This Record is of a Proceeding commenced on the Part of the Crown, on the Foot of this very Act, in the proper Court of Juſtice, againſt the Witneſs, and defended, on the Part of the Witneſs, by this Surrender; and that Defence and Surrender confeſſed by the Attorney General, by Warrant from the Crown; and this allowed by the Court, who, inſtead of awarding Execution againſt him, remanded him to Priſon, where he now remains forthcoming to Juſtice, according to the Act.

Now, to ſay that ſuch a Record, relating to the preciſe Point in queſtion, cannot be read to diſprove the ſuppoſed Attainder, and ſupport the Competency of the Witneſs, would be to deny one of the firſt Principles of Evidence; and therefore the Counſel, aware of the Abſurdity, have not ventured in Terms to aſſert a Propoſition ſo contrary to the known Law of the Land, as that ſuch a Record is not proper to be read; but ſeem rather, in the Way of Argument, to deny the Conſequence of it when read, and have inſiſted on Reaſons that tend to ſhew that it is not concluſive Evidence; and therefore, that the Fact of the Surrender may be ſtill controverted by Evidence on the Side of the Priſoner, rather than that it is no Evidence at all.

Though this is more properly a ſubſequent Queſtion, and a very different one in its Nature, yet, in the preſent Caſe, it is really, and in Effect, the ſame, and the neceſſary Conſequence of the other: For to inſiſt, that this Record is not concluſive Proof of Mr. *Murray*'s not being attainted by that Act, muſt proceed on this Suppoſition, that he may ſtill be held attainted under the Act, notwithſtanding this Record. But, I preſume, your Lordſhips will upon no Terms be induced to admit of that Suggeſtion, when it is conſidered, that the certain Effect of it muſt be, that he may be called up again for Execution, and put a Second Time on the Defence of his Life againſt the ſame Charge.

But to conſider the Grounds, on which the Objection has been attempted to be ſupported,

There are Two general Reaſons inſiſted on; one, That the Surrender inſiſted on in Behalf of the Witneſs, when he was brought before the Court of King's Bench, was neither proved to the Court, nor found by a Jury; but only confeſſed by the Attorney General: The other, that the noble Lord was himſelf no Party to the Record; and therefore not to be affected by it.

As to the Firſt, in order to ſupport that Reaſon, a Diſtinction is attempted to be ſet up between the Caſe of a Fact, on which a Judgment is grounded, appearing by a Verdict or Evidence, and where it appears only by the Confeſſion of the Party; and it is ſaid, That in the former Caſe it may, but in the latter, cannot be concluſive to any other Perſons but thoſe who were Parties.

And, for this Purpoſe, the Authorities of my Lord Chief Juſtice *Coke* and Lord *Hale*, and others, are cited, to ſhew the Difference, in point of Conſequence to Third Perſons, between an Attainder by Verdict, or by Confeſſion; that, in the one Caſe, the Crime may be diſputed by a Purchaſer under the attainted Perſon; but, in the other, it cannot, though the Time of the Commiſſion of it may.

It will be unneceſſary for me to enter minutely into the nice Diſquiſition, How far, and for what Purpoſes, the Crime appearing on an Attainder, may be controverted by Strangers, whoſe Intereſt is affected by it; becauſe I am ſatisfied your Lordſhips will ſee, that the Diſtinctions on that Head are totally foreign to the preſent Queſtion; and one ſingle Obſervation would be ſufficient to make that manifeſt; that is, that none of the Caſes cited, or that can be cited, prove, that any Stranger can controvert the Attainder itſelf, whether founded on a Verdict or Confeſſion, or

or by Default; and it is the Attainder, and not the Crime, that is the only material Thing on the preſent Objection.

All that will be neceſſary, therefore, upon this Point, will be to ſhew, that the Confeſſion, in this Caſe, binds the Crown; and that, if it does, there is no Attainder. The Inference will then follow of Courſe, that the Record may be read, to prove *Murray* not attainted, as the preciſe Point to be proved in Anſwer to the Objection to his Competency.

The Authority of the Attorney General to confeſs the Truth of the Plea of Surrender, has not been directly denied by the Counſel; but as they have ſeemingly, in Conſequence, done it, and the clear Eſtabliſhment of that Right, in this Caſe, will, by certain Inferences, eſtabliſh the Right to read this Record, I ſhall ſtate a little to your Lordſhips how that Authority ſtands, upon the Nature and Reaſon of the Thing, and the known conſtant Practice.

The Law and Conſtitution has intruſted the Crown, as the executive Power, with the Proſecution of Crimes; and though oftentimes ſuch Proſecutions are carried on by private Perſons, even thoſe are, for the moſt part, in the Name of the Crown.

But thoſe, as well as Civil Suits, may be commenced ſometimes without a juſt Foundation, and the Party ſued may have a juſt Defence to the one as well as the other. Where that appears, it is equally juſt, in both Caſes, to put a Stop to them; and as a Subject-Plaintiff may confeſs the Defendant's Plea; ſo may the Crown, by the Attorney General, its proper Officer, confeſs the Priſoner's Defence; and ſuch Confeſſion, in both Caſes, is, and ought to be, both in Law and natural Juſtice, a Security againſt future Action or Proſecution for the ſame Cauſe. Nor is there any Reaſon that can be given for the Power in the Caſe of a Subject, but what will hold equally ſtrong, and ſtronger, in the Caſe of the Crown, as there could not be a greater Grievance to the Subjects in general, than to have it eſtabliſhed as a Rule, that, when once a criminal Proſecution is commenced, the Defendant, how innocent ſoever, or how willing ſoever to make Satisfaction, muſt be put to the Vexation of a Trial, or the Charge of a Pardon, which might, in many Caſes, be his Ruin. And how ſtrange would it appear to ſay, that the King might not do the ſame Juſtice to Innocence, that every honeſt Man would do? or that he might not, for ſuch wiſe and gracious Reaſons as would induce him to grant a Pardon after Sentence, ſtop the Proceedings in the ordinary Courſe of Law, before they come to Sentence?

To avoid theſe Abſurdities, the Law intruſts the proper Officer, the Attorney General, with the Power of confeſſing a Defendant's Plea, where it appears to be true, in Charges of a leſſer Nature, and, in the higher, by the immediate Warrant of the Crown; and ſuch Confeſſion has the Effect it ought to have of an abſolute Diſcharge; and, I ſhould imagine, Nobody, who thinks of it for a Moment, would, for the Sake of the Subject, wiſh it otherwiſe.

And, my Lords, this has been the conſtant Practice, not only in Criminal Proſecutions, properly ſo called, but in all Crown Cauſes even for Civil Rights: And whoever has had the Honour of ſerving the Crown in the Office of Attorney General muſt have eaſed the Subject on that Head, when, on Applications by the Parties ſued, and Attendances by the Officers of that Branch of the Revenue which is in queſtion, the Plea has appeared to be a juſt one, and both the Crown and the Subject find their Account in this Method of Proceeding, in the Expence and Delay that are ſaved by it; and ſuch Confeſſion, being recorded, has, to all Intents, the ſame Effect, as if, on Iſſue joined, a Jury had found the Fact to be what the Attorney General confeſſed.

The Practice is the ſame in criminal Caſes, where the Attorney General confeſſes the Plea, whether it be to the Merits of the Charge, or only in order to let the Defendant into an Opportunity of trying thoſe Merits.

There is one ſort of Caſe frequently happens, very parallel to the preſent, where a Perſon is outlawed for Treaſon or Felony, which amounts in Law to an Attainder for the Crime, and equally affects the Party, both as to his Life and Eſtate, as on a Verdict. The Party having no way of coming at the Trial, but by reverſing the Outlawry by Writ of Error, which cannot be allowed without his Majeſty's Conſent, it is a frequent Practice to apply for that Indulgence; and it is very eaſily granted, provided there has been no great Delay. If the Party aſſigns an Error in Fact, as he may, the Attorney General confeſſes it, if true; and the Outlawry is reverſed, and the Attainder avoided by it. And no one ever doubted, but the Record of that Reverſal is concluſive Proof of his not being attainted.

Nay, the Crown has ſometimes directed the Attorney General to confeſs Errors in Fact, as the Party's being beyond Sea at the time of the Outlawry, which have not been true; only that he may have an Opportunity of taking his Trial, and not ſuffer for a Default in not appearing only. And no Lawyer ever ſaid, that ſuch a Confeſſion was not as effectual to avoid the Outlawry, as the Verdict of a Jury impannelled to try it.

And if, in the preſent Caſe, the Truth was, That Mr. *Murray* did not actually ſurrender, but was apprehended before the Day; and that ſhould be thought, in Strictneſs, not a Compliance with the Act; and the Attorney General was now proſecuting for the Crown only; I believe he would be under no Difficulty of owning the Truth, or apprehenſive, that your Lordſhips would ſay, that the Confeſſion was either illegal or unequitable; or that, when the End of the Act was anſwered, by Mr. *Murray*'s being ready to take his Trial, it was not agreeable to his Majeſty's Royal Juſtice and Clemency, to remove the only Impediment to his having it. Nor can the Exerciſe of this Power be objected to from any Reaſons but what would equally affect the Exerciſe of that great and excellent Prerogative of Pardoning.

What I have now ſaid will fully ſhew, that the Caſes cited are not applicable to the preſent: They are the Caſes of innocent Purchaſers, whoſe Eſtates were to be loſt by the ſubſequent Attainder, and ſuppoſed Guilt, of the Vendors.

It would be unjuſt in itſelf, not to give them an Opportunity of defending their Property, by controverting the Fact on which it depended. The Law, in Conformity to natural Juſtice, gives them, in ſome Caſes Liberty of diſputing the Crime itſelf, where the Conviction is by Confeſſion; and the time of the Commiſſion, where it is by Verdict: But, in thoſe Caſes, the Queſtion was a Matter of Property between the Crown and an innocent Subject, and depended on the Crime's being committed before or after the Purchaſe, and not merely on the Attainder, which would ſtand good, let that Queſtion be determined either Way; but, in the preſent Caſe, the Queſtion is on the Incompetency of a Witneſs, which depends ſolely on his Attainder, and not on the Reality, or Time, of his Crime. Therefore, to make a parallel Caſe, it muſt be ſaid, that if the Attorney General had confeſſed a Plea of Not Guilty to an Indictment of Treaſon, and the Priſoner, being thereupon acquitted, ſhould be brought as a Witneſs either in a Criminal or Civil Suit, his Competency might be objected to, and the Objection ſupported by Proof of his actual Guilt: But this cannot be pretended; the contrary is ſo clear, that if he had never been indicted or acquitted, the cleareſt Proof of his Crime could not be admitted for this Purpoſe; and no Evidence can, in any Caſe, eſtabiſh ſuch an Objection, but a Record of an Attainder.

The only Colour of Diſtinction between the Caſe put, and the preſent, is, that the Attainder here appears *prima facie*, and muſt be avoided by a Surrender to be proved. This is true; and therefore puts the Proof on us, to remove the Objection; and it is for that Reaſon this Record is offered as the proper Proof: And, as in the Caſe where the Proof lies on the Side of the Objection, the Record of the Attainder is the proper Evidence; ſo in this, where it lies on the Side of the Witneſs, the Record of his Surrender is the direct Proof that he is not attainted.

My Lords, I come now to the Second Reaſon given for the Objection, That the Priſoner is no Party to this Record; and I ſhall have Occaſion to ſay very little upon this, becauſe it is, in Effect, anſwered by the firſt Reaſon inſiſted on by the Counſel themſelves; which ſuppoſes, if the Surrender had been found by Verdict, the Record would be proper Evidence; and yet the Priſoner would then have been equally no Party. This, therefore, deſtroys the Rule and Suppoſition on which this Reaſon is founded, which is, that no Record can be read againſt a Man to which he was no Party; and, indeed, there is not, nor can be, any ſuch Rule; it is moſt notoriouſly otherwiſe in the very Inſtance in queſtion, of the Incompetency of a Witneſs, on account of his Attainder, which never can be proved by any thing but the Record; and yet the Party to be prejudiced by it neither is, nor can be, a Party to it.

The noble Lord is controverting no Property on the Foundation of Mr. *Murray*'s ſuppoſed Attainder; he neither claims or defends any Right that is demanded on the Foundation of his Diſcharge; the Record has no more relation to him than to all the World; and if the Witneſs is diſabled as to him, he is ſo with reſpect to all Mankind, and in all Cauſes Civil or Criminal, and muſt be put on the Trial of his Surrender, as often as he ſhall be called upon during his Life, to give his Teſtimony in any Court, and in any Suit. What Abſurdities this would be attended with, I need not mention; your Lordſhips will be beforehand with me, in ſuggeſting them to your own Thoughts.

Sir JOHN STRANGE.

My Lords,

THE Queſtion ariſing upon the Objection made by the noble Lord at the Bar, is not what the Conſequence of this Record will be, when it is read, but ſingly, Whether we ſhall be now admitted to read it, or no? My Lords, the Objection made by the noble Lord at the Bar againſt this Witneſs, was founded upon this Record. My Lords, it was called for, and read; which was the Act of Parliament made in the laſt Seſſions, for the Attainder of ſeveral Perſons; and, my Lords, upon that Sort of Attainder no Writ of Error could lie; and therefore, my Lords, there was no other Way to take off the Force of that Attainder, that was warrantable, than the Method taken in the preſent Caſe. And, my Lords, I muſt ſubmit it to your Lordſhips, whether we are not intitled to read what we now call for, not as a diſtinct Record, but as Part of the whole Record relating to the Perſon now at your Lordſhips Bar; for the Record muſt come before your Lordſhips in all its Parts: Nobody can call for a particular Part of a Record to be read, but the Whole muſt be laid before your Lordſhips; and therefore, my Lords, I beg Leave to contend, that this is Part of the Record of the Proceedings againſt the Perſon whom we now call upon as a Witneſs, which the noble Lord at the Bar himſelf called for. My Lords, what the Conſequence of it will be afterwards, is a Queſtion of another Nature; but I muſt ſubmit it to your Lordſhips, that as Part of the Record of the Proceedings againſt Mr. *Murray*, we are certainly intitled to have it read.

My Lords, One Objection taken by the Gentlemen on the other Side, is, That it is not the Record of the proper Juriſdiction, but that it ought to be a Record made by the Perſon to whom Mr. *Murray* ſurrendered himſelf: But, my Lords, I muſt beg Leave to ſubmit it to your Lordſhips, by Way of Anſwer, That it is the Record of a proper Juriſdiction, in a Caſe of this Nature. My Lords, the Court of *King's-Bench*, as a Court of criminal Juriſdiction, may have Offenders of all Sorts brought before them. My Lords, in the preſent Caſe, a *Certiorari* iſſues out of Chancery, and by *Mittimus* the Record is removed into the *King's-Bench*: And I will call upon the Counſel for the impeached Lord, if they will venture to ſay, that a *Certiorari* will not lie for that Purpoſe. My Lords, if it will lie, it muſt be for ſome End or Purpoſe that a *Certiorari* was brought, and the Record tranſmitted thither; that was the proper Juriſdiction, and that Court then had a Right to call upon the Party brought up before them by *Habeas Corpus*, to know what he had to ſay, why Execution ſhould not be awarded, upon the Footing of the Attainder by this Act of Parliament? My Lords, the Queſtion was put by that Court to the Perſon who was then a Priſoner before them: He pleaded a Surrender within the Time; and inſiſted, that there he was amenable to Juſtice: He alledges, that as a proper Anſwer to that Court, upon the Queſtion aſked him; and whether it was, or was not a proper Anſwer, depended upon the Fact. The Court could have no Doubt, but if the Party ſurrendered himſelf in Time, and was amenable to Juſtice, but that was an Anſwer

to their demanding to know of him, why Execution ſhould not be awarded againſt him? And, my Lords, if that Fact had not been verified in a legal Way, there muſt have been Execution awarded; but if legal Satisfaction was given by the then Priſoner, it was the Duty of that Court to record that as a Matter of Fact, which was properly verified before them. And, my Lords, there are two Ways of verifying Matters of Fact; one is by the actual Proof of the Fact (if the other Party denies it), or by Confeſſion; and if the Party knows that he cannot in Conſcience deny it, then he ought to confeſs it, and not put the other to the Expence and Trouble of proving that which he knows to be true: If you know that to be Fact, that the Party ſurrendered himſelf to Juſtice, and was forthcoming, will any body ſay, that it is not right and juſt, to admit that Fact as alledged? Therefore, my Lords, the Queſtion of Fact in this Caſe has been properly determined by that Court; the Conſequence of which is, that That Court ought to make a Record of it; and that is to be conſidered, not as a diſtinct, ſeparate Record of itſelf, but as the Proceeding upon this Record of this Act of Parliament, which had thus been removed there by *Certiorari*; and it is, to all intents and Purpoſes of Law, to be conſidered as a Record of the Proceedings; and they are to be conſidered as having the former Proceedings before them, upon the ſame Record; and all Courts are bound to admit that Record, which was thus made in a Court of legal Proceeding: and therefore, my Lords, if that Court was the proper Juriſdiction, can any body ſay, that the Record of what was there tranſacted is not as proper Evidence as what the Noble Lord at the Bar has called for, and which has been read to your Lordſhips, which is the Act of Attainder of the laſt Seſſions of Parliament? My Lords, the Gentlemen on the other Side ſay, that this is an erroneous Method: Say they, you have not gone to the proper Perſon; here is a particular Juriſdiction to record a Surrender, and you ſhould have gone to the Juſtice of Peace to whom the Surrender was made. My Lords, I have looked upon the Act of Parliament, to ſee what the Legiſlature had thought proper to preſcribe, as the Duty of the Juſtice of Peace to whom the Surrender is directed to be made.

My Lords, all that is required of him by this Act of Parliament is, he is, upon the Surrender, to commit the Perſon ſo ſurrendering to Priſon, for the High-Treaſon, there to remain till he is diſcharged by due Courſe of Law; and he is immediately to give Notice of it to the Secretary of State. Your Lordſhips will then be pleaſed to conſider, what it is that the Gentlemen inſiſt upon: My Lords, will any body ſay, that what is mentioned in this Act of Parliament, in regard to the Juſtice of Peace, will take away the Juriſdiction from a Supreme Court of Original Juriſdiction, in Caſes of that Kind; and that without a Word being mentioned in the Act concerning it?

My Lords, they ſay, That the Juriſdiction of recording the Surrender is given to the Juſtice of Peace, though the Act of Parliament does not ſay a Word of his doing any Thing of this Nature: And, my Lords, if the Act of Parliament had made him the proper Perſon, whoſe Duty it was to record the Surrender, to what Purpoſe is he to ſend an Account of it to the Secretary of State? Was he to make up the Record? No; all the Juſtice of Peace was to do, was to give Notice of the Tranſaction before him, to thoſe Perſons who are appointed to do what ſhall be done upon ſuch a Surrender. My Lords, there is ſomething that was ſaid by the Counſel for the Noble Lord at the Bar, which I will only juſt take Notice of: They were pleaſed to put this Caſe: Say they, Suppoſe this Record is now to ſtand, it is a Matter tranſacted, to which the Noble Lord at the Bar is no Party, and conſequently ought not to be read againſt him. My Lords, I will venture to ſay, there is no ſuch general Rule; Nobody will contend (becauſe there are numberleſs Inſtances of it), that Records are not conſtantly permitted to be read as Evidence againſt Perſons who are no Parties to them. My Lords, Suppoſe a Man is charged with having harboured a Perſon attainted of Treaſon or Felony; and, when he comes to be tried, ſay they, Gentlemen, you ſhall not read the Record of that Perſon's Attainder, becauſe the Man now charged is no Party to it: Do not charge me with receiving or harbouring a Man attainted by that Record; for though the Record may be read as againſt him, yet it cannot be read againſt the Perſon charged, who was no Party to it. My Lords, Would any Court of Juſtice make the leaſt Difficulty in admitting ſuch a Record to be read? My Lords, the Reaſon of the Thing itſelf ſpeaks it; for till the Record is read, it does not appear there is any Perſon attainted; and conſequently no Charge againſt the Priſoner. And, my Lords, to make it a Civil Caſe, ſuppoſe a Lord of a Manor claims by Eſcheat the Eſtate of a Perſon attainted, and another Lord claims the ſame Eſtate, cannot the Record of the Perſon's Attainder be read as Evidence in that Caſe, though neither of them are Parties to it? My Lords, there can be no Doubt but it may; and therefore, my Lords, that Objection has no Force upon the preſent Queſtion. My Lords, the Objection now made is to the reading of a Record, or Part of a Record, which the Noble Lord at the Bar himſelf called for; and I muſt ſubmit it to your Lordſhips, that we are entitled to have it now read: What the Conſequence of reading of it will be, is not now to be conſidered; for we argue ſingly upon the Queſtion, Whether it ſhall be now read, or no?

Mr. Sollicitor General.

My Lords,

WHETHER the Record which has been opened may be read at all; and what ſhall be the Effect of it, after it is read (I mean, whether it may be falſified), are two ſeparate and diſtinct Conſiderations.

Your Lordſhips were pleaſed to aſk the Noble Lord at the Bar, and his Counſel, Whether they would reſt their Objection to the reading of it? or ſuffer it to be read, and then object to the Conſequence of it?

They choſe to object to the Reading; and the Counſel were allowed to ſpeak to that Point only: And yet there is not an Authority they have quoted, which don't prove, that at leaſt it muſt be read.

The Competency of all Evidence, in a great Meaſure, depends upon the Nature of the Queſtion to which it is applied; for that is Evidence in one Caſe, and to one Purpoſe, which is not ſo in another Kind of Caſe, or to another Sort of Purpoſe.

The Merits of this Objection, therefore, will depend upon thoroughly underſtanding the Purpoſe for which this Record is produced.

The Incapacity of a Perſon attainted to give Teſtimony, does not ariſe from his Life being thereby in the Power of the King; or any Preſumption, that, through the Fear of Death, he may be induced to exceed the Bounds of Truth; but it is one of thoſe many Incapacities which are the Conſequences of his Attainder.

He is cut off from the Community; his Blood is corrupted; he loſes his Credit; and therefore can be a Witneſs in no Caſe, neither for or againſt a Proſecution, nor in any Civil Suit between Subject and Subject.

All Proceedings upon which a Man can be attainted, at the Common Law, are between the King and the Party only: But ſuch Proceedings are Evidence, and the only Evidence to prove the Attainder between all Perſons, and upon all Occaſions; which ſhews the Miſtake the Gentlemen proceed upon, when they object, that my Lord *Lovat* was no Party to this Record; and therefore it ſhall not be read againſt him.

The Party who objects to a Witneſs, becauſe he is attainted, undertakes to ſhew, that, according to the Courſe of the publick Law and Juſtice of the Nation, he is ſo; and therefore may read any Proceedings in the Courſe of that publick Law, to prove it.

So likewiſe, in Anſwer to the Objection, and to ſhew the Perſon not attainted, any of the like Proceedings may be read.

If a Conviction and Judgment is read, it may be anſwered by reading the Reverſal of that Judgment upon a Writ of Error; and yet the King muſt be the only Party to both theſe Proceedings.

The likeſt Caſe to the preſent, at Common Law, is that of an Outlawry.

If an Outlawry is produced, to prove a Man attainted, the Reverſal of that Outlawry may be given in Evidence, as a full Anſwer to that Proof: And yet moſt of thoſe Reverſals in High-Treaſon, are grounded upon the Attorney General's confeſſing an Error in Fact, by the King's Command; and this generally is a merciful Confeſſion, contrary to the Truth of the Caſe. Several Noble Families now enjoy their Honours, and their Eſtates, by virtue of ſuch Reverſals.

I will not mention Inſtances; as your Lordſhips have the Aſſiſtance of the Judges, I am perſuaded they will inform your Lordſhips, that there are many. Would an Objection be endured to the reading ſuch a Reverſal?

The preſent Caſe is that of a Parliamentary Outlawry, if I may ſo call it: Perſons fled from Juſtice are attainted in a more expeditious and ſummary Way than could be done by the Courſe of the Common Law, unleſs they come in, and take their Trials within a limited Time.

The only Court in this Part of the Kingdom, which can award Execution againſt a Perſon, as attainted within this Act, is the Court of *King's-Bench*: There can be no Party to ſuch Proceedings but the King, who is intruſted with the whole Execution of the publick Law of the Nation. A Proceeding, therefore, in that Court, which ſhews a Man never to have been attainted within the Act, is Evidence to anſwer an Objection, which ſays, he is. It proves concluſively, that, in the Eye and Conſideration of the publick Law, he is not an attainted Man; he may inherit, he may purchaſe; he can't be put to Death. By this Proceeding the King is bound for ever; all Magiſtrates are bound; no Judicature can now conſider the Witneſs in any other Light than he ought to be conſidered in, if the Act had never been made. It is poſſible then to doubt, whether (in Anſwer to an Objection, that by the Law of the Land this Witneſs is now looked upon as an attainted Man) a Record ſhould be read, which proves, that by the Law of the Land he is not looked upon as an attainted Man? He is either a Perſon liable to all the Conſequences of an Attainder, or none.

Mr. Noel.

My Lords,

I SHALL be very ſhort in offering my Sentiments to your Lordſhips upon the preſent Queſtion, becauſe three learned and able Gentlemen have already ſpoken very fully to it.

My Lords, The Queſtion ariſes upon an Objection taken by the Noble Lord at the Bar, againſt the Competency of Mr. *Murray*'s Teſtimony, as he ſtands attainted by the Act of the laſt Seſſions of Parliament, which has been read to your Lordſhips: But after that, another Objection aroſe, in conſequence of what we, on the Part of the Proſecution, offered, which was a Record we propoſed to be read: To the reading of which the Noble Lord objected, and has relied upon that Objection, that it cannot be read at all.

My Lords, I was ſurpriſed at that Objection; and the Counſel for the Noble Lord have been ſo ſenſible, that there was no great Weight in it, that they have prematurely, in the Courſe of their Arguments, run into a Debate concerning the Force and Effect of it when read, and not to the actual reading of it; and, my Lords, it was a very ſtrange Propoſition to be inſiſted on before your Lordſhips, that in a Queſtion relating to Mr. *Murray*, and him alone, when an Objection is made to his Teſtimony, that he ſtands attainted by an Act of Parliament, that your Lordſhips ſhould ſhut your Eyes, and not receive Evidence of the Proceedings of a Court, having proper Juriſdiction to determine any Queſtion which might ariſe upon that Act of Parliament: I ſay, my Lords, that would be a moſt extraordinary Thing indeed, when the Objection relates to Mr. *Murray*, upon the Attainder by Act of Parliament; and yet, they ſay, your Lordſhips ſhall not ſee the Record of the Proceedings of a Court of Juſtice, founded upon that Act of Parliament. But, my Lords, as the Gentlemen have, under a Notion of conſidering this Objection in ſome Degree, conſidered the Force of the Record itſelf, if it had been read, tho' they have done it improperly, yet I doubt it will be expected, that we ſhould take Notice of the Foundation of that Argument.

The Queſtion, therefore, ſeems to be, Whether Mr. *Murray* is to be conſidered under the Act, and the Proceedings in the Court of *King's-Bench* upon it, as an attainted Perſon, or not.

My Lords, the Act of Parliament does not finally conclude any Perſon: It names ſeveral Perſons, whom the Act declares ſhall be attainted by the Force of that Law, unleſs they comply with the Terms expreſſed in it; and the proper Court of Law muſt judge, when the Perſon comes before them,

them, whether he was a Perſon within the Meaning of the Act of Parliament, or not. Therefore, my Lords, when he was before a Court, who had proper Juriſdiction upon that Queſtion, Whether he was an attainted Perſon, or not, and they have determined that Queſtion, That he was not, then there is an End of that Queſtion. But it has been ſaid, That this may affect, in conſequence, the Property of a third Perſon; and that the Noble Lord at the Bar ought not to be affected by the Proceedings in the King's-Bench. But I apprehend this Queſtion relates perſonally to Mr. *Murray*, and to no other. It is merely a Queſtion as to his Capacity or Incapacity; that is, whether he be attainted or no; and therefore, my Lords, that diſtinguiſhes this Caſe from the Caſes of private Property, alluded to by the Counſel for the Noble Lord in the Courſe of their Argument.

My Lords, I beg Leave to ſtate this Matter in a ſtronger Light: If your Lordſhips ſhall ſay, That Mr. *Murray* is an attainted Perſon, you muſt likewiſe ſay, that he is liable to have Execution awarded againſt him upon this Act; for, when that is the Queſtion, it muſt be conſidered intire, with all its Conſequences.

My Lords, if no Execution can be awarded againſt him, your Lordſhips cannot ſay, that he is an attainted Perſon: Therefore your Lordſhips ſee what Difficulties will enſue, if you ſhould determine, that he ſtands attainted, with reſpect to the Noble Lord at the Bar, but not to the Conſequences that the Law draws from his being an attainted Perſon. My Lords, it would be the ſtrangeſt Caſe in the World, if that ſhould be your Lordſhips Sentiments, that he is not attainted in one Reſpect, and yet that he is attainted in another Reſpect.

My Lords, the Counſel for the Noble Lord object, That the Proceeding which has been had, has been by the Confeſſion of the Attorney General, though they admit it was in the Power of the Crown to make ſuch Confeſſion. I muſt ſubmit it to your Lordſhips, that though it is by the Confeſſion of the Attorney General, as it is by proper Authority, and in a legal Court, having proper Juriſdiction, that it is as effectual and binding upon the Crown as any Act they can poſſibly do: And can your Lordſhips ſay, that Mr. *Murray* ſhall not have the Benefit of a legal Proceeding of a Court of Juſtice, having complete and lawful Juriſdiction, and who have determined the Caſe?

My Lords, it is ſaid, That there is ſome Difference where it is upon the Confeſſion of the Attorney General, and where it is founded upon a Verdict. My Lords, your Lordſhips will conſider what are the Circumſtances of the Caſe in regard to that Matter: A Gentleman is brought before a Court of Juſtice, to anſwer why Execution ſhould not be awarded againſt him upon a ſuppoſed Attainder. He pleads a Fact that is ſufficient, if true, to exempt him from that Attainder: Can the Gentleman ſay, that he muſt not avail himſelf of it, becauſe the Attorney General will not put him to the Expence to prove it? My Lords, it is ſaid, that if he had denied the Plea, the Conſequence to Mr. *Murray* muſt have been, that he would not have appeared to have been a Perſon exempted from the Act? No: But, ſay they, becauſe the Attorney General and the Crown are ſatisfied of the Truth of the Plea, and will not put him upon proving it, therefore he is not to have the Benefit of the Judgment of the Court upon that Queſtion. I muſt ſubmit it to your Lordſhips, that every Man, under thoſe Circumſtances, would be in a moſt fatal Situation, and that it would be attended with very bad Conſequences. A Man is aſked, what he has to ſay why Execution ſhould not be awarded againſt him; and pleads a Fact that actually will clear him from the Attainder: The Attorney General confeſſes the Plea, does not join Iſſue, and will not give him an Opportunity of proving it; and, my Lords, what is to be the Conſequence? Why, according to this Doctrine, he muſt inevitably be condemned as a Perſon attainted; whereas, if he had been put to the Proof of it, it might have been determined, that he was not attainted. I apprehend your Lordſhips will not ſuffer them to draw that Inference, that, becauſe the Attorney General has not put him to the Proof of his Plea, he is to be conſidered as a Perſon attainted, contrary to the Judgment of the Court.

Sir Richard Lloyd.

My Lords,

THE Queſtion has been ſo fully ſpoken to already, that I ſhall not have Occaſion to take up much of your Lordſhips Time: But I cannot forbear expreſſing my Surprize at the Objection now made, *viz.* "That this Record cannot be read againſt the Noble Lord at the Bar:" The Reaſon given for which is, that he is no Party to it. Many Anſwers have been given; and I will not repeat them: But ſhall offer a Conſideration or two to your Lordſhips, in order to ſhew that the Force and Effect of Mr. *Murray*'s Attainder has been, by this Tranſaction on Record, totally taken off.

My Lords, the whole Argument on the Priſoner's Side is in this Compaſs; *viz.* they ſay, that Mr. *Murray* (the Perſon produced by us as a Witneſs, is ſtill attainted; and therefore, by the Rules of Law, cannot be a Witneſs: And 'tis certainly true, that if he ſtands now attainted, he cannot, by our Law, be admitted to give Teſtimony. Let us come then to that Queſtion, Does he, or does he not, at this Hour, ſtand attainted by virtue of the late Statute?

It cannot be doubted, but that a Parliamentary Attainder of this Sort may be diſſolved by ſome Method or other; and the very Statute directs one Way; *viz.* by Surrender before a particular Day; and the only Way to aſcertain that Fact is a Judgment on Record, that he did ſurrender.

I would aſk the Counſel, for the Noble Priſoner, whether Mr. *Murray* can by Law be called to Judgment for that High-Treaſon for which he was by the late Act attainted? They muſt own, that this Record of Surrender would be an abſolute Defence on ſuch an Occaſion; nay, it would be an abſolute Bar to ſuch a Demand of Judgment. If this Defence would not be his Security, the Conſequence is, that there would be no Method at all of getting rid of ſuch an Attainder.

It has been objected, that though this may be a good Diſcharge betwixt the Crown and Mr. *Murray*, yet it ought not to affect others, who are not Parties to that Proceeding. My Lords, 'tis true, others may be affected by Mr. *Murray*'s being reſtored to his Credit. But that is no Objection; for though by virtue of this Record he is ſo reſtored, yet that is only a Conſequence, which neceſſarily follows from the Facts aſcertained by that Record.——The Proceeding on the Record was a legal Tranſaction between the Crown and Mr. *Murray*, and no other Perſon whatſoever had a Right to be a Party to it.——The King, at the Time of Mr. *Murray*'s pleading on the Record, was the only Perſon to call him to account for his Guilt: The only Controverſy at that Time was betwixt the Crown and the Party called down to Judgment: The Matter therefore being a legal Tranſaction, a Law Controverſy betwixt the only proper Parties, its neceſſary Conſequences muſt follow, let who may be affected.

But 'tis ſaid, "That if it had been found by Verdict, that Mr. *Murray* had ſurrendered in due Time, then the Record might have been read "in Evidence againſt all Perſons; but that, as 'tis founded on Mr. Attorney General's Confeſſion of the Surrender, it ought not."——This is a ſtrange Diſtinction. I would aſk the Gentlemen who make it, whether this Record by Confeſſion is not a full and compleat Record? Has not his Majeſty's Attorney a Right to confeſs it? No Lawyer will ſay, that he has not ſuch a Right by the Laws of our Land.

My Lords, let me argue this Matter, not on the Principles of Law only, but on thoſe of Reaſon, abſtracted from the Law: and thence ſee, whether Mr. *Murray* is not as much diſcharged from his Attainder, or his Attainder as much avoided, by this Confeſſion of the King by his Attorney, as he would be by Verdict.

Is the King the only Perſon in the Kingdom, who ſhall be compelled to ſay a Thing is not true, which he knows to be true? Or, is his Majeſty the only Perſon who ſhall be hindered from owning that to be true upon Record, which he and all the World knows is *true?*

'Tis a Point of legal Controverſy betwixt the Crown and one of his Subjects; and ſuppoſing it to have been a Fact notorious, that Mr. *Murray* (the Defendant in that Controverſy) had come in and ſurrendered in due Time according to the late Act, would it not be abſurd to ſay, that the Crown's Attorney ſhould be bound by Law to ſay, that he did not ſurrender? *i. e.* ſhall be bound to deny and put to Trial a Fact, which he knows is indiſputably true; and needs no Trial? Yet this, my Lords, muſt be the Doctrine to be maintained by the Counſel for the Noble Priſoner; or elſe they muſt agree, that this Record of the Fact of Surrender, by Confeſſion of the Attorney General, is of equal Weight with any other Record whatſoever.

My Lords, his Majeſty has a Right to the Life of every Perſon attainted; and would it not be a cruel Law, that ſhould prevent him from admitting any Facts to be true, which ſuch Perſon inſiſts on for the ſaving his Life, when the ſame, within his own Knowledge, ſtrictly are ſo?

There is no Doubt but that a Tranſaction of this Kind betwixt Subject and Subject is good, where each Party to a Controverſy (Plaintiffs and Defendants) admit ſuch Facts on the Record, which they know the Certainty of, and never, unleſs out of a Spirit of Perverſeneſs, put them in Iſſue.——Where is the Difference, ſince the Crown and Mr. *Murray* are, as to that Matter then in Controverſy, the only Perſons who could be Parties? The Capacity to be a Witneſs is only a Conſequence naturally flowing from the Avoidance of the Attainder. Mr. *Murray* is not reſtored to his Credit by Act of Favour, but a neceſſary Conſequence of Law, and ſuch as the Crown could not prevent; for as the Attainder was the only Cauſe of his Loſs of Capacity to be a Witneſs; when the Force of that is taken off, that Capacity is of Courſe reſtored, not out of Favour, but of ſtrict Right, and by neceſſary Conſequence.

My Lords, I would aſk one Queſtion; *viz.* Whether the Counſel for the Noble Lord at the Bar will ſay, that Mr. *Murray* has this preſent Day any Attainder againſt him? Or whether he can ever be called again to anſwer on the Foot of that Parliamentary Attainder, in which he was included?

If he cannot, as moſt certainly he cannot, then there is nothing now exiſting which takes away his Teſtimony; and as the preſent Record is of a Controverſy betwixt the only proper Parties to it, and is produced only to manifeſt a Fact then depending, and then by the Rules of Law aſcertained, it ought to be read.

L. H. S. Gentlemen of the Houſe of Commons, I ſuppoſe you have no Objection to the Counſels replying.

Sir *John Strange*. No, my Lords; provided we have the laſt Word; which is our Right.

Mr. Forrester.

My Lords,

I Shall take up the leſs of your Lordſhips Time at preſent, becauſe I admit moſt of the Propoſitions laid down by the learned Managers; though I conceive that none of them have anſwered the Objection we made to the Reading of this Record, which was the Poſſibility of Damage that might enſue to the Noble Lord at the Bar. My Lords, the Reaſon is plain why we object to it, becauſe the Credit of the Fact depending merely upon the Confeſſion of the Attorney General, if it be received in the preſent Caſe, it muſt be ſo in every other, whether the Queſtions relate to Property, or any other Matter; and if it be concluſive to the Noble Lord at the Bar, it is equally ſo to every Man in this Land. My Lords I admit every Caſe put by the learned Manager who ſpoke firſt, as relative to Criminal Proceedings; but what we inſiſt upon is, That this Confeſſion of the Attorney General does only bind the Crown, and the Parties to it; but binds no other Perſon: And, my Lords, they have cited no Authority to your Lordſhips to prove it binding upon any body elſe. My Lords, it was ſaid by the learned Manager, That if Mr. *Murray* was brought a ſecond Time into any Court of Juſtice, he would have the whole Benefit of this Record, and thereby, my Lords, prove himſelf not attainted by this Act of Parliament: And there is no doubt of it, becauſe the Confeſſion is the Act of the Crown, who is bound by it.

They likewiſe ſay, that any Perſon claiming under Mr. *Murray* might intitle himſelf under this Record. My Lords, I admit that alſo, becauſe ſuch Perſon would have the ſame Right as Mr. *Murray* himſelf; but, my Lords, that does not prove that it can affect any other Perſon.

My Lords, it is admitted that a Pardon would have taken off all Objection: But I humbly inſiſt, that by this Method, the Gentleman ſtill con-

continues liable to be conſidered as an attainted Perſon in another Part of the Kingdom, I mean in *Scotland*, where this Record would be no Evidence; for ſhould he eſcape from his preſent Confinement to *Scotland*, and be brought into the Court of Juſticiary, to ſhew Cauſe why Execution ſhould not be awarded againſt him, as attainted by this Act of Parliament, his Plea in the *King's-Bench*, confeſſed by the Attorney General, would be of no Avail to him: He muſt make out the Fact inſiſted on by other Proof, which, being Matter of Evidence, might as well come out one Way as the other, that he did not, as that he did, ſurrender before the 12th of *July* laſt; that he was *taken* by the King's Forces; as that he did *ſurrender* himſelf as the Act requires. Thus your Lordſhips ſee, in how high a Degree the Queſtion affects the Noble Lord at the Bar; and your Lordſhips will be very tender how this Gentleman's Teſtimony is admitted in a Caſe of this Nature, until both his Competency and Credit be eſtabliſhed by better Authority than the bare Confeſſion of the Attorney General.

My Lords, I mentioned ſeveral Inſtances, where a Record of this Kind would not be Evidence againſt a third Perſon: But, ſay the Gentlemen, that is not the Caſe here; becauſe my Lord *Lovat* is not affected by *Murray*'s Attainder. The King, who had the ſole Right of proſecuting, and had an Intereſt in the Attainder, has declared him not to come within the Act of Parliament. But I muſt ſubmit to your Lordſhips, that my Lord *Levat* is affected by, and concerned in, the Conſequence of the Attainder. He has a Right to ſet aſide the Teſtimony of Mr. *Murray*, if attainted; and that Right of ſetting aſide his Teſtimony is equally ſtrong as a Right to an Eſtate, or any other Right given by Law; and the ſame Methods muſt be uſed to deprive him of the one as the other. My Lords, it is ſaid, That this Method of Confeſſion is the proper Courſe; that it is daily made uſe of in that; and the Attorney General, upon a Writ of Error brought, and Errors aſſigned in Fact, or in Law, may admit them to be ſo. But, my Lords, in none of the Caſes quoted by the Gentlemen is there any, wherein the Attorney General has, by his Confeſſion, made that Error, which is not ſo: And although the Party ſhould aſſign Errors, and the Attorney General admit them, yet would not that bind the Court to pronounce them to be Errors, if they appear otherwiſe. My Lords, as ſo much Time has been taken up already, I will not repeat any of the former Arguments; but ſhall conclude with an Obſervation delivered down to us by one of the greateſt and moſt upright Judges that ever ſat in this Hall; I mean my Lord Chief-Juſtice *Vaughan*, who tells us, That the artificial Reaſoning of Law ought never to take place againſt the Principles of natural Juſtice and Equity: And, my Lords, it is a Principle of natural Juſtice, that a third Perſon ſhould not be prejudiced by the Acts of others. The ſame learned Judge concludes his Paragraph, by adding, That in Caſes which depend upon fundamental Principles, from whence plain and natural Concluſions may be drawn, Millions of Precedents are to no Purpoſe: But, my Lords, there has not been one ſingle Precedent laid before your Lordſhips, where the Right of a third Perſon may be affected in the Manner now contended for; and as nothing of that Kind has been attempted, I beg leave to inſiſt, That the Right of the Noble Lord at the Bar to ſet aſide this Witneſs, is as much a Right, as that he has to any Part of his own Eſtate; and ſubmit therefore to your Lordſhips, whether they ought not to ſubſtantiate this Teſtimony by ſome better Proof than ſo weak a Thing as a Record, founded only on the Suggeſtion of the Party, confeſſed by the Attorney General.

L. H. S. Gentlemen of the Houſe of Commons, the Counſel for my Lord *Levat* have done with what they had to offer by way of Reply: Would you ſay any thing to it?

Mr. Attorney General.

My Lords,

IT is ſaid by the Counſel for the noble Lord at the Bar, That they do not deny any Propoſition laid down by us; but that they deny the Conſequence of thoſe Propoſitions. My Lords, A Denial of the Premiſes would be a Denial of the Conſequences; but an Admiſſion of the Premiſes here is an Admiſſion of the Conſequences: They now ſay, all they deſire to contend for, is, That the Confeſſion in this Caſe does not bind a Third Perſon; and that they ſhall not by that loſe their Right to this Objection. My Lords, What is that Objection founded upon? It is founded upon this Suppoſition, That the Witneſs called is an attainted Perſon. If he is not attainted, their Objection fails; for they cannot ſay, that he is an improper Perſon to produce as a Witneſs, upon any other Ground. If the Record therefore deſtroys the Pretence of an Attainder, it proves his Competency. Now the Counſel for the Priſoner have not been able to point out, or ſuggeſt, any one Inſtance or Reſpect, in which he can be ſaid to be, or affected, as an attainted Perſon, unleſs for the preſent ſingle Purpoſe. And it would be very extraordinary to ſay, that a Perſon who can loſe neither his Life nor Eſtate, nor the Purity of his Blood, as a Perſon attainted of Treaſon, ſhould be deemed attainted, for no other Purpoſe but to render him infamous. My Lords, What is the Offence by this Act? It is not High-Treaſon; the Offence is in not ſubmitting to Juſtice; and the Record ſhews, that he did ſubmit himſelf to Juſtice. This is ſtronger, as to that Point, than a Pardon, becauſe it avoids the original Guilt. The Gentlemen ſay, That this Record cannot be made uſe of in *Scotland*; and that if the Witneſs was brought before a Court of Juſtice there, for Execution, upon the Foundation of this Act, he could never avail himſelf of this Record. My Lords, I deny that; and I take it to be clearly otherwiſe; for what would be the Conſequence, if he could not? Much more than the Gentlemen are aware of: For by the ſame Rule that this Record could not avail him there, no Verdict, no Acquittal in *England*, could protect a Man from another Proſecution in *Scotland*, for the ſame Offence; and the Priſoners who have already had, or hereafter ſhall receive their Trial, either in *England* or *Scotland*, for the late Rebellion, and been acquitted; may, by being ſent into the other Part of the Kingdom, be tried a Second Time, and be put twice in Hazard of their Lives. As this is contrary to the Laws of *England*, I believe it is equally ſo to the Laws of *Scotland*, as they ſtood originally; for I take it to be contrary to the Firſt Principles of all Laws, that after a Man is fairly tried for an Offence, by a Court that has full Cognizance of the Crime, he ſhould be taken up, and tried again for the ſame Offence. No Law will admit of it. But, with reſpect to Treaſon, it is made clear by the Statute of 7 *Ann.* which makes the Law of Treaſon, and the Manner of trying it in *Scotland*, the ſame as in *England*. My Lords, if the Gentlemen aſk, How this Record may be made uſe of there? The Method is by producing the Record, or proving a true Copy of it, as is done in Caſe of the Record of a Judgment of any other Court: And the Judges in *Scotland* will be bound by this Record. My Lords, the abſurd Conſequences ariſing from the contrary Doctrine appear at firſt Sight; and are too many now to enumerate. The Gentlemen ſay, That a Confeſſion of an Error in Law will not be admitted in any Court: I do agree that it will not, becauſe the Court muſt judge upon the Whole of the Record; and determine upon their own Judgment and Knowledge of the Law, whether (ſuppoſing all the Facts to be true) there is Error, or not. The Reaſon is, becauſe that is their proper Province; and they neither want, nor can be bound by, the Confeſſion of the Attorney General. But it is quite otherwiſe as to Matters of Fact, which the Court do not *ex officio* examine into themſelves; they muſt take them to be either as they are ſtated and admitted between the Parties themſelves, or appear by the Verdict of a Jury. To apply this to the preſent Caſe: Mr. *Murray* ſays, That he did ſurrender, and ſubmit himſelf to Juſtice, according to the Act of Parliament. The Attorney General, by Command of his Majeſty, admits that Fact: As there is no Iſſue joined, a Jury can't be ſummoned to try it; and it is impoſſible the Court ſhould try it themſelves, by examining Witneſſes; they have no Commiſſion for it; and the Law gives them no ſuch Power. The Fact, therefore, muſt be taken to be true; and, as it cannot be now controverted, your Lordſhips muſt judge, whether it don't clear him of any Attainder.

Sir John Strange.

My Lords,

I SHOULD not now have ſtood up, to have taken up any more of your Lordſhips Time, but in regard to what was mentioned by the Gentlemen who are Counſel for the Priſoner, that this Record cannot be made uſe of in *Scotland*. My Lords, I will beg Leave to put them in mind of the Statute made in the Seventh Year of Queen *Anne*; which ſays, That Trials for High-Treaſon in that Kingdom are to be the ſame as if they were here; and whatever Benefit a Perſon will be intitled to here, they would be equally intitled to there: And therefore I would not have it now taken for granted, that in ſuch Caſes, That ſhould not be admitted as Evidence in one Part of the Kingdom, which is Evidence in another Part of it.

Lord *Talbot*. My Lords, If the Record is now to be read, only to ſhew, That Mr. *Murray* ſurrendered himſelf within the Time preſcribed by the Act, I ſhould have no Objection to the reading of it; but if it is to prove Mr. *Murray* to be a competent, or an incompetent Evidence, then I think it of that Conſequence, that I hope ſome Lord will move to adjourn to the Chamber of Parliament.

Lord High Steward. My Lords, if any Debate ariſes upon the Point that has been argued at the Bar, your Lordſhips muſt adjourn to the Chamber of Parliament, to debate and conſider it.

Then the Earl *Stanhope* moved the Houſe to adjourn to the Chamber of Parliament: And the Houſe was adjourned accordingly: And, after about Two Hours, returned in the ſame Order as before. The Houſe was reſumed; and Proclamation made for Silence.

Lord High Steward. The Lords adjourned to the Chamber of Parliament, upon the Queſtion which had been argued before them, Whether the Record of the Court of King's Bench, offered in Evidence by the Managers, ought to be read, or not? And their Lordſhips have come to the following Reſolution; with which I am ordered to acquaint the Managers for the Houſe of Commons, and you, my Lord *Lovat*: And it is this; That the Managers for the Commons be admitted to prove, and give in Evidence, the Record of the Proceedings in the Court of *King's-Bench*, upon the *Certiorari*; whereby the Act of the laſt Seſſion of Parliament, for attainting *John Murray* of *Broughton*, and others, unleſs they ſurrender themſelves by a certain Day therein mentioned, was removed before that Court.

Mr. At. Gen. My Lords, We deſire Mr. *Tully* may be called, to prove the Record.

Lord *Lovat*. My Lords, I told your Lordſhips before, that I would give you very little Trouble; and now I am willing to give you ſtill leſs. I acknowledge the Record; and ſhall not give your Lordſhips the Trouble of hearing it proved.

Lord High Steward. That will ſave the Trouble of proving it; but it muſt be read. Does your Lordſhip admit the Record to be read, without further Proof?

Lord *Lovat*. Yes, if your Lordſhips pleaſe.

Then the Record was read by the Clerk, at the Table; and is as follows:

Pleas before our Lord the King, at Weſtminſter, *of* Hilary *Term, in the Twentieth Year of the Reign of our Sovereign Lord* George *the Second, by the Grace of God, of* Great-Britain, France, *and* Ireland, *King, Defender of the Faith*
amongſt the Pleas of the King. Roll.

England. } OUR preſent Sovereign Lord the King hath tranſmitted to his beloved and faithful Sir *William Lee*, Knight, and his Aſſociates, Juſtices of our ſaid preſent Sovereign Lord the King, aſſigned to hold Pleas before the King himſelf, his Writ of *Mittimus*; together with a Writ, directed to the Clerk of his Parliaments, and the Return made to the ſame; and alſo the Record of a certain Act of Parliament of our ſaid preſent Sovereign Lord the King, made at *Weſtminſter*, cloſed in theſe Words:

The

The Writ of *Mittimus.* TO Our beloved and faithful Sir *William Lee*, Knight, and others, his Associates, Our Justices assigned to hold Pleas before Us, Greeting. We send you inclosed, in these Presents, the Tenor of a certain Writ of *Certiorari*, directed to our beloved *Ashley Cowper*, Esquire, Clerk of our Parliaments; together with the Return, indorsed upon the Back of the said Writ; and also the Tenour of a certain Act, whereof Mention is made in the same Writ, intituled, An Act to attaint *Alexander* Earl of *Kellie*; *William* Viscount of *Strathallan*; *Alexander* Lord *Pitsligo*; *David Wemyss*, Esquire, commonly called Lord *Elcho*, eldest Son and Heir Apparent of *James* Earl of *Wemyss*; *James Drummond*, Esquire, eldest Son and Heir Apparent of *William* Viscount of *Strathallan*; *Simon Fraser*, Esquire, eldest Son and Heir Apparent of *Simon* Lord *Lovat*; *George Murray*, Esquire, commonly called Lord *George Murray*, Brother to *James* Duke of *Athol*; *Lewis Gordon*, Esquire, commonly called Lord *Lewis Gordon*, Brother to *Cosmo George* Duke of *Gordon*; *James Drummond*, taking upon himself the Title of Duke of *Perth*; *James Graham*, late of *Duntroon*, taking on himself the Title of Viscount of *Dundee*; *John Nairne*, taking upon himself the Title or Stile of Lord *Nairn*; *David Ogilvie*, taking upon himself the Title of Lord *Ogilvie*; *John Drummond*, taking upon himself the Stile or Title of Lord *John Drummond*, Brother to *James Drummond*, taking on himself the Title of Duke of *Perth*; *Robert Mercer*, Esquire, otherwise *Nairn* of *Aldie*; Sir *William Gordon* of *Park*; *John Murray* of *Broughton*, Esquire; *John Gordon* the elder, of *Glenbuckett*; *Donald Cameron* the younger, of *Lochiel*; Doctor *Archibald Cameron*, Brother to *Donald Cameron* the younger, of *Lochiel*; *Ludovick Cameron* of *Tor-Castle*; *Alexander Cameron* of *Dungallon*; *Donald Mac Donald* of *Clanronald*, junior, Son to *Rhonald Mac Donald* of *Clanronald*; *Donald Mac Donald* of *Lochgarie*; *Alexander Mac Donald* of *Keppoch*; *Archibald Mac Donald*, Son of *Col Mac Donald* of *Barisdale*; *Alexander Mac Donald* of *Glencoe*; *Evan Mac Pherson* of *Clunie*; *Lauchlan Mac-Lauchlan* of *Castle-Lauchlan*; *John Mac Kinnon* of *Mac Kinnon*; *Charles Stewart* of *Ardsheil*, *George Lockhart*, eldest Son and Heir apparent of *George Lockhart* of *Carnwath*; *Lawrence Oliphant* the elder, of *Gask*; *Lawrence Oliphant* the younger, of *Gask*; *James Graham* the younger, of *Airth*; *John Stewart*, commonly called *John Roy Stewart*; *Francis Farquharson* of *Monalterye*; *Alexander Mac Gilivrae* of *Drumaglash*; *Lauchlan Mac Intosh*, Merchant at *Inverness*; *Malcolm Ross*, Son of *Alexander Ross* of *Pitcalny*; *Alexander Mac Leod*, Son to Master *John Mac Leod*, Advocate; *John Hay*, Portioner of *Restalrig*, Writer to the Signet; *Andrew Lumsdale*, otherwise *Lumsdain*, Son to *William Lumsdale*, otherwise *Lumsdain*, Writer in *Edinburgh*; and *William Fidler*, Clerk in the Auditor's Office in the Exchequer of *Scotland*; of High-Treason, if they shall not render themselves to One of his Majesty's Justices of the Peace, on or before the Twelfth Day of *July*, in the Year of our Lord One thousand Seven hundred and Forty-six, and submit to Justice: The Tenor of which said Act We, for certain Reasons, have caused to be brought before Us into Our Chancery. And we do hereby command you, That, having inspected the Tenour of the said Act, you do further cause to be done thereon, that which of Right, and according to the Law and Custom of *England*, you shall see fit to be done. Witness Ourself at *Westminster*, the Tenth Day of *February*, in the Twentieth Year of Our Reign.

The Tenour of the said Writ of *Certiorari*, and the Return made to the same; and also the Tenour of the said Act, in the said Writ mentioned, follow in these Words:

The Writ of *Certiorari.* GEORGE the Second, by the Grace of God, of *Great Britain*, *France*, and *Ireland*, King, Defender of the Faith, To our beloved *Ashley Cowper*, Esquire, Clerk of our Parliaments, Greeting. We being willing (for certain Reasons) to be certified concerning the Tenour of a certain Act by Us Made and Enacted, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, at *Westminster*, the Seventeenth Day of *October*, in the Nineteenth Year of Our Reign, intituled, An Act to attaint *Alexander* Earl of *Kellie*; *William* Viscount of *Strathallan*; *Alexander* Lord *Pitsligo*; *David Wemyss*, Esquire, commonly called Lord *Elcho*, eldest Son and Heir Apparent of *James* Earl of *Wemyss*; *James Drummond*, Esquire, eldest Son and Heir Apparent of *William* Viscount of *Strathallan*; *Simon Fraser* Esquire, eldest Son and Heir Apparent of *Simon* Lord *Lovat*; *George Murray*, Esquire, commonly called Lord *George Murray*, Brother to *James* Duke of *Athol*; *Lewis Gordon*, Esquire, commonly called Lord *Lewis Gordon*, Brother to *Cosmo George* Duke of *Gordon*; *James Drummond*, taking upon himself the Title of Duke of *Perth*; *James Graham*, late of *Duntroon*, taking on himself the Title of Viscount of *Dundee*; *John Nairn*, taking upon himself the Title or Stile of Lord *Nairn*; *David Ogilvie*, taking upon himself the Title of Lord *Ogilvie*; *John Drummond*, taking upon himself the Stile or Title of Lord *John Drummond*, Brother to *James Drummond*, taking on himself the Title of the Duke of *Perth*; *Robert Mercer*, Esquire, otherwise *Nairn* of *Aldie*; Sir *William Gordon* of *Park*; *John Murray* of *Broughton*, Esquire; *John Gordon* the elder, of *Glenbuckett*; *Donald Cameron* the younger, of *Lochiel*; Doctor *Archibald Cameron*, Brother to *Donald Cameron* the younger of *Lochiel*; *Ludovick Cameron* of *Tor-Castle*; *Alexander Cameron* of *Dungallon*; *Donald Mac Donald* of *Clanronald*, junior, Son to *Rhonald Mac Donald* of *Clanronald*; *Donald Mac Donald* of *Lochgarie*; *Alexander Mac Donald* of *Keppoch*; *Archibald Mac Donald*, Son of *Col Mac Donald* of *Barisdale*; *Alexander Mac Donald* of *Glencoe*; *Evan Mac Pherson* of *Clunie*; *Lauchlan Mac Lauchlan* of *Castle-Lauchlan*; *John MacKinnon* of *MacKinnon*; *Charles Stewart* of *Ardsheil*; *George Lockhart*, eldest Son and Heir Apparent of *George Lockhart* of *Carnwath*; *Lawrence Oliphant* the elder, of *Gask*; *Lawrence Oliphant* the younger, of *Gask*; *James Graham* the younger, of *Airth*; *John Stewart*, commonly called *John Roy Stewart*; *Francis Farquharson* of *Monalterye*; *Alexander MacGilivrae* of *Drumaglash*; *Lauchlan Mac Intosh*, Merchant at *Inverness*; *Malcolm Ross*, son of *Alexander Ross* of *Pitcalny*; *Alexander MacLeod*, Son to Master *John MacLeod*, Advocate; *John Hay*, Portioner of *Restalrig*, Writer to the Signet; *Andrew Lumsdale*, otherwise *Lumsdain*, Son to *William Lumsdale*, otherwise *Lumsdain*, Writer in *Edinburgh*; and *William Fidler*, Clerk in the Auditor's Office, in the Exchequer of *Scotland*, of High-Treason, if they shall not render themselves to One of his Majesty's Justices of the Peace, on or before the Twelfth Day of *July*, in the Year of our Lord One thousand Seven hundred and Forty-six, and submit to Justice; do command you, That, immediately after the Receipt of this Writ, you do distinctly and openly send before Us, into Our Chancery, the Tenour of the said Act, with all Things touching the same, as fully and perfectly as the same now remains in your Custody; together with this Writ. Witness Ourself at *Westminster*, the Seventh Day of *February*, in the Twentieth Year of Our Reign.

The Return. THE Execution of this Writ appeareth in a certain Schedule to this Writ annexed, as within I am commanded, *Ashley Cowper*, Esquire, *Cler' Parliamentor'*. In the Parliament held at *Westminster*, the Seventeenth Day of *October*, in the Year of our Lord One thousand Seven hundred and Forty-five, and in the Nineteenth Year of the Reign of our Sovereign Lord *George* the Second, by the Grace of God, of *Great-Britain*, *France*, and *Ireland*, King, Defender of the Faith; and there continued by several Adjournments until and unto *Wednesday* the Fourth Day of *June* One thousand Seven hundred and Forty-six, by the Consent of the Lords as well Spiritual as Temporal, and of the Commons, and by the Assent of the King's Majesty then present; the following Statute (amongst others) was Ordained, Enacted, and Established, to wit, An Act to attaint *Alexander* Earl of *Kellie*; *William* Viscount of *Strathallan*; *Alexander* Lord *Pitsligo*; *David Wemyss*, Esquire, commonly called Lord *Elcho*, eldest Son and Heir Apparent of *James* Earl of *Wemyss*; *James Drummond*, Esquire, eldest Son and Heir Apparent of *William* Viscount of *Strathallan*; *Simon Fraser*, Esquire, eldest Son and Heir Apparent of *Simon* Lord *Lovat*; *George Murray*, Esquire, commonly called Lord *George Murray*, Brother to *James* Duke of *Athol*; *Lewis Gordon*, Esquire, commonly called Lord *Lewis Gordon*, Brother to *Cosmo George* Duke of *Gordon*; *James Drummond*, taking upon himself the Title of Duke of *Perth*; *James Graham*, late of *Duntroon*, taking on himself the Title of Viscount of *Dundee*; *John Nairn*, taking upon himself the Title or Stile of Lord *Nairn*; *David Ogilvie*, taking upon himself the Title of Lord *Ogilvie*; *John Drummond*, taking upon himself the Stile or Title of Lord *John Drummond*, Brother to *James Drummond*, taking on himself the Title of Duke of *Perth*; *Robert Mercer*, Esquire, otherwise *Nairn* of *Aldie*; Sir *William Gordon* of *Park*; *John Murray* of *Broughton*, Esquire; *John Gordon* the elder, of *Glenbuckett*; *Donald Cameron* the younger, of *Lochiel*; Doctor *Archibald Cameron*, Brother to *Donald Cameron* the younger of *Lochiel*; *Ludovick Cameron* of *Tor-Castle*; *Alexander Cameron* of *Dungallon*; *Donald Mac Donald* of *Clanronald*, junior, Son to *Rhonald Mac Donald* of *Clanronald*; *Donald Mac Donald* of *Lochgarie*; *Alexander Mac Donald* of *Keppoch*; *Archibald Mac Donald*, Son of *Col Mac Donald* of *Barisdale*; *Alexander Mac Donald* of *Glencoe*; *Evan Mac Pherson* of *Clunie*; *Lauchlan Mac Lauchlan* of *Castle-Lauchlan*; *John Mac Kinnon* of *Mac Kinnon*; *Charles Stewart* of *Ardsheil*; *George Lockhart*, eldest Son and Heir Apparent of *George Lockhart* of *Carnwath*; *Lawrence Oliphant* the elder of *Gask*; *Lawrence Oliphant* the younger, of *Gask*; *James Graham*, the younger, of *Airth*; *John Stewart*, commonly called *John Roy Stewart*; *Francis Farquharson* of *Monalterye*; *Alexander Mac Gilivrae* of *Drumaglash*; *Lauchlan Mac Intosh*, Merchant at *Inverness*; *Malcolm Ross*, Son of *Alexander Ross* of *Pitcalny*; *Alexander Mac Leod*, Son to Master *John Mac Leod*, Advocate; *John Hay*, Portioner of *Restalrig*, Writer to the Signet; *Andrew Lumsdale*, otherwise *Lumsdain*, Son to *William Lumsdale*, otherwise *Lumsdain*, Writer in *Edinburgh*; *and William Fidler*, Clerk in the Auditor's Office, in the Exchequer of *Scotland*, of High-Treason; if they shall not render themselves to One of his Majesty's Justices of the Peace, on or before the Twelfth Day of *July*, in the Year of Our Lord One thousand Seven hundred and Forty-six; and submit to Justice.

WHEREAS *Alexander* Earl of *Kellie*; *William* Viscount of *Strathallan*; *Alexander* Lord *Pitsligo*; *David Wemyss*, Esquire, commonly called Lord *Elcho*, eldest Son and Heir Apparent of *James* Earl of *Wemyss*; *James Drummond*, Esquire, eldest Son and Heir Apparent of *William* Viscount of *Strathallan*; *Simon Fraser*, Esquire, eldest Son and Heir Apparent of *Simon* Lord *Lovat*; *George Murray*, Esquire, commonly called Lord *George Murray*, Brother to *James* Duke of *Athol*; *Lewis Gordon*, Esquire, commonly called Lord *Lewis Gordon*, Brother to *Cosmo George* Duke of *Gordon*; *James Drummond*, taking upon himself the Title of Duke of *Perth*; *James Graham*, late of *Duntroon*, taking on himself the Title of Viscount of *Dundee*; *John Nairn*, taking upon himself the Title or Stile of Lord *Nairn*; *David Ogilvie*, taking upon himself the Title of Lord *Ogilvie*; *John Drummond* taking upon himself the Stile or Title of Lord *John Drummond*, Brother to *James Drummond*, taking on himself the Title of the Duke of *Perth*; *Robert Mercer*, Esq; otherwise *Nairn*, of *Aldie*; Sir *William Gordon* of *Park*; *John Murray* of *Broughton*, Esquire; *John Gordon* the elder, of *Glenbuckett*; *Donald Cameron* the younger, of *Lochiel*; Doctor *Archibald Cameron*, Brother to *Donald Cameron* the younger, of *Lochiel*; *Ludovick Cameron* of *Tor-Castle*; *Alexander Cameron* of *Dungallon*; *Donald Mac Donald* of *Clanronald*, junior, Son to *Rhonald Mac Donald* of *Clanronald*; *Donald Mac Donald*, of *Lochgarie*; *Alexander Mac Donald* of *Keppoch*; *Archibald Mac Donald*, Son of *Col Mac Donald* of *Barisdale*; *Alexander Mac Donald* of *Glencoe*; *Evan Mac Pherson* of *Clunie*; *Lauchlan Mac Lauchlan* of *Castle-Lauchlan*; *John Mac Kinnon* of *Mac Kinnon*; *Charles Stewart* of *Ardsheil*; *George Lockhart*, eldest Son and Heir Apparent of *George Lockhart* of *Carnwath*; *Lawrence Oliphant* the elder, of *Gask*; *Lawrence Oliphant* the younger, of *Gask*; *James Graham* the younger, of *Airth*; *John Stewart*, commonly called *John Roy Stewart*; *Francis Farquharson* of *Monalterye*; *Alexander Mac Gilivrae* of *Drumaglash*; *Lauchlan Mac Intosh*, Merchant at *Inverness*; *Malcolm Ross*, Son of *Alexander Ross* of *Pitcalny*; *Alexander Mac Leod*, Son to Master *John Mac Leod*, Advocate; *John Hay*, Portioner of *Restalrig*, Writer to the Signet; *Andrew Lumsdale*, otherwise *Lumsdain*, Son to *William Lumsdale*, otherwise *Lumsdain*, Writer in *Edinburgh*; and *William Fidler*, Clerk in the Auditor's Office in the Exchequer of *Scotland*; on or before the Eighteenth Day of *April*, in the Year of our Lord One thousand Seven hundred and Forty-six, did, in a traitorous and hostile Manner, take up Arms, and levy War, against his present most gracious Majesty, within this Realm, contrary to the Duty of their Allegiance; and are fled, to avoid their being apprehended,

and profecuted, according to Law, for their ſaid Offences; Be it therefore Enacted by the King's moſt Excellent Majeſty, by and with the Advice and Conſent of the Lords Spiritual and Temporal, and Commons, in this preſent Parliament aſſembled, and by the Authority of the ſame, That if the ſaid *Alexander* Earl of *Kellie*; *William* Viſcount of *Strathallan*; *Alexander* Lord *Pitſligo*; *David Wemyſs*, Eſquire, commonly called Lord *Elcho*, eldeſt Son and Heir Apparent of *James* Earl of *Wemyſs*; *James Drummond*, Eſquire, eldeſt Son and Heir Apparent of *William* Viſcount of *Strathallan*; *Simon Fraſer*, Eſquire, eldeſt Son and Heir Apparent of *Simon* Lord *Lovat*; *George Murray*, Eſquire, commonly called Lord *George Murray*, Brother to *James* Duke of *Athol*; *Lewis Gordon*, Eſquire, commonly called Lord *Lewis Gordon*, Brother to *Coſmo George* Duke of *Gordon*; *James Drummond*, taking upon himſelf the Title of Duke of *Perth*; *James Graham* late of *Duntroon*, taking on himſelf the Title of Viſcount of *Dundee*; *John Nairn*, taking upon himſelf the Title of Lord *Nairn*; *David Ogilvie*, taking upon himſelf the Title of Lord *Ogilvie*; *John Drummond*, taking upon himſelf the Stile or Title of Lord *John Drummond*, Brother to *James Drummond*, taking on himſelf the Title of Duke of *Perth*; *Robert Mercer*, Eſquire, otherwiſe *Nairn*, of *Aldie*; Sir *William Gordon* of *Park*; *John Murray* of *Broughton*, Eſquire; *John Gordon* the elder, of *Glenbuckett*; *Donald Cameron* the younger, of *Lochiel*; Doctor *Archibald Cameron*, Brother to *Donald Cameron* the younger, of *Lochiel*; *Ludovick Cameron* of *Tor-Caſtle*; *Alexander Cameron* of *Dungallon*; *Donald Mac Donald* of *Clanronald*, junior, Son to *Rhonald Mac Donald* of *Clanronald*; *Donald Mac Donald* of *Lochgarie*; *Alexander Mac Donald* of *Keppoch*; *Archibald Mac Donald*, Son of *Col Mac Donald* of *Bariſdale*; *Alexander Mac Donald* of *Glencoe*; *Evan Mac Pherſon* of *Clunie*; *Lauchlan Mac Lauchlan* of *Caſtle-Lauchlan*; *John Mac Kinnon* of *Mac Kinnon*; *Charles Stewart* of *Ardſheil*; *George Lockhart*, eldeſt Son and Heir apparent of *George Lockhart* of *Carnwath*; *Lawrence Oliphant* the elder, of *Gaſk*; *Lawrence Oliphant* the younger, of *Goſk*; *James Graham* the younger, of *Airth*; *John Stewart*, commonly called *John Roy Stewart*; *Francis Farquharſon* of *Monalterye*; *Alexander Mac Gilivrae* of *Drumaglaſh*; *Lauchlan Mac Intoſh*, Merchant, at *Inverneſs*; *Malcolm Roſs*, Son of *Alexander Roſs* of *Pitcalny*; *Alexander Mac Leod*, Son to Maſter *John Mac Leod*, Advocate; *John Hay*, Portioner of *Reſtalrig*, Writer to the Signet; *Andrew Lumſdale*, otherwiſe *Lumſdain*, Son to *William Lumſdale*, otherwiſe *Lumſdain*, Writer in *Edinburgh*; and *William Fidler*, Clerk in the Auditor's Office in the Exchequer of *Scotland*; ſhall not render themſelves to one of his Majeſty's Juſtices of the Peace, on or before the Twelfth Day of *July*, in the Year of our Lord One thouſand Seven hundred and Forty-ſix, and ſubmit to Juſtice for the Treaſons aforeſaid; then every of them the ſaid *Alexander* Earl of *Kellie*; *William* Viſcount of *Strathallan*; *Alexander* Lord *Pitſligo*; *David Wemyſs*, Eſquire, commonly called Lord *Elcho*, eldeſt Son and Heir Apparent of *James* Earl of *Wemyſs*; *James Drummond*, Eſquire, eldeſt Son and Heir Apparent of *William* Viſcount of *Strathallan*; *Simon Fraſer*, Eſquire, eldeſt Son and Heir Apparent of *Simon* Lord *Lovat*; *George Murray*, Eſquire, commonly called Lord *George Murray*, Brother to *James* Duke of *Athol*; *Lewis Gordon*, Eſquire, commonly called Lord *Lewis Gordon*, Brother to *Coſmo George* Duke of *Gordon*; *James Drummond*, taking upon himſelf the Title of Duke of *Perth*; *James Graham*, late of *Duntroon*, taking on himſelf the Title of Viſcount of *Dundee*; *John Nairn*, taking upon himſelf the Title or Stile of Lord *Nairn*; *David Ogilvie* taking upon himſelf the Title of Lord *Ogilvie*; *John Drummond*, taking upon himſelf the Stile or Title of Lord *John Drummond*, Brother to *James Drummond*, taking on himſelf the Title of Duke of *Perth*; *Robert Mercer*, Eſquire, otherwiſe *Nairn* of *Aldie*; Sir *William Gordon* of *Park*; *John Murray* of *Broughton*, Eſquire; *John Gordon* the elder, of *Glenbuckett*; *Donald Cameron* the younger, of *Lochiel*; Doctor *Archibald Cameron*, Brother to *Donald Cameron* the younger, of *Lochiel*; *Ludovick Cameron* of *Tor-Caſtle*; *Alexander Cameron* of *Dungallon*; *Donald Mac Donald* of *Clanronald*, junior, Son to *Rhonald Mac Donald* of *Clanronald*; *Donald Mac Donald* of *Lochgarie*; *Alexander Mac Donald* of *Keppoch*; *Archibald Mac Donald*, Son of *Col Mac Donald* of *Bariſdale*; *Alexander Mac Donald* of *Glencoe*; *Evan Mac Pherſon* of *Clunie*; *Lauchlan Mac Lauchlan* of *Caſtle-Lauchlan*; *John Mac Kinnon* of *Mac Kinnon*; *Charles Stewart* of *Ardſheil*; *George Lockhart*, eldeſt Son and Heir Apparent of *George Lockhart* of *Carnwath*; *Lawrence Oliphant* the elder, of *Gaſk*; *Lawrence Oliphant* the younger, of *Gaſk*; *James Graham*, the younger, of *Airth*; *John Stewart*, commonly called *John Roy Stewart*; *Francis Farquharſon* of *Monalterye*; *Alexander Mac Gilivrae of Drumoglaſh*; *Lauchlan Mac Intoſh*, Merchant at *Inverneſs*; *Malcolm Roſs*, Son of *Alexander Roſs* of *Pitcalny*; *Alexander Mac Leod*, Son to Maſter *John Mac Leod*, Advocate; *John Hay*, Portioner of *Reſtalrig*, Writer to the Signet; *Andrew Lumſdale*, otherwiſe *Lumſdain*, Son to *William Lumſdale*, otherwiſe *Lumſdain*, Writer in *Edinburgh*; and *William Fidler*, Clerk in the Auditor's Office in the Exchequer of *Scotland*, not rendering himſelf, as aforeſaid, and not ſubmitting to Juſtice, as aforeſaid ſhall, from and after the ſaid Eighteenth Day of *April*, in the Year of our Lord One thouſand Seven hundred and Forty-ſix, ſtand and be adjudged attainted of the ſaid High-Treaſon, to all Intents and Purpoſes whatſoever; and ſhall ſuffer and forfeit, as a Perſon attainted of High-Treaſon by the Laws of the Land ought to ſuffer and forfeit: And every of the ſaid Juſtices of the Peace are hereby required to commit every of them, the ſaid *Alexander* Earl of *Kellie*; *William* Viſcount of *Strathallan*; *Alexander* Lord *Pitſligo*; *David Wemyſs*, Eſquire, commonly called Lord *Elcho*, eldeſt Son and Heir Apparent of *James* Earl of *Wemyſs*; *James Drummond*, Eſquire, eldeſt Son and Heir Apparent of *William* Viſcount of *Strathallan*; *Simon Fraſer*, Eſquire, eldeſt Son and Heir Apparent of *Simon* Lord *Lovat*; *George Murray*, Eſquire, commonly called Lord *George Murray*, Brother to *James* Duke of *Athol*; *Lewis Gordon*, Eſquire, commonly called Lord *Lewis Gordon*, Brother to *Coſmo George* Duke of *Gordon*; *James Drummond*, taking upon himſelf the Title of Duke of *Perth*; *James Graham*, late of *Duntroon*, taking on himſelf the Title of Viſcount of *Dundee*; *John Nairn*, taking upon himſelf the Title or Stile of Lord *Nairn*; *David Ogilvie*, taking upon himſelf the Title of Lord *Ogilvie*; *John Drummond*, taking upon himſelf the Stile or Title of Lord *John Drummond*, Brother to *James Drummond*, taking on himſelf the Title of Duke of *Perth*; *Robert Mercer*, Eſquire, otherwiſe *Nairn* of *Aldie*; Sir *William Gordon* of *Park*; *John Murray* of *Broughton*, Eſquire; *John Gordon* the elder, of *Glenbuckett*; *Donald Cameron* the younger, of *Lochiel*; Doctor *Archibald Cameron*, Brother to *Donald Cameron* the younger, of *Lochiel*; *Ludovick Cameron* of *Tor-Caſtle*; *Alexander Cameron* of *Dungallon*; *Donald Mac Donald* of *Clanronald*, junior, Son to *Rhonald Mac Donald* of *Clanronald*; *Donald Mac Donald* of *Lochgarie*; *Alexander Mac Donald* of *Keppoch*; *Archibald Mac Donald*, Son of *Col Mac Donald* of *Bariſdale*; *Alexander Mac Donald* of *Glencoe*; *Evan Mac Pherſon* of *Clunie*; *Lauchlan Mac Lauchlan* of *Caſtle-Lauchlan*; *John Mac Kinnon* of *Mac Kinnon*; *Charles Stewart* of *Ardſheil*; *George Lockhart*, eldeſt Son and Heir Apparent of *George Lockhart* of *Carnwath*; *Lawrence Oliphant* the elder, of *Gaſk*; *Lawrence Oliphant* the younger, of *Gaſk*; *James Graham*, the younger, of *Airth*; *John Stewart*, commonly called *John Roy Stewart*; *Francis Farquharſon* of *Monalterye*; *Alexander Mac Gilivrae of Drumoglaſh*; *Lauchlan Mac Intoſh*, Merchant at *Inverneſs*; *Malcolm Roſs*, Son of *Alexander Roſs* of *Pitcalny*; *Alexander Mac Leod*, Son to Maſter *John Mac Leod*, Advocate; *John Hay*, Portioner of *Reſtalrig*, Writer to the Signet; *Andrew Lumſdale*, otherwiſe *Lumſdain*, Son to *William Lumſdale*, otherwiſe *Lumſdain*, Writer in *Edinburgh*; and *William Fidler*, Clerk in the Auditor's Office in the Exchequer of *Scotland*, ſhall not render themſelves to one of his Majeſty's Juſtices of the Peace, on or before the Twelfth Day of *July*, in the Year of our Lord One thouſand Seven hundred and Forty-ſix, and ſubmit to Juſtice for the Treaſons aforeſaid; then every of them the ſaid *Alexander* Earl of *Kellie*; *William* Viſcount of *Strathallan*; *Alexander* Lord *Pitſligo*; *David Wemyſs*, Eſquire, commonly called Lord *Elcho*, eldeſt Son and Heir Apparent of *James* Earl of *Wemyſs*; *James Drummond*, Eſquire, eldeſt Son and Heir Apparent of *William* Viſcount of *Strathallan*; *Simon Fraſer*, Eſquire, eldeſt Son and Heir Apparent of *Simon* Lord *Lovat*; *George Murray*, Eſquire, commonly called Lord *George Murray*, Brother to *James* Duke of *Athol*; *Lewis Gordon*, Eſquire, commonly called Lord *Lewis Gordon*, Brother to *Coſmo George* Duke of *Gordon*; *James Drummond*, taking upon himſelf the Title of Duke of *Perth*; *James Graham* late of *Duntroon*, taking on himſelf the Title of Viſcount of *Dundee*; *John Nairn*, taking upon himſelf the Title or Stile of Lord *Nairn*; *David Ogilvie* taking upon himſelf the Title of Lord *Ogilvie*; *John Drummond*, taking upon himſelf the Stile or Title of Lord *John Drummond*, Brother to *James Drummond*, taking on himſelf the Title of Duke of *Perth*; *Robert Mercer*, Eſquire, otherwiſe *Nairn* of *Aldie*; Sir *William Gordon* of *Park*; *John Murray* of *Broughton*, Eſquire; *John Gordon* the elder, of *Glenbuckett*; *Donald Cameron* the younger, of *Lochiel*; Doctor *Archibald Cameron*, Brother to *Donald Cameron* the younger, of *Lochiel*; *Ludovick Cameron* of *Tor-Caſtle*; *Alexander Cameron* of *Dungallon*; *Donald Mac Donald* of *Clanronald*, junior, Son to *Rhonald Mac Donald* of *Clanronald*; *Donald Mac Donald* of *Lochgarie*; *Alexander Mac Donald* of *Keppoch*; *Archibald Mac Donald*, Son of *Col Mac Donald* of *Bariſdale*; *Alexander Mac Donald* of *Glencoe*; *Evan Mac Pherſon* of *Clunie*; *Lauchlan Mac Lauchlan* of *Caſtle-Lauchlan*; *John Mac Kinnon* of *Mac Kinnon*; *Charles Stewart* of *Ardſheil*; *George Lockhart*, eldeſt Son and Heir Apparent of *George Lockhart* of *Carnwath*; *Lawrence Oliphant* the elder, of *Gaſk*; *Lawrence Oliphant* the younger, of *Gaſk*; *James Graham*, the younger, of *Airth*; *John Stewart*, commonly called *John Roy Stewart*; *Francis Farquharſon* of *Monalterye*; *Alexander Mac Gilivrae of Drumoglaſh*; *Lauchlan Mac Intoſh*, Merchant at *Inverneſs*; *Malcolm Roſs*, Son of *Alexander Roſs* of *Pitcalny*; *Alexander Mac Leod*, Son to Maſter *John Mac Leod*, Advocate; *John Hay*, Portioner of *Reſtalrig*, Writer to the Signet; *Andrew Lumſdale*, otherwiſe *Lumſdain*, Son to *William Lumſdale*, otherwiſe *Lumſdain*, Writer in *Edinburgh*; and *William Fidler*, Clerk in the Auditor's Office in the Exchequer of *Scotland*, not rendering himſelf, as aforeſaid, and not ſubmitting to Juſtice, as aforeſaid ſhall, from and after the ſaid Eighteenth Day of *April*, in the Year of our Lord One thouſand Seven hundred and Forty-ſix, ſtand and be adjudged attainted of the ſaid High-Treaſon, to all Intents and Purpoſes whatſoever; and ſhall ſuffer and forfeit, as a Perſon attainted of High-Treaſon by the Laws of the Land ought to ſuffer and forfeit: And every of the ſaid Juſtices of the Peace are hereby required to commit every of them, the ſaid *Alexander* Earl of *Kellie*; *William* Viſcount of *Strathallan*; *Alexander* Lord *Pitſligo*; *David Wemyſs*, Eſquire, commonly called Lord *Elcho*, eldeſt Son and Heir Apparent of *James* Earl of *Wemyſs*; *James Drummond*, Eſquire, eldeſt Son and Heir Apparent of *William* Viſcount of *Strathallan*; *Simon Fraſer*, Eſquire, eldeſt Son and Heir Apparent of *Simon* Lord *Lovat*; *George Murray*, Eſquire, commonly called Lord *George Murray*, Brother to *James* Duke of *Athol*; *Lewis Gordon*, Eſquire, commonly called Lord *Lewis Gordon*, Brother to *Coſmo George* Duke of *Gordon*; *James Drummond*, taking upon himſelf the Title of Duke of *Perth*; *James Graham*, late of *Duntroon*, taking on himſelf the Title of Viſcount of *Dundee*; *John Nairn*, taking upon himſelf the Title or Stile of Lord *Nairn*; *David Ogilvie*, taking upon himſelf the Title of Lord *Ogilvie*; *John Drummond*, taking upon himſelf the Stile or Title of Lord *John Drummond*, Brother to *James Drummond*, taking on himſelf the Title of Duke of

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Perth; *Robert Mercer*, Eſquire, otherwiſe *Nairn* of *Aldie*; Sir *William Gordon* of *Park*; *John Murray* of *Broughton*, Eſquire; *John Gordon* the elder of *Glenbuckett*; *Donald Cameron* the younger, of *Lochiel*; Doctor *Archibald Cameron*, Brother to *Donald Cameron* the younger, of *Lochiel*; *Ludovick Cameron* of *Tor-Caſtle*; *Alexander Cameron* of *Dungallon*; *Donald Mac Donald* of *Clanronald*, junior, Son to *Rhonald Mac Donald* of *Clanronald*; *Donald Mac Donald* of *Lochgarie*; *Alexander Mac Donald* of *Keppoch*; *Archibald Mac Donald*, Son of *Col Mac Donald* of *Bariſdale*; *Alexander Mac Donald* of *Glencoe*; *Evan Mac Pherſon* of *Clunie*; *Lauchlan Mac Lauchlan* of *Caſtle-Lauchlan*; *John Mac Kinnon* of *Mac Kinnon*; *Charles Stewart* of *Ardſheil*; *George Lockhart*, eldeſt Son and Heir Apparent of *George Lockhart* of *Carnwath*; *Lawrence Oliphant* the elder, of *Gaſk*; *Lawrence Oliphant* the younger, of *Gaſk*; *James Graham*, the younger, of *Airth*; *John Stewart*, commonly called *John Roy Stewart*; *Francis Farquharſon* of *Monalterye*; *Alexander Mac Gilivrae of Drumoglaſh*; *Lauchlan Mac Intoſh*, Merchant at *Inverneſs*; *Malcolm Roſs*, Son of *Alexander Roſs* of *Pitcalny*; *Alexander Mac Leod*, Son to Maſter *John Mac Leod*, Advocate; *John Hay*, Portioner of *Reſtalrig*, Writer to the Signet; *Andrew Lumſdale*, otherwiſe *Lumſdain*, Son to *William Lumſdale*, otherwiſe *Lumſdain*, Writer in *Edinburgh*; and *William Fidler*, Clerk in the Auditor's Office in the Exchequer of *Scotland*; and ſo ſurrendering himſelf to Priſon for the ſaid High-Treaſon, there to remain till he ſhall be diſcharged by due Courſe of Law; and thereof immediately to give notice to one of his Majeſty's Principal Secretaries of State.

I *Aſhley Cowper*, Clerk of Parliaments, by virtue of the Writ of our ſaid Lord the King of *Certiorari* to me directed, and to theſe Preſents annexed, do certify, That what is above written is the true Tenor of the Act of Parliament aboveſaid in that Writ expreſſed. In Witneſs whereof, to this Schedule I have ſet my Seal, and ſubſcribed my Name. Dated the Ninth Day of *February*, in the Twentieth Year of the Reign of our ſaid Lord the King, and in the Year of our Lord One thouſand Seven hundred and Forty-ſix.

ASHLEY COWPER.

Plea of *John Murray*. } AND now (that is to ſay) upon *Thurſday* next after the Octave of the Purification of the Bleſſed Virgin *Mary*, before our ſaid preſent Sovereign Lord the King at *Weſtminſter*, cometh the ſaid *John Murray* in the ſaid Act named, under the Cuſtody of the Lieutenant of the *Tower* of *London*, by virtue of his Majeſty's Writ of *Habeas Corpus ad ſubjiciendum*, &c. into whoſe Cuſtody he the ſaid *John Murray* had been before committed, upon the Account aforeſaid, being brought to the Bar here in his own proper Perſon, who is committed by the Court to the ſaid Lieutenant of the ſaid *Tower* of *London*, charged as a Perſon attainted of High Treaſon by virtue of the ſaid Act: And being aſked by the Court here, at the Inſtance of Sir *Dudley Ryder*, Knight, Attorney-General of our ſaid preſent Sovereign Lord the King, who, for our ſaid preſent Sovereign Lord the King, in this behalf proſecuteth, If he the ſaid *John Murray* hath, or knoweth of, any thing to ſay for himſelf, why the Court here ſhould not proceed to award Execution againſt him thereupon, he the ſaid *John Murray*, for Plea, ſaith, That it is very true, that he is one of the Perſons in the ſaid Act named and intended; to wit, The Perſon therein deſigned and deſcribed by the Name, Stile, and Addition, of *John Murray* of *Broughton*, Eſquire, againſt whom, with the reſt of the Perſons therein named, deſigned, and deſcribed, the ſaid Act was made, paſſed, and intended, for and on account of the High-Treaſon therein mentioned, and thereby ſuppoſed to have been committed againſt our ſaid preſent Sovereign Lord the King: But, for further Plea, he ſaith, That, long before the Twelfth Day of *July* in the ſaid Act mentioned; to wit, Upon the Twenty-eighth Day of *June* then laſt paſt, he the ſaid *John Murray*, at the City of *Edinburgh*, in the Shire of *Edinburgh*, did, in due Manner, and according to the Directions, and agreeable to the true Senſe, Intent, and Meaning of the ſaid Act, render himſelf to the Right Honourable *Andrew Fletcher*, Eſquire, Lord Juſtice Clerk of *Scotland*, being one of his Majeſty's Juſtices of the Peace in the ſaid Act mentioned and intended for that Purpoſe (he the ſaid *Andrew Fletcher* having then and there full Power and Authority, by virtue of the ſaid Act, to admit him the ſaid *John Murray* to make ſuch Render of himſelf to him the ſaid *Andrew Fletcher*, as aforeſaid); and that he the ſaid *John Murray* was, upon the ſaid Twenty-eighth Day of *June*, in conſequence of ſuch Render, as aforeſaid, committed by him the ſaid *Andrew Fletcher* to Priſon, for and on account of the ſaid High-Treaſon, according to the Directions, and agreeable to the true Senſe, Intent, and Meaning, of the ſaid Act; and that he the ſaid *John Murray* hath, ever ſince his ſaid Render and Commitment, as aforeſaid, until now, remained and continued, and ſtill doth remain and continue, a cloſe Priſoner, upon the Account aforeſaid; and this he is ready to verify and prove, as the Court ſhall award: With this further, That, at the Time of his ſaid Render and Commitment, as aforeſaid, he the ſaid *John Murray* was, and ever ſince hath been, and yet is, willing and deſirous to take his Tryal, and ſubmit himſelf to Juſtice, purſuant to the Directions, and agreeable to the true Senſe, Intent, and Meaning of the ſaid Act.

Confeſſion of the Attorney General } AND the ſaid Sir *Dudley Ryder*, Knight, Attorney General of our ſaid preſent Sovereign Lord the King, who, for our ſaid preſent Sovereign Lord the King, in this behalf proſecuteth, having heard and conſidered the ſaid Plea of him the ſaid *John Murray*, by him now pleaded in Form aforeſaid, he the ſaid Attorney General for our ſaid preſent Sovereign Lord the King ſaith, That he doth not in any wiſe deny any of the Matters in the ſaid Plea alledged; but doth now here in Court, for and on behalf of our ſaid preſent Sovereign Lord the King, and by the ſpecial Order and Command of our ſaid preſent Sovereign Lord the King, admit and confeſs the ſame to be in all reſpects true: Whereupon it is conſidered and adjudged by the ſaid Court here, That the ſaid Plea of him the ſaid *John Murray*, for him ſo above pleaded, as aforeſaid, and alſo the ſaid Confeſſion of the ſaid Attorney General by him ſo made of the ſaid Plea, as aforeſaid, be recorded; and that he the ſaid *John Murray* be remanded to the ſaid *Tower* of *London*, under the Cuſtody of the ſaid Lieutenant, to be by him there kept in ſafe Cuſtody, until he ſhall be from thence diſcharged by due Courſe of Law.

Mr. Att. Gen.

Mr. Att. Gen. My Lords, we desire that Mr. *Murray* may now be sworn.

Lord *Lovat.* My Lords, I desire Leave to falsify the Record, and to prove, by Witnesses, that Mr. *Murray* did not surrender himself within the Time prescribed by the Act of Parliament.

Mr. Att. Gen. My Lords, what the noble Lord at the Bar now insists upon, is, that he shall be at Liberty to falsify the Record, by shewing, by Witnesses, that Mr. *Murray* did not surrender himself according to the Act of Parliament; but I must submit it to your Lordships, that there is no Ground whatsoever to admit the Prisoner to go into that Kind of Evidence; because this is a Record, which, according to the known Rules of Proceeding, cannot be falsified, since it is a Proof of a Thing transacted in a Court of Justice, before whom it was properly cognizable, and who alone, in this Part of the United Kingdom, could hear it, and had Power to record it; and I therefore must insist, that it is out of the Power of any Person whatsoever to contradict that Record.

L. H. S. My Lord *Lovat*, the Managers insist, that it appearing by Matter of Record, that Mr. *Murray* did surrender himself according to the Act of Parliament, that Matter cannot now be falsified.

Lord *Lovat.* My Lords, I must beg, that, since it is a Point of Law, your Lordships will be pleased to hear my Counsel to it.

Mr. Att. Gen. My Lords, as to its being a Question of Law, whether the noble Lord at the Bar shall be at Liberty to produce Witnesses to falsify that Record; to be sure, my Lords, it is a Question of Law, because it cannot be said to be a Question of Fact; but it does not follow as a Consequence, because the noble Lord at the Bar says, that he has a Point of Law to submit to your Lordship, that therefore your Lordships should permit his Counsel to argue it: For it is still in your Lordships Judgment, whether you have any Doubt concerning it; and it is apprehended, that this is too plain a Case to admit of any Doubt with your Lordships; and therefore that you will not permit Counsel to argue it, as the Consequence can only be Delay; and an Indulgence of this Kind, in Matters of no Doubt, would put it in the Power of a Prisoner to protract his Tryal, and keep your Lordships sitting as long as he pleased.

Sir *John Strange.* My Lords, I beg Leave to have it clearly understood, what it is that the noble Lord at the Bar insists upon; whether it be to prove, by Witnesses, that Mr. *Murray* was not in Custody within the Time prescribed by this Act of Parliament; or that Mr. *Murray* did not surrender himself, and submit to Justice within that Time.

Lord *Lovat.* I put it upon that strict Word, that he did not *surrender himself.*

L. H. S. Lord *Lovat*, does your Lordship desire to be heard by your Counsel to that Point?

Lord *Lovat.* Yes.

Mr. *Forrester.* My Lords, it would ill become me, in the Station of Counsel for the noble Lord at the Bar, to decline arguing any Point which he thinks may be of Service to him. The Question now made by the noble Lord is singly this, Whether he shall be at Liberty to adduce Witnesses, *viva voce*, to falsify the Contents of this Record? that is, to prove that Mr. *Murray* did not surrender himself within the Time prescribed by the Act; which being closely connected to the former Objection, I can at present, and until I have Time to consider the Question, do little else but what would be extremely indecent in me, repeat a great Part of what I troubled your Lordships with in the Morning, and which is now over-ruled. But, my Lords, the debating this Point may lead to the Consideration of another, and indeed a very material one; which is, Whether Evidence of his being *taken Prisoner* by the King's Forces will make it a *Surrender* within the legal Construction of the Act of Parliament, so as to warrant his Plea, and the Attorney General's Confession contained in the Record? And this I shall, in Point of Law, beg Leave to deny, upon the Authority of Lord *Duffus*'s Case, and several other Cases. Your Lordships are to determine, whether we shall be heard to these Points or not: But, if I am at Liberty to speak to them, as they are both Questions of great Difficulty, I must beg some further Time for preparing myself, and laying my Thoughts together; since, at this Hour of the Night, and unprepared as I am, it is impossible to argue them so fully as my Duty requires, as the noble Lord has a Right to expect from me, and as your Lordships have a Right to expect Matters to be debated at your Bar.

Lord *Lovat.* My Lords, I am so very weak and infirm, and have been obliged, in order to attend in Obedience to your Lordships Commands, for two Days together, to be up by Three o'Clock in the Morning; I must therefore beg, that your Lordships will indulge me with a later Hour, and some Respite; otherwise I shall die at your Bar.

Mr. Att. Gen. My Lords, I did apprehend, from what the noble Lord at the Bar said, that the Point he wanted to submit to your Lordships was, Whether he should not be at Liberty to bring Witnesses to prove, that Mr. *Murray* did not surrender himself within the Meaning of the Act? But something has dropt since from the Prisoner's Counsel, as if they meant to shew, that Mr. *Murray* did not, in Fact, surrender, but was taken Prisoner before the Time given by the Act to surrender; and that this would not, in Point of Law, be a Surrender within the Act. My Lords, that is a Question totally different from the former. It is one Question, Whether he may be admitted to prove, that he did not surrender according to the Act of Parliament? and another, What would be the legal Effect of his being apprehended previous to the Time appointed? They are two intirely distinct Questions; and whether they shall be admitted to argue the former, is now for your Lordships Consideration; but as to the latter, it is a Matter subsequent, and not now to be considered.

Then the Duke of *Newcastle* moved to adjourn to the Chamber of Parliament; and the Lord High Steward went back to his Chair; and the House was adjourned accordingly.

The Lords and others went back in the same Order as before; and the House being resumed in the Chamber of Parliament, after Debate,

Ordered, That this House will proceed further in the Tryal of the said Lord *Lovat* To-morrow at Eleven of the Clock in the Forenoon: And

A Message was sent to the House of Commons, by Mr. *Elde* and Mr. *Thurston*, to acquaint them therewith.

Ordered, That the Lieutenant of the *Tower* of *London*, or his Deputy, do take back the said Lord *Lovat*, and bring him again to the Bar of this House in *Westminster-Hall*, at Eleven of the Clock in the Forenoon To-morrow.

Wednesday, *the* 11*th of* March, 1746.

The Third Day.

ABOUT Eleven of the Clock in the Forenoon the Lords and others came from the Chamber of Parliament, in the same Order as on *Monday* last, into *Westminster-Hall*; where the Commons, and their Managers, were in the Seats prepared for them respectively, as before: And the Lords took their Places in the Court, and the Lord High Steward in his Chair.

Lord High Steward. The House is resumed. Is it your Lordships Pleasure that the Judges have Leave to be covered?

Lords. Ay, ay.

Then the Serjeant at Arms made Proclamation for Silence, and afterwards the following Proclamation:

Serjeant at Arms. Oyes, Oyes, Oyes! Lieutenant of the *Tower* of *London*, bring forth your Prisoner *Simon* Lord *Lovat* to the Bar, pursuant to the Order of the House of Lords to you directed.

The Deputy Governor of the *Tower* brought the Prisoner to the Bar, in the like Manner as before: and then he kneeled down.

Lord High Steward. Your Lordship may rise.

Lord High Steward. My Lord *Lovat*, your Lordship thought fit Yesterday to insist upon it, that, notwithstanding the Record, produced by the Managers for the House of Commons, of Mr. *John Murray* of *Broughton*'s having surrendered himself within the Time, and according to the Terms prescribed by an Act of Parliament made in the 19th Year of his Majesty's Reign, your Lordship should be permitted to give Evidence, by Witnesses *viva voce*, that Mr. *Murray* did not surrender himself within the Time prescribed by that Act. To this Kind of Evidence the Managers for the House of Commons objected, because, as they alledged, it was giving Evidence to contradict a Fact which was verified by a Record of the highest Nature; and that therefore you should not be permitted to enter into such Proof: Whereupon you desired, that your Counsel might be heard to that Matter, as a Point or Question of Law. Against this the Managers thought fit to object, that it was no Doubt or Question of Law at all; that the Law of the Land was full, and clear, and settled in this Point; and that therefore your Lordship ought not to be heard by your Counsel to it. The House has taken all these Matters into Consideration, in the Chamber of Parliament; and hath come to the following Resolution, with which they have directed me to acquaint you; and it is this, That the Counsel for the Lord *Lovat* be not permitted to argue, that Parol Evidence should be received to prove, that *John Murray of Broughton* did not surrender himself according to the Act made in thelast Session of Parliament in that behalf, in Contradiction to the Record of the Court of *King's-Bench*, produced by the Managers for the Commons.

The Lord High Steward asked Leave to go down to the Table: Which was done.

Lord High Steward. Gentlemen of the House of Commons, you may proceed.

Mr. *Noel.* My Lords, we now desire that Mr. *Murray* of *Broughton* may be sworn.

Lord *Lovat.* My Lords, I did object against Mr. *Murray*'s being examined as a Witness: Your Lordships have been pleased to over-rule that Objection, and I now submit, that Mr. *Murray* may be examined, if you please.

John Murray *called in, and sworn.*

Lord *Talbot.* My Lords, I desire to ask Mr. *Murray* some Questions for the sake of forming my own Judgment in the Matter; but if it is improper that they should be asked, I submit it to your Lordships.

Lord High Steward. My Lords, the ordinary Method of proceeding in these Cases is, that where a Witness is produced, he is to be sworn in Chief, unless there be some Objection to his Competency; and then he is to be sworn upon a *Voire Dire.* After he is sworn in Chief, the Party, who produces him, asks him such Questions as he thinks proper; after which the other Party is at Liberty to cross-examine him either to the Matter of Fact concerning which he has been examined, or any other Matter whatsoever, that shall tend to impeach his Credit, or weaken his Testimony; provided the Questions that are asked him, are such as the Law allows: So in this Court, after the Managers have produced any Witness, and have finished their Examination of him, the Prisoner has Liberty to ask him whatever Questions are proper; and it is most regular, that, after both Sides have gone through with their Examinations of the Witness, any of your Lordships should ask him what Questions you shall judge proper.

Mr. *Noel.* Mr. *Murray*, you will be pleased to attend to the Questions that shall be asked you. Give your Answers distinctly, and raise your Voice as much as you can, that my Lords may hear you.---My Lords, the first Thing I desire of this Witness is, that he may give your Lordships an Account when was the first Time that he heard of any Invitation to the Son of the Pretender to come into *Scotland*, and from whom he heard it.

Mr. *Murray.* My Lords, to the best of my Remembrance, in the Month of *February*, 1741-2, when I was at *Edinburgh*, I had there Occasion to see my Lord *Traquair*, who told me that there were several Gentlemen, to the best of my Memory, the Prisoner at your Lordship's Bar, my Lord *Perth*, my Lord *John Drummond*, Sir *James Campbell* of *Achenbreck*, and Mr. *John Stuart* Brother to Lord *Traquair*, had employed one *Drummond* of *Bochaldie* to go from *Scotland* to *Rome*, to assure the Pretender of their Zeal for his Service; and that they would be ready and willing, as soon as sufficient Assistance could be had from *France*, to appear publickly in Arms for him: And, at the same Time, he said, that he had given *Drummond* a Memorial signed by those Persons, I think

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Seven of them in Number, to Cardinal *Fleury*, expreſſing their Attachment to the Pretender, and deſiring him to procure Aſſiſtance from the Court of *France*; and at the ſame Time this *Drummond* carried with him a Liſt of all the People, that, by thoſe Gentlemen, were ſuppoſed to be ready and willing to join in the Pretender's Service.

Lord Lovat, *interrupting*,

MY Lords, Your Lordſhips will be pleaſed to conſider, that what this Gentleman ſays, is only Hearſay Evidence, which ſhould not be admitted before your Lordſhips, as it gives you a bad Impreſſion of a Man. I am now trying for my Life and Fortune, and hope your Lordſhips will conſider it.

Mr. *Noel*. My Lords, I am ſo far from differing from the noble Lord at the Bar in this reſpect, that I did underſtand the Witneſs was ſpeaking only what he had heard from my Lord *Traquair*.

Mr. Att. Gen. My Lords, the Managers do know and deſire, that your Lordſhips will diſtinguiſh between Evidence that does, and Evidence that does not affect the Priſoner at the Bar. The Witneſs was giving an Account by way of Introduction; which will be material for your Lordſhips Conſideration. I beg leave to ſay, it is impoſſible for a Witneſs, in his giving an Account of a Tranſaction, to ſpeak nothing but Words that alone will affect the Priſoner; and therefore This, though it does not affect the Priſoner, may be proper to introduce That, which he has to ſay, that may affect him. What he now ſays, is only giving an Account of a Plot or Conſpiracy entered into by ſeveral Perſons, which did afterwards bring on the Rebellion.

Lord High Steward. My Lord *Lovat*, The Managers do admit, that what has been hitherto ſaid by the Witneſs under Examination does not affect you; and they deſire now to offer it only as Evidence of a Conſpiracy in general, which, if they do not apply to your Lordſhip by particular Evidence, will not affect you.

Lord *Lovat*. My Lords, As I ſaid before, it gives a bad Impreſſion.

Lord *Coke*. My Lords, I apprehend, that we are right in going into this Kind of Evidence; becauſe, in the Preamble to our Articles of Impeachment, we ſet forth the general Conſpiracy.

Mr. Sollicitor General. My Lords, What has hitherto been ſaid, is not Evidence againſt the noble Lord at the Bar; and God forbid that he ſhould be affected by any thing that is not ſtrictly Evidence againſt him! And therefore it is fit, that the View with which the Evidence is offered ſhould be fully underſtood. The Preamble to the Articles of Impeachment aſſerts, That, ever ſince the Breaking out of the War, and particularly in 1743, many Perſons have plotted and conſpired with the Enemy, to procure an Invaſion of this Kingdom by a Foreign Force, and to raiſe a Rebellion at Home. The firſt Article charges Lord *Lovat* to have been one of thoſe Conſpirators. It is neceſſary, therefore, by general Evidence, to ſhew, that there have been ſuch Plots and Conſpiracies as the Commons aſſert, and then to affect the noble Lord at the Bar, by proper Evidence, with being concerned in thoſe Plots. This Method of Proceeding is not new, but the eſtabliſhed Courſe. Upon the Impeachment of the Lord Viſcount *Stafford*, a general Evidence was given of the Conſpiracy, which was declared not to affect him, but as introductory only. The like was done upon the Trials at Law of the Perſons accuſed of having been in the ſame Plot. The ſame Method was allowed as proper, and liable to no juſt Objection, in many Trials after the Revolution. In the Reign of the late King, upon the Trial of *Layer*, the like Method was purſued: General Evidence was given of a Plot which did not directly affect him. I dare anſwer for the Gentlemen who manage this Proſecution, that no one of us will urge againſt the noble Lord any thing which is not brought home to him by ſtrict and legal Proof: If we ſhould, he is ſafe in your Lordſhips Judgment, which will diſtinguiſh general from particular Evidence.

Then the Witneſs was directed to go on with his Narrative.

Mr. *Murray*. My Lords, I mentioned to your Lordſhips, That at the ſame Time that *Drummond* went over to *Paris*, he carried with him a Liſt of all the Gentlemen in *Scotland*, who, it was ſuppoſed by thoſe who ſigned this Memorial, were ready and willing to join them: But this Liſt I take rather to be a general Liſt of the Highlands of *Scotland*; nor do I imagine there could be any Reaſon to think, that the great Number of People there mentioned, could appear in Favour of the Pretender. My Lord *Traquair*, at the Time of his informing me of this, told me, that *Drummond* was then in *Edinburgh*; and propoſed, that I ſhould have a Meeting with him. Accordingly, I had a Meeting with him; and he repeated to me much the ſame thing that I have repeated to your Lordſhips: Said he had been extremely well received by the Cardinal, to whom he had delivered the Memorial given him at *Edinburgh*: That he expreſſed much Satisfaction, and was very ſanguine, and had the Pretender's Intereſt very much at Heart; and that, provided he could get ſufficient Aſſiſtance and Aſſurance from thoſe who are called the Pretender's Friends in *England*, that then he would ſend over the Troops required; the Number was 3000 Men, to be landed in *Scotland*; 1500 at or near *Inverneſs*, ſo as immediately to join with the Clan of the *Fraſers*; the other 1500 were to be landed in the Weſt-Coaſt, near *Cameron*'s of *Lochiel*, who was to take the Command of them upon him, and to raiſe the People of *Argyleſhire*: At the ſame Time, a Body of Ten or Twelve Thouſand Men were to be landed as near *London* as they poſſibly could.---That at the ſame Time *Drummond* was in *Edinburgh*, he ſent for *Cameron*; and when they met, he repeated what had paſt, and the Succeſs he had at *Rome* and *Paris*; and aſſured them, that provided he could have Aſſiſtance in *England*, the Scheme might be put in Execution in Autumn following. After a Week's Stay in *Edinburgh*, *Drummond* went to *London*. I do not remember to have heard any thing more concerning this Matter till the *Auguſt* following. This was, to the beſt of my Memory, the End of *March*, or Beginning of *April*, that he left *Edinburgh*.

Lord High Steward. What Year was it in?

J. Murray. 1742. We call it ſo in *Edinburgh*.

Lord High Steward. You begin the Year in *Scotland* on the 1ſt of *January*?

J. Murray. Yes.

My Lords, in the Autumn following, when I was at my Lord *Traquair*'s Houſe in the Country, he told me he underſtood by *Drummond*, that Cardinal *Fleury* propoſed ſending a Body of *Swediſh* Troops into *Scotland*, thinking they might be more agreeable to the People there, as they were Proteſtants, than *French* or *Iriſh* Brigades would be: But, at the ſame Time, ſaid, he thought it would be neceſſary that a Perſon ſhould be ſent from *Scotland*, to be deputed to ſollicit thoſe Troops from *Sweden*, in Conjunction with the Perſon whom the Cardinal ſhould employ. My Lord *Traquair* thought that I ſhould go on that Account: But I think it was rather *Drummond*'s than my Lord *Traquair*'s Propoſition.

Lord High Steward. When was this?

J. Murray. In *Auguſt* 1742. I refuſed to comply with this. From which Time I do not remember to have heard any thing for Six Months; and, about that Time, my Lord *Traquair* and *Cameron* of *Lochiel*, at *Cameron*'s Houſe, did ſhew me a Letter written by *Drummond* from *Paris*; wherein he ſaid, That upon his Return to *France*, he had repreſented the thing to the Cardinal in ſuch a Light as engaged him to promiſe, that in a ſhort Time he would land the Troops in *Scotland*, as propoſed. There were ſeveral other Circumſtances in the Letter, which I cannot now remember: So far I can ſay, that Letter, in general, when it was read to me, ſeemed very extraordinary, to think, that an Affair of ſuch Conſequence as the invading theſe Kingdoms, and raiſing a Civil War in the Country, was to be undertaken by a few People, and by ſuch kind of Management. I ſaid, I apprehended it was a Scheme of *Drummond*'s, to keep up a Spirit of Party in this Country, and to make himſelf uſeful to the Gentlemen who employed him; and that there was no ſuch thing intended by Cardinal *Fleury*. My Lord *Traquair* determined, that it was then neceſſary to know the real State of the Caſe; and he deſired I would go to *Paris* for that Purpoſe. I at firſt did not comply with it; I did not care to execute it; nor did I agree to it till ſeveral Weeks afterwards: I was then coming to *London*; and in *January* I came up; but, upon the Road, I underſtood that Cardinal *Fleury* was dead.

Lord High Steward. When was this?

J. Murray. In *January* 1743, by the *Scotch* Stile. I ſtaid ſome ſhort Time in *London*; and from thence I went over privately to *Paris*; and, by means of one *Mac Donald* the Banker, I found out *Drummond*: He carried me that Evening to one Mr. *Semple*, who is there called my Lord *Semple*; and was the Perſon employed by the Pretender to manage his Affairs in *France*: They both joined in lamenting the Death of the Cardinal; and ſaid, That, had he lived, in all Probability the Scheme would have been executed that Spring; that the Reaſon why it was not, was owing to the Marſhal *Mallebois* having Orders from *France* to march his Army towards *Hanover*, inſtead of the Coaſt of *Flanders*, as the Cardinal intended; but that the Cardinal had been ſo extremely ſanguine in the Pretender's Intereſt, that he had given all his Papers, Memorials, and the like, to M. *Amelot*, the then Secretary for Foreign Affairs. I propoſed to ſee M. *Amelot*; and accordingly I went to *Verſailles*, where I ſtayed Two or Three Weeks. I was firſt preſented by *Drummond* to *Semple*; and had an Audience of M. *Amelot*, whom I told I had been ſent from *Scotland*, by the Perſons who had ſigned the Memorial which I mentioned to your Lordſhips, and who were concerned in it, to know whether the King of *France*, his Maſter, was willing to put the Scheme in Execution. He told me, that Mr. *Semple* had acquainted him with the Reaſon of my coming: And thereupon he went to the King of *France*, and told him of it; and upon that I deſired to know what Anſwer he had from the King of *France*. The Anſwer he gave me was, That the King told him, that I might aſſure thoſe Gentlemen, that he had the Intereſt of their Maſter as much at Heart as they; and that, as ſoon as he had an Opportunity, he would put the Scheme they propoſed in Execution. With this Anſwer I returned to *Paris*, where I only ſtayed Two Nights. At firſt, I obſerved, that M. *Amelot* ſeemed very deſirous to have ſuch Aſſurances from *England* as the Cardinal had required; and he applied to *Drummond* and *Semple* on that Head. When I left *Paris*, Mr. *Drummond* determined to come over. I ſet out from *Paris*, and came privately to *London*. The Reaſon of Mr. *Drummond*'s coming over, was to collect thoſe Aſſurances which had been expected from *England*.

Lord High Steward. What Time was this?

J. Murray. It muſt have been the End of *March*, or Beginning of *April*.

L. H. S. In what Year was it?

J. Murray. In 1743.

I ſtaid but a few Days in *London* after my Return; and Mr. *Drummond* deſired me, that as ſoon as I arrived in *Scotland*, I would acquaint my Lord *Traquair* of his being come to *London*, and the Reaſon of it; and deſired, that he would come and aſſiſt in procuring the Aſſurances from the Pretender's Friends. Upon my Return to *Edinburgh*, I ſtopt at *York*, where I met with the late Lord *Perth*, who then was at *York*; and I acquainted him with what had been done; who ſeemed extremely diſſatisfied at it. I ſoon afterwards came to *Edinburgh*; and ſoon after my Arrival there, I met Lord *Traquair*, whom I acquainted with *Drummond*'s being come over; and that he deſired his Lordſhip to go to *London* to aſſiſt him in his intended Purpoſe. His Lordſhip went with that Intent (as he ſaid) in about two Weeks after, about the Beginning of *April*, to the beſt of my Remembrance. On Lord *Traquair*'s Return to *Scotland*, in Autumn, he acquainted me, That he had ſeveral Meetings with *Drummond*; and that he had endeavoured to get as many Aſſurances as he could from the Pretender's Friends, at leaſt ſuch as he thought ſo: The Perſons he named were Lord *Barrymore*, Sir *John Hinde Cotton*, and Sir *Watkin Williams Wynne*: That he had ſeveral Meetings with theſe ſeveral Perſons; and that Sir *John Hinde Cotton* ſeemed extremely ſhy, and unwilling to converſe or meet on the Pretender's Affairs; and none of them were willing to give any ſuch Aſſurances under their Hands and Seals as were given by the Seven in *Scotland*. The ſame Summer one *Butler* was ſent from *France*, to know the State of the *Jacobite* Party in *England*.

Lord *Talbot*. My Lords, I object to the Witneſs's proceeding to give Evidence

Evidence which does not relate to the Point in Queſtion: He has mentioned the Names of ſeveral Honourable Gentlemen, on a very extraordinary Occaſion, which does not at all relate to the Trial of the Noble Lord at the Bar: He is calumniating the Characters of ſeveral Gentlemen, who are my worthy Friends: And therefore, if it is inſiſted that he ſhould proceed, I think it will be worth our while to adjourn to the Chamber of Parliament, to conſider how far it ſhall be permitted.

L. H. S. Gentlemen of the Houſe of Commons, you hear what is ſaid by the Noble Lord. It is objected, that the Witneſs is going on to give Evidence of a Fact not relating to the Noble Lord at the Bar, but to other Perſons; and that this is an improper Kind of Evidence, and ought not to be given.

Mr. At. Gen. My Lords, we did not examine the Witneſs to thoſe particular Facts which he has mentioned, that do not relate to the Noble Lord at the Bar; but in giving an Account of the Facts inquired into, he has himſelf entered into that Kind of Narrative; but as it is only what he heard my Lord *Traquair* ſay concerning other particular Perſons, we do not inſiſt on his proceeding in his Hearſay Account of what concerns thoſe Gentlemen.

Mr. *Noel.* My Lords, what the Witneſs has dropt in reſpect of the Honourable Gentlemen he has named, does not affect them at all. It is nothing more than a Relation which he had from my Lord *Traquair*, and not from any Matter ariſing within his own Knowledge. And, my Lords, I may venture to aſſure your Lordſhips, for myſelf and all the Gentlemen concerned in this Proſecution, that we will not aſk the Name of one Perſon immaterial to the preſent Trial: And therefore I muſt ſubmit it to your Lordſhips, whether the Witneſs ſhould not be ſuffered now to go on; and that for the future, when he comes to any Tranſaction of that Kind, he ſhould not name any Perſons till he comes to the Noble Lord at the Bar.

L. H. S. Your Lordſhips hear what is mentioned by the Managers, that they agree that the Witneſs, in mentioning theſe Tranſactions in general, ſhould not name any Perſons, till he comes to the Noble Lord at the Bar.

J. Murray. I was directed, that when I came to be examined here, I was to give a Narrative of the Springs, the Riſe and Progreſs of the late Rebellion, as well as what related to the Noble Lord at the Bar; but if I have committed an Error, I readily ſubmit to your Lordſhips Correction.

Earl of Cholmondeley. As the Witneſs ſays he was directed to give a Narrative, with regard to the whole Riſe and Progreſs of the Rebellion, I beg he may be aſked by whom he was directed?

L. H. S. My Lords, I did not at this Diſtance hear the Witneſs uſe the Word *directed*; but underſtood him only, that he was brought here to give an Account of the Riſe and Progreſs of the Rebellion. Poſſibly it might eſcape me.

Earl of Cheſterfield. I did not hear the Word *directed*; but I ſhould be glad to have it cleared up.

L. H. S. Mr. *Murray*, when you ſpoke laſt of your giving a Narrative of the Riſe and Progreſs of the Rebellion, did you make Uſe of the Word *directed*, or not?

J. Murray. My Lords, this is the firſt Time I ever ſpoke in Publick; I may have committed an Error; I cannot ſay whether I made uſe of the Word *directed*, or no.

Earl of Cholmondeley. My Lords, I had no other Intention in the Queſtion, but to know the Meaning of the Perſon who ſpoke the Words; whether he apprehended that the general Queſtion, aſked him by the Managers, was a Direction to him, and whether that was what he meant?

J. Murray. My Lords, ſome Days after my Examination in the *Tower*, by the Honourable Committee of the Houſe of Commons, a Gentleman, who I believed was their Secretary, came to me to take a further Examination; and to aſk me as to any other Matter that had occurred ſince my laſt Examination: Some Days after that, he told me, that I ſhould be called here before your Lordſhips, upon the Trial of my Lord *Lovat*; and that at the ſame time, it would be expected that I ſhould give an Account of the Riſe and Progreſs of the Rebellion in general.

Sir William Yonge. My Lords, now the Witneſs at the Bar has explained what he meant by the Word *directed*, I hope your Lordſhips will have no ill Impreſſion of the Managers, from any thing that may have dropped from the Evidence. And, my Lords, I beg Leave to aſſert, that no Direction has been given to Mr. *Murray* by the Managers; and that they neither have given, or will give, any Direction to any Witneſs whatſoever. My Lords, we well know, that it does not become us to do any thing of that Kind; nor have we done it: So far from it, that when we firſt examined the Witneſs at the Bar, we examined him ſolely to the Point of the Conduct of the Noble Lord at the Bar. My Lords, we did afterwards determine among ourſelves, that as it was our Duty to lay before your Lordſhips that Conſpiracy wherein the Noble Lord at the Bar appeared to have acted a Part; we did therefore give Mr. *Murray* Notice, that he would be examined before your Lordſhips to that Point. My Lords, we never had any Information from him on that Subject; and this is the firſt Time I ever heard him give an Account of this general Conſpiracy. My Lords, we were ſo careful in our Examination of the Witneſs in the Committee, that I well remember the Queſtion's being aſked him by the worthy Manager who ſits near me; and it was in the moſt general Terms that we could conceive, in order to let your Lordſhips into the Knowledge of this Matter. And your Lordſhips will obſerve, through the whole Courſe of this Proceeding, that the utmoſt Candour will be made uſe of by the Managers, in their Examination of the Witneſſes; and that they will put no leading Queſtions to them but general Queſtions, and ſuch as they are to anſwer upon Oath, and according to the Truth.

Earl of *Cholmondeley.* My Lords, I beg Leave to ſay, that I did not conceive that the Managers, in their Examination of Witneſſes, made uſe of the leaſt Direction or Authority whatſoever. I have the greateſt Senſe of their Candour and Fairneſs; it is my Opinion of them, and of the whole Body by whom they are deputed; and it was upon that Principle I propoſed my Queſtion to the Witneſs.

Lord *Talbot.* My Lords, I pray that the Witneſs may be aſked; Whether he is, upon this Occaſion, a voluntary or an involuntary Evidence?

Mr. At. Gen. My Lords, the Managers are now proſecuting for the whole Commons of *Great-Britain*; they are proſecuting upon the Foundation of Evidence, for a Treaſon of the greateſt Magnitude; there is now a Witneſs at your Lordſhips Bar, whom they are examining to prove that Treaſon; and, while they are ſo, I hope they ſhall not be interrupted. There is no Doubt, but when they have done with the Examination of the Witneſs, if any Lord thinks proper to aſk him any Queſtions, your Lordſhips have a Right to do it: But we are now examining the Witneſs on behalf of the Proſecution; and we hope we ſhall have Liberty to go through with it; and then your Lordſhips will permit him to be examined by any body elſe: But, my Lords, at preſent we are in Poſſeſſion of the Witneſs; and we beg we may have Liberty to go on.

Earl *Stanhope.* My Lords, I beg the Queſtion propoſed may be aſked; or that we may adjourn to the Chamber of Parliament.

L. H. S. My Lords, the Rule for the Examination of Witneſſes in this Court, in either Houſe of Parliament, and every where elſe, is, that if a Witneſs is produced by a Proſecutor, or Plaintiff, they have a Right to examine him firſt: But if any Objection is made to the Queſtions aſked by the Proſecutors, whether they are Managers of the Houſe of Commons upon an Impeachment, or Counſel upon an Indictment, the Objection is firſt to be conſidered; and if the Objection prevails, and is allowed, then the Queſtion is not to be aſked: But all Queſtions that are aſked, whether touching the Matter of Fact to be tried, or the Credibility of the Witneſs, are to be aſked at the proper Time. The Party who produces the Witneſs has a Right to go through the Examination firſt; and then the other Side croſs-examines him; and after that is over, the Judge aſks him ſuch Queſtions as he thinks proper, unleſs, as I ſaid before, there be any Objection to the Queſtions; or any doubtful Matter ariſes that wants immediately to be cleared up. The ſame Method is to be obſerved here; and the Reaſon of it, my Lords, is, that unleſs your Lordſhips obſerve this Method, you will be in perpetual Confuſion.

Earl *Stanhope.* My Lords, the Queſtion now propoſed, aroſe from an Expreſſion that juſt now dropped from the Witneſs.

The Witneſs proceeded in his Evidence.

J. Murray. My Lords, this *Butler*, whom I mentioned to your Lordſhips, was for ſome time in *England* during that Summer that my Lord *Traquair* was in *London*; when, to cover his Intention, he bought up a Number of Horſes for the King of *France*'s Uſe, and expreſſed himſelf ſo well pleaſed with the Encouragement he had from the Pretender's Friends in *England*, that he ſaid, that, as ſoon as he went over, he would repreſent it in ſuch a Light to the King of *France*, his Maſter, as he imagined, would induce him to ſend the Succours deſired. Upon his Return to *Verſailles*, where *Drummond* went with him, *Drummond* went to *Rome*, as he ſaid, at the Deſire of the *French* Court, to perſuade the Pretender to ſend his Son to *France*. Accordingly he did perſuade him to do it; but *Drummond* returned to *France*, before the Pretender's Son left *Rome*. After *Drummond* went to *Paris*, he came to *London*, to acquaint the Friends of the Pretender in *England*, that the King of *France* was determined to ſend over a Body of Troops in the Spring. This came to my Knowledge by two Letters from *Drummond*; the one written from *Paris* in *December*, and the other written from *London*. The firſt Letter he ſent over, was not forwarded in time to my Lord *Traquair*; but when *Drummond* returned, he found it lying here: He incloſed it in another Letter; and they both came to my Lord *Traquair*'s Hands at *Edinburgh*. In the firſt Letter, he mentioned his intended Journey to *Rome*: In the ſecond, he mentioned his Return to *Paris*, and the Reaſon of his coming to *London*; and that he found the Pretender's Friends there very backward: That with Difficulty he had perſuaded them to agree to the *French*'s Landing. In this Letter, there were a great many Contradictions and Abſurdities, in regard to the landing a Body of Troops in *Scotland* and *England* at the ſame Time. It particularly mentioned, that Earl *Marſhall* was to command the 3000 Men that were to come from *Dunkirk* to *Scotland*; and at the End of the ſame Letter he ſays, "But I do not know how my Lord *Marſhall* is to be equipped; which, with other Circumſtances, determined us to write a Letter to *Drummond*, to deſire him to explain himſelf." My Lord *Perth*, and my Lord *Traquair*, ſhewed me the Letter, and deſired I would prepare a Letter to *Drummond*, deſiring him to explain himſelf. Accordingly I wrote a Letter in their Preſence, which they both ſigned; and I believe, I cannot ſay poſitively, that I ſigned it myſelf. This Letter, as my Lord *Traquair* ſaid, was ſent to *London*, to be forwarded to *Drummond* at *Paris*; but the Perſon to whom the Letter was delivered in *London*, wrote to *Drummond*, and told him, That ſuch a Letter was in his Hands; and deſiring to know, whether he ſhould ſend it to him at *Paris*, or not; *Drummond* ſaid in Anſwer, That he ſhould not ſend the Letter, leſt it ſhould be intercepted; but deſired he would burn it.

Mr. *Noel.* What Time was this?

J. Murray. In the Month of *January* 1743.

Mr. *Noel.* According to what Stile?

J. Murray. It was in the Year 1743, not long before the intended Imbarkation at *Dunkirk*.

Mr. *Noel.* When was that?

J. Murray. To the beſt of my Memory, in 1743.

Mr. *Noel.* Be pleaſed to recollect the Time; becauſe it is very material.

J. Murray. It was about two Months before the intended Invaſion.

L. H. S. You may poſſibly recollect the Time from the other Circumſtances. Do you remember the Year of the Battle of *Dettingen*?

J. Murray. I believe it was in the Year 1743.

Mr. *Noel.* How long was this after the Battle of *Dettingen* that you ſpeak of? Or was it in the *January* before, or after the Battle?

J. Murray. I believe it was the *January* following.

Mr. *Noel.* It would be proper for you to recollect from theſe Circumſtances, if you can, whether it was in *January* 1743, or 1744, according to the *Scotch* Stile?

J. Murray. January 1744, by the *Scotch* Stile.

In Two Weeks after, there was another Letter came from *Drummond*, conſiſting of a few Lines only, wherein he ſaid, That, in all Probability, before that Letter came to hand, the Pretender's Son would be landed in *England*, with the Troops under the Command of Marſhal *Saxe*. From this time, to *July* following, ſo far as came to my Knowledge, there were no Accounts from Abroad. It was propoſed to me, as I had then an Intention that Summer of going to *Flanders* to ſee the Army, that I ſhould go the Length of *Paris*, to know in what Situation their Affairs then ſtood. The Firſt time I declined it; but was afterwards brought to agree to it, upon being ſhewed a Letter of Mr. *Semple*, wherein he made a Number of Excuſes for the intended Invaſion's not taking Effect; and deſired freſh Aſſurances from *Scotland*, and that Endeavours ſhould be uſed in *England:* Upon which I was preſſed to go. We then thought it extremely neceſſary that we ſhould know upon what Footing Things really were. I accordingly came to *London*, and from thence I went to the Army in *Flanders*, ſtaid only a few Days there, and then I went to *Holland*, and from thence, in a private Manner, to *Paris*. When I went to *Paris*, I was introduced to the Pretender's Son by *Drummond* and *Semple*. The Firſt time I ſaw him, ſo far as I can remember, there was nothing eſſential paſſed. I deſired to ſee him in private; which I accordingly did the next Day. My Deſign was to repreſent to him, that I thought the Perſons employed by him at *Paris* were impoſing upon him; and that they had no other Intention but to ſerve themſelves, to keep up the Spirits of the Party in *Britain*, and thereby make themſelves neceſſary to the Party. With this Intent, I explained the Letter wrote by *Drummond*, endeavoured to ſhew the Contradictions in it, and that *Drummond* endeavoured to ſerve himſelf, and not him. He ſaid at that time, he was determined to come to *Scotland*.

Mr. *Noel*. Who are you ſpeaking of?

J. Murray. The Pretender's Son. He mentioned the Aſſociation; and ſaid, He was determined to come into *Scotland*, and did not doubt but the King of *France* intended an Invaſion in the Spring; but that he was then preparing for it, and intended to execute it as ſoon as the Campaign was over; and that, if he did not do it before, he was determined to come into *Scotland*. I endeavoured to ſhew him, that the Undertaking was deſperate; and that he could not propoſe having above 4 or 5000 Men, ſuppoſing all the Friends he could expect, ſhould be ready to join him: And it was ſeen afterwards, that he had not ſo many. Notwithſtanding which, he inſiſted upon coming. I was ſo much againſt it, that I ſpoke to Sir *Thomas Sheridan*, a Perſon who lived with him for many Years, and told him of the Danger of ſuch an Attempt; and that it would be the Ruin of many Families, and the Deſtruction of the Country. Sir *Thomas Sheridan* ſaid, he would endeavour to perſuade him againſt it; and, upon his Arrival in *Scotland*, told me he had; but to no Purpoſe. After ſtaying a few Days in *Paris*, I returned to *Scotland*, where I gave an Account, not to all, but to ſome of the Perſons concerned in the Memorial, of what had paſſed; and every body, but my Lord *Perth*, declared againſt the Pretender's Son coming into *Scotland:* Upon which I wrote a Letter to him, repreſenting the Opinion of his Friends in *Scotland*, and ſetting forth the bad Conſequences of ſuch an Undertaking. This Letter I committed to the Care of a Gentleman who was going to *London*, in the Month of *January* 1745, *Scotch* Stile. This was neglected to be forwarded, and was returned to me in the Month of *April* following. I, notwithſtanding, endeavoured to forward that Letter ſeveral times; and there having been Occaſion to ſend from the Weſt of *Scotland*, by my Lord *Perth*'s Means, the Packet was ſent to *France*; but could not arrive in time, before the Young Pretender ſet out. In *June*, I received a Letter from the Young Pretender, wherein he ſaid, he was fully reſolved and determined to come into *Scotland*; and that he was to ſet out in *June*, and propoſed to come to the Weſt of *Scotland*; and appointed Signals for his Landing. Upon the Receipt of this, I ſent it, by an Expreſs, to my Lord *Perth*; deſiring him to forward the Letter, or the Contents of it, to *Cameron* of *Lochiel*'s Houſe, becauſe I began to reflect, that it would be neceſſary ſome Methods ſhould be taken to inform the Gentlemen in the *Highlands*, who were ſuppoſed to be ready, and to ſee if they approved of it. Upon that, I went to *Cameron*'s Houſe of *Lochiel*; who told me, That he had ſent his Brother Doctor *Cameron*, with a Copy of that Letter, to the noble Lord at the Bar. Doctor *Cameron* returned the next Day, and ſaid he had accordingly gone to the noble Lord's Houſe; that he had told him he had Buſineſs of Conſequence to impart to him; and that he had taken his Promiſe to mention nothing of what was to paſs between them: Upon which, he ſhewed my Lord *Lovat* a Copy of the Letter. I cannot ſay theſe were the very expreſs Words; but it was to this Effect: Upon which, the noble Lord at the Bar declared, That it was a fooliſh and raſh Undertaking; and that he ſhould not land; and, if he did, that none of the Men would join him. And this is what Dr. *Cameron* told me. And it was the Opinion of all thoſe of the *Highlands*, that he ſhould not land, but return. They deſired I would write a Letter of the Opinion of thoſe Gentlemen to the Pretender, and of the bad Situation the Country lay under; and to deſire, as their utmoſt Wiſhes, that he would return to *France*; which Letter I did write: I wrote Two of them, and committed them to the Care of a Gentleman; and which Letters he received upon the Iſland.

Mr. *Noel*. Who received them?

J. Murray. The Pretender's Son. The Firſt Notice I had of his Landing was by an anonymous Letter that I received about a Week after. It did not ſay expreſly, that the Pretender was landed; but, by the Words of it, I judged it was ſo. I was deſired to come to the Houſe of Lord *John Drummond:* There I underſtood that he was landed; and, in a little Time after, joined him, at the Houſe of *Mac Donald* of upon the Weſt Coaſt. About Ten Days after that, he erected a Standard in a Place called *Glengarie*; where he was joined by the *Camerons*, the *Mac Donalds* of *Keppoch*, and a few of the *Mac Donalds* of With thoſe, he marched to the Houſe of *Mac Donald* of *Glengarie*. There was a Gentleman of the Name of *Fraſer* of *Gortuleg*, whom he there applied to, and the Laird of *Lochiel*, as being Perſons acquainted with the noble Lord at the Bar. *Lochiel* told me there was ſuch a Perſon there; that there were Two Commiſſions granted by the Old Pretender in favour of the noble Priſoner, which he deſired the Young Pretender to ſend. Accordingly, I aſked him for thoſe Commiſſions. He told they were in a Trunk, with other Papers, which he had left up the Country, by reaſon of the Approach of General *Cope*, who was then expected in the Country; but deſired, at the ſame time, that Mr. *Kelley* might write a Commiſſion; whether it was of Lieutenant-General, or no, I cannot ſay; but I ſaw the Commiſſion written by Mr. *Kelley*. I was alſo to make an Apology to my Lord *Lovat*, why the original Commiſſions had not been ſent. Whether I made the Apology verbally to Mr. *Fraſer* of *Gortuleg*, or whether I did it by Letter, I cannot ſay. I did not ſee it put into the Packet, or ſent; and I did not inquire whether he had received it, becauſe I did not doubt of the thing. After the Arrival of the Pretender's Son at *Edinburgh*, nothing material relating to the noble Lord at the Bar happened between the laſt Time I ſpoke of, and the Time of his Arrival there. Some time after the Battle of *Preſton-Pans*, *Cameron* of *Lochiel* came to me, and told me, That one *Hugh Fraſer*, who had been Clerk, or Servant in ſome Capacity, to my Lord at the Bar, but was then an Attorney at *Edinburgh*, he was a fit Perſon to ſend to my Lord *Lovat*, to deſire him to ſend out his Clan. I agreed that he ſhould go; and he had Inſtructions ſo to do. Whether I wrote to my Lord *Lovat* by *Hugh Fraſer*, or no, I cannot recollect; very probably I did; but cannot ſay politively I did. The next thing, in regard to the noble Lord at the Bar, that happened, was upon the Return of the *Highland* Army from *Derby* to *Glaſgow*. There this *Hugh Fraſer* came to *Glaſgow*; and this was the Firſt time I ever ſaw him after he left *Edinburgh*. He came at that time, as he ſaid, from *Perth*, and was ſent, by the Maſter of *Lovat*, to procure Arms for a few Men which he had under his Command, and to know where he ſhould join the Army. It was then propoſed to write to my Lord the Priſoner at the Bar, to endeavour to perſuade him to appear publickly in favour of the Pretender. This was agreed to, and the Letter was wrote by *Cameron* of *Lochiel*, and ſigned by him, *Clunie Mac Pherſon*, and myſelf. This Letter was delivered to *Hugh Fraſer*, with one that was wrote by the Pretender's Son himſelf, a Letter of Compliment. I do not remember that there was any Commiſſion, or any thing ſent, ſave theſe Two Letters, and a Letter which I wrote to the Maſter of *Lovat*, which was ſent by *Hugh Fraſer*. If there were any more ſent, it is more than I can remember. *Hugh Fraſer* at the ſame time aſked, if there had not been a Patent granted by the Old Pretender to create my Lord *Lovat* a Duke: To which *Lochiel* anſwered, That if there had been any ſuch granted, it was in the Hands of his Father *John Cameron*, who was then at *Dumblain*. It was for this Reaſon that I did not addreſs this Letter or Packet to my Lord *Lovat*; but left that to the Management of *Hugh Fraſer*, if he ſhould find the Patent creating my Lord *Lovat* a Duke, when he ſhould come to *Dumblain*. *Hugh Fraſer*, at the ſame time, anſwered, That my Lord *Lovat* had made a Propoſal, that Lord *John Drummond* (it was either he, or my Lord *Strathallan*, who then commanded at *Perth*, or perhaps both of them) ſhould march, with the Troops under his Command, to *Inverneſs*, and bring with him ſome more People of his own. The Propoſal, if it came from my Lord *Lovat*, as *Hugh Fraſer* ſaid it did, was a very judicious one; and my Lord *Lovat* muſt have deſired it to cover his Country from the Troops then under Lord *Loudon*'s Command, as my Lord *Lovat* had left *Inverneſs* ſome little Time before that. And the next thing that occurs to me, with reſpect to the noble Lord at the Bar, is, that while I was at *Inverneſs*, I received a Letter from the Hands of *Fraſer* of *Gortuleg*. This, he ſaid, came from my Lord *Lovat*; but wrote to me ſeemingly in ſome Clerk's Hand. This Letter was produced; but, one Paragraph of it being very remarkable, I aſked *Gortuleg* the Meaning of it; and he ſaid, That my Lord *Lovat* was deſirous of having that Patent creating him a Duke, which he expected ſome time before. I ſaid, That I had no ſuch Patent; and told him, That he ought to put my Lord *Lovat* off from any ſuch Expectation.

Mr. *Noel*. You ſaid, That this Letter came to you at *Inverneſs*; pray when did it come to you?

J. Murray. It was in the End of *February*, or Beginning of *March*.

Mr. *Noel*. In what Year?

J. Murray. In the Year 1746.

Mr. *Noel*. According to the *Scotch* Stile?

J. Murray. Yes.

I had no Occaſion either to ſee or hear from the Lord at the Bar, from that time for ſome Weeks after the Battle of *Culloden*; and, when in Company with *Lochiel*, I was informed, that my Lord *Lovat* was in that Country, and that he lay at the Place called *Glenmely*; and there was a Boat ſent to bring Lord *Lovat* to the other Side of the Lake, where a Meeting had been propoſed by *Lochiel*. I believe that Meeting was accidental in regard to the noble Lord at the Bar, becauſe *Lochiel* expreſſed great Satisfaction, that they ſhould have Lord *Lovat*'s Advice and Aſſiſtance. Another Reaſon which induced me to think ſo was, that *Cameron* ſent a Servant, with Two Horſes, to procure Wine and Spirits from *Beaufort*, Lord *Lovat*'s Seat, there being neither in that Part of the Country. *Cameron* of *Lochiel*, with ſome others, and I, came to the Place where Lord *Lovat* was: He was then upon the Side of a Lake.

Mr. *Noel*. What is the Name of that Place?

J. Murray. I heard it is called *Morell*, or *Morlaig*; but whether that is the real Place, I cannot ſay.

The Firſt Night we were together, or rather the only Night that I was there, I do not remember that any thing material paſſed; but, in general, we told my Lord *Lovat*, that there was a Meeting to be the next Day; and that we ſhould be very proud of his Advice. Accordingly, the next Day there was a Meeting of about Twelve or Thirteen Gentlemen, where we did deſire the noble Priſoner at the Bar to give his Opinion. There were preſent *Cameron* of *Lochiel*, *Barriſdale*, *John Roy Stewart*, old *Glenbuckett*, Dr. *Cameron*, and a Nephew of *Keppoch*'s, and ſome few others. I cannot particularly remember them all.

Mr. *Noel*. You have not ſaid whether the noble Lord at the Bar was there?

J. Murray. Yes: He was at that Meeting.

Mr. *Noel*. Did you ſee him there?

J. Murray.

J. Murray Yes. I propoſed in that Meeting, that my Lord *Lovat* ſhould give his Opinion. My Lord *Lovat* ſaid, That, in his Opinion, the only thing for the Gentlemen there to do, was, to raiſe a competent Number of Men to protect their Country, Families, and Cattle, and endeavour to defend themſelves.

Mr. *Noel.* To protect their Country! from what?

J. Mur. To protect or defend their Country from the King's Forces, who were then at *Inverneſs*: There were no other Forces. The Number of Men then propoſed to be raiſed was 3000, or 3500; a compact Body, whom it was eaſy to find Proviſions for. This Propoſal was agreed upon; and the particular Number of Men that each Gentleman ſhould bring was agreed upon. Among the others, the Clan of the *Fraſers* was named for 400, to be commanded by the Maſter of *Lovat*: But my Lord *Lovat* himſelf would not anſwer for his Son; but required *Lochiel* to anſwer for him. My Lord *Lovat* ſaid, That he was an old Man, and not able to do any thing himſelf; and that he would not anſwer for his Son's Abilities; but deſired they would let *Lochiel* anſwer for him; and that he did not doubt but he would do it. *Lochiel* accordingly anſwered for him. There was a Sum of Money diſtributed there, and, I think, about Seventy *Louidors* given to the Servant of my Lord *Lovat*, to carry to his Son, as Ten Days Pay for the 400 Men which he was to bring out.

Mr. *Noel.* Was my Lord *Lovat* preſent, or not, at the Time you ſpeak of, when that Money was given to his Servant?

J. Mur. I cannot ſay poſitively whether my Lord *Lovat* ſaw the Servant get the Money; but it was diſtributed by a Perſon who was my Clerk; and my Lord *Lovat* was at the other End of the Room.

Mr. *Noel.* Was it in the ſame Room?

J. Mur. Yes: My Lord *Lovat* was in the ſame Room that the Money was diſtributed in. There were ſeveral Perſons there, to whom Money was paid.

Mr. *Noel.* Can you name the Servant who received it for Lord *Lovat*?

J. Mur. No: I think he was called the Steward of my Lord *Lovat*.

Mr. *Noel.* From whence came the Money?

J. Mur. From *France*.

Mr. *Noel.* What was the Sum that came from *France*?

J. Mur. Thirty-five thouſand *Louidors* at that time.

Proclamation was made for Silence.

After this Meeting was over, ſo far as I can remember, I, with *Lochiel*, croſſed over to the oppoſite Side of the Lake; and my Lord *Lovat*, as I underſtood, and he himſelf propoſed, remained there all that Night. Four or Five Days after, I had Occaſion to be at a Place called *Glendeſherrie*, when my Lord *Lovat* was on the oppoſite Side, at a Houſe formerly belonging to the Brother of *Lochiel*. I went there to my Lord *Lovat* the next Day, with no Intention to ſpeak to him of Buſineſs; but upon ſeeing his Servant, to whom the Money was given, I aſked him, when he intended to ſend the Servant away with it? He ſaid, he ſhould go that Day; or the next; and then called a Perſon who was called his Secretary; and deſired him to write a Letter to the Maſter of *Lovat*, in my Name: But what were the Contents of the Letter, or that I ſaw it, I cannot remember; but I took it in general, that the Contents of the Letter were to give the Maſter of *Lovat* the Reaſon why the Money was ſent. I did not then ſtay above an Hour or Two with my Lord *Lovat*, but returned to *Lochiel*. What was agreed upon at the Meeting, and propoſed to be done, did not take Effect ſo ſoon as was expected; neither indeed was there above Four or Five hundred Men in the Whole, that met, about Ten Days after the Time firſt propoſed; that Handful of Men were Two Days at *Lochiel*'s Houſe before the King's Troops marched Northwards, in Purſuit of them: Upon Intelligence that the King's Troops were on their March, Two Men were ordered out, to ſee what Number of Men there were; and if we could make any Head: They ſaw a great Number of Men; upon which we retired to the Head of the Lake; when it was determined, that we ſhould diſperſe, and every one do the beſt he could for himſelf. From thence I went into the Country that belongs to the Clan *Ronald*, where I received a few Lines by a young Man, who ſaid he was Servant to my Lord at the Bar; wherein he ſaid, It was neceſſary for him to have a Watch or Guard to attend him, of Twenty-two Men, and a Lieutenant; and deſired, that I might ſend him Money, to pay thoſe Men Twenty Days Pay, I think it was. I do not remember, that I wrote any Anſwer to this Letter, becauſe I had no Pen, Ink, or Paper; but I gave the Servant Fifteen *Louidors*, having then not much Money; and deſired him to give it to my Lord *Lovat*. After that I had a Meſſage from the noble Lord at the Bar, by one *Biſhop Mac Donald*, deſiring, that I would ſee him before I left the Country; but ſo far as I remember, it was nothing farther than Compliments. Since that Time till Yeſterday, I never had the Honour to ſee the noble Lord at the Bar, nor had any Letters from him, nor correſponded with him.

Mr. *Noel.* Were the Fifteen *Louidors* that you ſent to my Lord *Lovat*, Part of the *French* Money that was landed there?

J. Mur. Yes, it was Part of the *French* Money.

Mr. *Noel.* My Lords, He has told your Lordſhips already, that the Men that were to be raiſed were to defend the Country againſt the King's Forces: Now I beg to know, whether it was mentioned at that Meeting, where theſe Men were to march, or where to rendezvous?

J. Mur. It was propoſed, that the general Rendezvous ſhould be near the Houſe of *Keppoch*. *Lochiel*'s People, *Bariſdale*, and *Clanronald*'s, were to have rendezvouſed upon the Lake, about two Miles above *Lochiel*'s Houſe, and then to proceed to the general Rendezvous, by *Lochiel*'s.

Mr. Attorney General. Pray, had you any blank Letters from the Young Pretender, after he came to *England*; or that were ſent to you?

J. Mur. I had Letters that were ſent to me, and were not directed, but left with me, to deliver to ſuch Perſons as I thought willing to ſupport the Cauſe.

Mr. At. Gen. Pleaſe to give an Account to my Lords, what thoſe Letters were, and the Import of them.

J. Mur. I do not remember the exact Number of Letters, but I did receive a Number of Letters; they were not directed, but left to be directed to ſuch People in *Scotland* as were thought the beſt Friends to the Pretender, and proper to cultivate a Party for him in the Country.

Mr. At. Gen. Pleaſe to give an Account to my Lords, at what Time theſe Letters were delivered to you, and by whom.

J. Mur. There were ſome of the Letters, either Two or Three of them, that I brought with me from *Paris*; and the others were ſent to me; but who delivered them to me, I cannot particularly remember.

Mr. At. Gen. Pleaſe to mention to my Lords, who delivered you the Letters you received at *Paris*.

J. Mur. The Young Pretender himſelf.

Mr. At. Gen. What were the Directions he gave then?

J. Mur. There was a Credential attached to every Letter; and they were to be delivered to ſuch Perſons as were diſpoſed to promote his Intereſt in the Country.

Mr. At. Gen. And what was the Meaning of the Credential? Was it ſigned by the Young Pretender, or by any body?

J. Mur. Yes, by him.

Mr. At. Gen. Pleaſe to give an Account to my Lords, to whom you delivered thoſe Letters.

J. Mur. One of thoſe Letters, together with the Credential, I delivered at *Edinburgh*, to the Laird of *MacLeod*.

Mr. At. Gen. Pleaſe to give an Account to my Lords, to whom you delivered any of thoſe Letters.

J. Mur. There was another of thoſe Letters ſent to Sir *Alexander MacDonald*.

Mr. At. Gen. You ſay it was ſent; then you did not deliver it yourſelf?

J. Mur. No.

Mr. At. Gen. Do you know whether it was received or no?

J. Mur. No, I never heard it was.

Mr. At. Gen. Pleaſe to give an Account to my Lords, of any other of theſe Letters which you delivered.

J. Mur. The other Letters, ſo far as I can remember, were put into the Cuſtody of *Lochiel*, who was the proper Perſon to ſend them to the People who were to have them: As to thoſe who had them, I cannot diſtinctly name them all; but my Lord *Perth* had one, I am ſure.

Mr. At. Gen. What Time was it, that thoſe ſeveral and reſpective Letters were delivered?

J. Mur. They were delivered in the Months of *November* and *December*, 1714.

Mr. At. Gen. Was that after the Time you came from *Paris*?

J. Mur. Yes, it was.

Mr. At. Gen. Were they delivered, in order to forward the intended Invaſion from *France*, which you gave an Account of before?

J. Mur. They were deſigned by the Pretender as Letters to be given to People who were moſt his Friends, to know whether or no they were ready to join him; and the Credential annexed was for them to forward his Intereſt in the Country.

Mr. *Noel.* You have told us, that a Computation was made at that Meeting, of the Number of Men that could be raiſed; pleaſe to give an Account to my Lords, whether any particular Perſon, and who, mentioned the Number of Troops that might be raiſed?

J. Mur. It was the general Opinion, that 3000 Men ſhould be raiſed; and my Lord *Lovat* ſaid, that ſuch a Number would be ſufficient.

Mr. *Noel.* Did he mention any Proportion of Men that were to be raiſed by the Matter of *Lovat*?

J. Mur. He mentioned 400 *Fraſers*, to be raiſed by the Maſter of *Lovat*.

Lord High Steward. Gentlemen of the Houſe of Commons, Have you done with the Examination of this Witneſs?

Mr. At. Gen. My Lords, we have done with this Witneſs at preſent.

L. H. S. My Lord *Lovat*, The Managers for the Houſe of Commons declare, that they have done with this Witneſs at preſent: Will your Lordſhip aſk him any Queſtions?

Lord *Lovat.* My Lords, I beg Leave to tell your Lordſhips, that I am the moſt incapable Man of the three Kingdoms to make my Defence, becauſe, as I mentioned to your Lordſhips before, I want both my Sight and my Hearing; and I therefore begged of your Lordſhips to allow my Counſel to examine my own Witneſſes, and counter-examine the Witneſſes againſt me; but your Lordſhips were not pleaſed to allow that. Your Lordſhips are much more capable of examining the Witneſſes than I am; and therefore I ſhall refer it to your Lordſhips; and beg Leave to ſit down. I will aſk this Witneſs no Queſtions now.

Lord *Talbot.* My Lords, I beg Leave to aſk this Queſtion: Did you voluntarily ſurrender yourſelf to the King's Forces? or was you taken by the King's Forces?

J. Mur. I did not intend, at that particular Time, to ſurrender myſelf; and I preſume it is not neceſſary for me to ſay now, whether I ever did intend it or not: But at the Time that the Party of Dragoons came to the Houſe where I then was, the Doors were ſhut, and I was in ſuch a Poſition, as that I could have killed two of them myſelf; but I rather choſe to ſubmit myſelf, and throw down my Arms.

Lord *Talbot.* My Lords, The Queſtion that I aſk is, Whether he did, or did not, voluntarily ſurrender himſelf; and whether his Intention was then to ſubmit to the King's Forces?

J. Mur. I did ſay, that it was not my Intention then particularly to ſubmit myſelf; it was not my Intention till I ſaw the Dragoons.

Lord *Talbot.* Did you uſe any Means to make your Eſcape afterwards?

J. Mur. I never did.

Lord *Talbot.* Have you ever taken the Oaths of Allegiance and Fidelity to the King?

J. Mur. I never did.

Lord *Talbot.* Did you never take thoſe Oaths, or Oaths of the ſame Nature to any body elſe?

J. Mur. No.

Sir *William Yonge.* My Lords, we hope the Witneſs ſhall not be obliged to anſwer Queſtions of this Nature; it is a Queſtion that tends to accuſe himſelf of High-Treaſon.

Lord *Talbot.* My Lords, I did not aſk him any Queſtion to accuſe himſelf of any Crime which he had not himſelf before confeſſed; and as he had

had before accuſed himſelf of that Crime, this may be ſaid to be a Continuation of it, but cannot be ſaid to be a freſh Accuſation. I ſhould not have aſked him the Queſtion, if he had not before accuſed himſelf.

Lord High Steward. My Lords, There is no Reaſon to ſpend your Lordſhips Time upon this Point; for the Gentleman has already anſwered the Queſtion.

Lord *Talbot.* Are you at preſent a Priſoner, or under Confinement?

J. Mur. Yes, I am, and have been ever ſince I came to the *Tower*.

Lord *Talbot.* Are you, upon this Occaſion, a voluntary Evidence?

J. Mur. I ſhould be glad to have the Meaning of that Queſtion explained; and to know what is meant by a voluntary Evidence.

Lord *Talbot.* My Lords, The Meaning of the Queſtion is, Whether the Witneſs is not an Evidence in Hopes of a Pardon? and whether, if he himſelf was pardoned, he would be an Evidence at all?

Mr. At. Gen. My Lords, On behalf of this Proſecution, I muſt oppoſe that Queſtion's being aſked. The Queſtion, as I underſtand it, is, Whether the Gentleman under Examination is a Witneſs in Hopes of a Pardon? and whether he would be a Witneſs, if his Pardon had been obtained? My Lords, This is a Queſtion, as I apprehend, not proper to be aſked, becauſe it is no Queſtion as to any Matter of Fact at all, but only a Queſtion concerning what the Witneſs would do, upon Suppoſition of a Fact which has not happened. I do not apprehend, that any Queſtion can be aſked of a Witneſs, but what concerns a Matter of Fact; not what a Witneſs would, or would not do, upon a future Contingency. The Queſtion muſt tend to a Fact, and the Witneſs either is, or is not capable of giving Evidence; but, my Lords, to aſk Queſtions of this Kind, is entering into the Receſſes of a Man's Heart, which Nobody has a Right to enquire into; and it is ſuch a Sort of Queſtion as I do not remember ever to have heard aſked in a Court of Juſtice: and, perhaps, it is what the Witneſs is incapable of anſwering; for, till the Event happens, he cannot ſay what he would, or would not do. We therefore hope your Lordſhips will think, that this is an improper Queſtion; and that the Thoughts, Inclinations, or Wiſhes of a Witneſs ought not to be enquired into here, where Matters of Fact only are to be tried.

Lord *Talbot.* My Lords, I aſked the Queſtion for this Reaſon, that I might know with what View his Evidence was given; and ſo judge of the Credibility of it. Do you believe your Life depends upon the Conformity of the Evidence that you ſhall give on this Trial, to former Examinations which you have undergone?

Sir *William Yonge.* My Lords, I preſume, without troubling your Lordſhips with any Argument, that all that has been ſaid by the worthy Manager who ſpoke laſt to oppoſe the former Queſtion, is much more applicable to the Queſtion now propoſed to be aſked; and, therefore, without adding any thing more why this Queſtion ſhould not be aſked, I ſhall ſubmit it to your Lordſhips; and humbly apprehend, it is our Duty to oppoſe the aſking of this Queſtion.

L. H. S. Gentlemen of the Houſe of Commons, Do you oppoſe this laſt Queſtion being aſked?

Mr. At. Gen. I ſhould beg that the Queſtion might be a little more fully explained; I do not remember to have ever heard the like.

Lord *Talbot.* My Lords, The Queſtion to me ſeems extremely clear and plain; and I beg Leave to repeat it to your Lordſhips; and if you have any Difficulty about it, I will readily ſubmit. My Lords, The Queſtion is, Whether you (the Witneſs under Examination) believe your Life depends upon the Conformity of the Evidence you ſhall give upon this Trial, to your former Examinations? I ſuppoſe the Gentleman was examined as well by the Managers for the Houſe of Commons, as their Clerk.

Lord *Halifax.* My Lords, All that the Noble Lord, who aſked this Queſtion, means by it, is comprehended in the former Queſtion that he aſked; and that is, Whether the Witneſs is a voluntary Witneſs, or not?

L. H. S. The Witneſs ſaid, He did not know what was meant by the Word *voluntary*; and deſired it might be explained.

Lord *Talbot.* My Lords, I urged the other Queſtion only as explanatory to that; and all that I meant by it was to know, whether the Witneſs at the Bar is governed by Hope or Fear?

J. Mur. My Lords, If your Lordſhips pleaſe, I will anſwer the Queſtion: I am upon my Oath, and obliged to tell the Truth; and I ſay, that poſſibly, and very probably, had I been in another Situation of Life, I ſhould not have appeared before your Lordſhips as a Witneſs againſt the Noble Lord at the Bar.

Lord *Talbot.* My Lords, I am extremely well ſatisfied with the Gentleman's Anſwer to the Queſtion; and it gives me a much better Opinion of his Evidence than I had before.

Lord *Barrington.* My Lords, I beg Leave to aſk this Witneſs a Queſtion explanatory to the laſt Queſtion. If you had a full Pardon, and was at this Bar, and was obliged to anſwer upon Oath, would you not have given the ſame Evidence that you now have given?

Lord *Talbot.* My Lords, I apprehend that is only aſking the Witneſs, whether he would come here voluntarily, and perjure himſelf?

Lord *Barrington.* My Lords, The Queſtion I propoſed is not, Whether the Witneſs would come voluntarily to this Bar? but whether, if he had a full Pardon, and was brought to this Bar (as every Man may, whether free or not free), if he had a free Pardon, and was compelled to give Evidence, whether he would give the ſame Evidence upon Oath as he has now given?

Lord *Talbot.* My Lords, This is a Queſtion that no Man alive, in this Gentleman's Circumſtances, can poſſibly anſwer.

J. Mur. My Lords, I beg Leave to anſwer the Queſtion. If I was in ſuch a Situation as has been now ſtated to your Lordſhips, and brought here with a Pardon in my Pocket, but brought here to give Evidence againſt the Noble Lord at the Bar, I would not add to, or impair a Syllable of, or vary in the leaſt from, what I have now ſaid.

L. H. S. Is the Evidence you have here given upon your Oath true?

J. Mur. Yes, it is.

Sir *John Strange.* My Lords, I beg Leave to aſk this Gentleman a Queſtion, relating to a Tranſaction which has been lately mentioned. He was aſked, Whether he did, or did not, ſurrender himſelf voluntarily to the King's Forces? His Anſwer was, That he could, he believes, have diſpatched two of the Dragoons, but that he did not make any Reſiſtance. Now I deſire he may acquaint your Lordſhips, whether that was, or was not, before the 12th Day of *July* laſt?

J. Mur. It was upon the 28th of *June* laſt.

Sir *J. Strange.* My Lords, I deſire to know, Whether or not, from that Time till now, he has not been in Cuſtody, and amenable to Juſtice?

J. Mur. I have been in Cuſtody ever ſince that Time.

Mr. At. Gen. My Lords, I deſire to know, Whether he was then brought before any Judge or Juſtice of the Peace, and whom?

J. Mur. I was carried to my Lord Juſtice Clerk in *Edinburgh*, the Day I was taken into Cuſtody.

Mr. At. Gen. Was you then committed, or no, by the Juſtice Clerk?

J. Mur. I was that Night committed, by the Juſtice Clerk, to the Caſtle of *Edinburgh*.

Mr. At. Gen. On the 28th of *June*?

J. Mur. Yes.

Mr. At. Gen. Did you continue in the Caſtle of *Edinburgh* from that Time till you was ſent from thence to *London*?

J. Mur. I did continue there till I came to *London*.

Mr. At. Gen. Did you ever make, or endeavour to make, any Eſcape all that Time?

J. Mur. I never did.

A Lord. Did you at any Time ſince you have been in Cuſtody, receive any Hopes or Promiſe of a Pardon?

J. Mur. I have never, ſince I have been in Cuſtody, been promiſed a Pardon, nor have heard a Word of Pardon mentioned to me ſince I was in Cuſtody.

[*Then the Witneſs, by the Direction of the* Lord High Steward, *withdrew.*]

Sir *Richard Lloyd.* My Lords, The next Witneſs we beg Leave to produce, is *Hugh Fraſer* of *Dumballoch*: Who was called in, and ſworn.

Proclamation for Silence.

Sir *Rich. Lloyd.* Do you know the Noble Lord at the Bar?

Hugh Fraſer. Yes, I do.

Sir *Rich. Lloyd.* How long have you known him?

H. Fraſ. I have known him many Years ago.

Sir *Rich. Lloyd.* Do you remember whether you was ſent for at any Time, and when, to the Houſe of my Lord *Lovat*?

H. Fraſ. I got a Meſſage from *Peter Fraſer* of *Belladrum*: It was he that brought me the Meſſage.

Sir *Rich. Lloyd.* From whom was that Meſſage brought?

H. Fraſ. From Lord *Lovat*, as he told me.

Sir *Rich. Lloyd.* When was that?

H. Fraſ. I think it was about the End of *September* 1745.

Sir *Rich. Lloyd.* Was you ſent for at any other Time about this Part of the Year?

H. Fraſ. I did not go upon the firſt Meſſage.

Sir *Rich. Lloyd.* Did you go upon the ſecond?

H. Fraſ. Yes, I did.

Sir *Rich. Lloyd.* What Diſtance of Time was there between the Firſt and Second Meſſage?

H. Fraſ. I believe there might be a Day or two: Thereabouts, to the beſt of my Memory.

Sir *Rich. Lloyd.* When you came to my Lord *Lovat*'s Houſe, pray what paſſed between my Lord *Lovat* and you?

H. Fraſ. Upon my Word, I cannot remember particularly.

Sir *Rich. Lloyd.* Do you remember whether any particular Paper was ſhewn you at that Time, and what it was?

H. Fraſ. No, I don't remember ſeeing any particular Paper at that Time?

Sir *Rich. Lloyd.* Was there any Paper read, or talked of, by any body at that Time relating to the Pretender's Son?

H. Fraſ. There was a Converſation there about that Time, and, to the beſt of my Remembrance, it was about the Troubles in the Country.

Sir *Rich. Lloyd.* Did you ever ſee or read a Paper ſaid to be a Manifeſto from the Pretender's Son? Or did you ever hear it read?

H. Fraſ. Yes, I did.

Sir *Rich. Lloyd.* Where did you hear it read?

H. Fraſ. I read that Paper in a back Room at my Lord *Lovat's*.

Sir *Rich. Lloyd.* Who gave it you to read?

H. Fraſ. I cannot remember who gave it me to read.

Sir *Rich. Lloyd.* Do you remember who firſt ſhewed it you?

H. Fraſ. My Lord *Lovat* directed ſome Perſon in the Room to give it me: Whether it was *Robert Fraſer*, or not, I cannot ſay.

Sir *Rich. Lloyd.* Do you remember to have heard my Lord *Lovat* ſay any thing of that Paper?

H. Fraſ. I have heard him ſay it was a pretty well wrote Paper.

Sir *Rich. Lloyd.* I beg you'll inform their Lordſhips, whether at that Time you heard any Converſation about the Clan of the *Fraſers*?

H. Fraſ. Upon my Word, I cannot remember whether I did or not, at that particular Time.

Sir *Rich. Lloyd.* Did you about that Time hear any Thing about the Clan of the *Fraſers*?

H. Fraſ. I heard them ſpoken of ſeveral Times.

Sir *Rich. Lloyd.* Did you hear it ſpoken of, at any of thoſe Times, who was to command them?

H. Fraſ. Yes; I heard that the Maſter of *Lovat* was to command them.

Sir *Rich. Lloyd.* Who did you hear ſay that?

H. Fraſ. I heard my Lord *Lovat* ſay it.

Sir *Rich. Lloyd.* To what Purpoſe did my Lord *Lovat* ſay he was to command them?

H. Fraſ. It was to go South.

Sir *Rich. Lloyd.* To join whom?

H Fraſ. To join the Pretender.

Sir *Rich. Lloyd.* What did he call the Pretender? by what Name?

H. Fraſ. He called him the Prince.

Sir *Rich. Lloyd.* Were there any other of the Clans expected at that Time to join the *Fraſers* to march Southwards?

H. Fraſ. I heard my Lord *Lovat* ſay, That he was uneaſy about an Anſwer to a Letter, which he or his Son had wrote to the Iſle of *Sky*.

Sir *Rich. Lloyd.* From whom was that Anſwer expected?

H. Fraſ. From the Laird of *Mac Leod*.

Sir *Rich. Lloyd.* Did you hear my Lord *Lovat* ſay what ſort of Anſwer he expected, or hoped for?

H. Fraſ. By all that I could learn of the Letter, it was a Letter deſiring that Laird *Mac Leod*'s Men ſhould come and join them.

Sir *Rich. Lloyd.* A Letter from whom, deſiring that *Mac Leod*'s Men might come and join them?

H. Fraſ. I cannot be poſitive, whether it was from my Lord *Lovat*, or his Son.

Sir *Rich. Lloyd.* From whom did you learn the Contents of the Letter?

H. Fraſ. I heard my Lord *Lovat* ſpeak of it.

Sir *Rich. Lloyd.* Was any Application made to you concerning the Raiſing of the Men, or their joining?

H. Fraſ. My Lord *Lovat* aſked me what Number of Men I could raiſe.

Sir *Rich. Lloyd.* Of what Clan were you to raiſe them?

Sir *William Yonge* deſired, that the laſt Queſtion might be repeated: Which was done; and he made the ſame Anſwer as before.

Sir *Rich. Lloyd.* What Men did he ſpeak of, and what Clan?

H. Fraſ. The *Fraſers*: There are no other Men in that Part of the Country.

Sir *Rich. Lloyd.* With what View were theſe Men to be raiſed?

H. Fraſ. To join the reſt of the Clan of the *Fraſers*, which were to be commanded by the Maſter.

Sir *Rich. Lloyd.* Did you tell my Lord *Lovat* what Number of Men you thought you could raiſe?

H. Fraſ. No; upon my Word, I did not.

Sir *Rich. Lloyd.* Did you hear my Lord *Lovat* ſay any thing about the raiſing his Clan, and who was to raiſe them, or did raiſe them?

H. Fraſ. I heard my Lord *Lovat* ſay, That the Maſter was the Man that was to raiſe the Clan, and to head them.

Sir *Rich. Lloyd.* Was he to do that by his own Power or Inclination, or by Advice from any body elſe?

H. Fraſ. That is a Thing I can give but an Opinion upon.

Sir *Rich. Lloyd.* What is your Opinion upon it?

H. Fraſ. That the Maſter could not have raiſed the Men, except my Lord *Lovat* had countenanced the Thing, and it had been done by his Permiſſion.

Sir *Rich. Lloyd.* Have you heard my Lord *Lovat* ſay any Thing in regard to his Son's being active, or not, in raiſing the Men?

H. Fraſ. I have heard my Lord *Lovat* ſay more than once, That his Son was very ſlow in raiſing of the Men.

Sir *Rich. Lloyd.* And did he ſay ſo as praiſing him for his Slowneſs in raiſing the Men, or as in diſpraiſing him?

H. Fraſ. I thought it was to diſpraiſe it.

Sir *Rich. Lloyd.* Did you hear my Lord *Lovat* ſay any Thing of his own Abilities or Inabilities to raiſe Men, and head them?

H. Fraſ. I have heard my Lord *Lovat* ſay, That he was a tender, infirm Man, and not able to go about thoſe Things himſelf.

Sir *Rich. Lloyd.* Have you heard him wiſh himſelf younger?

H. Fraſ. I have heard him ſay, He wiſhed himſelf younger, that he might go and command the Men himſelf.

Sir *Rich. Lloyd.* Command them in whoſe Service?

H. Fraſ. In the Pretender's Service, that he was talking of.

Sir *Rich. Lloyd.* Do you know what they mean by the Firy Croſs in that Country?

H. Fraſ. I remember the Firy Croſs when it went about my Father's Ground. It was a long Pole, with two croſs Sticks burnt at the Fore-end; and the Deſign of it was to raiſe the Men, and to threaten them with Fire and Sword; that their Houſes ſhould be burnt, if they did not riſe.

Sir *Rich. Lloyd.* Was the Firy Croſs carried through the Clan, that you know of, or have heard?

H. Fraſ. I have heard, that it was carried through the Clan: I did not go about all the Country.

Sir *Rich. Lloyd.* You ſay you ſaw it at your Father's?

H. Fraſ. Yes; I did.

Sir *Rich. Lloyd.* By whoſe Order is it that thoſe Croſſes are uſually carried about to raiſe Men in the ſeveral Clans?

H. Fraſ. Order is given by the Perſon that wants the Men.

Sir *Rich. Lloyd.* Is it not always ordered by the Chief of the Clan? Does any body but the Chief of the Clan take upon them to order it?

H. Fraſ. I am an intire Stranger to that: I never ſaw the Thing before.

Sir *Rich. Lloyd.* When you were at Lord *Lovat*'s Houſe at the Time you ſpeak of, did you obſerve any Tents there?

H. Fraſ. Yes; I obſerved ſome Bell-Tents there.

Sir *Rich. Lloyd.* What Number of them?

H. Fraſ. I cannot be poſitive, whether Two or Three.

Sir *Rich. Lloyd.* Were they new or old Ones?

H. Fraſ. They were new: They ſeemed to me to be new.

Sir *Rich. Lloyd.* What Arms were upon them?

H. Fraſ. My Lord *Lovat*'s Creſt was upon them.

Sir *Rich. Lloyd.* Did you ſee any Colours?

H. Fraſ. I ſaw Colours at the Houſe of *Caſtle-Downey*.

Sir *Rich. Lloyd.* What Arms were upon them?

H. Fraſ. There was upon one large Pair of Colours my Lord *Lovat*'s Arms, to the beſt of my Memory.

Sir *Rich. Lloyd.* Do you know if my Lord *Lovat* ſaw them?

H. Fraſ. I cannot tell.

Sir *Rich. Lloyd.* Was any thing ſaid to you, and by whom, to induce you to join the Pretender, more than you have given an Account of already?

H. Fraſ. There were ſeveral Things dropped in Converſation; but it is ſuch a Diſtance of Time, that I cannot remember what they were.

Sir *Rich. Lloyd.* Was any Perſon preſent there, beſides yourſelf and my Lord *Lovat*, when you was at his Houſe?

H. Fraſ. There were ſeveral Perſons there.

Sir *Rich. Lloyd.* Did any Converſation then paſs or not about throwing off the Maſk?

H. Fraſ. Yes; Mr. *Alexander Mac Leod*, and ſeveral others of the Country there, were ſpeaking about the Pretender; and Mr. *Alexander Mac Leod* ſaid, That much depended upon my Lord *Lovat*'s throwing off the Maſk, or Words to that Purpoſe.

Sir *Rich. Lloyd.* To whom did he ſay theſe Words?

H. Fraſ. To my Lord *Lovat*.

Sir *Rich. Lloyd.* What Anſwer did my Lord *Lovat* make to that?

H. Fraſ. My Lord *Lovat* I ſaw take off his Hat, and put it upon the Ground, and heard him ſay, There it is then.

Sir *Rich. Lloyd.* Do you remember any particular Healths that were drank then?

H. Fraſ. I have heard the Prince's Health drank ſeveral Times there at the Table at *Caſtle-Downey*.

Sir *Rich. Lloyd.* Was my Lord *Lovat* preſent, or not? Or did he drink it?

H. Fraſ. My Lord *Lovat* was preſent at the Table.

Sir *Rich. Lloyd.* Do you know of any Force that was made uſe of in that Clan to make them riſe?

H. Fraſ. I know there went Parties about.

Sir *Rich. Lloyd.* Did you hear my Lord *Lovat* ſay any thing about his Expectation which Side would prevail?

H. Fraſ. I heard my Lord *Lovat* ſay; He was ſure the Prince would prevail.

Sir *Rich. Lloyd.* Who did he mean? Who did he call the Prince? Who was he ſpeaking of?

H. Fraſ. Of the Young Pretender.

Sir *Rich. Lloyd.* Do you know of any Subſiſtence that was given by Lord *Lovat* to any body?

H. Fraſ. I have heard my Lord *Lovat* ſay, That he had ordered his Factor to give an Allowance monthly or weekly to the Wives and Children of the Men.

Sir *Rich. Lloyd.* Of whom?

H. Fraſ. Of thoſe that went with his Clan.

Sir *Rich. Lloyd.* Upon what Occaſion did they go?

H. Fraſ. Thoſe Men that were to go South with the Young Pretender.

Sir *Rich. Lloyd.* Was it all, or only thoſe that were to be in his Clan?

H. Fraſ. There were a great many in the Country, that perhaps had nothing to ſupport their Families in their Abſence, when they were gone South.

Sir *Rich. Lloyd.* Do you know of any Letter that was ſhewn you from the Young Pretender, diſpenſing with my Lord *Lovat*'s perſonal Preſence?

H. Fraſ. Yes; I remember to have read the Letter.

Sir *Rich. Lloyd.* Who gave it you to read?

H. Fraſ. My Lord *Lovat*.

Sir *Rich. Lloyd.* From whom was that Letter?

H. Fraſ. He ſaid it was from the Marquis of *Tullibardin*.

Sir *Rich. Lloyd.* How was the Letter ſigned?

H. Fraſ. The Letter was ſigned *Athol*, in large Letters.

Sir *Rich. Lloyd.* What were the Contents of it?

H. Fraſ. I don't remember the particular Contents of it. To the beſt of my Memory, it appeared to be in Return to another Letter, which had been ſent by my Lord *Lovat*; and it was to excuſe his perſonal Attendance.

Sir *Rich. Lloyd.* Whoſe perſonal Attendance?

H. Fraſ. My Lord *Lovat*'s.

Sir *Rich. Lloyd.* His Attendance where?

H. Fraſ. To go South in the Pretender's Service.

L. H. S. Where is that Letter?

H. Fraſ. I don't know.

L. H. S. You ſay my Lord *Lovat* gave it you?

H. Fraſ. Yes.

L. H. S. What did you do with it?

H. Fraſ. I returned it again.

L. H. S. To whom did you return it?

H. Fraſ. To my Lord *Lovat*, or his Secretary; I don't know which.

Sir *Rich. Lloyd.* Do you know whether there was any Reward given to the Clans, when they were raiſed, for their Subſiſtence?

H. Fraſ. I know there was Meal, Cows, and Mutton given them.

Sir *Rich. Lloyd.* For what was it given them?

H. Fraſ. To maintain thoſe Men.

Sir *Rich. Lloyd.* Where were they then?

H. Fraſ. There were ſeveral of them about *Caſtle-Downey*.

Sir *Rich. Lloyd.* By whoſe Order were thoſe Things given?

H. Fraſ. That I don't know, indeed.

Sir *Rich. Lloyd.* Did you ever hear my Lord *Lovat* ſay any thing about their being maintained by his, or any body elſe's Order?

H. Fraſ. I don't remember, indeed.

Mr. *Noel.* My Lords, the Witneſs has already told your Lordſhips what the Noble Priſoner at the Bar declared about the Perſon's Succeſs, whom he called the Prince: I beg he may inform your Lordſhips, whether my Lord *Lovat*, when he ſpoke about that Succeſs, did, or did not, ſay any thing about his ſending for Men, and for what Purpoſe?

H. Fraſ. I don't remember what he ſaid at that particular Time.

Mr. *Noel.* Do you at any other Time?

H. Fraſ. Yes, indeed: I heard my Lord *Lovat* ſay, He would ſend his Son and Men.

Mr. *Noel.* For what?

H. Fraſ. To ſerve the Prince.

Mr. *Noel.* Who did you underſtand he meant by the Prince?

H. Fraſ. The Pretender's Son.

Mr. *Noel.* You mentioned the Particulars about pulling off the Maſk: You ſaid, that Mr. *Alexander Mac Leod* ſaid, That much depended on Lord *Lovat*'s throwing off the Maſk; that my Lord *Lovat*, upon that, threw his Hat upon the Floor, and ſaid, Then there it is: Pray what was the Subject-Matter of the Converſation when that was done?

H. Fraſ. The Subject-Matter of the Converſation was the Young Pretender's Cauſe; and it was about that they were ſpeaking at that Time.

Mr. At. Gen. My Lords, the Managers have done with their Examination of this Witneſs.

L. H. S. My Lord *Lovat*, has your Lordſhip any Queſtions to aſk this Witneſs?

Lord *Lovat.* My Lords, there have been ſuch Proceedings againſt me ſince I was ordered to be tried, as never were heard of in *Scotland* or *England.*

L. H. S. In what reſpect does your Lordſhip mean?

Lord *Lovat.* I mean, that after I was brought up to be tried before your Lordſhips, the Impeachment had been read againſt me, my Anſwer put in to it, and the Commons had replied to it, and after I had Leave to ſummon Witneſſes in my Defence, I had ſummoned a great many Witneſſes out of *Scotland* to come here in my Defence, I did not imagine there would be the leaſt Difficulty in their coming up: But, my Lords, I find there was a Perſon there, who was a kind of a Deputy-Sheriff, but never was known as an Officer of Juſtice, went to ſeveral private Meetings, and endeavoured to prevent my Witneſſes coming up.

L. H. S. My Lord *Lovat*, I would not interrupt you, if it were not for your own Sake. If your Lordſhip has any Matter of Complaint, my Lords will be ready to hear you at a proper Time, upon a proper Application; but this is not a proper Time for ſuch an Application. You have Counſel to adviſe you as to the proper Method and Time of doing it, with whom you muſt adviſe.

Lord *Lovat.* My Lords, I was going to object to this Witneſs before he was ſworn, becauſe he had been called in by that Deputy-Sheriff, who threatened the Men, if they offered to come up to give Evidence for me; and ſome were put in Priſon, and driven from their Houſes, particularly thoſe they thought would favour me, after I had your Lordſhips Order to ſummon my Witneſſes: And therefore, I ſhall object to any Witneſs that ſhall come from that Little Court. I beg this Witneſs may be aſked, whether he was examined at *Inverneſs* before he came here?

H. Fraſ. Yes, I was.

Lord *Lovat.* My Lords, I thought, as I was to be judged in a Court of the Supreme Judicature, and was innocent, that I was ſafe in ſuch Hands; but I cannot think myſelf ſafe, when ſuch Officers as thoſe ſhall manage the Witneſſes, and threaten thoſe who will not ſay as they ſay.

L. H. S. I have already told your Lordſhip, that if you have any Complaint to make, you muſt make it at a proper Time, and in a proper Manner; and my Lords will hear it. You may go on to aſk this Witneſs any Queſtions concerning any Practices that he knows of.

Lord *Lovat.* My Lords, I beg this Witneſs may be aſked, if he was examined upon Oath, in *December* or *January* laſt, and by whom?

H. Fraſ. Yes, I was examined at *Inverneſs* by one *Killravock.*

Lord *Lovat.* What is *Killravock?*

H. Fraſ. He is a Gentleman that lives about four Miles from *Inverneſs.*

Lord *Lovat.* What is he?

H. Fraſ. He had Subſtitution from the Sheriff-Depute.

Lord *Lovat.* Did you ſee *Chevis* of *Murtoun?* What Part did he act there?

H. Fraſ. This Gentleman had got a Copy of the Charge ſent into the Country; and he came in Obedience to that Charge, among the reſt.

Lord *Lovat.* What is a Charge?

H. Fraſ. A Kind of Summons.

Lord *Lovat.* Was you threatened by any Perſon, to give Evidence againſt me? and by whom?---*H. Fraſer.* I was not, indeed.

Lord *Lovat.* Was you promiſed any Favour, or Reward, for being Evidence againſt me?---*H. Fraſ.* No, indeed.

Lord *Lovat.* By whom have you been maintained ſince you came to *London?*

H. Fraſ. I have been, ſince I came to *London*, in the Cuſtody of a Meſſenger.

Lord *Lovat.* By whom was you maintained?

H. Fraſer. I do not know at whoſe Expence it was: I have had Victuals and Drink, and a Bed; and never was aſked for any thing.

Lord *Lovat.* Have you been in Cuſtody by any Order, Force, or Compulſion?

H. Fraſ. No, not at all: I have not been under any Order, Force, or Compulſion.

Lord *Lovat.* Since you have been at the Houſe of the Meſſenger, have you been at Liberty to go where you pleaſed?

H. Fraſer. I have gone abroad, walked in the Park, and about *Kenſington*; and I go out at Night to take a Glaſs.

Lord *Lovat.* When you went out, did not a Meſſenger attend you?

H. Fraſer. Yes, he went to take a Walk with me.

A Lord. When was it that you were at Lord *Lovat*'s Houſe, that he ſaid he would ſend his Son and Clan into the Pretender's Service?

H. Fraſ. I think it was the Beginning of *October* 1745; it was after the Rebellion broke out.

A Lord. Where was it? and what Perſons were then preſent?

H. Fraſer. It was in my Lord *Lovat*'s Room, at *Caſtle-Downey.*

Sir *John Strange.* My Lords, I would beg leave to aſk this Witneſs one Queſtion for Form-ſake: Pray what County is *Caſtle-Downey* in?

H. Fraſer. It is in the County of *Inverneſs.*

A Lord. Pray, which of the Priſoner's Servants was preſent then?

H. Fraſ. Upon my Word, I can't remember that.

Lord *Lovat.* Did you receive any Money, or were you promiſed any Money, for your Expences in coming to *London*, to be a Witneſs againſt me?---*H. Fraſ.* There was Money given to bear our Expences.

A Lord. Pray, Who was preſent, when my Lord *Lovat* ſaid, that he would ſend his Son, with his Men, into the Pretender's Service?

H. Fraſer. I think there were ſeveral preſent; but I cannot condeſcend upon whom they were.

A. Lord. Name any one of them: Was *Alexander Mac Cleod* there?

Hugh Fraſer. I don't remember.

Lord High Steward. My Lord *Lovat*, Have you any more Queſtions to aſk this Witneſs?

Lord *Lovat.* Not till I make my Defence; and then I hope your Lordſhips will give me Liberty.

L. H. S. Does your Lordſhip mean, that when you come to your Defence, you would aſk this Witneſs any Queſtions?

Lord *Lovat.* No, I don't mean that.

L. H. S. Your Lordſhip will be at Liberty to aſk any other Witneſs what Queſtions you pleaſe.

Mr. Sol. Gen. Was the Propoſal of my Lord *Lovat*, to ſend his Son and Clan into the Pretender's Service, as you have mentioned, before or after the News of the Battle of *Preſton-Pans* came into that Country?

H. Fraſer. It was after.

Mr. Sol. Gen. Did you obſerve any Difference in the Behaviour of my Lord *Lovat*, in regard to his raiſing his Clan, or taking any Steps towards it, after the News of that Battle, from what his Behaviour was before?

H. Fraſer. I did not ſee my Lord *Lovat* before the Battle of *Preſton-Pans.*

Mr. Sol. Gen. How long was it after the Battle of *Preſton-Pans* that you ſaw him?

H. Fraſ. I don't remember.

Mr. Sol. Gen. Was it before the News came to *Caſtle-Downey*, of the Troops from *France* being landed?

H. Fraſer. Upon my Word, I don't remember.

[*Then the Witneſs, by Order of the* Lord High-Steward, *withdrew.*]

Lord *Lovat.* My Lords, I beg your Lordſhips Leave to withdraw for a little Time.

The Priſoner was carried from the Bar accordingly.

Serj. at Arms. Our Sovereign Lord the King ſtrictly charges and commands all Manner of Perſons to be uncovered, on Pain of Impriſonment.

In about a Quarter of an Hour, the Priſoner was again brought to the Bar.

Mr. Att. Gen. My Lords, The next Witneſs we ſhall beg Leave to produce, is *John Riddell:* Who was called in, and ſworn.

L. H. S. My Lord *Lovat*, Have you any Objections againſt this Witneſs *John Riddell?*---Lord *Lovat.* No.

Mr. Att. Gen. My Lords, I beg this Witneſs may give your Lordſhips an Account, whether he knows the noble Lord at the Bar?

Riddell. Yes, I do.

Mr. Att. Gen. Do you remember if you were at *Caſtle-Downey* ſoon after the Battle of *Preſton-Pans?*

Riddell. Yes, I was.

Mr. Att. Gen. Did you before that Time ſee *Bariſdale*, or any other Perſon, there?----*Rid.* Yes.

Mr. Att. Gen. Did he come there firſt by himſelf, or not?

Rid. I ſaw *Kinloch Moidart* there.

Mr. Att. Gen. At that Time?

Rid. I cannot remember whether it was the ſame Time, or not.

Mr. Att. Gen. How long was *Bariſdale* there?

Rid. Two Nights.

Mr. Att. Gen. Did he bring any Horſes with him?

Rid. Four Dragoon Horſes.

Mr. Att. Gen. Whoſe Arms were upon the Furniture?

Rid. The King's Arms were upon them, and R and G, or a G and an R.

Mr. Att. Gen. Did you ſee any of the Clan of the *Fraſers* there?

Rid. At the ſame time ſome of them were there.

Mr. Att. Gen. Was my Lord *Lovat* there at that Time?

Rid. Yes.

Mr. Att. Gen. Did you ever ſee any of the Chiefs of the Clans dine at my Lord *Lovat*'s Table?---*Rid.* Yes.

Mr. Att. Gen. Did you hear any Healths drank there?

Rid. Yes.

Mr. Att. Gen. Whoſe Health did you hear drank?

Rid. Prince *Charles*'s Health.

Mr. Att. Gen. Was my Lord *Lovat* preſent at the Time, or not?

Rid. Yes.

Mr. Att. Gen. Did you ever hear my Lord *Lovat* drink any of thoſe Healths?

Rid. I cannot ſay that; I'm not ſure, 'tis ſo long ſince.

Mr. Att. Gen. Did you ever hear my Lord *Lovat* drink any other Healths relating to the Rebel Army?

Rid. Never, to the beſt of my Knowledge.

Mr. Att. Gen. Did you ever hear him ſay any thing, relating to his countenancing the Rebel Army?

Rid. No, I do not remember.

Mr. Att. Gen. Pray give my Lords an Account, whether you ever ſaw any Meal delivered out at my Lord *Lovat*'s.

Rid. My Lord *Lovat* has given Precepts for Meal ſeveral times.

Mr. Att. Gen. What do you mean by Precepts?

Rid. Precepts for ſo much Oats for the Horſes, or Meal.

Mr. Att. Gen. Do you mean by that an Order?---*Rid.* Yes.

Mr. Att. Gen. Pray, what was done with the Meal that was ordered to you?

Rid. I got a Precept for Two Bolls of Meal, in Part of my Wages.

Mr. Att. Gen. Do you know of any Precept that was given to *Thomas Fraſer?*

Rid. Yes, for Four Bolls.

Mr. Att. Gen. For what?---*Rid.* It is more than I can tell.

Mr. Att. Gen. Do you know any thing of Boll-Tents being made?

Rid. Yes, I ſaw them made.

Mr. Att. Gen. Where were they made?
Rid. At *Caſtle-Downey.*
Mr. Att. Gen. Was my Lord *Lovat* there?---*Rid.* Yes.
Mr. Att. Gen. What were they made for?---*Rid.* I can't tell.
Mr. Att. Gen. By whoſe Order were they made?
Rid. I can't tell.
Mr. Att. Gen. What became of them?
Rid. I heard they were ſent to *Perth.*
Mr. Att. Gen. For whoſe Uſe? for what Purpoſe were they ſent there?
Rid. They went there with a Company of Men; I don't know for whoſe Uſe they were.
Mr. Att. Gen. Who were the Company of Men?
Rid. They were the *Fraſers.*
Mr. Att. Gen. What were they collected together for?
Rid. They marched Southward, with a Deſign to go to *Perth*, as I heard.
Mr. Att. Gen. Whoſe People were at *Perth* then?
Rid. The Rebel Army.
Mr. Att. Gen. Did they march to join them?
Rid. 'Tis more than I can tell.
Mr. Att. Gen. Had you any Orders from my Lord *Lovat*, concerning the preparing yourſelf, and Horſes, to go with my Lord *Lovat*, or his Son?
Rid. Yes; he ordered me to get myſelf ready to go.
Mr. Att. Gen. Where was you to go to?
Rid. With the Maſter.
Mr. Att. Gen. Did not my Lord *Lovat* tell you where he was to go to?
Rid. No, he did not, to the beſt of my Knowledge.
Mr. Att. Gen. Where did you underſtand he was to go to?
Rid. To *Perth.*
Mr. Att. Gen. For what Purpoſe?---*Rid.* To join that Army.
Mr. Att. Gen. What Army do you mean; the King's Army, or the Rebel Army?---*Rid.* I can't tell that.
Mr. Att. Gen. How did you underſtand it? As you was to go to *Perth*, don't you know what Army you was to join?
Rid. There was no Army at *Perth* but the Rebel Army.
Mr. Att. Gen. Do you remember any Number of Men paſſing by Lord *Lovat*'s Houſe?---*Rid.* Yes, very well.
Mr. Att. Gen. Did you ſee my Lord *Cromertie*, or his Officers, there?
Rid. Yes.
Mr. Att. Gen. How long did they continue there?---*Rid.* One Night.
Mr. Att. Gen. What Time of the Year was it?
Rid. Hallowmaſs, or thereabouts.
Mr. Att. Gen. Did you hear my Lord *Lovat* ſay any thing to theſe Gentlemen, concerning his Men being, or not being ready?
Rid. I did not hear from my Lord *Lovat*; I heard it from ſome of his Servants.
Mr. Att. Gen. What did you hear?
Rid. I heard the Servants ſay, that my Lord *Lovat* mentioned ſomething about the Men's not being ready.
Mr. Att. Gen. Did you hear my Lord *Lovat* ſay any thing about it in the Chamber?
Rid. No; if it was ſpoken, it was in the *Erſe* Language; and I did not underſtand it.
Mr. Att. Gen. Was my Lord *Lovat* preſent in the Houſe when Lord *Cromertie* was there?---*Rid.* Yes.
Mr. Att. Gen. Did you ſee them together at Table?---*Rid.* Yes.
Mr. Att. Gen. Did you hear any of the Converſation that paſſed betwixt them?---*Rid.* No.
Mr. Att. Gen. Did you hear nothing concerning the drinking of any Healths?---*Rid.* No, not at that Time I did not.
Mr. Att. Gen. At what Time did you hear it?
Rid. A good while before.
Mr. Att. Gen. What Healths were drank? and by whom?
Rid. The Chieftains of the Clans drank Prince *Charles*'s Health.
Mr. Att. Gen. Was my Lord *Lovat* preſent?---*Rid.* Yes.
Mr. Att. Gen. Did he contradict the Health?
Rid. I did not hear he did.
Mr. Att. Gen. Was you preſent, or near, when a Number of *Fraſers* were drawn up?
Rid. I ſaw 700 Men together once.
Mr. Att. Gen. Where were they?---*Rid.* In the *Aird.*
Mr. Att. Gen. Is that Place near my Lord *Lovat*'s Houſe?
Rid. It is within half a Mile.
Mr. Att. Gen. Was my Lord *Lovat* there at that Time?
Rid. No, I never ſaw my Lord *Lovat* there.
Mr. Att. Gen. Was he at home then?---*Rid.* Yes.
Mr. Att. Gen. By whom were they drawn up?
Rid. By my Lord *Lovat*'s Chamberlain.
Mr. Att. Gen. Were there any Officers among them?---*Rid.* Yes.
Mr. Att. Gen. Where did the Officers lodge?
Rid. They went through into the Country, to Farmers Houſes, Change-Houſes, and Ale-Houſes.
Mr. Att. Gen. Did any of them ever dine at my Lord *Lovat*'s Houſe?
Rid. Sometimes they did.
Mr. Att. Gen. Did they dine with my Lord *Lovat* himſelf?---*Rid.* Yes.
Mr. Att. Gen. Did he know, that there were 700 Men drawn up there, or near that Place?
Rid. I cannot tell, whether he knew, that there were 700 of them; but believe he knew they were there.
Mr. Att. Gen. Do you know what Kind of Mark they had upon their Bonnets?—*Rid.* They had a Cockade, and Sprigs of Yew.
Mr. Att. Gen. What Kind of Cockades had they?
Rid. White Cockades.
Mr. Att. Gen. Was not that the diſtinguiſhing Mark of the Rebel Army?
Rid. Yes.
Mr. Att. Gen. Did they make uſe of the Sprigs of Yew as a diſtinguiſhing Mark?——*Rid.* Yes.
Mr. Att. Gen. Did you ſee any Companies of thoſe Men there?
Rid. Yes, Three or Four Companies.
Mr. Att. Gen. Where did they march to?---*Rid.* To the Southward.
Mr. Att. Gen. Did you, at any time, ſee any of the Officers take Leave of my Lord *Lovat*?—*Rid.* Yes, I did.
Mr. Att. Gen. What paſſed upon that Occaſion? Which way did they take Leave of one another?
Rid. My Lord *Lovat* ſhook Hands with them, kiſſed them, and bid them Farewel.
Mr. Att. Gen. Did my Lord *Lovat* wiſh them any thing?
Rid. I cannot ſay I heard that.
Mr. Att. Gen. Do you remember, that, at any time after, one *Fraſer* of *Byerly* was with my Lord *Lovat*?
Rid. Yes, that Man was always with my Lord *Lovat.*
Mr. Att. Gen. Did you hear my Lord *Lovat* aſk him any Queſtions about the Pretender's Son?---*Rid.* No, I never did.
Mr. Att. Gen. Recollect yourſelf, whether you did, or no?
Rid. I cannot mind, indeed; if I did, it is out of my Memory.
Mr. Att. Gen. Did you ever hear my Lord *Lovat* aſk any other Perſon concerning the Pretender's Son?
Rid. I heard my Lord *Lovat* once aſk what ſort of a Man he was.
Mr. Att. Gen. Of whom did he aſk that Queſtion?
Rid. Some of the Chieftains, ſome of them that had been at *Falkirk*; I do not know who they were.
Mr. Att. Gen. Do you remember what Anſwer was given my Lord *Lovat* to that Queſtion?——*Rid.* I do not.
Mr. Att. Gen. Do you remember, whether my Lord *Lovat* mentioned any thing to him concerning the Pretender's Son's Preſervation?
Rid. I do not.
Duke of *Bedford.* You ſay, that my Lord *Cromertie*'s Men were at *Caſtle-Downey*, my Lord *Lovat*'s Houſe: Pray were they received there as Friends; or did they come there by Force?
Rid. The Men did not come to *Caſtle-Downey*; only Lord *Cromertie*, his Son, and the Officers.
Duke of *Bedford.* Did they come there by Force; or were they received as Friends?—*Rid.* They were in the Houſe all Night.
Duke of *Bedford.* Were they entertained as Friends?
Rid. I did not hear any thing to the contrary; they were lodged there all Night.
Mr. Att. Gen. You ſay you heard my Lord *Lovat* aſk, what ſort of a Man the Pretender's Son was? Pray, when was it that he aſked that?
Rid. I cannot name the Time certainly.
Mr. Att. Gen. My Lords, we have done with this Witneſs.
Lord High Steward. My Lord *Lovat*, The Gentlemen of the Houſe of Commons have done with this Witneſs; will you aſk him any Queſtions?
Lord *Lovat.* When was you brought to Town; and by whoſe Order was you ſent to Town?
Rid. I have been brought to Town ſince the 24th of *Auguſt*; and was ſent up by the Judge-Advocate.
Lord *Lovat.* What is the Judge Advocate's Name?
Rid. David Bruce.
Lord *Lovat.* Was you examined at *Inverneſs*, after the Battle of *Culloden?* and by whom?
Rid. I was examined by the Judge-Advocate, in the Duke of *Cumberland*'s Lodgings.
Lord *Lovat.* When was you ſo examined?
Rid. It was the 24th of *April* laſt.
Lord *Lovat.* Was you threatened by any Perſon to give Evidence againſt me? and by whom? And what was the Expreſſion uſed on that Occaſion?
Rid. I was threatened to deliver up my Money, but not about my being an Evidence.
Lord *Lovat.* What were the Threatenings?
Rid. That they would put me in Priſon, and hang me next Morning.
Sir *John Strange.* My Lords, I would not interrupt the noble Lord at the Bar; but I would be glad to know who the Witneſs ſpeaks of.
Rid. After I was examined, they heard I had ſome Money: Brigadier *Mordaunt* demanded the Money: and Mr. *Bruce* threatened, that if I did not give up the Money to the Brigadier, I muſt go to Priſon.
Lord *Lovat.* Was you a Servant of mine?
Rid. I ſerved you for five Years.
Lord *Lovat.* In what Capacity?——*Rid.* As a Groom.
Lord *Lovat.* Was you taken Priſoner?
Rid. I delivered myſelf up to the Duke of *Cumberland*, at *Inverneſs*, Eight Days after the Battle of *Culloden.*
Lord *Lovat.* Who was it that threatened to hang you?
Rid. The Judge-Advocate.
Lord *Lovat.* Did any Perſon come to you, ſince you came to *London*, with a pretended Letter, ſaid to be ſigned by me?
Rid. Yes; there was a Man, whoſe Name is *Leſly*, who came to ſee if I knew my Lord *Lovat*'s Hand.
Lord *Lovat.* What was deſired of you by that Perſon? And what Anſwer did you give him?
Rid. I ſaid, that I did not know, whether it was my Lord *Lovat*'s Hand, or not; but that it did not look like it.
Sir *William Yonge.* My Lords, I beg to know of this Witneſs, whether he did, or did not, ſurrender himſelf a Priſoner to the Duke, at *Inverneſs?*
Rid. Yes; I did: I delivered up myſelf to the Duke, to get a Paſs to go to *Edinburgh*; but never was in the Rebellion in my Life.
Sir *W. Yonge.* Did you come to *Inverneſs* on Horſeback?
Rid. Yes: There were Two of us.
Sir *W. Yonge.* Whoſe Horſes had you?---*Rid.* My Lord *Lovat*'s.
Sir *W. Yonge.* You ſay there were Two of you; and that you were both on my Lord *Lovat*'s Horſes: and that you were threatened to have your Money taken from you?
Rid. Yes.

Sir *W. Yonge.*

Sir *W. Yonge.* Pray how came you by that Money?

Rid. By selling the Horses.

Sir *W. Yonge.* Do you know, or was you informed of, the Contents of the Letter, which Mr. *Lesly* asked you, whether it was Lord *Lovat*'s Hand?

Rid. I never saw the Letter, but the Subscription; and he shewed me that, to see if I knew it.

Sir *W. Yonge.* Did not *Lesly* inform you what were the Contents of the Letter?

Rid. No: To the best of my Remembrance, he said it was signed by my Lord *Lovat* in 1738.

[*Then the Witness, by Direction of the* Lord High Steward, *withdrew.*]

Sir *W. Yonge.* My Lords, The next Witness we beg Leave to produce is *William Walker*: Who was called in, and sworn.

Lord High Steward. My Lord *Lovat*, Has your Lordship any Objection to this Witness?

Lord *Lovat.* No; I have none.

Sir *William Yonge.* My Lords, I beg leave to ask this Witness, If he lived in my Lord *Lovat*'s Family? and how long?

Walker. Yes; for three Years and an half.

Sir *W. Yonge.* Do you remember any Persons coming to him after the Battle of *Preston-Pans?* and who were they?

Walker. Yes: There was *Alexander MacLeod*, and *Mac Donald* of *Barisdale.*

Sir *W. Yonge.* Was *Kinloch Moidart* there?---*Walker.* Yes.

Sir *W. Yonge.* Was young *Glengary* there?

Walker. Yes; He was there one Day; I think on a *Sunday.*

Sir *W. Yonge.* Did they dine at my Lord *Lovat*'s Table?

Walker. Yes; all except *Glengary.*

Sir *W. Yonge.* Do you remember any Healths that were drank?

Walker. Yes: I heard *Barisdale* drink the young Pretender's Health.

Sir *W. Yonge.* By what Name?—*Walker.* By the Name of the Prince.

Sir *W. Yonge.* Was my Lord *Lovat* present then?--- *Walker.* Yes.

Sir *W. Yonge.* Do you know one *Thomas Fraser*, a Baker?

Walker. Yes.

Sir *W. Yonge.* During the Time that those Persons were at my Lord *Lovat*'s House, did he give them any Advice? and what was it?

Walker. I never heard it: It was always in my Lord's Room; and I never went in, but at Dinner.

Sir *W. Yonge.* Did you hear them say any thing about the Young Pretender, and the Clan of the *Frasers?*

Walker. I heard my Lord *Lovat* say, That they must take care not to let the Young Pretender run into an Engagement.

Sir *W. Yonge.* Do you know *Thomas Fraser* the Baker?---*Walker.* Yes.

Sir *W. Yonge.* Was he at my Lord *Lovat*'s then?

Walker. He came to *Castle-Downey*, with some Colours they were to make at *Inverness.*

Sir *W. Yonge.* What Colours were they?

Walker. Two Standard Colours, four Bell-Tents, and two painted Flags.

Sir *W. Yonge.* What were they painted with?

Walker. My Lord *Lovat*'s Arms were upon the Flags.

Sir *W. Yonge.* What became of those Things?

Walker. Cameron sent them away, after my Lord *Lovat* was taken.

Sir *W. Yonge.* Do you remember the Marching of Two Companies to *Perth?*———*Walker.* Yes.

Sir *W. Yonge.* Do you remember soon after the Master of *Lovat*'s coming into the Room where you was?

Walker. Yes.

Sir *W. Yonge.* Was my Lord *Lovat* there?---*Walker.* Yes.

Sir *W. Yonge.* What passed there between them?

Walker. When the Master came into the Room, my Lord *Lovat* was speaking to him: I don't know what it was about.

Sir *W. Yonge.* What did the Master do then?

Walker. The Master rose up, and took his Bonnet, and threw it upon the Floor, and threw the White Cockade in the Fire, and damned the Cockade.

Sir *W. Yonge.* What did the Father do upon that Occasion?

Walker. He rose up in a Passion, and said, What could he do! and was forcing his Son out.

Sir *W. Yonge.* I beg you'll inform their Lordships, upon what Occasion it was that the Master of *Lovat* threw his Cockade into the Fire; and what his Father had said to him to occasion it?

Walker. I don't know that, indeed.

Sir *W. Yonge.* Did you hear his Father say any thing to him?

Walker. His Father spoke to him in *Erse.*

Sir *W. Yonge.* Do you understand *Erse?*

Walker. No; I do not. The Master of *Lovat* went to the Door; and Mr. *Fraser* the Minister stood up in the Master of *Lovat*'s Behalf: Upon which, Mr. *Fraser* of *Byerfield* rose up, and said, What have you to do with it? You have no Estate to forfeit.

Sir *W. Yonge.* What said my Lord *Lovat* upon that?

Walker. I do not know what he said upon that.

Sir *W. Yonge.* Did they say nothing in *English* after that?

Walker. They spoke in a Language I did not understand.

Sir *W. Yonge.* Did my Lord *Lovat* say nothing in *English?*

Walker. Not that I know of: Only he said, What could he do more! He was forcing his Son out, the very Life of him.

Sir *W. Yonge.* Pray do you know upon what Account that was said?

Walker. It was an Answer he gave to *Byerfield.*

Sir *W. Yonge.* To whom did *Byerfield* speak, when he said, He had no Estate to forfeit?

Walker. To *Donald Fraser* the Minister.

Sir *W. Yonge.* Do you remember any Thing about a Smith and a Tinker repairing any Arms?

Walker. Yes; There was one *Hugh Monro*, and another.

Sir *W. Yonge.* How long was it that they were at *Castle-Downey?*

Walker. About a Fortnight, I think.

Sir *W. Yonge.* Were there any Arms where they were?

Walker. Yes; in the Ward-Room.

Sir *W. Yonge.* Where was the Key kept of that Room?

Walker. The Key was very often in my Lord *Lovat*'s Room, in his Custody.

Sir *W. Yonge.* Did my Lord *Lovat* usually give out that Key to any body that went into the Ward-Room? Or did he use to go there himself?

Walker. My Lord always gave the Key out to any body that wanted it, to get Shoes for the Horses, or the like: My Lord never went there himself.

Sir *W. Yonge.* Do you know any thing of the Smith and the Tinker's going into my Lord's Room?

Walker. Yes.

Sir *W. Yonge.* What passed there? Did my Lord give them any thing?

Walker. A Dram.

Sir *W. Yonge.* Have you ever been in the Ward-Room?

Walker. Yes.

Sir *W. Yonge.* What was usually kept there?

Walker. Several Sorts of Things; 'tis more than I can tell how many.

Sir *W. Yonge.* Did you see any Number of Men rendezvoused in that Neighbourhood?

Walker. Yes.

Sir *W. Yonge.* What Number? How many Companies did you see?

Walker. I don't know how many Companies; the First of the Rendezvous, we reckoned there were 7 or 800 Men.

Sir *W. Yonge.* Were they armed?

Walker. Some of them were armed, and some not.

Sir *W. Yonge.* How far from *Castle-Downey* did you see those Men?

Walker. About a Mile from it.

Sir *W. Yonge.* Did you ever see them afterwards?

Walker. Yes; I saw a Company of them drawn up on the Green.

Sir *W. Yonge.* Was my Lord *Lovat* at home then? Did he see them drawn up?

Walker. He was at home; but I believe did not see them.

Sir *W. Yonge.* How near is that Green to my Lord *Lovat*'s House?

Walker. About 100 or 200 Yards.

Sir *W. Yonge.* Do you know of any Violence or Force that was used to make the Men rise?

Walker. The Chamberlain forced them, and young *Inverallachy.*

Sir *W. Yonge.* In what Manner did they force them?

Walker. They threatened to burn their Houses, after the Battle of *Culloden*, if they did not rise.

Sir *W. Yonge.* But, before that, how did they threaten them?

Walker. That they would take their Cattle and Plaids from them, if they did not rise. Lord *Lovat* was then a Prisoner to my Lord *Loudon*, and was then in his Custody.

Sir *W. Yonge.* Do you remember when my Lord *Cromertie* marched by my Lord *Lovat*'s?

Walker. Yes.

Sir *W. Yonge.* Was Lord *Cromertie*, or his Son, or any of the Officers, at my Lord *Lovat*'s?

Walker. Yes: my Lord *Cromertie* and Lord *Mac Leod* were there all Night.

Sir *W. Yonge.* Did you hear my Lord *Lovat* make use of any Expressions, or Excuse, that his Men were not ready?

Walker. My Lord *Lovat* said, It was a Shame to see Lord *Cromertie*'s Men go by his Nose: But what it was for, I can't tell.

Sir *W. Yonge.* My Lords, We have done with our Examination of this Witness.

Lord High Steward. My Lord *Lovat*, Would your Lordship ask this Witness any Questions?

Lord *Lovat.* Was you threatened by any one to give Evidence against me? and by whom? And what were the Expressions used on that Occasion?

Walker. No, I was not.

Lord *Lovat.* Was you examined at *Inverness?* and by whom?

Walker. I was examined at *Inverness* by Mr. *Bruce* and Brigadier *Mordaunt.*

Lord *Lovat.* What passed between you and Mr. *Bruce?*

Walker. I was examined: Nothing passed between me and Mr. *Bruce* at that time.

Lord *Lovat.* Or at any time afterwards?

Walker. Nor afterwards.

Lord *Lovat.* Was any Force used to get out the Men, while I was a Prisoner, or while I was at home, or after my Return from *Inverness?*

Lord High Steward. First, Was there any Force used to get out the Men, while my Lord *Lovat* was at home?

Walker. I cannot truly tell that; It is more than I can tell.

Lord High Steward. Was any such Force used while he was a Prisoner at *Inverness?*

Walker. Lord *Lovat* was with Lord *Loudon* when the Force was used to raise the Men.

Lord High Steward. Did you say, that the Dispute between Lord *Lovat* and his Son happened after the *Frasers* had marched Southwards, or not?

Walker. It was the *Frasers* of *Strathorick* that had marched; there was not a Man marched out of the *Aird* at that time.

Lord *Lovat.* Did I know of the Marching of the Men?

Walker. My Lord *Lovat* knew nothing of it: It was *Fraser* of *Byerfield* that took as many of the *Frasers* as he could get to the Castle of *Culloden*, in order to take the Lord President Prisoner: But my Lord *Lovat* knew nothing of that; for when he heard of it, he was like to go mad; he cursed for a matter of two Hours; and we had no Peace with him.

Lord *Lovat.* Was that the Occasion of my Quarrel with my Son?

Walker. No; my Lord *Lovat*, nor the Master of *Lovat*, knew nothing of it; for this *Byerfield*, as I heard, was designed to raise the Men, without my Lord *Lovat*'s Authority; and, if he had got the Command of

of the Houſe of *Culloden*, he would have kept them there: It was he that marched with the *Strathbarick* Men to *Perth*.

A Lord. Did my Lord *Lovat*, or his Son, know nothing of this?

Walker. No; they were Twenty-four Miles off.

A Lord. What was the Occaſion of the Quarrel between Lord *Lovat* and his Son?

Walker. I cannot tell.

A Lord. Was you preſent in the Room, when the Diſpute began between my Lord *Lovat* and his Son?

Walker. No; I was not in the Room: I came in with a Diſh in the mean time; and there was this little *John Fraſer* of *Byerfield* ſpeaking to my Lord: My Lord *Lovat* fell foul of the Maſter, who roſe up, and took his Cockade off the 'Scriptore, and threw the Cockade into the Fire, and damned it.

A Lord. What Language did they talk in?

Walker. They talked in *Erſe*, when I heard it firſt.

A Lord. You ſay, that *Fraſer* the Miniſter took part with the Maſter?

Walker. Yes.

A Lord. Did he talk in *Erſe*?

Walker. Yes.

A Lord. Then how do you know he ſpoke in favour of the Maſter?

Walker. The Reaſon why I knew it was, that little *John Fraſer* flew up to *Donald Fraſer*, and ſaid, He had no Eſtate to forfeit; and that, if he had got a Stipend, it was all he had to take care of.

Lord *Lovat.* Do you know whether I uſed my Endeavours to get my Men home after they were taken out by *Fraſer* of *Byerfield*, or any other Perſon?

Walker. *Mac Donald* of *Bariſdale* would have my Lord *Lovat*'s Men out, and was never away from the Houſe; and there came on a great Snow, that my Lord *Lovat*'s Men did not go out at that time; but about Two Days after that, ſome of them went up to a Hill with *Bariſdale*'s Men; and they would take Cattle, to maintain them upon the Road: When my Lord *Lovat* ſent for them from *Urquhart*, and brought them all back again. When there was any of them riſen at all, then my Lord was Priſoner with Lord *Loudon*.

A Lord. Pray what kind of Servant is a Chamberlain?

Walker. The Steward, who gathers in the Rents.

A Lord. Did you ever hear of the Croſs being carried about the Country?

Walker. I never either ſaw it, or heard of it.

Lord *Lovat.* Do you know, whether *Fraſer* of *Dumballoch*, that was here To-day, went out in Arms, at the Head of a Company, to *Urquhart*, till I brought him home?

Walker. I ſaw him that Day at Lord *Lovat*'s Table; but whether he got to *Urquhart*, or no, I cannot tell.

A Lord. Did the Men that went to *Urquhart* dine with my Lord *Lovat*?

Walker. Yes.

[*Then the Witneſs, by the Direction of the* Lord High Steward, *withdrew.*]

Mr. *Yorke.* My Lords, The next Witneſs we ſhall produce, is *Hugh Monro.*

Hugh Monro *called in.*

Lord High Steward. My Lord *Lovat*, Has your Lordſhip any Objection againſt *Hugh Monro*'s being examined as a Witneſs?

Lord *Lovat.* Yes; he is my Tenant.

Lord High Steward. Would your Lordſhip have him examined upon that Point?

Lord *Lovat.* Yes.

The Witneſs was ſworn upon a Voire dire.

Lord High Steward. My Lord *Lovat*, What Queſtions would you aſk him?

Lord *Lovat.* Have you any Lands, Houſes, or Yard, that you hold of me?——*Monro.* Yes.

L. H. S. What Lands do you hold of my Lord *Lovat?*

Monro. Six Bolls a Year.

L. H. S. How do you hold it of my Lord *Lovat*, as Vaſſal, or by Leaſe or Tack?

Monro. While I was a Servant, I had it from him.

L. H. S. Do you hold it of my Lord *Lovat* now?

Monro. Another Man hath taken Poſſeſſion there.

L. H. S. Have you the ſame Tenure under my Lord *Lovat* as you had before?

Monro. Yes.

Mr. Attorney General. My Lords, I beg this Witneſs may be aſked, If he holds any Lands of my Lord *Lovat* at this time.

Monro. I have the ſame Land that I had before; but another Man hath it in Poſſeſſion ever ſince *Whitſunday.*

Mr. Att. Gen. What is that other Man's Name?

Monro. Kilbocky.

Mr. Att. Gen. How does he hold it of my Lord?

Monro. I don't know.

Lord *Lovat.* Do you think you have any Right to hold this Land, though another Man is in Poſſeſſion of it?

Monro. No, I have no Right to hold it.

Lord *Sandys.* Why do you ſay you have no Right to hold it?

Monro. Becauſe the Superior Lord may turn me out of the Land at any time.

Lord *Sandys.* Has the Superior Lord turned you out of the Land?

Monro. No.

L. H. S. Who do you take to be your Superior Lord?

Monro. My Lord *Lovat.*

Sir *W. Yonge.* Had you any Wages from my Lord *Lovat*, while you was his Servant?

Monro. Yes; I had.

Sir *W. Yonge.* What were the Wages you had?

Monro. Five Pounds a Year.

Sir *W. Yonge.* Was it paid in Money, or in Lands of any Rent?

Monro. It was paid in Land.

Sir *W. Yonge.* Was that the Land you now ſpeak of which you hold of my Lord *Lovat?*

Monro. Yes.

Sir *W. Yonge.* Have you any Title to that Land, now you are not his Servant?

Monro. I don't know what Way it is.

Sir *W. Yonge.* Do you think you have any Claim to the Land, now you are not his Servant?

Monro. No; I have none.

Sir *W. Yonge.* How long have you left my Lord *Lovat*'s Service?

Monro. I was always his Servant: I did not leave his Service.

Lord *Lovat.* The Perſon that now is in Poſſeſſion of that Land, has he it by my Conſent?

Monro. I don't know: The Man that is in Poſſeſſion ſays he muſt have the Rent this Year.

Mr. Att. Gen. Did you ever hold this Land by any Writing?

Monro. No.

Mr. Att. Gen. Did you ever hold it by any Contract for any certain Term?

Monro. I had the Land from my Lord *Lovat*, for what I worked for him in the Year.

Lord *Lovat.* Was you turned out of this Land by Force, or againſt your Will?

Monro. No; I was not.

A Lord. By what Means was you diſpoſſeſſed of this Land?

Monro. I have the ſame Land yet.

Mr. *Grenville.* In what Capacity was you a Servant to my Lord *Lovat?*

Monro. I was his Blackſmith.

Mr. *Grenville.* Do you know the Perſon, who, you ſay, is now in Poſſeſſion of that Land?

Monro. Indeed do I.

Mr. *Grenville.* What is he? Is he a Servant to my Lord *Lovat?*

Monro. No: He is a Gentleman.

Lord *Halifax.* My Lords, I ſubmit it to your Lordſhips, as this Witneſs has already contradicted himſelf ſeveral times, whether he ſhould not be ordered to withdraw.

Sir *J. Strange.* I ſtood up to acquaint your Lordſhips, that we ſhould not inſiſt on the Examination of this Witneſs; but deſire it may be underſtood, that we only do that from the Manner of his anſwering the Queſtions which have been aſked him; and do not thereby ſubmit to the Objection that has been made againſt him by the noble Lord at the Bar.

[*Then the Witneſs, by Direction of the* Lord High Steward, *withdrew.*]

The Duke of *Newcaſtle* moved to adjourn to the Chamber of Parliament.

Lord *Lovat.* My Lords, I have moſt humbly repreſented to your Lordſhips every Day of my Trial, that I am ſo weak and feeble, that I am not able to attend your Lordſhips. I fainted away thrice this Morning, before I came up to your Lordſhips Bar; but yet was determined to ſhew my Reſpect to your Lordſhips, or die upon the Road. My Lords, it is impoſſible for me to come up in the Manner I have done for theſe Three Days paſt. I am every Day obliged to get up by Three or Four o'Clock in the Morning; and therefore I beg your Lordſhips to have Compaſſion on me, and to give me a later Hour, and a Day's Reſpite, that I may try to recover myſelf.

The Lord High Steward went back to his Chair: And then the Houſe adjourned to the Chamber of Parliament; and the Lords, and others, returned in the ſame Order as before.

The Houſe being there reſumed,

Ordered, That this Houſe will proceed further in the Trial of *Simon* Lord *Lovat* in *Weſtminſter-Hall*, on *Friday* next, at Eleven of the Clock in the Forenoon.

A Meſſage was ſent to the Houſe of Commons, by Mr. *Elde* and Mr. *Thurſton*, to acquaint them therewith.

Ordered, That the Lieutenant of the *Tower* of *London*, or his Deputy, do take back the ſaid Lord *Lovat*, and bring him again to the Bar of this Houſe in *Weſtminſter-Hall*, on *Friday* next, at Eleven of the Clock in the Forenoon.

Friday *the* 13*th Day of* March, 1746,
The Fourth Day.

ABOUT Eleven of the Clock in the Forenoon, the Lords, and others, came from the Chamber of Parliament, in the ſame Order as on *Monday* laſt, into *Weſtminſter-Hall:* Where the Commons and their Managers were in the Seats prepared for them reſpectively, as before: And the Lords took their Places in the Court; and the Lord High Steward in his Chair.

L. H. S. The Houſe is reſumed. Is it your Lordſhips Pleaſure that the Judges have Leave to be covered?

Lords. Ay, ay.

Then the Serjeant at Arms made Proclamation for Silence; and afterwards the following Proclamation:

Serj. at Arms. Oyes, Oyes, Oyes! Lieutenant of the *Tower* of *London*; Bring forth your Priſoner, *Simon* Lord *Lovat*, to the Bar, purſuant to the Order of the Houſe of Lords to you directed.

The Deputy-Governor of the *Tower* brought the Priſoner to the Bar, in the like Form as before. And then he kneeled down.

L. H. S. Your Lordſhip may riſe.

The Lord High Steward deſired Leave to go down to the Table: And went down accordingly.

L. H. S. Gentlemen of the Houſe of Commons, You may proceed.

Mr. *Yorke.* My Lords, the next Witneſs we ſhall produce to your Lordſhips is *Thomas Fraſer.*

Thomas Fraser *called into Court:*

Mr. *Yorke.* My Lords, We deſire this Witneſs *Thomas Fraſer* may be ſworn.

L. H. S. My Lord *Lovat*, has your Lordſhip any Objection againſt *Thomas Fraſer* being ſworn as a Witneſs?

Lord *Lovat*. My Lords, I have no Objection to him; but, my Lords, I am not able to riſe up, and ſit down, having been ill all Night, and am very ill now. I hope your Lordſhips will excuſe my riſing up and down.

Thomas Fraſer *ſworn*.

Mr. *Yorke*. My Lords, I would aſk this Witneſs, If he knows my Lord *Lovat?* And I deſire he would ſpeak out.

T. Fraſ. Yes, my Lords, as well as I do myſelf.

Mr. *Yorke*. How long have you known him?

T. Fraſ. Ever ſince I was a Child.

Mr. *Yorke*. Have you been employed to work for my Lord *Lovat* at any time about *September* 1745; and upon what Occaſion was you ſo employed? Anſwer the Queſtion diſtinctly.

T. Fraſ. No; I never was employed by him.

Mr. *Yorke*. Was you employed at *Caſtle-Downey* about that Time?

T. Fraſ. Yes, I was at *Caſtle-Downey*, and was employ'd by my Lord's Chamberlain.

Mr. *Yorke*. About what Buſineſs?

T. Fraſ. About mending ſome old Colours.

Mr. *Yorke*. And what elſe was you employed in?

T. Fraſ. About ſome Camp-Colours.

Mr. *Yorke*. Was you employed in any thing elſe?

T. Fraſ. Yes: There were ſome Bells for Arms that I was employed about.

Mr. *Yorke*. Who gave you Directions about making theſe Things?

T. Fraſ. *John Fraſer*, my Lord *Lovat*'s Chamberlain or Steward; and he paid me for my Pains when I had done.

Mr. *Yorke*. At what Houſe was this Work done?

T. Fraſ. Moſt of it was done at my own Houſe at *Inverneſs*.

Mr. *Yorke*. Was none of the Work done at *Caſtle-Downey?*

T. Fraſ. There was a Camp-Colour, and ſome other Things, done at *Caſtle-Downey*.

Mr. *Yorke*. Whoſe Arms were put upon theſe Colours, or Bells for Arms?

T. Fraſ. There was no Arms upon them, but the Creſt of Lord *Lovat*'s Family, the Deer's Head.

Mr. *Yorke*. Was that Creſt put both upon the Bell-Tents and Colours?

T. Fraſ. It was upon the Camp-Colours, and Bells of Arms.

Mr. *Yorke*. Were the Arms upon the Colours?

T. Fraſer. They were a Stand of old Colours that were done by *Fraſer*.

Mr. *Yorke*. Where were theſe Colours ſet up afterwards? Or, were they ſet up at all?

T. Fraſ. Yes, I ſtuck them up on the Green of *Caſtle-Downey*.

Mr. *Yorke*. Did my Lord *Lovat* ever ſee them there?

T. Fraſ. To my Knowledge, he never did.

Mr. *Yorke*. What were thoſe Bell-Tents and Colours, which you painted, intended for? What was to be the Uſe of them?

T. Fraſ. I cannot tell that, upon my Faith.

Mr. *Yorke*. Did my Lord *Lovat* know of your being employed about theſe Things?

T. Fraſ. No; he did not, to my Knowledge, as I ſhall anſwer.

Mr. *Yorke*. Who paid you for them?

T. Fraſ. The Chamberlain, or Steward.

Mr. *Yorke*. Do you think the Chamberlain would have paid you for them, without my Lord *Lovat*'s Order?

T. Fraſ. I can't tell that: Let the Judges determine that.

Mr. *Yorke*. Pray who uſed to pay you for Work that you had done for my Lord *Lovat* before that? ---*T. Fraſ.* The Chamberlain.

Mr. *Yorke*. Was my Lord *Lovat* in the Houſe at the ſame Time?

T. Fraſ. Yes; he was in the Houſe: He was very ſick.

Mr. *Yorke*. Did you obſerve my Lord *Lovat* ever look at theſe Colours that you ſet up?

T. Fraſ. I ſaw him one fair Morning take a Walk upon the Green, and take an old Colour in his Hand.

Mr. *Yorke*. Did he ſee there the Colours which you ſet up?

T. Fraſ. Yes, the Bells of Arms and Colours.

Mr. *Yorke*. Did he ſay any thing to you about them?

T. Fraſ. Yes: He ſeemed to be very ill pleaſed.

Mr. *Yorke*. What was he ill pleaſed with?

T. Fraſ. I don't know whether it was with the Manner of doing the Work, or becauſe it was done at all.

Mr. *Yorke*. When his Lordſhip expreſſed himſelf ill pleaſed, did he direct you to take them away, or not?

T. Fraſ. No: They were to ſtay there till they were dried by the Wind.

Mr. *Yorke*. When he expreſſed himſelf to be ill pleaſed, did he order them to be taken away?

T. Fraſer. He did not ſpeak a Word to me afterwards about them.

Mr. *Yorke*. Do you know what became of thoſe Colours?

T. Fraſ. No: I went home to *Inverneſs*, which is the Place of my Reſidence: But, when I am employed by any Man, I muſt anſwer and obey.

Mr. *Yorke*. My Lords, We have done with this Witneſs.

L. H. S. My Lord *Lovat*, Will your Lordſhip aſk this Witneſs any Queſtions?---Lord *Lovat*. No, my Lords.

[*Then the Witneſs, by Direction of the* Lord High Steward, *withdrew.*]

Mr. Att. Gen. My Lords, the next Witneſs we ſhall produce is *Hugh Fraſer*, who was Secretary to my Lord *Lovat* from 1741 to 1744, when *Robert Fraſer*, who was before examined, became Secretary in his Room.

Hugh Fraſer *was called in.*

L. H. S. My Lord *Lovat*, Have you any Objection to this Witneſs?

Lord *Lovat*. No, my Lords.

Lord *Halifax*. My Lords, As the noble Lord at the Bar has complained, that he is ſick and faint, I move, That your Lordſhips may diſpenſe with his riſing up.---*Lords*. Ay, ay.

Hugh Fraſer *ſworn*.

Mr. Att. Gen. Do you know the noble Lord at the Bar?

Hugh Fraſer. Yes.

Mr. Att. Gen. How long have you known him? and raiſe your Voice.

H. Fraſ. I've known my Lord *Lovat* for about Five Years.

Mr. Att. Gen. Did you ever ſerve my Lord *Lovat*, and in what Capacity?

L. H. S. Raiſe your Voice, Mr. *Fraſer*.

Mr. Att. Gen. In what Capacity did you ſerve Lord *Lovat?*

H. Fraſ. I ſerved my Lord *Lovat* in the Capacity of a Secretary.

Mr. Att. Gen. When did you firſt come into his Service? and when did you quit it?

H. Fraſ. I came into Lord *Lovat*'s Service in *April* or *May* 1741, and left it towards the End of *December* 1744.

Mr. Att. Gen. Give an Account to my Lords, whether you was at *Edinburgh* in the Month of *September* 1745?---*H. Fraſ.* I was.

Mr. Att. Gen. Do you know one *William Fraſer* of *Belnain?* Was he then at *Edinburgh?*

H. Fraſ. Yes.

Mr. Att. Gen. Had you and he any, and what, Converſation together? And did you come to any Reſolution upon it, in order to your going to my Lord *Lovat*'s?

H. Fraſ. I had a Converſation with Mr. *Fraſer*.

Mr. Att. Gen. Did you Two come to any Reſolution together concerning your going to my Lord *Lovat*'s, in relation to his Son the Maſter of *Lovat?*---*H. Fraſ.* We did.

Mr. Att. Gen. Pleaſe to tell my Lords what that Reſolution or Agreement between you was.

H. Fraſ. The Reſolution between Mr. *Fraſer* and me was this, That as there had, at that Time, a Rebellion broke out in the North of *Scotland*, it was agreed between us to be proper, that I ſhould go into the North Country, in order to converſe with my Lord *Lovat* upon the Subject of his Son's going out of *Scotland*, to avoid any Cenſure, or wrong Interpretation that might be put upon his Conduct, as he was then in that Country.

Mr. Att. Gen. Had you and this *Fraſer*, at that Time, any Apprehenſions that he might be prevailed upon to go into the Rebellion?

H. Fraſ. We had no Grounds for any Apprehenſions, further than the ſpreading Contagion there was at that Time.

Mr. Att. Gen. Was there any Propoſals made by *William Fraſer*, or you, to prevent his being infected with that Contagion?

H. Fraſ. The Propoſal made by Mr. *Fraſer*, and agreed to by me, was, that he ſhould be removed, and go abroad.

Mr. Att. Gen. Did you, or did you not, propoſe that he ſhould go abroad?

H. Fraſ. The Thing was unanimous: I don't know which of us propoſed it.

Mr. Att. Gen. To what Place was he to go?

H. Fraſ. We intended that he ſhould go to *Leiden*.

Mr. Att. Gen. At whoſe Expence was he to go to *Leiden?*

H. Fraſ. The Expence in the End was to fall on my Lord *Lovat*; but it was to be defrayed by Mr. *Fraſer* for a Year, to be advanced by him.

Mr. Att. Gen. What was agreed upon, with reſpect to making any Propoſals of this Kind to my Lord *Lovat?*

H. Fraſ. It was agreed, That it ſhould be propoſed to my Lord *Lovat*, and his Son; and was not to be done without my Lord's Conſent.

Mr. Att. Gen. Was it agreed upon, that you ſhould go to my Lord *Lovat* upon this Propoſal?

H. Fraſ. Yes; it was.

Mr. Att. Gen. And did you go to him?---*H. Fraſ.* Yes.

Mr. Att. Gen. And did you deliver the Meſſage to him?

H. Fraſ. I did.

Mr. Att. Gen. And what Anſwer did he give you?

H. Fraſ. He approved very much of the Propoſal, and agreed to the Thing.

Mr. Att. Gen. How long did he continue in that Agreement to this Propoſal?

H. Fraſ. Some Days after, he ſaid, He did not think it quite ſo convenient a Thing; and that he had altered his Mind in regard to That.

Mr. Att. Gen. Pray did he ſay any thing concerning his Intention about the Maſter his Son's going into the Rebellion?

H. Fraſ. He communicated his Deſign to me, when he talked to me on the Subject; which was, that the Maſter ſhould.

Mr. Att. Gen. Should do what?

H. Fraſ. Should go into the Rebellion; that is, to head the Clan of the *Fraſers*.

Mr. Att. Gen. Did you hear my Lord *Lovat* ſay any thing, or no, concerning his own Intentions originally to head the Clan in the Rebellion?

H. Fraſ. My Lord *Lovat* told me then, That he had intended to head them himſelf; but that he had altered his Reſolution.

Mr. Att. Gen. For what Purpoſe, or with what View, did he alter his Reſolution?

H. Fraſ. In order to ſtay himſelf at home, I ſuppoſe.

Mr. Att. Gen. And who was intended to go in his room?

H. Fraſ. I ſaid before, That the Maſter was to head the *Fraſers*.

Mr. Att. Gen. Did you mean, by ſaying he altered his Reſolution, that he had reſolved the Maſter ſhould go?

H. Fraſ. Yes.

Mr. Att. Gen. Did you hear my Lord *Lovat* ſay any thing concerning the Number of Men that he had thought might have been raiſed, or that would riſe?

H. Fraſ. My Lord *Lovat* did talk to me of a greater Number of Men he thought might be raiſed, than was likely to riſe.

Mr. Att. Gen. What Number did he mention?

H. Fraſ. If I remember right, he talked of Four or Five thouſand.

Mr. Att. Gen. Did he give any Reaſon, in relation to his Reſolution, concerning the Maſter's going out, inſtead of himſelf?

H. Fraſ. He told me, That he had once intended to have headed them himſelf, in Expectation that there would be a Riſing of Four or Five thouſand Men; but, as that was not then likely to happen, he intended that the Maſter of *Lovat* ſhould go with the Clan, to head them.

Mr. At. Gen. Please to give an Account to my Lords; If he, at that Time, told you of any Disappointment he met with from other People?

H. Fras. He talked in general, That some People had not acted up to their Engagements, or to that Purpose.

Mr. At. Gen. Please to give an Account to my Lords, If you remember the Time when the Battle of *Preston-Pans* happened?

H. Fras. Yes: I remember the Time very well.

Mr. At. Gen. Was you at *Castle-Downey* after, or before that?

H. Fras. After that Battle.

Mr. At. Gen. How long were you there after that Battle?

H. Fras. It may be about Eight Days after.

Mr. At. Gen. Did any body come to *Castle-Downey* when you was there, and give an Account to my Lord *Lovat* of that Battle; and who was it?

H. Fras. There were several Gentlemen came to *Castle-Downey* while I was there; who said they had been in that Action.

Mr. At. Gen. What did they say concerning it?

H. Fras. What they said of it was, giving a History of the Matter of Fact.

Mr. At. Gen. Who did they give the History to?

H. Fras. To the Company, where I was present: I don't know to whom in particular.

Mr. At Gen. Was Lord *Lovat* present at any Conversation of that Kind?---*H Fras.* I do not doubt but he was.

Mr. At. Gen. Do you remember whether he was, or not?

H. Fras. I believe he was.

Mr. At. Gen. Did you hear Lord *Lovat* say any Thing, and what, concerning that Battle?

H. Fras. I remember to have heard my Lord *Lovat* say, That it was a Victory obtained, not to be paralleled in History.

Mr. At. Gen. I beg you will give an Account to their Lordships, Who the Persons were that came to my Lord *Lovat*'s with this Account of the Battle? Please to name them.

H. Fras. That they came with an Account of the Battle, is more than I can say.

Mr. At. Gen. Who were the Persons that told it? and who were there?

H. Fras. *Mac Donald* of *Barisdale* was there,

Mr. At. Gen. Was any other Person there?

H. Fras. There were with him Servants, and one Gentleman, I think, that was in Company.

Mr. At. Gen. Was young *Glengarie* there?

H. Fras. Yes: The Son of *Glengarie* was there.

Mr. At. Gen. Were *Barisdale* and *Glengarie* in the Rebellion, or no?

H. Fras. So they said themselves.

Mr. At. Gen. Are these the Persons that said they had been in the Battle?

H. Fras. They said they had been there; and gave an Account of their own Conduct in it.

Mr. At. Gen. What did they say they came Northward for?

H. Fras. That they told their real Business, I cannot affirm. What they gave out was, That they intended to levy more Men, in order to prosecute the Affair they had undertaken.

Mr. At. Gen. What Affair do you understand that to have been?

H. Fras. The Rebellion, sure enough.

Mr. At. Gen. Was my Lord *Lovat* present, or no, at the Time when they declared what they came into the North for?

H. Fras. He must have been present; because, where I heard them speak of it, was in his Room.

Mr. At. Gen. Do you remember my Lord *Lovat* said any Thing, and what, upon his being told of the Views of *Barisdale* and *Glengarie*'s coming into the North?

H. Fras. He said, They might raise Five thousand Men: And I don't remember I heard him say any more upon this Subject.

Mr. At. Gen. How long did you continue at *Castle-Downey* this Time that you went there?

H. Fras. For a matter of Twelve or Fourteen Days, I believe, at first.

Mr. At. Gen. Whither did you go to when you went from *Castle-Downey?*---*H. Fraser.* I returned to *Edinburgh.*

Mr. At. Gen. Did my Lord *Lovat* charge you with any Thing to be communicated at *Edinburgh*, as from him?

H. Fras. I am sorry to say he did.

Mr. At. Gen. What was that Charge my Lord *Lovat* gave you to communicate? and to whom was you to communicate it?

H. Fras. What my Lord *Lovat* gave me in Charge to communicate, was in Import, the Conversation I before mentioned to have passed at *Castle-Downey*, That he had once intended to have raised and headed such a Number of Men as I mentioned.

Mr. At. Gen. What Number was that?

H. Fras. Four or Five thousand, the Number I have mentioned already.

Mr. At. Gen. Pray give an Account to my Lords, of the Remainder of the Messages which my Lord *Lovat* sent by you to *Edinburgh.*

H. Fras. It was this: That he intended to have headed such a Number of Men; but that his Age and Infirmities would not allow him to do that; and that he had resolved his Son should head the *Frasers*, and go into the Rebellion.

Mr. At. Gen. Did my Lord *Lovat* add any Thing to what you have now mentioned? Did he give any Reason why he chose to send his Son rather than go himself?

H. Fras. I have given the Reason already: To the best of my Remembrance, that was the principal Reason.

Mr. At. Gen. Did he give any other? Did he mention any Thing relating to his Marks of Affection for the Cause?

H. Fras. He said, the Master of *Lovat*'s going, for whom he had such Regard, was a greater Mark of his Attachment and Affection, than if he had gone himself.

Mr. At. Gen. Did he, at that Time, mention any Thing of the Danger there might be of his going himself personally? and what Danger was it?

H. Fras. He talked much of the Inconvenience and Danger that would attend it; and mentioned the Inconvenience of crossing the *Forth*; and that it could be done no other Way than by the Bridge of *Stirling.*

A Lord. I desire to know to whom the Message was sent?

Mr. At. Gen. I intended to ask the Question the noble Lord mentions. You were giving an Account of some Inconveniences that Lord *Lovat* had mentioned; go on with it.

H. Fras. I have given the Reason why he did not go himself; I mentioned *Stirling* Bridge; and that he said it was impossible for him to cross the *Forth* elsewhere; and that might be very dangerous to him.

Mr. At. Gen. To whom did he charge you with that Message? or to whom was it to be delivered?---*H. Fras.* To the Pretender's Son.

Mr. At. Gen. Did you, or did you not, deliver that Message to the Pretender's Son?---*H. Fras.* I did deliver it to him.

Mr. At. Gen. What Answer did the Pretender's Son give you to it?

H. Fras. The Answer he gave, was no more than that it was very well; or to that Purpose.

Mr. At. Gen. Who was it gave that Answer to you?

H. Fras. The Pretender's Son.

Mr. At. Gen. How long did you continue at *Edinburgh* after this, before you went from thence?

H. Fras. I continued at *Edinburgh* from that Time, which was the Time of my Arrival from the North, in the Beginning of *October*, till the Beginning of *November* after.

Mr. At. Gen. Before you left *Edinburgh*, did any Person, in Behalf of the Pretender's Son, come to you, and who, in order to employ you upon any Message to my Lord *Lovat?*

H. Fras. I left *Edinburgh* twice; which of the Times is meant?

Mr. At. Gen. When you left *Edinburgh* at the Beginning of *November.*

H. Fras. Before I left *Edinburgh* in *November*, I was called upon by one who appeared to me to be in the Service of the Pretender, and by him carried to *Holyrood-House.*

Mr. At. Gen. Who was at *Holyrood-House* then?

H. Fras. The Pretender's Son was the principal Tenant.

Mr. At. Gen. When you came to *Holyrood-House*, who was the Person you was brought before? and what Conversation passed between you?

H. Fras. I was brought before Mr. *Murray.*

Mr. At. Gen. Who is he?

H. Fraser. *John Murray* of *Broughton*, who then took upon him the Name of Secretary to the Pretender's Son.

Mr. At. Gen. Was any body with Mr. *Murray* at the Time you had this Meeting with him, when you went to *Holyrood-House?*

H. Fras. There were two or three Gentlemen in the House.

Mr. At. Gen. Can you name them?---*H. Fras.* Some of them I can.

Mr. At. Gen. Who were they?---*H. Fras.* *Cameron* of *Lochiel* was one.

Mr. At. Gen. Who was there else?

H. Fras. *Mac Donald*, and *Stuart* of *Ardshields*; these Three were in the Room with Mr. *Murray.*

Mr. At. Gen. Was *Mac Donald* of *Keppoch* there?---*H. Fras.* Yes.

Mr. At. Gen. What did Mr. *Murray* say to you upon that Occasion?

H. Fras. He told me, that there had been a Letter intercepted from the North, which was directed to me; and that he understood, from that Letter, that it was owing to me that the *Frasers* had not already marched.

Mr. At. Gen. Marched whither?

H. Fras. Marched, and gone into the Rebellion; and that the Letter bore, that none of them would march till I should go into the North Country.

Mr. At. Gen. Was any Thing said concerning my Lord *Lovat* upon that Occasion?

H. Fras. I believe Mr. *Murray* told me, that he had heard from a Gentleman who was one of their own Party, that my Lord *Lovat* was very well disposed towards supporting the Cause.

Mr. At. Gen. Did he say any Thing concerning my Lord *Lovat*'s Intention to raise Men, or no?---*H. Fras.* I can't tell.

Mr. At. Gen. In the Letter was any Thing of it mentioned?

H. Fras. The Letter I never saw: it was not given to me: I asked for a Sight of the Letter, and asked from whom it was written; and they told me it was from one of the *Frasers.*

Mr. At. Gen. Did you give any Answer to this, or no?

H. Fras. The Answer I gave was, That it was a Misrepresentation of me, and a Falshood.

Mr. At. Gen. In what respect was it a Misrepresentation?

H. Fras. Because the moving, or not moving, of the *Frasers*, no way depended on me.

Mr. At. Gen. Please to give an Account, and go on with what passed between Mr. *Murray* and you.

H. Fras. Mr. *Murray* said, That it was possible it might be so; but that it was necessary for the Vindication of my Character, that I should go into the North Country.

Mr. At. Gen. Go on.

H. Fras. I told him, that my Business would not allow me to do it.

Mr. At. Gen. What was agreed upon then?

H. Fras. That I should write such an Account of the Situation of the Rebel Army at *Edinburgh*, as he then gave me; and they would be satisfied with such Account.

Mr. At. Gen. Did you, or did you not, agree to this?

H. Fras. I did agree to it.

Mr. At. Gen. What was the Consequence of that Agreement?

H. Fras. I agreed to it, and obtained a Pass for the Bearer of it; and, in Consequence of that Pass, I meant to send what I took to be the real State of the Matter on both Sides.

Mr. At. Gen. Did you, or did you not write, according to this Proposal?

H. Fraser. I went to write, and was about doing it, when I was called upon a second Time by the same Person who had called upon me before, and was brought by him to the same Place.

Mr. At. Gen. What passed when you was thus brought back to the same Place?

H. Fras. I was told that Writing would not do, but I must go myself.

L. H. S. Who told you so?---*H. Fras.* Mr. *Murray.*

Mr. At. Gen.

Mr. At. Gen. Be pleaſed to inform their Lordſhips, what was done upon that. Did you, or did you not agree to go?

H. Fraſ. In the End, I did agree to it, becauſe I underſtood, if I had not, I muſt have expected a worſe Service.

Mr. At. Gen. What was the Meſſage you was to go upon?

H. Fraſ. The Meſſage I was charged with was to give ſuch an Account of their own Situation as they had given me.

Mr. At. Gen. Was you charged with any Letter for my Lord *Lovat?* and from whom?

H. Fraſ. There was a Letter from Mr, *John Murray* delivered to me, and directed to my Lord *Lovat.*

Mr. At. Gen. Was it delivered to you open or ſealed?

H. Fraſ. The Letter was open when it was delivered to me.

Mr. At. Gen. Did you or did you not read it?

H. Fraſ. I did read it.

Mr. At. Gen. Who delivered it to you?

H. Fraſ. Mr. *Murray.*

Mr. At. Gen. Pray, give an Account to my Lords of the Contents of that Letter that was thus delivered to you by Mr. *Murray.*

H. Fraſ. The Import, or Contents of the Letter, was, to the beſt of my Remembrance, that Mr. *Murray* was extremely glad of the Accounts he had received, with reſpect to my Lord *Lovat*'s Intentions; and that he begged of him to perſevere in them; and that he earneſtly deſired, that the *Fraſers* ſhould march forthwith: And I think, to the beſt of my Remembrance, there was a Route directed for them.

Mr. At. Gen. Was there any Place mentioned where they were to meet the Army?

H. Fraſ. The Place where it was intended, according to that Route, they ſhould join the Rebel Army, was about *Moffat* or *Carliſle.*

Mr. At. Gen. Did you go with that Letter or not to my Lord *Lovat?*

H. Fraſ. I went into the North Country; and ſome time after my Arrival at that Place, I delivered that Letter.

Mr. At. Gen. To whom did you deliver that Letter?

H. Fraſ. To my Lord *Lovat.*

Mr. At. Gen. When you delivered Lord *Lovat* that Letter, did you give him any Account of the Situation either of the Rebels, or the King's Army, or of the Affairs relating to the Rebellion?

H. Fraſ. I gave him the Account, which I intended to have wrote, of the Situation on both Sides of the Queſtion, ſo far as I knew of it.

Mr. At. Gen. What was that Repreſentation that you made, and did, in Fact, deliver or give to my Lord *Lovat?*

H. Fraſ. The Repreſentation I delivered to my Lord *Lovat* at that time was this, That with reſpect to the Government, there were above 21 Battalions of Forces arrived from *Flanders:* That there were two Regiments arrived from *Ireland:* That the *Dutch* Auxiliaries were expected: And that the Rebels did not ſeem to be a Party ſufficient, according to their Number, to engage with ſuch a Number of regular and well-diſciplined Forces.

Mr. At. Gen. What did my Lord *Lovat* ſay to this Repreſentation of yours, that you thus made to him?

H. Fraſ. My Lord *Lovat* ſaid, that he conceived what I had ſaid, with reſpect to the Situation of Affairs on both Sides of the Queſtion, to be very true.

Mr. At. Gen. What did he ſay, as the Conſequence of that Belief of his?

H. Fraſ. He further ſaid,—But that he thought himſelf too far engaged to look back.

Mr. At. Gen. Did he ſay any thing elſe relating to that Matter?

H. Fraſ. Yes, I believe it was Part of the Converſation, that he forbid me to mention or intimate any thing of the Converſation that had thus paſſed between us to his Son.

Mr. At. Gen. Can you tell the Reaſon why he was unwilling that his Son ſhould know of it?

H. Fraſ. As for the Reaſon, that muſt depend upon my own Conjecture, ſince Lord *Lovat* expreſſed none.

Mr. At. Gen. Did you continue at my Lord *Lovat*'s Houſe after this for any, and what Time?

H. Fraſ. I continued from my Arrival there, which was the Beginning of *November*, till the Middle or towards the End of *December.*

Mr. At. Gen. You had by that an Opportunity of ſeeing ſome of my Lord *Lovat*'s Conduct, and hearing his Converſation: Pleaſe to give an Account to my Lords, whether there was any Rendezvous of the *Fraſers*, my Lord *Lovat*'s Clan, during the Time you were there?

H. Fraſ. I heard there was a Rendezvous before I came into the Country; but I was preſent at none, nor ſaw any while I was there. I ſuppoſe by the Word Rendezvous, you mean a Gathering of Men.

Mr. At. Gen. Have you ever ſeen any of them?

H. Fraſ. I never ſaw an univerſal one, or general one: Perhaps I might ſee forty or fifty Men together at a Time.

Mr. At. Gen. Have you ſeen forty or fifty Men at a Time gathered together there, as a Body of Men in Arms?

H. Fraſ. No, I cannot ſay I did ſee, or was preſent at any Gathering of Men in Arms.

Mr. At. Gen. Did you ever ſee a Liſt of the Officers appointed out of my Lord *Lovat*'s Clan?

H. Fraſ. I have ſeen ſuch a Liſt.

Mr. At. Gen. By whom was that Liſt ſhewn to you?

H. Fraſ. It was ſhewn to me by the Maſter of *Lovat.*

Mr. At. Gen. Do you know, whether my Lord *Lovat* ſaw that Liſt?

H. Fraſ. I do not know that, indeed.

Mr. At. Gen. Was you yourſelf appointed or named as one of the Officers in that Liſt?

H. Fraſ. I was.

Mr. At. Gen. What was the Office or Poſt you had there?

H Fraſ. I was named there a Captain-Lieutenant.

Mr. At. Gen. Did my Lord *Lovat* call you by that Name or Title, or by any other, after this Time?

H. Fraſ. My Lord *Lovat* has called me by that Name after this.

Mr. At. Gen. Was it or was it not the uſual Name he called you by?

H. Fraſ. Yes, very often.

Mr. At. Gen. Did he ever call you by the Name of Captain before that Time?

H. Fraſ. No.

Mr. At. Gen. What did you underſtand by your being called by that Name by my Lord *Lovat?* Did you underſtand by that, that he looked upon you as a Captain or Officer in his Son's Regiment?

H. Fraſ. I underſtood by that, that my Lord *Lovat* apprehended it was ſo wrote in that Liſt.

Mr. At. Gen. Did my Lord *Lovat* underſtand by it, and ſo expreſs himſelf, that you were actually a Captain, as well as wrote ſo in that Liſt?

H. Fraſ. Actually a Captain I was not; he could not underſtand what was not, becauſe as I had not undertaken or done any thing, all the Foundation he had for calling me Captain, was owing to my Name being in that Liſt.

Mr. At. Gen. Have you had any Converſation with my Lord *Lovat* concerning his Diſſatisfaction at his Son's Backwardneſs in raiſing the *Fraſers?*

H. Fraſ. I have heard my Lord *Lovat* complain ſometimes of his Son's Backwardneſs to raiſe the Clan, and ſometimes of his too much Forwardneſs.

Mr. At. Gen. Did you ever hear him ſay any thing concerning the Conſequence of this Engagement of his in the Rebellion, in reſpect to himſelf?

H. Fraſ. I have heard him ſay, that he apprehended the Conduct of his Clan, upon this Occaſion, would be his Ruin, and very probably coſt him his Life.

Mr. At. Gen. I beg you will inform their Lordſhips, whether the Officers of this Clan, or of the Maſter of *Lovat*'s Regiment, did or did not to live or dine with my Lord *Lovat?*

H. Fraſ. I have dined at my Lord *Lovat*'s Table ſeveral Times, with the Officers who were named in that Liſt.

Mr. At. Gen. Did you ever hear the Pretender's Son ſpoken of at Dinner, or at any other Time, in my Lord *Lovat*'s Houſe?

H. Fraſ. Any particular Converſation, with reſpect to the Pretender's Son, I cannot recollect; but that he has been ſpoken of, there is little Reaſon to doubt, becauſe it was the Topick of Converſation in all the Country.

Mr. At. Gen. By what Name or Title was the Pretender's Son uſually called, in the Converſation between my Lord *Lovat* and thoſe Officers?

H. Fraſ. To the Converſation between my Lord *Lovat* and thoſe Officers, I cannot anſwer; but in the Converſation upon that Subject, in my Lord *Lovat*'s Preſence, I can ſay he was called Prince *Charles.*

Mr. At. Gen. Now, my Lords, I will beg Leave to aſk the Witneſs concerning another Matter of Fact: Did you ever hear my Lord *Lovat* ſay any thing concerning a Patent to create him Duke of *Fraſer*, by the Pretender?

H. Fraſ. I have heard him ſay there was ſuch a thing in being.

Mr. At. Gen. Did he ever ſay, whether he had or had not ſeen the original Patent, or any Copy of it?

H. Fraſ. He did not ſay that he had ſeen the Patent; I think he ſaid he had never ſeen it.

Mr. At. Gen. Did you ever hear him ſay any Thing concerning any Copy of it which he had?

H. Fraſ. He ſhewed me half a Sheet of Paper, whereon was wrote what had been ſhewn or given to him, as a Copy of ſuch a Patent.

Mr. At. Gen. What Patent do you mean?

H. Fraſ. The Patent to create him a Duke.

Mr. At. Gen. By whom was that Patent ſaid to be granted?

H. Fraſ. The Copy that I ſaw was in the Name of one whom I took to be the Old Pretender, who called himſelf *James* the VIIIth.

Mr. At. Gen. How was that ſubſcribed, do you recollect?

H. Fraſ. I don't remember it was ſubſcribed, or ſuperſcribed.

Mr. At. Gen. Was there any Name at the Top of it?

H. Fraſ. I really cannot ſay.

Mr. At. Gen. That Copy which you ſaw, by whom was it ſhewn to you?

H. Fraſ. It was ſhewed me by my Lord *Lovat.*

Mr. At. Gen. You was ſaying, that you continued with my Lord *Lovat*, from the ſecond Time you came to *Caſtle-Downey*, to the latter End of *December:* Pleaſe to inform their Lordſhips, if during that Interval of Time, any of the Men of the *Fraſers* did actually march, in order to go to the Pretender's Army, or to join them?

H. Fraſ. Yes; there were Men that marched: About ſix or ſeven Companies of Men marched about ſix or ſeven Miles from their own Country, to an adjacent Country.

Mr. At. Gen. What Place was that they went to?

H. Fraſ. It was a Place called *Urquhart.*

Mr. At. Gen. What became of thoſe Men? How far did they march?

H. Fraſ. I ſaid before, about ſix or ſeven Miles.

Mr. At. Gen. Were they afterwards recalled?

H. Fraſ. They were.

Mr. At. Gen. Who were they recalled by?

H. Fraſ. They were recalled by a Letter from my Lord *Lovat*, directed to his Son, the Maſter of *Lovat.*

Mr. At. Gen. Did, or did not, they comply with that Letter which recalled them?

H. Fraſ. The Son complied; and they, in Conſequence, I ſuppoſe, complied with the Son's Orders.

Mr. At. Gen. Did the whole Clan comply?

H. Fraſ. All, except about 25 of them.

Mr. At. Gen. Did they return to their own Habitations?

H. Fraſ. They returned.

Mr. At. Gen. At or about what Time was this?

H. Fraſ. I believe it was in the Month of *November.*

Mr. At. Gen. Now, Sir, I would aſk you, Did you take it, that the Maſter of *Lovat* marched with them, by Order of my Lord *Lovat*; or was it out of his own Head that he thus marched?

H. Fraſer. The Men had marched, and were in that Country, before the Maſter of *Lovat* went from *Caſtle-Downey:* When he went from *Caſtle-Downey*, it was not with a View to proceed upon that March, in caſe he ſhould be able to prevail on the Men to return. I went along with the Maſter; and after we came where the Men were, we called the Officers together, and propoſed to them that they ſhould return: The only Reaſon we gave them for this Advice was, a Storm of Snow which then fell, and which would probably render their March very troubleſome: But, by the Influence of *Mac Donald* of *Bariſdale*, it was carried againſt the Maſter's Sentiments that they ſhould march. Upon that Reſolution, I returned to *Caſtle-Downey*; and a few Hours after my Return, my Lord *Lovat* wrote the Letter I mentioned himſelf; which occaſioned their coming back.

Mr. At. Gen. Pleaſe to inform their Lordſhips, whether you was ſent at any Time, by my Lord *Lovat*, to the Preſident of the Seſſion of *Scotland:* Or mention firſt, if my Lord Preſident was at *Inverneſs*.

H. Fraſ. He then was at his own Houſe at *Culloden*.

Mr. At. Gen. Was my Lord *Loudon* there?

H. Fraſ. He was at *Inverneſs*.

Mr. At. Gen. Was you ſent by my Lord *Lovat* to the Lord Preſident, or to my Lord *Loudon*, with any, and what Meſſage?

H. Fraſ. I was ſent by my Lord *Lovat* to my Lord Preſident and my Lord *Loudon* both.

Mr. At. Gen. What was the Meſſage that you was ſent with?

H. Fraſ. The Intention of the Meſſage was, to ſee to diſcover from thoſe Gentlemen, what would be the Reſult of the *Fraſers* marching, and going into the Rebellion.

Mr. At. Gen. Was that the Intention of the Meſſage?

H. Fraſ. Yes; it was.

Mr. At. Gen. Did you carry any Letter or Letters from my Lord *Lovat* to the Lord Preſident, or my Lord *Loudon?*

H. Fraſ. There was a Letter I carried from my Lord *Lovat* to the Lord Preſident.

Mr. At. Gen. Did you know what was the Contents of that Letter? Did you read it?

H. Fraſ. I did.

Mr. At. Gen. What were the Contents of it?

H. Fraſ. The Contents of it were, informing my Lord Preſident, That the Maſter of *Lovat* had gone off in a headſtrong Way, and carried the *Fraſers* into the Rebellion.

Mr. At. Gen. What did my Lord *Lovat* mean by the Word *headſtrong?*

H. Fraſ. I ſuppoſe he meant, that it was contrary to his Advice.

Mr. At. Gen. When you came to my Lord Preſident, did you deliver that Letter?——*H. Fraſ.* Yes; I did.

Mr. At. Gen. What Anſwer did my Lord Preſident give to it?

H. Fraſ. He told me by Word of Mouth, That the Conſequence that would ariſe to my Lord *Lovat* from ſuch a Step taken by his Clan, would in all Probability be the Seizing of his Perſon, and making an Inquiry into his Conduct.

Mr. At. Gen. Did you, or did you not, return with that Anſwer of my Lord Preſident, and deliver it to my Lord *Lovat?*

H. Fraſ. I returned with that Anſwer of Lord Preſident, and with an Anſwer to the ſame Purpoſe from my Lord *Loudon*; and delivered them both to my Lord *Lovat.*

Mr. At. Gen. Was you likewiſe charged with a Letter from my Lord Preſident to Lord *Lovat?*

H. Fraſ. My Lord Preſident did write to my Lord *Lovat*, in Return to his Letter.

Mr. At. Gen. Did you ſee that Letter?

H. Fraſ. I ſaw it.

Mr. At. Gen. Can you give my Lords an Account of the Contents of it?

H. Fraſ. The Import of it was what I already told their Lordſhips.

Mr. At. Gen. Did you, or did you not, go to my Lord *Lovat* with thoſe Meſſages and this Letter?——*H. Fraſ.* I did.

Mr. At. Gen. Before you delivered this Letter, or theſe Meſſages, had you any Meeting with the Maſter of *Lovat?*

H. Fraſ. I had a Meeting with the Maſter of *Lovat* upon the Way. It was concerted between him and me before I ſet out upon that Meſſage, that he ſhould meet me privately by the Way in my Return, in order to know what paſſed between my Lord Preſident and me, and my Lord *Loudon* and me.

Mr. At. Gen. Had you that Meeting before your Return?

H. Fraſ. Yes, I had.

Mr. At. Gen. What paſſed between you Two at that Meeting?

H. Fraſ. I made a Report to the Maſter of *Lovat* of all the Converſation I had with thoſe two Gentlemen.

Mr. At. Gen. Was there any thing concerted or agreed between you Two upon that Occaſion?

H. Fraſ. The Reſult of our comparing our Sentiments on that Meeting was, that the Maſter of *Lovat*, if it was poſſible, ſhould be got immediately ſent over to *Holland*; and that the Scheme which he had propoſed ſome Months before, ſhould then be put in Execution, with reſpect to the Maſter of *Lovat*'s following his Education at *Leiden*, or ſome other Univerſity in the *Low Countries.*

Mr. At. Gen. What Anſwer did you return to my Lord *Lovat* in regard to theſe Meſſages?

H. Fraſ. I reported what was agreed upon between the Maſter and me, and agreeable to my Lord Preſident's Letter, and to my Lord *Loudon*'s verbal Meſſage by me: I ſay, we had agreed, that there was a Report to be made agreeable to this Reſolution between the Maſter and me, to my Lord *Lovat.*

Mr. At. Gen. Pleaſe to inform their Lordſhips, in the firſt Place, Whether you delivered my Lord Preſident's Letter to my Lord *Lovat?*

H. Fraſ. I did.

Mr. At. Gen. And did you make a Report to my Lord *Lovat*, according to what was agreed upon between his Son and you?——*H. Fraſ.* I did.

Mr. At. Gen. Pleaſe to repeat them again to my Lords; and ſtate what was the Meſſage you delivered to my Lord *Lovat*, beſides the Letter.

H. Fraſ. The Report I delivered to my Lord *Lovat*, beſides delivering the Letter, was this, That it was my Lord Preſident's Belief, that an Order would be immediately ſent down from *London* for the ſeizing his Perſon, and inquiring into his Conduct; and that it was my Lord *Loudon*'s Determination to put that Order in Execution, as ſoon as ever it came into his Hands.

Mr. At. Gen. Do you recollect any thing more concerning it? Do you remember whether it was to be put in Execution, in caſe the *Fraſers* did, or in caſe they did not march?

H. Fraſ. In caſe the *Fraſers* did march.

Mr. At. Gen. Is this the whole Subſtance of the Report that you made to Lord *Lovat?*——*H. Fraſ.* Yes, ſo far as I remember.

Mr. At. Gen. What Anſwer did my Lord *Lovat* make you upon that Occaſion?

H. Fraſ. When I made the Report, I do not remember any particular Converſation that paſſed upon it.

Mr. At. Gen. Did he give you any Anſwer to it at any other Time? and when?

H. Fraſ. There was a Converſation between us ſoon after about it: I believe it was the next Day after my Return to *Caſtle-Downey.*

Mr. At. Gen. What did my Lord *Lovat* then ſay to you relating to thoſe Meſſages, or to that Report which you made?

H. Fraſ. I believe my Lord *Lovat* ſaid, That he thought the Report of ſecuring his Perſon, and inquiring into his Conduct, was to be conſidered rather as a Bugbear.

Mr. At. Gen. Was the Maſter of *Lovat* preſent at that Time?

H. Fraſ. Yes, he was.

Mr. At. Gen. What did my Lord *Lovat* ſay to his Son upon that Occaſion?

H. Fraſ. My Lord *Lovat* told his Son what I have already ſaid, That he looked upon it to be rather a Bugbear: And that it was his Opinion, he ſhould proceed in the Undertaking he was engaged in.

Mr. At. Gen. Did he, upon that Occaſion, give or make any Orders concerning what was to be done?

H. Fraſ. Yes, that the Men ſhould march immediately.

Mr. At. Gen. Did he give any Orders for it?

H. Fraſ. Not in the Way of an Order.

Mr. At. Gen. What did he ſay upon the Occaſion?

H. Fraſ. That it was his Opinion, That the Men ſhould march immediately.

Mr. At. Gen. What Men did you underſtand by that, were to march immediately?

H. Fraſ. The Clan of the *Fraſers:*

Mr. At. Gen. What March did you underſtand it was to be? Or, whither were they to march?

H. Fraſ. To join the Rebel Army.

Mr. At. Gen. Was there any other Company preſent at this Converſation, beſides my Lord *Lovat*, and the Maſter, and you?

H. Fraſ. Yes, there were two other Gentlemen.

Mr. At. Gen. Did Lord *Lovat* then ſay any thing to them concerning it, by way of aſking their Opinion, or their Agreement to it?

H. Fraſ. He aſked the Opinion of all the Gentlemen preſent, after he had given his own, by ſaying, That it was his Opinion; and that he hoped all the Gentlemen preſent agreed to it.

Mr. At. Gen. What did you underſtand by that?

H. Fraſ. That he hoped all preſent agreed to the Opinion which he had delivered himſelf.

Mr. At. Gen. Did you give any Anſwer to that? or any Opinion concerning it?——*H. Fraſ.* Yes, I did.

Mr. At. Gen. What was it?

H. Fraſ. So far as I remember, the Anſwer I made was, That my Opinion had not been aſked; but that, notwithſtanding that, I thought myſelf obliged to give it: And it was this, That if the Affair could not be entirely dropped, that it ſhould be put off for ſome Time.

Mr. At. Gen. Did my Lord *Lovat* give any Anſwer to that?

H. Fraſ. When I ſaid, That my Opinion had not been aſked, he told me, That ſome People's Opinion might be eaſily read in their Countenances, or Words to that Purpoſe.

Mr. At. Gen. What Anſwer did you make upon that?

H. Fraſ. The Anſwer I have already given.

Mr. At. Gen. What Anſwer did Lord *Lovat* give as to the putting off the March for a while?

H. Fraſ. No Anſwer at all; ſo far as I remember. The Maſter of *Lovat*, upon that, burſt out into Tears; and ſaid, He had been made a Fool of, and a Tool from firſt to laſt.

Mr. At. Gen. Did he ſay any Thing more?

H. Fraſ. Yes; he ſaid, That he had been one Day doing, and another Day undoing; but that now he was determined, that whatſoever Reſolution Lord *Lovat* ſhould come to, that he would execute it; let the Conſequence be what it would with reſpect to himſelf, and other People.

Mr. At. Gen. Was there any Thing more paſſed? Did Lord *Lovat* ſay any Thing upon this Occaſion?

H. Fraſ. My Lord *Lovat* ſaid, That he had given his Opinion already; and that he would not alter it; or to that Effect.

Mr. At. Gen. You have ſeen my Lord *Lovat* and his Son pretty often together, and were at his Houſe for two or three Months together; pray what was your Opinion as to the Backwardneſs of the Maſter of *Lovat?* or as to his Obedience or Diſobedience to his Father, in reſpect to his going into the Rebellion? Do you think that the Maſter was guilty of Obſtinacy and Diſobedience to his Father in going into the Rebellion? or that, by ſo doing, he complied with his Father's Orders and Inclinations?

H. Fraſ. If I am to form my Opinion, with reſpect to the Maſter of *Lovat*, upon his own good Senſe and Underſtanding, or his avowed Principles, I ſhould apprehend, that he would not have gone into the Rebellion, had he been left to himſelf: And if I am to form my Opinion upon the private Converſation I had with him, and particularly one, which I remember I had in *Urquhart*; I ſay, if I am to form my Opinion upon what he declared with reſpect to his Intentions and Sentiments declared

to me, it is my Belief, that he would not have had any Concern in this Rebellion, had he been entirely left to himself.

Mr. Att. Gen. I desire to ask you, Sir, Whether, from your Knowledge of the Situation of the Clan of the *Frasers*, and of the Power and Influence which either my Lord *Lovat* or the Master had over them, do you think, that the Master of *Lovat* could have raised the Clan, without the Concurrence and Order of my Lord *Lovat*?

H. Fraser. I believe, had the Lord *Lovat* and the Master acted in direct Opposition the one to the other, that the Clan would have been divided; and Part would have gone with one, and Part with the other; but what Part to either of them, is what I cannot determine.

Mr. Att. Gen. About what Time was it that the News came first to *Castle Downey* of the Landing of Lord *John Drummond* with Soldiers from *France*?

H. Fras. It was about a Day before I went to my Lord President, or that Day.

Mr. Att. Gen. I desire to know, Whether, in your Opinion, that News had any Influence to determine my Lord *Lovat*'s Conduct at that Time?

H. Fras. I cannot take upon me to say what it was that determined my Lord *Lovat*'s Conduct.

Mr. Att. Gen. Did you hear my Lord *Lovat* say any Thing about that particular Event of Lord *John Drummond*'s landing then?

H. Fras. I have heard my Lord *Lovat* report what Intelligence had been returned to him on account of that Landing.

Mr. Att. Gen. Please to give an Account to my Lords when the Master of *Lovat* and the *Frasers* did march? and where they marched to?

H. Fras. Some Part of the *Frasers* marched at one Time, and some at another: Some of them marched a short Time after this Conversation passed between my Lord *Lovat* and the Master, at which I was present.

Mr. Att. Gen. Where did they march first?

H. Fras. They marched first to *Perth*; but the Master of *Lovat* did not go along with them.

Mr. Att. Gen. Did my Lord *Lovat* know, or not know, of their marching?——*H. Fras.* That I don't know of my own Knowledge; but that my Lord *Lovat* must have heard of their March, is certain.

Mr. Att. Gen. Did they, or did they not, march against his Orders?

H. Fras. Truly that is what I cannot easily answer: He certainly gave Orders for them not to march sometimes, and it was sometimes given out, that he gave Orders for their marching; but I did not see either of these Orders.

Mr. Att. Gen. Please to give my Lords an Account when the *Frasers* did march to *Perth*; and be as correct as you can.

H. Fras. The Times that they marched were different.

Mr. Att. Gen. Did they march in large Numbers?

H. Fras. They marched in very small Numbers, not, I believe, above fifty at a Time; and the Number that marched in all was but very small.

Mr. Att. Gen. What Number do you suppose might march?

H. Fras. When they were strongest at *Perth*, they were between Two and Three Hundred at most.

Mr. Att. Gen. Please to give an Account to my Lords, Whether my Lord *Lovat* was apprehended by Lord *Loudon*'s, or my Lord President's Order? and when?

H. Fras. The next Morning after the Conversation passed between the Lord *Lovat* and the Master, as I mentioned already, I left *Castle-Downey*.

Mr. Att. Gen. Were the *Frasers* then gone, or were they going to *Perth*?

H. Fras. I believe there were none of them gone at that time; but I cannot say that I remember positively; but their March was then resolv'd on.

Mr. Att. Gen. Do you remember when it was precisely that you came from my Lord President's to my Lord *Lovat*?

H. Fras. I do not remember the precise Day of the Month.

Mr. Att. Gen. About what Time of the Month was it?

H. Fras. I dare say it must be about the Beginning of *December*.

Mr. Att. Gen. You say, That you went to *Perth* with the Master of *Lovat*; pray who was with you?

H. Fras. The Master and I went to *Perth* by ourselves alone.

Mr. Att. Gen. When you came there, where was the Body of the Rebel Army?

H. Fraser. I believe it was in *England*.

Mr. Att. Gen. How soon after that did they come into *Scotland* again?

H. Fras. About Two or Three Weeks at most, after the Master and I had got to *Perth*, there came an Account, that the Rebel Army had returned to *Glasgow*.

Mr. Att. Gen. Had you any Orders from the Pretender's Son about marching?

H. Fras. There were Orders given by Mr. *Murray*, that the Rebel Forces should march to *Stirling*, to join those coming from *Glasgow*.

Mr. Att. Gen. Did the *Frasers* go thither?

H. Fras. They did.

Mr. Att. Gen. How far did they go?

H. Fras. To *Stirling*.

Mr. Att. Gen. Was there any Message sent to *Glasgow*, or any Place thereabouts, by the Master of *Lovat*, relating to the *Frasers*?

H. Fras. Yes, there was: It was sent from *Perth* to *Glasgow*.

Mr. Att. Gen. For what Purpose was it sent?

H. Fras. In order to procure Firelocks for the *Frasers*.

Mr. Att. Gen. Did you yourself go to *Glasgow*?

H. Fras. I did.

Mr. Att. Gen. To whom did you apply there?

H. Fras. To Mr. *John Murray*.

Mr. Att. Gen. Please to give an Account to my Lords what was the Effect of that Application of yours?

H. Fras. The Effect of it was, that an Order was sent to Lord *John Drummond*, in the Name of one that called himself the *French* Ambassador, that Lord *John Drummond* should deliver Arms for the *Frasers* out of the Arms that he had in Charge, that were the King of *France*'s Arms, as he himself said.

Mr. Att. Gen. How long did you stay at *Glasgow*?

H. Fras. About Twenty-four Hours.

Mr. Att. Gen. Before your Return from thence, had you any Conversation or Meeting with Mr. *Murray* of *Broughton*, the Pretender's Secretary?

H. Fras. I called upon him there, and saw him in his own Room.

Mr. Att. Gen. What was the Import of your Conversation at that Meeting?

H. Fras. The Business that brought me there was, to desire him to send the Arms I mentioned.

Mr. Att. Gen. Was that the only Subject of your Conversation?

H. Fras. No: We talked with respect to the Situation of Matters in the North Country, and with respect to the Imprisonment of my Lord *Lovat*, and his Escape from *Inverness*, which I had then heard of.

Mr. Att. Gen. Was there any Proposal then made concerning the Army's going into the North Country to take *Inverness*?

H. Fras. There was a Proposal then made, that a Detachment should be sent from the Army, in order to make themselves Masters of *Inverness*.

Mr. Att. Gen. What more passed between you relating to this Proposal?

H. Fras. That Proposal was agreed to, and a Resolution formed upon it, in a Council that was called in the Afternoon.

Mr. Att. Gen. Did you at that time hear any thing, or receive any thing, from my Lord *Lovat*?

H. Fras. No: I had no Charge from my Lord *Lovat* when I went to *Glasgow*.

Mr. Att. Gen. But, when you was there, did you receive any Order from Lord *Lovat*?

H. Fras. I received no Order or Letter from my Lord *Lovat*, while I was at *Glasgow*.

Mr. Att. Gen. Had you any Orders or Letters from Lord *Lovat* at all relating to the sending any Men Northward; I do not mean while you was at *Glasgow*, but in *Stratharrick*, or any other Place?

H. Fras. Before I went to *Perth*, there was a Letter delivered to me.

Mr. Att. Gen. You say it was concerted to send a Detachment to *Inverness*, or that a Detachment of the Army should go thither: What was done in pursuance of that Resolution?

H. Fras. Nothing at all.

Mr. Att. Gen. You say, that you received a Letter from my Lord *Lovat* at *Stratharrick*; pray what were the Contents of it?

H. Fras. I did say so: There was a Letter delivered to me: It was not signed; but it appeared to me to be the Hand-writing of *Robert Fraser*, who then acted as Secretary to my Lord *Lovat*; but it had no Name subscribed to it.

Mr. Att. Gen. What was the Import of that Letter?

H. Fras. The Request of the Letter was, That I should have gone to *Perth*, in order to have prevailed with the Gentlemen who commanded at that Place, to send a Number of Forces to *Inverness*, in order to make themselves Masters of that Place, by dislodging my Lord *Loudon*, and to rescue my Lord *Lovat*.

Mr. Att. Gen. Was any thing done upon this?

H. Fras. Nothing: I refused to do it.

Mr. Att. Gen. Before you went from *Glasgow*, and returned with the Answer to the Message you had delivered there, did you receive any Message from Mr. *Murray* the Secretary, or any Packet? and what was it?

H. Fras. Mr. *Murray* proposed me to carry a Packet from *Glasgow* to *Perth*.

Mr. Att. Gen. Did he deliver you any Packet?

H. Fras. I refused to take it; because, I told him, that very probably his Packet would require Dispatch; and that I rid my own Horses, and did not incline to abuse them.

Mr. Att. Gen. Did you, or did you not, receive the Packet?

H. Fraser. When he told me afterwards, That he had no other Person to carry it, and that it did not require Dispatch, I accepted of the Packet.

Mr. Att. Gen. Do you know what that Packet contained?

H. Fras. I came to know it afterwards.

Mr. Att. Gen. And what were the Contents of it?

H. Fras. There was a separate Letter, directed to the Master of *Lovat* only, with respect to the Army; and there was a large Packet of Papers, not directed to any Person, but which, Mr. *Murray* told me, I was to deliver to the Master of *Lovat*.

Mr. Att. Gen. Do you know what that Letter, or Packet, did contain?

H. Fras. Upon my Return to *Perth*, as the Master of *Lovat* happened not to be there at that time, another Gentleman and I took the Freedom to open the large Packet.

Mr. Att. Gen. What did you find in it?

H. Fras. There was in it a Commission of Lieutenant-General to my Lord *Lovat*, that is, in my Lord *Lovat*'s Name; and it was granted in the Name of *James* the VIIIth.

Mr. Att. Gen. What was there in it else?

H. Fras. There was another Commission in it, to my Lord *Lovat*, of Lieutenant of some Northern County, granted in the same Manner.

Mr. Att. Gen. Did that appear to be signed and sealed by the Pretender?—*H. Fras.* It had a Subscription and Superscription, and a Seal.

Mr. Att. Gen. Was there any thing else contained in that Packet?

H. Fras. There was another Commission to a Gentleman of the Name of *Fraser*.

Mr. Att. Gen. What did that Commission import to be?

H. Fras. It was a Colonel's Commission.

Mr. Att. Gen. Do you recollect to whom it was made?

H. Fras. The Gentleman was named *Fraser*: One who was called *Inverlacky*, and a Gentleman of that Name was then acting in that Capacity among the *Frasers*.

Mr. Att. Gen. Did that Commission appear, upon the Face of it, to be signed and sealed? and by whom?

H. Fras. Yes, it was signed and sealed in the same Manner as the other Commissions were.

Mr. Attorney

Mr. Attorney General. Was there any thing elſe in the Packet?

H. Fraſ. There was a Letter under the Hand of the Pretender's Son.

Mr. Att. Gen. To whom was that directed?

H. Fraſ. It was directed to my Lord *Lovat.*

Mr. Att. Gen. Was there any other Paper there?

H. Fraſ. Yes; there was a Letter from Mr. *Murray*, *Cameron* of *Lochiel*, and *Mac Pherſon* of *Clunie.*

Mr. Att. Gen. To whom was that Letter directed?

H. Fraſ. That Letter had no Direction, or Cover; it was in the large Cover.

Mr. Att. Gen. Were thoſe all that were in the large Cover?

H. Fraſ. All that I remember.

Mr. Att. Gen. Was the large Cover addreſſed to any body?

H. Fraſ. No.

Mr. Att. Gen. What was the Reaſon of that?

H. Fraſ. The Reaſon given me by Mr. *Murray* was, That it was intended for my Lord *Lovat*; but could not be directed, becauſe he could not aſcertain by what Title to write it.

Mr. Att. Gen. What was the doubted Title?

H. Fraſ. The doubted Title was that of a Duke.

Mr. Att. Gen. Duke of what?

H. Fraſ. Duke of *Fraſer*, or *Beaufort: Fraſer*, I believe.

Mr. Att. Gen. Does not my Lord *Lovat*'s Houſe go by Two Names?

H. Fraſ. Yes, by the Name of *Caſtle-Downey* and *Beaufort.*

Mr. Att. Gen. Do you know, whether that Letter, that was ſigned by *Clunie Mac Pherſon*, *Lochiel*, and Mr. *Murray*, was referred to in the Letter that was ſent by the Pretender's Son?

H. Fraſ. I don't know that it was.

Mr. Att. Gen. Do you recollect the Subſtance of the Letter from the Pretender's Son to my Lord *Lovat?*

H. Fraſ. The Subſtance of the Letter, as far as I can recollect, was requeſting my Lord *Lovat* to come and join with him in Perſon.

Mr. Att. Gen. My Lords, Theſe are all the Queſtions we have to aſk of this Witneſs.

Lord High Steward. My Lord *Lovat*, The Gentlemen of the Houſe of Commons have done with this Witneſs: Would your Lordſhip aſk him any Queſtions?

Lord *Lovat.* My Lords, I have told your Lordſhips already, that I am ſo ill that I am not able to ſpeak, or to get up, or ſit down; and therefore hope your Lordſhips will indulge me to retire a little, and refreſh myſelf.

Lord High Steward. My Lords, my Lord *Lovat* deſires Leave to withdraw for a little while.

Lords. Ay, ay.

Upon which Lord Lovat *withdrew for a little while: And being returned,*

Lord *Lovat.* I deſire, that your Lordſhips will indulge me in permitting your Clerk to read the Queſtions I would aſk.

Lords. Ay, ay.

Lord *Lovat.* Was not you taken Priſoner by the King's Forces, after the Battle of *Culloden?*——*H. Fraſ.* I was.

Lord *Lovat.* Have you not been in Cuſtody ever ſince? and are not you ſo now?——*H. Fraſ.* I have been, and I am.

Lord *Lovat.* Have you as yet obtained any Pardon?

H. Fraſ. I know of none.

Lord *Lovat.* Are you in Expectation of a Pardon from what you ſhall depoſe againſt me?

H. Fraſ. I will anſwer that Queſtion very readily. I do not expect Puniſhment will be inflicted; but I aſſure your Lordſhip, it is no Condition or Paction made with me.

Lord *Lovat.* Have you ever had any Offer made to you of a Pardon, upon this or any other Condition? and what was that Condition?

H. Fraſ. I have had no Offers made to me of a Pardon, upon any Condition whatever.

Lord *Talbot.* My Lords, I have taken a particular Account of the Evidence of this Witneſs; which I beg Leave to repeat to your Lordſhips, in the Preſence of the Witneſs, that, in caſe I miſrepreſent any Part, he may correct it, I having been already accuſed of Unfairneſs, in the Manner of ſtating my Queſtions. My Lords, The Witneſs ſays, that the Men marched before the Maſter of *Lovat* went from *Caſtle-Downey:* That he and the Maſter of *Lovat* followed the Men, and endeavoured to prevail upon them to return; but that *Bariſdale* prevailed upon them to advance, contrary to the Deſire and Advice of the Maſter of *Lovat:* That my Lord *Lovat* afterwards wrote a Letter to them to return, and that they did return: That my Lord *Lovat* certainly gave Orders ſometimes, that they ſhould not march. Am I right in this State of the Evidence?

H. Fraſ. Yes; my Lord *Lovat* certainly gave Orders for them ſometimes not to march; and, I believe, he gave Orders, at other times, for them to march.

Lord *Talbot.* My Lords, he ſays, That he believes that, at other times, my Lord *Lovat* ordered them to march: But, my Lords, this might be only a general Report, without any Foundation, as it might be the Report of *Bariſdale*, in order to prevail on them to march.

Lord High Steward. My Lords, The noble Lord is in the right, to ſtate the Evidence to the Witneſs, in order to introduce Queſtions, by way of Explanation; but to obſerve upon that Evidence now, is not regular.

Lord *Talbot.* My Lords, All that I mean is to come at the Truth; which I cannot do from my own Knowledge.

Lord *Talbot.* You have ſaid, that you have heard my Lord *Lovat* ſay, that the Conduct of his Clan might coſt him his Life.—*H. Fraſ.* I did.

Lord *Talbot.* Now, my Lords, the Queſtion I would aſk him, from all this put together, is, Whether he did underſtand, by theſe Expreſſions of my Lord *Lovat*, that he diſapproved of the Conduct of his Clan?

H. Fraſ. That my Lord *Lovat* diſapproved to me in private, and that I have heard him diſapprove, and condemn in publick, the Conduct of his Clan, is Truth: That I affirm before Almighty God.

Lord *Talbot.* Have you been examined by any body relating to this Trial, ſince you was a Priſoner, before you came to this Place?

H. Fraſ. I have.

Lord *Talbot.* My Lords, I will beg Leave to aſk him, Whether the Confeſſions he made upon that Examination, or the Anſwers he gave there, proceeded from the Hope of a Pardon?

H. Fraſ. I cannot ſay that I would have done it, had I been convinced that I ſhould meet with no Mercy; though, at the ſame Time, I had no Aſſurance given me of Mercy; neither had I any Promiſe of Pardon.

Lord *Talbot.* Do you believe, that your Pardon may depend upon the Conſiſtency of the Evidence you ſhall give here, with what you have ſaid upon thoſe former Examinations?

Duke of *Bedford.* My Lords, I do not think that is a proper Queſtion to be aſked of any Witneſs; and, if it is inſiſted upon to be aſked, I ſhall beg your Lordſhips may adjourn to the Chamber of Parliament, to determine that Queſtion: And I will there give my Reaſons againſt it.

Lord *Talbot.* My Lords, I have no Partiality for the noble Lord at the Bar; but what I have ſaid proceeded from a Principle of Humanity, a Principle of Honour, and a Principle of Juſtice.

L. H. S. You have ſpoke of different Orders that were given at different Times: Sometimes my Lord *Lovat* ordered the Men to march, and, at other Times, not to march. Do you know, of your own Knowledge, of any of theſe Orders being given?

H. Fraſ. I have already ſaid, that I ſaw an Order under his Hand, for the returning of ſeven Companies of Men, from *Urquhart*, whither they had marched.

L. H. S. Whither were they to return?

H. Fraſer. To their own Houſes.

L. H. S. When was that Order given?

H. Fraſ. In the Month of *November.*

L. H. S. What Orders did you ever ſee, or hear, from my Lord *Lovat*, for the Men to march?

H. Fraſ. I never ſaw any Order of my Lord *Lovat* for the Men to march.

L. H. S. Then why did you ſpeak of thoſe Orders?

H. Fraſ. I have given my Reaſon for that, That I heard ſuch Orders talked of; but that I heard them given, I never did ſay, and never will.

Lord *Orford.* When my Lord *Lovat* declared himſelf diſſatisfied with the Conduct of his Clan, was it for their being too forward, or too backward, in going into Rebellion?

H. Fraſer. I have ſaid already, That I have heard him diſſatisfied for their too great Forwardneſs, and I have likewiſe heard him diſſatisfied for their too great Backwardneſs.

Mr. Att. Gen. My Lords, In conſequence of ſome Queſtions that have been aſked, I beg Leave to know of this Witneſs, Whether what he has ſaid in Evidence before your Lordſhips, notwithſtanding his having ſaid it under the Circumſtances of his being now a Priſoner, is, or is not true?

H. Fraſ. I ſay, that what I have ſaid, is literally Fact.

Mr. Att. Gen. Then I beg he may inform your Lordſhips, Whether, ſuppoſing he had been called on to be a Witneſs, and had not been a Priſoner, but had been, by Virtue of your Lordſhips Summons, obliged to come before you, to give Evidence upon this Trial, would he have given any other Evidence than what he hath given before your Lordſhips?

H. Fraſ. If I would give Evidence in any Caſe, it ſhould be the Truth; and, if the Truth were ſuch as I did not chooſe to diſcloſe, I would declare poſitively, that I would give no Evidence at all.

Mr. Att. Gen. Was not you in ſo dangerous a Condition, in point of Health, when you were at *Fort Auguſtus*, that your Life was not expected?

H. Fraſ. At *Fort Auguſtus* I was paſt all Hopes of Recovery, and at *Inverneſs.*

Mr. Att. Gen. During that Time, did not you give, in Subſtance, the ſame Account of theſe Tranſactions as you have given now?

H. Fraſ. There were Queſtions aſked me then; and the Anſwers I gave to them were the real Truth: Matters were not then ſo fully explicated as they have been ſince; ſo that thoſe Declarations were not ſo complete as the Account I have given now: But the Anſwers that I made there, were ſtill the real genuine Truth, as to thoſe Queſtions that I was aſked; and ſo is the Account I have now given.

Mr. Att. Gen. I beg he may inform your Lordſhips, if, ſo far as his Examination then went, it was not the ſame as his Examination is now?

H. Fraſ. So far as the Examination was then extended, it was the ſame as now: Truth is always the ſame; it will never vary from itſelf.

Mr. Att. Gen. Did you not then expect to die?

H. Fraſ. I expected not to live, ſure enough.

Mr. Att. Gen. Was it from the Condition you were in by your Diſtemper, that you expected not to live?

H. Fraſ. It was from my Wounds, and the Ailments that I laboured under.

Mr. Att. Gen. My Lords, We have done with this Witneſs.

A Lord. I beg this Witneſs may inform your Lordſhips, If the Packet which he carried from Mr. *Murray*, containing the Papers that he has mentioned, was ever delivered? and to whom?

H. Fraſ. That Packet was never delivered to my Lord *Lovat.*

A Lord. I beg he may inform your Lordſhips, to whom that Packet was delivered?

H. Fraſ. When I came to *Perth*, a Gentleman, who then commanded among the *Frafers*, and I, opened the Packet, to ſee what it contained; and, while I was intending to ſhut it up again, and to forward it to the Maſter of *Lovat*, the Maſter himſelf came into the Room; and I told him the Freedom we had uſed with thoſe Letters and Packets: He ſaid, that we might always uſe that Freedom, and were welcome. All thoſe Papers which I have mentioned to have been contained in that Packet, were then lying upon the Table where we ſtayed: I told the Maſter, in general, what they were; and he threw them from him; and there they continued to lie till I went from *Perth* to *Stirling:* And, as that March was made a little precipitately, thoſe Papers, and every Thing elſe that belonged to me, that were in the Room, were thrown into my Cloak-Bag, and they

and my Cloak-Bag continued in my Poſſeſſion till ſome few Days before the Battle of *Culloden*, when I lodged them in a Houſe at *Inverneſs*, and went myſelf to the Field of Battle.

[*Then the Witneſs, by the Direction of the* Lord High Steward, *withdrew.*]

Sir *William Yonge.* My Lords, The next Gentleman we beg Leave to call, is Lieutenant *Alexander Campbell.*

Lieutenant Campbell *called into Court.*

L. H. S. My Lord *Lovat*, Have you any Objection to Lieutenant *Campbell* being a Witneſs?

Lord *Lovat.* I don't know him: I never heard of him.

Alexander Campbell *ſworn.*

Sir *W. Yonge.* My Lords, We beg Leave to aſk this Witneſs, Whether, at any Time, in the Year 1745, he went to *Caſtle-Downey?*

A. Camp. Yes, I did.

Sir *W. Yonge.* About what Time was it that you went?

A Camp. I don't remember particularly: It was ſome Time in *October.*

Sir *W. Yonge.* Upon what Account did you go there?

A Camp. To require ſome Cattle that were carried off from ſome People in the Shire of *Roſs.*

Sir *W. Yonge.* By whom were theſe Cattle carried off?

A. Camp. By ſome of my Lord *Lovat*'s People: I don't know whether it was done by his Orders, or not.

Sir *W. Yonge.* When you came near *Caſtle-Downey*, did you ſee any Number of armed Men?---*A. Camp.* Yes, I did.

Sir *W. Yonge.* How was you received by thoſe armed Men? with Acclamations? or in what Manner? and how many were there of them?

A. Camp. I cannot condeſcend upon the Number of Men.

Sir *W. Yonge.* How was you received by them? with Acclamations? or how?---*A. Camp.* Yes.

Sir *W. Yonge.* How was you received? in what Manner?

A. Camp. They were all out with their Arms; ſome of the *Mac Leod*'s Deſerters that came from *Inverneſs.*

Sir *W. Yonge.* How were you received there by thoſe Men? in what Manner?---*A. Camp.* Some of them took off their Bonnets.

Sir *W. Yonge.* Were there any Shouts, or Huzzas, made uſe of?

A. Camp. Yes; ſome of them did.

Sir *W. Yonge.* Upon what Account?---*A. Camp.* I can't tell.

Sir *W. Yonge.* Did not they ſay any Thing to you of the Reaſon of it?

A. Camp. No; they ſpoke nothing to me.

Sir *W. Yonge.* Did you go to dine with my Lord *Lovat*, at *Caſtle-Downey?*---*A. Camp.* No; I did not.

Sir *W. Yonge.* Was you at *Caſtle-Downey* with him?---*A. Camp.* Yes.

Sir W. Yonge. Had you any Converſation with my Lord *Lovat* there?

A. Camp. Yes.

Sir *W. Yonge.* What Converſation had you with him?

A. Camp. I told him, I came to require the Cattle; and he told me, the Cattle were not brought there by his Order, but his Son's.

Sir *W. Yonge.* My Lords, The Witneſs had better go on with the reſt of the Converſation: I know he can, without being aſked particular Queſtions; for I would not lead him.

A. Camp. I do not remember what paſſed.

Lord *Talbot.* My Lords, I muſt take Notice to your Lordſhips, that I think it is a very odd Expreſſion to make uſe of to a Witneſs, That he had better anſwer the Queſtions; for I know he can: It is a kind of threatening the Witneſs.

Sir *W. Yonge.* My Lords, I ſtand here as a Manager, on this Trial, for the Commons of *Great-Britain*; and I hope I ſay nothing that is offenſive to your Lordſhips; and that the Manner in which I aſked the Witneſs the Queſtion, ſhewed that it proceeded from a Fairneſs in ſtating of it. My Lords, I think, as a Manager, I ought to know what a Witneſs can ſay; and the whole Tendency of what I ſaid, was adviſing the Witneſs, without giving your Lordſhips unneceſſary Trouble, to tell all he knew, fairly and impartially, without my being obliged to put any leading Queſtions to him: And I hope, I ſhall have your Lordſhips Liberty to go on.

L. H. S. My Lords, Every body knows, that it is the conſtant Courſe and Uſage of Parliament, that, when a Committee of Managers is appointed by the Houſe of Commons, upon an Impeachment, it is their Duty to examine, and they always do examine the Witneſſes beforehand: And the ſame Method is uſed by Proſecutors for the Crown, upon Indictments. If this was not done, it would be impoſſible to know, whether a Witneſs could ſpeak materially to the Facts in Queſtion, or not.

Lord *Talbot.* My Lords, Though they are Managers, I am a Judge. I have as high a Veneration for the Repreſentatives of this Kingdom, as any Man in the World; I ſat ſome Time among them myſelf: But I am ſure, my Lords, the Repreſentatives of *England* do not deſire a Language may be uſed to a Witneſs, that may ſeem threatening. And, my Lords, I took the Expreſſion uſed by the Manager in this Light. The Expreſſion was, That he had better ſpeak; which, I apprehend, was as much as to ſay, That, if he hoped for Mercy, he muſt tell it. My Lords, I deſire a fair Examination, that I may form a true Judgment. My Honour depends upon it.

L. H. S. My Lords, I deſire this may be forborn. It is my Duty to acquaint your Lordſhips, that it is irregular, and contrary to all Rules of Proceeding. The Honourable Manager explained his Words in a very proper and candid Manner, that he thought it was fairer in him to aſk the Witneſs general Queſtions, to declare what he knew of the Fact, than any particular Queſtions, which might tend to lead him; and he was in the right.

Mr. At. Gen. My Lords, in order to clear up this Matter, I beg Leave to aſk the Witneſs, Whether he is now a Priſoner?---*A. Camp.* No.

Mr. At. Gen. Was you ever a Priſoner?

A. Camp. Yes; I was a Priſoner with the Rebels.

Mr. At. Gen. Had you then the King's Commiſſion?

A. Camp. Yes; when I was a Priſoner.

Mr. At. Gen. Was you engaged in the King's Behalf againſt the Rebels, when you was taken?---*A. Camp.* Yes.

Sir *W. Yonge.* Your Lordſhips now ſee, That the Witneſs is no Priſoner, nor under any Terror or Apprehenſion, but has now the King's Commiſſion in his Pocket; and therefore I beg Leave to aſk him, What the Converſation was that paſſed between my Lord *Lovat* and him about the Cattle?

A. Camp. As I did not expect to be called here as a Witneſs, ſo I do not remember what paſſed upon that Occaſion.

Sir *W. Yonge.* Did my Lord *Lovat* perſuade you to join the Rebels, or not?---*A. Camp.* He did not.

Sir *W. Yonge.* Did he ſay nothing to induce you to it?

A. Camp. He ſaid nothing at all to induce me to join them.

Sir *W. Yonge.* Or his Son?

A. Camp. No.

Sir *W. Yonge.* My Lords, I don't know whether it be ſo proper: But have you never ſaid ſo?

A. Camp. No; I never did ſay ſo.

Mr. *Noel.* My Lords, I beg Leave to aſk him, Whether any Diſcourſe paſſed between my Lord *Lovat* and him touching the Rebellion?

A. Camp. Yes.

Mr. *Noel.* Pray tell my Lords what that was?

A. Camp. He ſaid, His Son was engaged in the Rebellion, not him; and that he was a very loyal Perſon.

Mr. *Noel.* My Lords, We have done with this Witneſs.

L. H. S. My Lord *Lovat*, Would you aſk this Witneſs any Queſtions?

Lord *Lovat.* No; I have no Queſtions, my Lord, to aſk this Witneſs: I never ſaw him before in my Life.

[*Then the Witneſs, by Direction of the* Lord High Steward, *withdrew.*]

Mr. *Lyttelton.* My Lords, The next Witneſs we ſhall produce, is *Peter Fraſer*, Tutor of *Belladrum.*

Peter Fraſer *was called into Court.*

Lord *Lovat.* My Lords, I have a material Objection to this Witneſs: He is my Tenant in all that he poſſeſſes.

L. H. S. Would your Lordſhip aſk him that Queſtion? Or, would you prove it upon him by Witneſſes?

Lord *Lovat.* I humbly think he will not deny it. If he does, I have Witneſſes to prove it.

Mr. At. Gen. My Lords, I beg the noble Lord at the Bar may explain what he means by ſaying, If he denies it, that he has Witneſſes to prove it; for, if the noble Lord puts it to the Oath of the Witneſs, and he denies it, then he cannot, without the Conſent of the Commons, call a Witneſs to prove it.

L. H. S. My Lords, The Rule is, That, upon an Objection made to the Competency of a Witneſs, the Party objecting may either put it to the Oath of the Witneſs produced, or call Witneſſes to prove it. If he puts it to the Oath of the Witneſs produced, then he is concluded as to the Point of Competency, by the Anſwer he gives to it, unleſs the other Side conſents to wave that. My Lord *Lovat*, Do you chooſe to put this to the Oath of *Peter Fraſer*, or to call a Witneſs to prove it?

Lord *Talbot.* My Lords, I deſire to know, if this Witneſs ſhould deny it, whether my Lord *Lovat* may not give Evidence of this Man's being his Tenant, when he comes upon his Defence.

L. H. S. Gentlemen of the Houſe of Commons, You hear what the noble Lord ſays; what do you ſay to it?

Mr. At. Gen. My Lords, To be ſure my Lord *Lovat* may give ſuch Proof by way of Objection to the Credit of the Witneſs; but not to his Competency.

L. H. S. My Lord *Lovat*, Do you chooſe now to put this Queſtion to the Oath of the Witneſs himſelf, or to call a Witneſs to prove it?

Lord *Lovat.* I will put it to his own Oath.

Then the Witneſs was ſworn upon a Voire Dire.

Lord *Lovat.* My Lords, I deſire to aſk him, Whether or no the Lands he poſſeſſes are not my Lands?

P. Fraſ. Yes; they are: I poſſeſs them in virtue of my Nephews Right, who hold a Tack under my Lord *Lovat.*

L. H. S. How do you hold them in virtue of your Nephews? Is it as their Manager, or Tutor?

A Lord. My Lords, I will beg Leave to aſk a Queſtion to explain that; which is, Whether or no the Witneſs pays the Rents of thoſe Lands to my Lord *Lovat*'s Chamberlain or Steward?

P. Fraſ. I do.

Lord *Lovat.* Do you pay any Part of that Rent in your own Right?

P. Fraſ. No; I do not. I only pay it in virtue of my Nephews, as taking Care of them.

Mr. At. Gen. My Lords, The Queſtion, which the noble Lord at the Bar has now put to the Witneſs, is that which I intended to have put to him; which is, Whether he holds any Lands in his own Right, or only as Tutor? He has told your Lordſhips, That he holds none in his own Right, but only as Tutor to his Nephews.

Mr. *Lyttelton.* My Lords, We pray the Witneſs may be ſworn in Chief.

Peter Fraſer *ſworn in Chief.*

Lord *Lovat.* My Lords, I beg to aſk him, Whether he does not hold a Tack of Land within the Lordſhip of *Lovat*, of *Aird*, or *Stratharrick?*

P. Fraſ. I do not.

Mr. *Lyttelton.* I beg this Witneſs may inform your Lordſhips, Whether, in the Year 1745, he was at my Lord *Lovat*'s Houſe at *Caſtle-Downey?*

P. Fraſ. Yes; I was.

Mr. *Lyttel.* And whether he remembers to have ſeen any of my Lord *Lovat*'s Men rendezvous there about that Time?---*P. Fraſ.* Yes; I did.

Mr. *Lyttel.* Did you ſee any of the Officers that headed thoſe Men go to my Lord *Lovat*'s Houſe, and converſe with him there?

P. Fraſ. Yes; I did.

Mr. *Lyttel.* Who did you ſee there?

P. Fraſ. Simon Fraſer of *Mac Leod.*

Mr. *Lyttel.* Did he talk to my Lord *Lovat* about the Regiment? or aſk any Orders from him?

P. Fraſ. I never heard him ſay any Thing; only that my Lord *Lovat* deſired him to go to their Colonel: That is all I heard.

Mr. *Lyttel.* Who did he call their Colonel?

P. Fraſ. His Son, the Maſter of *Lovat.*

Mr. *Lyttel.* How came he to be their Colonel? Had not the Lord *Lovat* the abſolute Power over his Clan?

P. Fraſ. Yes; he had.

Mr. *Lyttelton.*

Mr. *Lyttelton.* Do you imagine or believe, that the Maſter of *Lovat* could have carried the *Fraſers* into the Rebellion, if his Father had been againſt it?

P. Fraſer. No; he could not; I am ſure he could not.

Mr. *Lyt.* Had the Maſter of *Lovat* any Manner of Foundation to think he could raiſe the Men himſelf? Or did he, at his own Charge or Coſt, pay thoſe Men when they went into the Rebellion? Or, had he Money to do it?

P. Fraſ. I ſuppoſe he had no Money of his own.

Mr. *Lyt.* Who do you think furniſhed him with the Money neceſſary for that Purpoſe?

P. Fraſ. Really I know nothing of the Money: I ſaw no Money given.

Mr. *Lyt.* Do you know any thing of *Bariſdale*'s keeping a Party of Men upon my Lord *Lovat*'s Ground?---*P. Fraſ.* Yes.

Mr. *Lyt.* What were they to do?

P. Fraſ. To overawe the Country.

Mr. *Lyt.* To do what?

P. Fraſ. To riſe in Arms.

Mr. *Lyt.* In Arms for whom?---*P. Fraſ.* For the Pretender.

Mr. *Lyt.* Had he got any of them to riſe in Arms then?--*P. Fraſ.* Yes.

Mr. *Lyt.* Did he make any of my Lord *Lovat*'s Vaſſals riſe in Arms at that Time?

P. Fraſ. They ſtaid in the Country till they ſaw ſome of the Men did convene.

Mr. *Lyt.* Do you know of any body's giving the Men any Cattle or Meal?---*P. Fraſ.* Yes: My Lord *Lovat* gave them ſome Cows.

Mr. *Lyt.* To whoſe Men? To *Bariſdale*'s Men?

P. Fraſ. No; to my Lord *Lovat*'s Men.

Mr. *Lyt.* Thoſe that join'd with *Bariſdale*?---*P. Fraſ.* Yes.

Mr. *Lyt.* Did you ſee *Bariſdale* converſe with my Lord *Lovat* then?

P. Fraſ. Yes; I did.

Mr. *Lyt.* Did my Lord *Lovat* know that he was then in the Rebellion?

P. Fraſ. No doubt of it.

Mr. *Lyt.* Did he wear any Mark of Diſtinction to ſhew it?

P. Fraſ. He wore a white Cockade.

Mr. *Lyt.* Do you remember any Part of the Converſation between *Bariſdale*, *Mac Leod*, and my Lord *Lovat*, concerning my Lord's declaring openly for the Pretender?

P. Fraſ. I remember one Day, that *Alexander Mac Leod* ſaid, That all would be well, if my Lord *Lovat* would pull off the Maſk: Upon which my Lord *Lovat*, by way of Reply, pulled off his Hat, and ſaid, There it is then.

Mr. *Lyt.* What did that Converſation relate to?

P. Fraſ. I heard no more of it.

Mr. *Lyt.* What were they talking about?

P. Fraſ. I only heard, that he ſaid, All would be well, if my Lord *Lovat* would pull off the Maſk.

Mr. *Lyt.* What did that Converſation mean? What meant, All would be well?---*P. Fraſ.* I can't tell.

Mr. *Lyt.* What did my Lord *Lovat* mean by pulling off his Hat?

P. Fraſ. All that they ſaid was, That all would be well, if my Lord would pull off the Maſk: Upon which my Lord *Lovat* pulled off his Hat, and ſaid, Here it is then.

Mr. *Lyt.* Did he throw his Hat down?

P. Fraſ. I did not ſee that.

Mr. *Lyt.* Did my Lord *Lovat* offer you to be an Officer?

P. Fraſ. No; he never did.

Mr. *Lyt.* My Lords, We have done with this Witneſs.

L. H. S. My Lord *Lovat*, Would you aſk this Witneſs any Queſtions?

Lord *Lovat.* Was you examined at *Inverneſs?* and by whom? and who were the Perſons you ſaw there?

P. Fraſ. I was examined at *Inverneſs* before one *Kilravock:* He was a Depute. And I was examined before my Lord *Loudon.*

Lord *Lovat.* Was you examined upon Oath?

P. Fraſ. Yes: I was ſummoned, and ſtrictly deponed.

Lord *Lovat.* Upon Oath?---*P. Fraſ.* Upon Oath.

Lord *Lovat.* Who were the Perſons you ſaw at *Inverneſs*, when you was examined?

P. Fraſ. We were examined but one by one: As ſoon as one was examined, another was called; and no other Perſon heard what the Examinations were.

Lord *Lovat.* Who were preſent at the Examinations?

P. Fraſ. Lord *Loudon*, *Kilravock*, and a Clerk.

Lord *Lovat.* At what Time was you examined at *Inverneſs?*

P. Fraſ. I don't remember the Day of the Month, indeed.

Lord *Lovat.* What Month was it?

P. Fraſ. It was in *January*; the latter End of *January.*

Lord *Lovat.* In *January* laſt?

P. Fraſ. Yes, in *January* laſt.

L. H. S. You ſay you were at *Caſtle-Downey* in 1745, and ſaw all the Men rendezvous there: In what Month was that?

P. Fraſ. In *November.*

Then the Priſoner begged Leave to withdraw a little: Which was granted; and he ſoon after returned to the Bar again.

Mr. *Legge.* The next Witneſs we ſhall call is *John Farquhar.*

At the Priſoner's Requeſt, he was ſworn upon a Voire Dire.

Lord *Lovat.* Are you Tenant to me?---*J. Farquhar.* No.

Lord *Lovat.* What is your Name?---*J. Farq. John Farquhar.*

Lord *Lovat.* What Employment are you of?

J. Farquhar. I was Servant to Mr. *Murray.*

John Farquhar *ſworn in Chief.*

Mr. *Legge.* My Lords, We propoſe to examine this Witneſs to the Steps taken by my Lord *Lovat* ſubſequent to the Battle of *Culloden*, in order to revive and reſtore the Pretender's Cauſe in *Scotland.*

Mr. *Legge.* Was not you Servant to Mr. *Murray* of *Broughton?*

J. Farquhar. Yes.

Mr. *Legge.* In what Capacity did you ſerve him?

J. Farquh. I was his Groom.

Mr. *Legge.* For what Space of Time did you ſerve him? From what Time, and to what Time?

J. Farquh. From *Michaelmas* till the Ninth of *June* laſt.

Mr. *Legge.* In what Year?---*J. Farquh.* In 1745.

Mr. *Legge.* Was there a Meeting of the Chieftains in the Rebel Army after the Battle of *Culloden?*

J. Farquh. Yes.

Mr. *Legge.* When was that Meeting?

J. Farquh. On the 10th of *May* laſt.

Mr. *Legge.* Who were the Perſons that met on that Occaſion?

J. Farquh. Mr. *Murray* of *Broughton*, *Lochiel*, Young *Clanronald*, *Cameron* of *Dungallon*, Doctor *Cameron*, and ſeveral others that I did not know, and my Lord *Lovat:* They met at the Iſland of *Mortlaig.*

Mr. *Legge.* Did you hear of any *French* Ships having landed any Money in *Scotland* then?

J. Farquh. Yes.

Mr. *Legge.* Upon what Day did you hear that they landed that Money?

J. Farquh. Upon the 4th of *May.*

Mr. *Legge.* What did you imagine was the Subject-Matter of the Meeting you mentioned?

J. Farquh. In order to have a Second Gathering of the Rebel Army.

Mr. *Legge.* Did you hear any, and what Orders given to any body, and to whom, upon that Occaſion?

J. Farquh. There was an Order for the Men to be gathered together at a Place called *Glenmany.*

Mr. *Legge.* Who were the Perſons that gave thoſe Orders?

J. Farquh. There was *Lochiel*, and the ſeveral other Perſons that were preſent at the Meeting.

Mr. *Legge.* How did Lord *Lovat* behave on that Occaſion? Did he expreſs any Satisfaction on that Head?

J. Farquh. He was preſent during all the Time I was there.

Mr. *Legge.* Did he ſay any thing about the Number of Men that were to be raiſed?

J. Farquh. The next Morning, when the Parties were going away, my Lord *Lovat* ſaid, They had no need to fear; and he did not doubt raiſing Eight or Ten thouſand Men preſently.

Some Lords deſired the laſt Anſwer to be repeated: Which was accordingly done by the Witneſs, as follows:

J. Farquh. The next Morning, when the Parties were going away, Lord *Lovat* ſaid, that there was no Need to fear; for that he did not doubt to raiſe Eight or Ten thouſand Men preſently; and that thoſe, with the *Highland* Men, would be able to fight the Elector of *Hanover*'s Troops. He ſaid this to *Lochiel*'s Officers: When they embraced each other.

Mr. *Legge.* Had my Lord *Lovat* any of his own Clan there?

J. Farquh. Yes: He had ſome of them to wait upon him.

Mr. *Legge.* Were they armed?

J. Farquh. Yes, with Swords, Dirks, and Piſtols.

Mr. *Legge.* Did they wear any Mark of Diſtinction in their Hats?

J. Farquh. Some of them had Sprigs of Yew, and ſuch-like Things, in their Hats; by which they were known to be of that Party.

Mr. *Legge.* Did you hear my Lord *Lovat* expreſs any Wiſhes that he had joined their Army?

J. Farquh. He ſaid, He wiſhed to God he had joined the Prince, as he called him, at firſt when he came over.

Mr. *Legge.* While you was there, did you hear the Pretender's Health drank?---*J. Farquh.* Yes.

Mr. *Legge.* By what Stile or Title?

J. Farquh. By the Title of Prince *Charles*, to the Young One.

Mr. *Legge.* And what Title did they give to the Old One?

J. Farquh. The Title of *James* the Eighth.

Mr. *Legge.* Who were the Perſons that drank it? Did you hear my Lord *Lovat* drink it?---*J. Farquh.* Yes.

Mr. *Legge.* Pray how long did this Council laſt?

J. Farquh. From Night till next Morning: I was there from Two o'Clock till Ten in the Morning.

Mr. *Legge.* You mention the *French* Money's being landed on the 4th of *May*; do you know any thing of the Diſpoſition of any Part of that Money?---*J. Farquh.* Yes.

Mr. *Legge.* To whom was it given?

J. Farquh. To the Officers of the Rebel Army.

Mr. *Legge.* For what Purpoſe was it given them?

J. Farquh. For a Second Gathering of the Men.

Mr. *Legge.* Do you know what was the general Reſolution that That Council came to? or what was their Determination?

J. Farquh. That they would aſſemble a Body of the ſeveral Clans to march South, ſo far as I could conjecture.

Mr. *Legge.* Why do you conjecture that?

J. Farquh. I heard it.

Mr. *Legge.* Did you hear of any Expectation of further Aſſiſtance from *France?*----*J. Farquh.* Yes.

Mr. *Legge.* What Number of Men did you expect?

J. Farquh. I did not hear any particular Number mentioned; but we expected a Reinforcement every Day.

Mr. *Legge.* Where was the Rendezvous to have been?

J. Farquh. At *Glenmany.*

Mr. *Legge.* Did they meet there?---*J. Farquh.* Yes; ſeveral of them.

Mr. *Legge.* What do you think prevented the reſt of them from meeting there?----*J. Farquh.* The King's Troops.

Mr. *Legge.* My Lords, We have done with this Witneſs.

L. H. S. My Lord *Lovat*, Will you aſk this Witneſs any Queſtions?

Lord *Lovat.* Was you taken Priſoner by the King's Forces?

J. Farquh. No.

Lord *Lovat*. Do you know whether the Money that came over from *France* in the Ship, was given to Mr. *Murray*?

J. Farquhae. I cannot tell. Mr. *Murray* was there when the Money came.

A Lord. Do you know of any more Meetings than one between *Lochiel* and Lord *Lovat*?——*J. Farquh*. No.

[*Then the Witneſs, by the Direction of the* Lord High Steward, *withdrew*.]

Mr. *Grenville*. My Lords, The next Witneſs we beg Leave to call, is *Charles Stuart*.

Charles Stuart *called into Court*.

Lord High Steward. My Lord *Lovat*, Have you any Objection to this Witneſs?——Lord *Lovat*. No.

Charles Stuart *ſworn*.

Mr. *Grenville*. My Lords, We beg this Witneſs may inform your Lordſhips, whether he remembers the Battle of *Culloden*?

C. Stuart. Yes.

Mr. *Gren*. Did you go with Mr. *Murray*, the Pretender's Son's Secretary, after that Battle, to *Mortlaig*?——*C. Stuart*. Yes.

Mr. *Gren*. Was there a Meeting there of any of the Rebel Officers?

C. Stuart. Yes.

Mr. *Gren*. Who were preſent?

C. Stuart. There were *Lochiel*, *Clanrenald*, *Bariſdale*, and ſeveral others.

Mr. *Gren*. Was my Lord *Lovat* there?

C. Stuart. Yes, he was there.

Mr. *Gren*. Where were they?——*C. Stuart*. In a little Hut.

Mr. *Gren*. Was you in the Room with them?

C. Stuart. Yes, I was.

Mr. *Gren*. Did you hear what paſſed in the Room? If you did, pleaſe to give my Lords an Account of what paſſed there.

C. Stuart. *Lochiel* and Mr. *Murray* of *Broughton* came there, where they met with my Lord *Lovat*, and ſeveral other of the *Highland* Chieftains. They wanted to create an Aſſociation for re-aſſembling the Men together, in order to procure a Peace, or Terms of Surrender with the Duke of *Cumberland*, or to ſtand it out to the laſt. Mr. *Murray* ordered me to draw up the Articles; which I wrote: And it was ſigned by every Chief that was there.

Mr. *Gren*. Did my Lord *Lovat* ſign it?

C. Stuart. No; all but he.

Mr. *Gren*. Was it propoſed to him to ſign it?

C. Stuart. Yes, it was; and he would not.

Mr. *Gren*. What was the Purport of it?

C. Stuart. That they were to aſſemble again in ten Days, in order to procure Terms of Peace from the Duke, or ſtand it out to the laſt.

Mr. *Gren*. What Number of *Fraſers* were propoſed to be raiſed?

C. Stuart. I think Three or Four Hundred.

Mr. *Gren*. Did any body undertake for the *Fraſers*?

C. Stuart. I think *Lochiel* did.

Mr. *Gren*. At whoſe Requeſt did he undertake for the *Fraſers*?

C. Stuart. When it was propoſed to my Lord *Lovat* to ſign the Paper, he ſaid, He would not; and deſired *Lochiel* to anſwer for his Son.

Mr. *Gren*. What did he ſay about *Lochiel*?

C. Stuart. He deſired *Lochiel* to anſwer for his Son.

Mr. *Gren*. Did he, or did he not, anſwer for him?

C. Stuart. I can't tell.

Mr. *Gren*. What Reaſon did my Lord *Lovat* give why he would not ſign the Paper himſelf?

C. Stuart. I don't remember he gave any Reaſon.

Mr. *Gren*. Do you remember any Expreſſions made uſe of by my Lord *Lovat* then?——*C. Stuart*. No.

Mr. *Gren*. Was there any Money given then to any of the Chiefs of the Clan?——*C. Stuart*. Yes, to all of them.

Mr. *Gren*. Who delivered it to them?——*C. Stuart*. I did.

Mr. *Gren*. Was there any delivered to my Lord *Lovat*?

C. Stuart. No, not to him; but it was given to ſome of the Perſons about him: I don't know whether it was his Servant, or no.

Mr. *Gren*. Was he my Lord *Lovat*'s Servant?

C. Stuart. I don't know: He was a Perſon about him.

Mr. *Gren*. For what was it delivered? For what Purpoſe?

C. Stuart. For the Maſter to raiſe the Men againſt the Time.

Mr. *Gren*. You ſaw the Money given, and was the Perſon that delivered it?——*C. Stuart*. I did.

Mr. *Gren*. How much was there of it?

C. Stuart. Seventy or Eighty Pounds.

Mr. *Gren*. How came you by the Money?

C. Stuart. I got it from Mr. *Murray*.

Mr. *Gren*. What Money was it?

C. Stuart. Part of 35,000 *l*. that was landed ſome Days before from *France*.

Mr. *Gren*. Was my Lord *Lovat* preſent when the Money was delivered?

C. Stuart. Yes, he was.

Mr. *Gren*. Did he object to any Thing that was done, but to the Signing of the Paper?——*C. Stuart*. I don't remember he did.

Mr. *Gren*. Was the Money that was given in Guineas, or in *Louidors*?

C. Stuart. It was all in *Louidors*.

Mr. *Gren* Was there any Thing ſaid about a Neutrality then?

C. Stuart. I think my Lord *Lovat* ſaid, That he was a neutral Perſon; ſo would have no Concern in it.

Mr. *Gren*. Do you remember Mr. *Murray*'s being at *Ariſaig*?

C. Stuart. Yes.

Mr. *Gren*. Did he receive any Letter there from a Captain of any Guard that my Lord *Lovat* had?

C. Stuart I ſaw a Man come from the Houſe where my Lord was, and ſaid, He came from the Captain of my Lord's Guards, with a Letter for Mr. *Murray*; and aſked ſome Money of him.

Mr. *Gren*. Did you ſend any Money to my Lord?

C. Stuart. Yes.

Mr. *Gren*. How much did you ſend?

C. Stuart. I believe it was about Fifteen Guineas.

Mr. *Gren*. By whoſe Order did you ſend it?

C. Stuart. It was by Mr. *Murray*'s Orders I delivered the Money.

Sir *J. Strange*. My Lords, I will beg Leave to aſk this Witneſs, Whether he was ever abroad on any Occaſion?

C. Stuart. I was; but 'tis long ago.

Sir *J. Strange*. How long is it ago?

C. Stuart. It was in the Year 1736.

Sir *J. Strange*. Do you remember to have met with a Perſon called *Roy Stuart* whilſt you was abroad?——*C. Stuart*. Yes.

Sir *J. Strange*. Where did you meet with him?

C. Stuart. At *Boulogn* in *France*.

Sir *J. Strange*. Where was he going when you ſaw him there?

C. Stuart. He ſaid he was going to *Rome*.

Sir *J. Strange*. Pleaſe to recollect, as near as you can, the Time when it was you ſaw *Roy Stuart* at *Boulogn*, and give my Lords an Account thereof.

C. Stuart. I think it was in 1736, as near as I can remember.

Sir *J. Strange*. When *Roy Stuart* told you he was going to *Rome*, did he ſay upon what Errand he was going?

C. Stuart. He ſaid he was going with Letters of Recommendation from my Lord *Lovat*.

Sir *J. Strange*. My Lords, I ſhould not trouble your Lordſhips with aſking the Witneſs any Queſtions of this Kind, if we had not laid a Foundation for it already, by having proved, that a Meſſage was ſent by this *Roy Stuart* from my Lord *Lovat* to the Pretender at *Rome*; and therefore what I now enquire of him is not Matter of Hearſay; but it is in Corroboration of the Circumſtance which has been proved to your Lordſhips, That my Lord *Lovat* did give ſuch a Meſſage to this *Roy Stuart*: And therefore I will beg Leave to aſk this Witneſs, What Meſſage did *Roy Stuart* ſay he was going upon?

C. Stuart. Nothing elſe.

Lord *Lovat*. My Lords, I ſubmit it to your Lordſhips, if this, or any other Witneſs, ſhall be examined upon Hearſay Evidence.

Lord High Steward. My Lord *Lovat*, You hear in what manner the Managers offer this Evidence: They ſay, That they have proved by one Witneſs, that you ſent a Meſſage by *Roy Stuart* to the Pretender at *Rome*. Now, to corroborate that Evidence, they offer to prove, that *Roy Stuart*, about the ſame time, declared to this Witneſs, That he had ſuch a Meſſage to carry.

Lord *Lovat*. What the other Witneſs ſaid was Hearſay.

Sir *J. Strange*. My Lords, I will ſet the Noble Lord at the Bar right. It was ſuch Hearſay as he had from my Lord *Lovat*'s own Mouth; for *Chevis* the Witneſs ſaid, on his Examination, That, after *Roy Stuart* had made his Eſcape out of *Inverneſs* Gaol, when he was going away to *Rome*, he heard my Lord *Lovat* charge him with a Meſſage to the Pretender at *Rome*, to aſſure him of his Fidelity, and to proſecute the Affair of his Patent for a Duke: So that was not Hearſay, but poſitive Evidence.

Lord *Lovat*. That poſitive Evidence would ſay, That I was a natural Ideot.

L. H. S. Chevis did ſwear, either that he heard my Lord *Lovat* charge *Roy Stuart* with a Meſſage to the Pretender, to aſſure him of his Fidelity, and to expedite his Commiſſion of Lieutenant-General of the *Highlands*, and his Patent of a Duke; or elſe, that Lord *Lovat* told him, That he had charged *Roy Stuart* with ſuch a Meſſage: But I am not certain which it was.

Sir *J. Strange*. My Lords, I beg Leave to aſk the Witneſs, when he met with *Roy Stuart*, and he ſaid he was going to *Rome*, What he ſaid he was going upon?

C. Stuart. All that *Roy Stuart* ſaid was, That he depended on Letters of Recommendation he had from my Lord *Lovat*; and was in Expectation of getting the Poſt that Colonel *Allan Cameron* had.

Sir *J. Strange*. What Letters were thoſe he mentioned?

C. Stuart. Letters, he ſaid, he had from my Lord *Lovat*.

Mr. Sol. Gen. My Lords, In order to explain a little more particularly the Affair of the Meeting: As this Witneſs ſays, That my Lord *Lovat* refuſed to ſign the Paper, I deſire to aſk him, What Part my Lord *Lovat* took in the Deliberations about raiſing the Men, before he had an Opportunity of making that Refuſal?

C. Stuart. I was buſy at that Time in diſtributing the Money, and do not remember.

Mr. Sol. Gen. My Lords, We have done with our Examination of this Witneſs.

L. H. S. My Lord *Lovat*, Would you aſk this Witneſs any Queſtions?

Lord *Lovat*. No.

[*Then the Witneſs, by Direction of the* Lord High Steward, *withdrew*.]

Lord *Coke*. My Lords, The next Witneſs we beg Leave to produce, is Lieutenant *John Dalrymple*.

Lieutenant Dalrymple *called into Court*.

L. H. S. My Lord *Lovat*, Have you any Objections to Lieutenant *Dalrymple*?

Lord *Lovat*. My Lords, I do not know him; but have no Objections to any *Dalrymple*.

Lieutenant Dalrymple *ſworn*.

Lord *Coke*. My Lords, I beg Leave to aſk this Witneſs, Where he was when my Lord *Lovat* was taken?

Dalrymple. I was on board the *Furnace* Sloop.

Lord *Coke*. Where was ſhe?

Dal. At Loch *Morar*.

Lord *Coke*. Had you any Converſation with my Lord *Lovat* after he was taken Priſoner?

Dal. I had frequent Opportunities of diſcourſing with him, as I dined and ſupped with his Lordſhip on board the Sloop.

Lord *Coke*. What did he ſay upon thoſe Diſcourſes? What was the Purport of them?

Dal. On the 8th of *June*, I heard him ſay, That, if his Advice had been

been taken, the Rebel Army might have laughed at the King's Troops, and tired them out all Summer. He said, It was not their Business to fight the King's Troops; but that, as Summer was coming on, they might have taken themselves to the Mountains, and could have lived on Butter, Cheese, and Milk; for that the Duke of *Cumberland*'s Horse could be of no Service to him in that Country. At another Time, I was asking his Lordship, How he came to be engaged in this Affair, after having received so many Favours from the Government? He said, He did it more in Revenge to the Ministry, for having taken away his Independent Company, than any Thing else. And, in talking of the Pretender's Son, he called him Prince: And, when he came on board, there was one *Fraser* taken, from whom we took about Twenty-two Guineas; and my Lord *Lovat* complained, that the Money had been taken from his Servant, which he had given him to pay his Men with.

Lord *Coke*. Had my Lord *Lovat* any Men in Arms with him when he was taken?

Dalrymple. That I am no Judge of, because I was on board.

Lord *Coke*. My Lords, We have done with this Witness.

L. H. S. My Lord *Lovat*, Would you ask this Witness any Questions?

Lord *Lovat*. Was you in Captain *Fergusson*'s Ship?

Dal. Yes; your Lordship may remember me very well.

Lord *Lovat*. Then I hope you parted my Money amongst you: Did you see him take my Strong Box, in which were 700 Guineas?

Dal. I did not see him take the Box.

Lord *Lovat*. Did you see it in his Cabin?

Dal. I saw the Outside of it; I never saw the Inside.

Sir *J. Strange*. My Lords, He says he saw the Outside, but did not see the Inside of the Strong Box: he will inform your Lordships whether he was present when the Papers were taken out of that Box afterwards?

Dal. No; I was not present at the Opening of it.

[*Then the Witness, by Direction of the* Lord High Steward, *withdrew.*]

Mr. *Noel*. My Lords, The next Witness we beg Leave to produce, is *David Campbell*.

He was called into Court.

L. H. S. My Lord *Lovat*, Have you any Objection to *David Campbell*?

Lord *Lovat*. No; I have no Objection to any of the *Campbells*.

David Campbell *sworn*.

Mr. *Noel*. Please to tell my Lords, Whether you were with Captain *Fergusson* upon any Occasion, and in what Capacity?

D. Campbell. I was a Volunteer with General *Campbell* when we went to search the Islands; our Officers and Forces that served with General *Campbell* in the *Western Highlands* were divided; a good many went by Land, and a good many by Sea; and it fell to my Share to go with Captain *Fergusson*; I was on board and on Shore with Captain *Fergusson* for about six Weeks.

Mr. *Noel*. What Islands did you go to search? and for what Purpose?

D. Camp. We went into several Islands to search.

Mr. *Noel*. Do you remember your going into the Island of *Morar*?

D. Camp. The Coast of *Morar* is on the Continent.

Mr. *Noel*. Where did you search?

D. Camp. All along the Continent, and in all the Islands that lie there.

Mr. *Noel*. Who did you find there?

D. Camp. We found a good many Rebel Gentlemen in the Islands, and upon the Continent.

Mr. *Noel*. Did you find any of the *MacDonalds* there?

D. Camp. We apprehended several of that Name.

Mr. *Noel*. Do you remember one called the Bishop, or Vicar-General?

D. Camp. We had Intelligence of his being in *Morar*; but the Day we expected to have taken him, he escaped with some others.

Mr. *Noel*. Was you present when my Lord *Lovat* was taken?

D. Camp. I was not present when he was taken, because it was ashore.

Mr. *Noel*. Did you see him after he was taken? and where?

D. Camp. I saw him that Morning when he was taken, and brought on board the *Furnace* Sloop: I was then on board that Ship.

Mr. *Noel*. Did you search for any Letters belonging to my Lord *Lovat*, on his being brought on board? and where did you search?

D. Camp. Captain *Duff*, who was the Captain of the *Terror* Man of War, was the oldest Officer, and, as such, was the Commanding Officer of all those Vessels; and when my Lord *Lovat* was brought on board, Captain *Duff* and Captain *Fergusson* determined to open his Box, and search it.

Mr. *Noel*. Did they find any Letters there?

D. Camp. My Lord *Lovat*, and the Two Captains, desired me to be present at the Opening and Examining the Box; and accordingly I came off the Deck, and was present, and was desired to take down a Particular of every Thing in the Box; which I did write down accordingly: And there was a Bundle of Papers, which seemed to be Letters, and was the last Thing we came to in the Box; and when we came to examine those Letters, I undertook to examine and read them, which I was desired to do; and I read them all.

Mr. *Noel*. Do you remember any particular Letter that you took notice of to my Lord *Lovat*? If you do, pray tell my Lords what Lord *Lovat* said upon it.

D. Camp. I remember that the Purport of all the Letters, except the last, or the last but one, was about my Lord *Lovat*'s domestic Affairs; I cannot be positive whether it was the last, or the last but one; but that was a Letter directed to my Lord from his Son.

Mr. *Noel*. Did you say any Thing, and what, to my Lord upon that Letter?

D. Camp. I read over that Letter; my Lord *Lovat* at first had said to us, that we should not find, among those Papers that we were examining, any Matters of Disloyalty or Correspondence with the Rebels: And I expected it was so; but this Letter seeming to be a Correspondence with the Rebels, I said to my Lord *Lovat*, after I had read the Letter, I think your Lordship had better not have had this Letter here: My Lord said, I was right, and he thought so too; or to that Purpose.

Mr. *Noel*. Did you say any Thing to my Lord *Lovat* concerning his engaging, or not engaging, in the Rebellion?——*D. Camp*. Yes.

Mr. *Noel*. What did you say to him?

D. Camp. I cannot be positive whether I said it in the Manner of a Question, or in the Way of Conversation; but I took notice to him the one Way or the other, that I wondered his Lordship should be along with the Rebels, and be concerned in bringing his Country into Confusion. I remember I either asked him, or had Conversation with him, to this Effect.

Mr. *Noel*. What Answers did you receive from my Lord?

D. Camp. What I remember of the Purport and Effect of it was, that he had been disobliged by the Government, and angry ever since he had his Independent Company taken from him.

Mr. *Noel*. Did he give that as an Answer to the Question that you asked him?

D. Camp. He answered that immediately upon that Question, or this Part of the Conversation, as far as I can recollect.

Mr. *Noel*. Did you hear my Lord *Lovat* say any Thing about his Opinion of fighting the Battle of *Culloden*?

D. Camp. Yes; I heard my Lord *Lovat* say, That the Rebels and the Pretender's Son did not behave Soldier-like in fighting the Duke of *Cumberland* at that Time.

Mr. *Noel*. Did he say that as the Opinion of others, or as his own Opinion?

D. Camp. To the best of my Remembrance, the Purport of the Conversation seemed to be, that he thought it was an unsoldier-like and a bad Manner of carrying on their Affairs.

Mr. *Noel*. Did he say any Thing about any Opinion of his having been, or not been, taken?

D. Camp. I don't remember I heard any Thing of that.

Mr. *Noel*. Recollect yourself whether he did or no?

D. Camp. It is so long since that happened, and I never expected to be questioned about that Conversation, that I do not recollect any particular Circumstances about my Lord *Lovat*'s giving any particular Reasons.

Mr. *Noel*. Did he speak any Thing of his own Advice or Opinion not being followed? and what was it? or to what Purport or Effect?

D. Camp. I cannot recollect whether he did or not.

Mr. *Noel*. Did he say any Thing about continuing in the *Highlands*? or for what Purpose?

D. Camp. I cannot charge my Memory with that Circumstance.

Mr. *Noel*. Did you hear my Lord *Lovat* say any Thing about his coming to *London*, after he was taken?——*D. Camp*. Yes.

Mr. *Noel*. What did he say upon that Occasion?

D. Camp. In the Course of Conversation, sometimes my Lord said, He was in Hopes that he might get Friends that would befriend him; and he observed, that his being dealt mildly with, might be of more Service to the Government than rigorous Methods; and that it would be of more Service if they would spare him, than treating him with Rigour could possibly be.

Mr. *Noel*. Did he say in what respect it might be of more Service?

D. Camp. I do not remember that.

Mr. *Noel*. Did he mention particularly in what he could be of Service, or no?

D. Campbell. I do not remember any Particulars farther, than that the general Tenor of his Conversation seemed to imply, that he could be of Service to the Government, by letting them into the Politicks of the Rebels, or some of their Counsels, or to that Purpose; I cannot be positive to any particular Thing.

Mr. *Noel*. My Lords, The Witness says, that he was sent for down from the Deck on board the *Furnace*, as he understood, at the Request of my Lord *Lovat*, to be present when the Box was opened; and that accordingly he went down for that Purpose: Now I desire he may inform your Lordships, whether there were, or were not, many Papers in that Strong Box?

D. Campbell. It seemed to be a Bundle containing from about 25 to 30 Letters.

Mr. *Noel*. After you had read a Number of them, before you came to the Letter from his Son that you have mentioned, did my Lord *Lovat* say any thing about the Contents of the Papers?

D. Campbell. He said, either before or after I had the Letters, directing his Discourse to the Company, that we should find nothing in those Letters that would shew any Correspondence of his with the Rebels.

Mr. *Noel*. Did he drop any thing to that Purpose during your reading the Papers?

D. Campbell. I cannot say whether he did, or not.

Mr. *Noel*. Was the Paper you have spoken of at the Bottom?

D. Campbell. I took them all up in Course as they lay; and that was the last, or last but one.

Mr. *Noel*. What did you say upon having read that Paper?

D. Campbell. I said, that he had better not have had that Paper there; and he said, I was right.

Mr. *Noel*. What did my Lord *Lovat* say, or do, upon that Occasion?

D. Campbell. I remember nothing farther than what I have expressed.

Lord *Halifax*. My Lords, This Witness has told your Lordships, that, among the Letters which were in this Box, there was a Letter found from my Lord *Lovat*'s Son to him; which makes me imagine there was some treasonable Correspondence in that Letter: I therefore pray, he may acquaint your Lordships what the Purport and Tenor of that Letter was.

Sir *J. Strange*. My Lords, We shall produce the Letter in the Course of our written Evidence; and therefore we do not ask him any Questions about it now.

Sir *J. Strange*. When you said, that you believed the Letter had better not have been there, did my Lord *Lovat* say any thing to his Servant how such a Mistake happened?

D. Campbell. I do not recollect any such Circumstance; it might have been, but I do not remember any such thing.

Sir *J. Strange*. Do you recollect, that he said any thing to his Secretary, or any of his People, about him?

D. Campbell. No.

Sir *J. Strange*. My Lords, We have done with this Witness.

Lord High Steward. My Lord *Lovat*, Would you aſk this Witneſs any Queſtions?

Lord *Lovat.* Was you preſent when I ſurrendered my Sword in the Deſert of *Morar?*

D. Campbell. I was not preſent; I was not aſhore all Day, came on board the Night before, and therefore could not ſee my Lord *Lovat* ſurrender his Sword.

Lord *Lovat.* Do you know whether it was to Captain *Dugal Campbell*, of the *Argyllſhire* Militia, that I ſurrendered my Sword?

D. Campbell. Captain *Campbell* was upon the Command; he is a Relation of mine; when he came on board, he ſaid he had taken my Lord *Lovat* Priſoner. I heard Captain *Ferguſſon*'s Boatſwain mention how they came up with my Lord.

Lord *Lovat.* Did Captain *Ferguſſon* threaten Captain *Campbell* for not delivering up my Strong Box; and did they not fall to Loggerheads about it?

D. Campbell. Captain *Ferguſſon* never ſaid any thing about it; Captain *Campbell* did; but I do not apprehend they were at Loggerheads. Captain *Campbell* told me, that when he had got Lord *Lovat*, and the Box, he did not know where Captain *Ferguſſon* was; he went a different Route; and afterwards Captain *Campbell*'s Servant gave Captain *Ferguſſon* the Box, and deſired him not to part with it.

Lord *Lovat.* Did you ſee my Brother-in-Law, Major General *Campbell*, in Captain *Ferguſſon*'s Ship, when it lay there?

D. Campbell. I did not ſee him, becauſe I went juſt before to another Ship.

Lord *Lovat.* Do you know that I delivered up my Strong Box to General *Campbell*, and ſaid it would be as ſafe as in my own Hands?

D. Campbell. No; I was not there.

Lord *Lovat.* Do you know whether General *Campbell* and Captain *Ferguſſon* went themſelves into the Cabin, to examine my Strong Box, and ſtaid there two Hours?

D. Campbell. I don't know it; but I had an Inventory of the Things in the Box; and whoever had the Box, the Things contained in it were in the Inventory.

Mr. Attorney General. I deſire to know, if the Strong Box was not opened by a Key delivered by my Lord *Lovat*, juſt at the Time it was opened?

D. Campbell. Yes, it was; and the Things put in the ſame Order they were before, and the Key delivered back to my Lord *Lovat.*

Mr. Att. Gen. Had it ever been opened before that Time?

D. Campbell. This was the firſt Opening of it.

Mr. Att. Gen. At the time you took the Inventory, was not that the firſt Opening of the Box? And was not the Key delivered by my Lord *Lovat?*——*D. Campbell.* Yes.

[*Then the Witneſs, by Direction of the* Lord High Steward, *withdrew.*]

Mr. Attorney General. My Lords, We will now call Sir *Everard Fawkener.*

Lord High Steward. My Lord *Lovat*, Have you any Objection to Sir *Everard Fawkener?*——Lord *Lovat.* Not any.

Sir Everard Fawkener *ſworn.*

Mr. Attorney General. I deſire, Sir *Everard Fawkener*, that you will pleaſe to give an Account to my Lords of the Converſation you had with Lord *Lovat*, after he was taken Priſoner.

Sir *Everard Fawkener.* After Lord *Lovat* was taken and brought Priſoner to *Fort Auguſtus*, and lodged in an Apartment of the Fort there, his Royal Highneſs the Duke ordered me to go and viſit him; not with any Deſign to examine him particularly; for his Highneſs ſaid, he intended to ſend him to *London*, there to receive what the Laws of his Country ſhould order; but that as, in all Appearance, he had been a great Cauſe of the Miſchiefs brought upon his Country, this Viſit was deſigned to ſee whether he would diſcover any thing that might tend to bring thoſe Miſchiefs to a more ſpeedy End. When I went to him, I thought it would be the moſt candid Way of Proceeding to inform him who I was; and accordingly I told him, that I had the Honour to be Secretary to his Royal Highneſs the Duke: My Lord *Lovat* ſaid, that, notwithſtanding the Circumſtances he then appeared in, he had formerly rendered great Services to the Government, and the preſent Royal Family; and that he had received ſeveral Marks of the late King's Favour: And my Lord imputed to Marſhal *Wade* the Cauſe of his preſent Misfortunes; which was, the taking away his Company; which he expreſſed his Reſentment at, by ſaying, that if *Kouli Kan* had landed in *Britain*, he ſhould have thought that would have juſtified his Lordſhip to have joined him with his Clan; and he would have done it. He ſaid further, that he had been in a Condition to render Service to the Government, and that he might be of future Service to the Government; and that Mercy, as well as Juſtice, belonged to Sovereigns; and that, if his Majeſty would extend Mercy towards him, he would ſhew his Loyalty, and deſerve more than Twenty ſuch Heads as his were worth. I would have entered more particularly into the Services that he would render the Government, but that I found, by his own Diſcourſe, that the Service he meant was no more, than to bring his Clan for the future into the Service of the Government, inſtead of employing them againſt it. He ſaid, the World allowed him ſome Abilities, and he would apply them to that Service; and concluded with this, ſaying, He was

——— in utrumque paratus
Seu verſare dolos, ſeu certæ occumbere morti.

Mr. Attorney General. Can you charge your Memory with any particular Expreſſions he made uſe of?

Sir *Everard Fawkener.* I cannot ſay whether what I have ſaid was the Subject of one or two Converſations; but he uſed to ſend for me frequently, and I remember there was one thing he would ſeem to make reconcileable, which was, his Principle of Loyalty to the Family of the *Stuarts*, and the Services done for the late King and the Royal Family.

Mr. Attorney General. What were the Services he ſaid he could render he Government?

Sir *Everard Fawkener.* Only that he would employ the *Fraſers* in the Service of the Government, inſtead of employing them againſt it, and employ his Talents in the Support of it.

Mr. Att. Gen. Did my Lord *Lovat* confeſs or deny that he had been concerned in the Rebellion?

Sir *Everard Fawkener.* He did not ſeem to me to take the Trouble to deny it, but rather acquieſced in it that he had.

Mr. Att. Gen. Did he ever ſay he was not concerned in it?

Sir *Everard Fawkener.* I cannot ſay he ever did.

Mr. Att. Gen. My Lords, We have done with this Witneſs.

Lord High Steward. My Lord *Lovat*, Would you aſk Sir *Everard Fawkener* any Queſtions?

Lord *Lovat.* No; only that I am Sir *Everard*'s humble Servant, and wiſh him Joy of his young Lady.

Mr. Att. Gen. My Lords, We have now done with calling our *Viva Voce* Evidence, any further than what will be neceſſary to prove the written Evidence which we ſhall produce; and therefore what we propoſe now, is, to call a Witneſs, to prove ſome Letters, ſome of them of the Signature and Hand-writing, and all of the Dictating, of the noble Lord at the Bar.

Sir *W. Yonge.* My Lords, I ſubmit to your Lordſhips, if it would not be better to have the Whole of the written Evidence together, rather than to go on To-night with Part of it only: We ſubmit it intirely to your Lordſhips, whether we ſhall now go on or not.

Lord *Lovat.* And I hope your Lordſhips will remember poor *Lovat*, who cannot ſtand; and that you will give a little Reſpite till *Monday*, or order his Funeral.

L. H. S. Gentlemen of the Houſe of Commons, Is your written Evidence likely to be long?

Mr. Att. Gen. My Lords, It will be very long.

L. H. S. Will it take up more than one Day?

Mr. Att. Gen. My Lords, It is difficult to ſay, with Certainty, how long it will take up: There is a great deal of written Evidence to lay before your Lordſhips; and there muſt be the Summing up of the whole Evidence by one of the Managers.

Lords. Go on; go on.

Sir *W. Yonge.* My Lords, Then we will beg Leave to call *Robert Fraſer.*

He was ſworn and examined on this Trial before, and was my Lord Lovat's *Secretary.*

Robert Fraſer *called into Court.*

Sir *W. Yonge.* Look upon that Letter (*ſhewing the Witneſs a Letter*), and tell my Lords of whoſe Hand-writing it is.

R. Fraſer. 'Tis my own.

Sir *W. Yonge.* By whoſe Order did you write that Letter?

R. Fraſ. By Order of my Lord *Lovat.*

Sir *W. Yonge.* Did my Lord *Lovat* dictate it to you, or not?

R. Fraſ. My Lord *Lovat* dictated every Word of it.

Sir *W. Yonge.* Look upon the Signature of the Letter, and tell my Lords of whoſe Hand-writing it is?

R. Fraſ. 'Tis my Lord *Lovat*'s.

Sir *W. Yonge.* Did you, or did you not, ſee him ſign it?

R. Fraſ. I ſaw him ſign it.

Sir *W. Yonge.* As the Letter is not addreſſed to any body, pleaſe to inform their Lordſhips to whom it was intended to be ſent?

R. Fraſ. It was intended to be ſent to *John Murray* of *Broughton*, the Pretender's Secretary.

Sir *W. Yonge.* Was it ſent from *Caſtle-Downey?*

R. Fraſ. No; not from *Caſtle-Downey.*

L. H. S. How do you know this Letter was intended to be ſent to Mr. *Murray?*

R. Fraſ. My Lord *Lovat* told me ſo.

Sir *W. Yonge.* Was the Letter ſent at any time?

R. Fraſ. Yes; it was ſent from *Gortuleg.*

Sir *W. Yonge.* When was it ſent?

R. Fraſ. After my Lord *Lovat* had made his Eſcape from Lord *Loudon.*

Sir *W. Yonge.* How long was that after the Letter was writ?

R. Fraſ. It was writ in *December*, and ſent in *January.*

Then the Letter (marked N°. III.) *ſigned* Lovat, *was delivered in, and read by the Clerk at the Table, as follows:*

No. III.

Honoble and Dear Sir,

I Received, with vaſt Pleaſure, the Honour of your Letter of the 31ſt *October*, by the Bearer, who has the Honour to be known to you. He is my Relation, and was my Secretary for ſeveral Years; and he is now Captain-Lieutenant in the Firſt Battallion of my Son's Regiment. He gave me great Joy in letting me know at this Time, as well as when he came from *Edinburgh* ſome Weeks ago, that you was in perfect Health, notwithſtanding of the extreme Fatigue, and conſtant Hurry, that the eſſential Affairs of the Royal Prince keeps you in Day and Night.

I do aſſure you, dear Sir, that no Man in *Scotland* is better pleaſed to hear of the Continuation of your Health, and the Proſperity of your Perſon in every Shape, than I am, as I always found you a worthy Gentleman, full of good Senſe and Politeneſs, full of true Loyalty and Valour, and faithfully zealous for the Intereſt of the Royal Family, and, in the mean Time, mighty civill and oblidgeing to me, when I had the Honour to ſee on the Subject of the King's Affairs, which never was ſo well taken care of, as ſince they were in your Hands: I woud be therefore a moſt ſtupid, worthleſs Animall, if I had not a moſt grateful Senſe of your Goodneſs and Freindſhip towards me: So, dear Sir, you my beleive me, when I aſſure you, that my Heart and Soul is full of Thanks and Gratitude for the great Marks of Freindſhip, that I had the Honour to receive from you; and I have laid my poſitive Commands upon my Son to love, honour, and reſpect you as my beſt Freind, and to make you his Patron at the Prince's Court, and to do nothing that is eſſentiall without your

Advice

Advice; and he will find it his own Intereſt to obſerve exactly my Inſtructions on that Head.

I ſolemnly proteſt, dear Sir, That it was the greateſt Greif of my Life, that my Indiſpoſition and ſevere Sickneſs keept me from going South to my dear brave Prince, and never parting with him while I was able to ſtand, but venture my old Bones, with Pleaſure, in his Service, and before his Eyes, while I had the leaſt Breath within me: But, when I found, that by Pains and Weakneſs in my Knees, I loſt the Uſe of my Limbs, I reſolved to give a Proof of my ſingular Zeal for my dear Maſter the King, and for my brave glorious Prince, that, I truly beleive, few or none in *Scotland* would do, but myſelf. I ſend my eldeſt Son, the Hopes of my Family, and the Darling of my Life, a Youth about Nineteen Year old, who was juſt going abroad to finiſh his Studys and Education, after having learned, with Applauſe, what is taught in our *Scots* Univerſitys, and was graduate Maſter of Arts. But, inſtead of ſending him abroad to compleat his Education, I have ſent him to venture the laſt Drop of his Blood in the glorious Prince's Service; and, as he is extreamly beloved, and the Darling of the Clan, all the Gentlemen of my Name and Clan (which, I thank God! are numerous, and look well, and always beleived to be as ſtout as their Neighbours) are gone with him.

There is not the Head of ane old Family or Trybe of my Name and Clan in this Country, that have ſtaid at home; only a few old Gentlemen, infirm like myſelf, that were not able to travell: And, as my Son is adored by the common People of my Clan, he has brought along with him a conſiderable Number of the beſt of them, in two handſome Battallions; and, if they were as well armed and equipped as I could wiſh, they would look as well as any Clan that went South this Year; for, as I poſſeſs the largeſt and beſt Eſtate in the Shire, I have a great Number of Commons on my Property, about 1500 good and bad; and that which is very ſingular, is, that, in that 1500, there is not 30 but what are *Fraſers*; which no Chief in the *Highland*, can ſay of his Clan, but myſelf; for moſt of them are mixed with Men of all the other Clans.

I flatter myſelf, that my Son will behave well at the Head of my People; and I am ſure every one of them will be ready to live and dye with him; and, if he lives, I hope he will be ane uſeful Servant to the King and Prince, and ane Honour to his Family; for he has very good Parts and Learning for his Age: And ſince I am like to make my Exit very ſoon out of this troubleſome World, and that, I thank God! I have ſerved my King faithfully from my Infancy till now; and that it is well known by all the Gentlemen in the King's Intereſt in the North, that, for many Years paſt, I was the Life and Spirit of the King's Affairs in theſe Countrys; and as I made it my only Buſineſs to encourage and keep up the Hearts of the King's Freinds, it was very fatigueing and troubleſome to me, and vaſtly expenſive, by my extravagant Houſekeeping, and giving away often a little Money to the King's Freinds that wanted it much, and from whom I never expect any Payment; and now I give the laſt Proofs of my uncommon and unalterable Zeal for my dear Maſter the King, in ſending what is deareſt to me in the World, my eldeſt Son, and my Clan, to venture their Lives with the glorious Prince Royal, and under his Eyes.

As it would be ill Manners to trouble you in a Letter with ſome eſſentiall Things that concerns my own Perſon and Family, I have entruſted my Couſin, the Bearer, to give you a true Account of what I have to ſay; which, I hope, you will receive with your ordinary Goodneſs, and Freindſhip for me. And I earneſtly entreat, after you conſider what I have to ſay, that you repreſent it to the Prince in the kindly and freindly Manner you always behaved to me: And, as I aſk nothing of his Royal Highneſs, that is either expenſive, diſhonourable, or diſadvantageous, to his Royal Highneſs, and to his Intereſt, I am convinced, that his Royal Highneſs will give me a juſt and gracious Anſwer; which will for ever fix me, my Poſterity, and all concerned in me, to his Royal Highneſs Perſon and Family: And I can ſay without Vanity, that there is not one Family in the North of *Scotland* more capable to ſerve him, and his Royal Family, than mine, nor non that has deſerved it more of the Royal Family of *Stuarts*, ſince their Acceſſion to the Throne, than the *Fraſers*, and the Lords of *Lovat*. They likewiſe ſignalized themſelves with Honor and Valour for King *Robert Bruce*, and his Offspring: And it is likewiſe ſingular, that no Lord *Lovat* of Twenty-four that have been of my Family, ever fought or voted againſt their King.

I beg you Ten thouſand Pardons for this Digreſſion; but, as I look upon you as my beſt Freind, I thought proper to let you know this under my own Hand; which, I hope, you will forgive, and the Tediouſneſs of this Letter, and beleive that I am, as much as any Man alive, with the utmoſt Eſteem and Reſpect, and with a moſt ſincere and conſtant Gratitude, while there is Life in me,

Honoble and Dear Sir,

Your moſt obedient, moſt obliged, and moſt affectionate,

faithful, humble Servant,

LOVAT.

Mr. Att. Gen. This Letter will be proved to have been received by *John Murray* of *Broughton*. My Lords, he is not now here; and therefore we do not call him to that Particular: But the next Letter we ſhall produce, is a Letter written by my Lord *Lovat* to the Pretender's Son. The Letter itſelf will appear to be torn in ſome Parts, which will, in a ſmall Degree, mangle the Senſe; but that will be ſupplied by a Copy of the ſame Letter, written at the ſame Time, by the ſame Hand, and by the Order of my Lord *Lovat*, which we ſhall produce to your Lordſhips.

Sir *William Yonge*, producing the Letter to the Witneſs, aſked,

Sir *Wm. Yonge.* Of whoſe Hand-writing is that?

R. Fraſer. It is mine.

Sir *Wm. Yonge.* By whoſe Order did you write it?

R. Fraſ. By my Lord *Lovat*'s Order.

Sir *Wm. Yonge.* Was it dictated to you by him?

R. Fraſ. Every Word of it.

Sir *Wm. Yonge.* Was the Letter ſigned by my Lord?

R. Fraſ. It was.

Sir *Wm. Yonge.* Is the Signature there? Or, is it torn off?

R. Fraſ. It is torn off.

Sir *Wm. Yonge.* Look upon that Copy of a Letter, and tell my Lords whom that was written by?---*R. Fraſ.* By me.

Sir *Wm. Yonge.* By whoſe Order?

R. Fraſ. By my Lord *Lovat*'s Order.

Sir *Wm. Yonge.* For what End or Purpoſe was it made?

R. Fraſ. It was made for a Copy to keep.

Sir *Wm. Yonge.* Is that a Copy of the other Letter which you were juſt now ſhewn?

R. Fraſ. That is a Copy that was drawn from the Principal.

Sir *Wm Yonge.* Was the Original ſent at any Time?

R. Fraſ. Yes; it was.

Sir *Wm. Yonge.* When was it ſent?

R. Fraſ. It was ſent from *Gortuleg* at the ſame Time the Letter to Mr. *Murray* was ſent.

Sir *Wm. Yonge.* Can you give an Account how the Signature of the original Letter came to be torn off?

R. Fraſ. I cannot.

Mr. Att. Gen. My Lords, There is ſome Part of the Signature remaining: The Top of the *L*, and the Top of the *t*, remain.

My Lords, We deſire the Letter may be read.

Sir *Wm. Yonge.* Deliver both the Letter, and the Copy, to explain it.

L. H. S. Was the Signature originally there?---*R. Fraſ.* Yes.

L. H. S. You ſay my Lord *Lovat* dictated it?---*R. Fraſ.* Yes.

L. H. S. Did he ſign it?---*R. Fraſ.* Yes.

L. H. S. Was the Name intire upon it, when it was ſent away from *Gortuleg*?---*R. Fraſ.* Yes; it was.

L. H. S. When was it ſent away from *Gortuleg*?

R. Fraſ. At the ſame Time with the former Letter, that has been read.

L. H. S. When was that ſent?---*R. Fraſ.* In *January*.

L. H. S. By whom was it ſent?

R. Fraſ. By a Tenant of my Lord *Lovat*'s; one of his *Stratharrick* Men.

L. H. S. My Lords, As both the Letter and the Copy have been proved, it will be proper for your Lordſhips firſt to hear the Original read, imperfect as it is, and then the Copy.

Clerk read the Letter No. I. *dated* Beaufort, November, 1745, *and then read the Copy of the ſame Letter*, No. II.

No. I.

Moſt Royal Prince,

(a) I Reckon it the greateſt Misfortune of my Life, and which has occaſioned me more Greif and Sorrow, than any croſs Accident that ever happened to me, that my long Indiſpoſition, and ſevere Pains and
that I
Tortures, ... ſuffered for a long Time, deprived me of the vaſt Joy and
Royal High
. . . . . Honour I would have had in kiſſing your . . . . . neſs
Perſon
Hands, and in venturing my old . . . . before your Eyes. And, as my dear
Sov
Maſters and . . . . . ereigns, your Royal Father and Grandfather never ha
I have b
. . . . . d a more faithful and zealous Subject than . . . . . een to
ha
their Royal Perſons and Intereſts, ſince I . . . d the Uſe of my Reaſon; ſo nothing in this World could give me ſo much Pleaſure as to ſignalize myſelf, and end my Days, in the Service of your Royal Highneſs, where I would not be uſeleſs, having been bred to the War by the beſt Maſters in *Europe* theſe Fifty Years paſt: But now, finding myſelf a perfect Invalid, not able to mount a Horſeback, nor to walk Half a Mile, and conſequently not able to exert myſelf either as a Soldier, or as a General Officer, which my dear Maſter, your Royal Father, was pleaſed to make me above Forty Years ago.

Finding myſelf in this unhappy, cruell Situation, of not being able to pay my Duty to your Royal Highneſs in every reſpect, I did reſolve to give your Royal Highneſs the next Mark of my greateſt Zeal that I am capable of, if it was to gain your Royal Highneſs Ten Kingdoms; and that is, to ſend my eldeſt Son, the Bearer of this Letter, and the great Hopes of my Family, and the Darling of my Soul, to venture his Life,
and
neſs Service:
. . . his young Perſon, in your Royal High . . . . . : And I hope,
wardneſs to ſerve
that his great Zeal and For . . . . . your Royal Highneſs, in
ou pleaſe to command
every Shape y . . . . . him, will be a Proof, that he is my true Son.

. . . . . .

the principal
I have ſent along with him all . . . . . Gentlemen, and Heads
Clan, with
of Families, of my . . . ., . . . Eight hundred of my common People of
s own Choice:
Thirteen
hi . . . . . : And it is ſingular in my Clan, that, of . . . . . or
ty,
Fourteen hundred Men that are on my Proper . . ., they are all *Fraſers*; and there is not Twenty of them of any other Clan. Both Hiſtory and Traditions tell us, that the Clan of the *Fraſer* always behaved well; and now, when they have a moſt glorious and brave Prince at their Head, I truely rather hear of my Son's Death, and of all my Clan that went along with him, than to hear of their Miſbehaviour, which wou'd ſoon put my gray Head with Sorrow to the Grave; but I do not in the leaſt fear it. I therefore deliver my Son, and my

(a) *N. B. The Chaſms in this Letter, which were occaſioned by tearing off the Signature, are ſupplied from* No. II. *the Copy of it.*

Clan, moſt heartily and frankly to your Royal Highneſs, to do with them what in your Royal Highneſs Goodneſs and Pleaſure you think fit.

I hope there is none of your Royal Highneſs Freinds, or Servants, that has come to this Country, but will do me the Juſtice to declare, that I am, and always have been, the moſt zealous and moſt active Partizan your Roya in that I o that ..... l Highneſs has in the North of *Scotland*; and .....: wn I did but my Duty.

Manners,

This Letter is already longer, than, in good ....., I ought to with: But have troubled your Royal Highneſs ..... as I have a great many before eſſential Things to lay .... your Royal Highneſs, I will make a Memo- of them, *Murray*, rial ..... and give them in to my good Freind Mr....., your ma Royal Highneſs Secretary of State, that he ...y repreſent to your Royal it, Highneſs what is in .., when you are at Leaſure.

I pray God preſerve your Royal Highneſs Perſon, and give you Succeſs and Glory in all your Enterprizes, as you have had hitherto; and I am, while I live, ready to looſe the laſt Drop of my Blood, and with as great Zeal as any Man on Earth,

Moſt Glorious and moſt Royal Prince,

Your Royal Highneſs moſt conſtant and faithful Slave,

Beaufort, Nov. 1745.

* * * *

Then the Copy of the above Letter was read.

Lord High Steward. By whom was this Letter intended to have been ſent to the Young Pretender?

R. Fraſer. It was intended to have been ſent by the Maſter of *Lovat.*

L. H. S. How long had you this Copy in your Hands?

R. Fraſ. I had it in my Hands for ſome time after it was written: It lay in my Deſk.

L. H. S. How long had you it in your Hands?

R. Fraſ. I cannot be poſitive.

L. H. S. To whom did you deliver the Copy?

R. Fraſ. I do not know to whom I delivered the Copy.

Mr. Att. Gen. My Lords, Though it is impoſſible for your Lordſhips to doubt who is meant by the Words *Moſt glorious Prince*, and *Your Royal Highneſs*, in the Letter, yet, if your Lordſhips pleaſe, this Witneſs may be aſked, as he wrote the Letter by my Lord's dictating, Who was meant by theſe Words?

R. Fraſ. I took it to mean the Pretender's Son.

Sir *W. Yonge.* My Lords, The next Letter we beg leave to produce, is another Letter that was intended to be ſent to the Maſter of *Lovat.*

Look upon that Letter [*ſhewing the Letter to the Witneſs*], and tell my Lords of whoſe Hand-writing it is.

R. Fraſ. It is mine.

Sir *W. Yonge.* By whoſe Order did you write it?

R. Fraſ. By my Lord *Lovat*'s.

Sir *W. Yonge.* Was it dictated by Lord *Lovat* to you?

R. Fraſ. Every Word of it.

Sir *W. Yonge.* Was it ſigned by my Lord *Lovat*, when it was written?

R. Fraſ. I cannot be poſitive whether it was ſigned, or not.

Sir *W. Yonge.* Recollect, if you can, whether it was ſigned, or not.

R. Fraſ. To the beſt of my Remembrance, it was ſigned. It was intended to be ſent, with the other Letters, to the Laird of *Lochiel*, who was then at *Perth.* It was written by me, and dictated by my Lord *Lovat* every Word.

Sir *W. Yonge.* Can you take upon you to ſay, that it was ſigned, or not?

R. Fraſ. To the beſt of my Knowledge, it was.

Sir *W. Yonge.* Was that Letter ſent at the ſame time with the others?

R. Fraſ. Yes; it was.

Sir *W. Yonge.* At the ſame time, and by the ſame Perſon?—*R. Fraſ.* Yes.

Sir *W. Yonge.* By whoſe Orders were they ſent?

R. Fraſ. By my Lord *Lovat*'s.

Sir *W. Yonge.* What was you ordered to do with theſe Four Letters?

R. Fraſ. To put them up in a Packet; which I did, and directed them to the Maſter of *Lovat.*

Sir *W. Yonge.* By whom was you ordered to do it?

R. Fraſ. By my Lord *Lovat.*

Sir *W. Yonge.* Were there Three or four Letters in all?

R. Fraſ. There were Four Letters.

L. H. S. Was this Letter ſent in the ſame Packet with the others?

R. Fraſ. Yes; it was.

Then the Letter N° IV. *was delivered in at the Table, and read by the Clerk, as follows:*

No. IV.

My Dear Laird of *Lochiel*,

I Could hardly beleive ane Angell from Heaven, if he had told me, that *Donald* Laird of *Lochiel* wou'd forget *Simon* Lord *Lovat*, as you have done: And this is the more ſurprizeing, that you cannot ſay, nor juſtly think, that, in one Article of my Life, I fail'd to ſhew my ſingular Affection and Reſpect for my dear Couſin *Lochiel*; but, on the contrary, gave you all the Marks of Freindſhip in my Power, or that I was capable off; and yet, my dear Couſin, ſince ever you join'd the Prince, you never did me the Honour to write me one Scrape of a Pen, notwithſtanding of the ſtrict Union and Freindſhip that we always lived in, and our conſtant Correſpondence. I ſolemnly proteſt, that I know not what to attribute this Sillence to; ſince I cannot accuſe myſelf of any thing that deſerves it at your Hands: For you never ſaw me fail in my Loyalty to the King, or in my Affection and Freindſhip towards you; nor never will, tho' you ſhould continue as unkind as you are. I therefore beg of you, my dear Couſin, to let me hear from you; and be ſo good as to comfort my languiſhing Soul, and drooping Spirits, by aſſureing me that you are the ſame affectionate Laird of *Lochiel* to me that ever you was: I truely never had ſo much Need of your Comfort and Aſſiſtance as at this time; for I am in vaſt Diſtreſs of Body and Mind.

The baſe and treacherous Behaviour of our wretched Couſin the Laird of *Mac Leod* has almoſt coſt me my Life already: The Night before he took his Journey to the Iſle of *Sky* from this Houſe, ſitting by me, he looked up ſerriouſly, and ſwore to me, that as he ſhould anſwer to God, and wiſhed that God might never have Mercy on him, and that he might never enter into the Kingdom of Heaven, but that his Bones might rott on Earth, be burnt, and his Aſhes blown up in the Air, if he did not come with all Speed imaginable, and with all his Men that was already prepared, and come and join my Son, and the Clan *Fraſer*, and march South with them to the Prince's Service, wherever he was. He ſwore the ſame terrible Oaths and Imprecations next Day to my Son, and to your faithful Servant *Gortuleg*: And if he had keept his Oaths and Word, I had ſo manhaged this Part of the North, that about 6000 Men had marched South to the Prince's Aſſiſtance; which I thought wou'd much encourage his own Loyal Party, and frighten the *Engliſh* to his Obedience. But when I got *Mac Leod*'s Letter about Twelve Days after, in which he told me, that, after deliberateing fully with his Neighbour, Sir *Alexander*, and weighing the Arguments on both Sides, he, and his Neighbour, had reſolved to ſtay at home, and not to trouble the Government.

In reading this Line, I had almoſt fainted, and my Body ſwell'd with Anger and Vexation; ſo that I could not ſleep nor eat for ſeveral Days; and I am yet far from being recovered, for I have a ſevere Stich and Pain in my Left-ſide, which keeps me from my Night's Reſt, and has intirely taken away my Appetite; ſo that I beleive the Treachery of that unnatural, ungrateful, and wicked Man, will be the Occaſion of my Death very ſoon: But before I die, I reſolved, if poſſible, to give ſuch a Mark of my Zeal for my good Maſter the King, and for the glorious brave Royal Prince his Son, that I beleive few in *Scotland* would do but myſelf.

I ſend my eldeſt Son, who is the great Hopes of my Family, and the Darling of my Life and Soul, to venture his Life and Blood in the brave Royal Prince's Service; and he has all the Gentlemen of my Clan with him, except a few old Gentlemen that are not able to travell. He has *Stray*, *Killbokie*, and *Religg*, the principal Heads of Familys of the *Fraſers* this Side of *Lochneſs*; and he has *Foyers*, *Ferraline*, and *Leale-Garth*, as the principal Heads of the Familys in *Stratherrick* and *Abertorff*; and he has certainly taken with him the Flour of my Clan. I pray God preſerve him and them, and influence them to fight gallantly before the brave Prince's Eyes; for I had much rather hear of my Son's Death, and of my Clans, than that they ſhould miſs-behave; ſince Hiſtory cannot ſhew ane Occaſion in which the *Fraſers* miſbehaved; for, I thank God, they were always known to be brave.

Now, my dear Couſin *Lochiel*, you cannot but think it juſt and reaſonable, that I deliver my Son to your Care, in every reſpect; and that your Clan, *Cluny*'s, and mine, ſhould be moſt unite, and live together like Brethren; and that the Quarrell of the one ſhould be the Quarrell of the other, according to our mutual Engagements by Word and Write; in which, I hope, we will never fail. The treacherous Behaviour of the monſtrous Laird of *Mac Leod* ſhoud put all Relations and intimate Freinds on their Guard not to fail to one another; for he has, by his Treachery and unnatural Behaviour, fixed upon himſelf the moſt infamous Character of any Man on Earth: That Traitor, inſtead of coming to this Houſe, where he was always Mr. to join my Son, according to his Promiſe, has marched the other Side of *Keſſock* this Day with 400 of his choſen Men and Gentlemen: I beleive that, hearing that my Son's Regiment was in Arms in this Country, he was affraid to paſs through it, though it's the beſt Way to *Inverneſs*. His Fears was groundleſs; for I woud not hurt my Mother's Kin, though it was in my Power: But if my Son ſaw the Laird, I believe he would ſhott him, or bring him Priſoner to the Prince, becauſe of his abominable Breach of Oath and Promiſes to him.

When he ſent a little ſneaking Gentleman here with his treacherous Letters, my Son and *Gortulegg* made two bitter Anſwers to them. When the little Gentleman ſought my Anſwer, I told him to tell his Chief, that he was a Traitor to the King, and a Murderer of my Son and me, which he might be ſure I would reſent, if I was able; but that I would never black Paper to a Man that had ſo baſely betray'd me; that ſince he went to the Devill, I would leave him there, and have no more to do with him.

Honeſt *Gortuleg*, who made up a Company to go with my Son, and who would be moſt uſefull to him, fell very ill, Eight Days ago, of his old Diſtemper, ane Inflammation in the Kidneys, of which he had almoſt dyd ſome years ago in *Lochaber*, and many times ſince. He lies in the next Room to me; we are both much indiſpoſed, and Invalids. He joins me in aſſureing you, and my dear Couſin the Lady *Lochiel*, and all your lovely Family, of our moſt affectionate humble Duty and beſt Reſpects.

Since you are juſtly the Royal Prince's great Favourite, I hope you'll be ſo kind, dear Couſin, as make my Court to his Royal Highneſs; for tho' it is my Misfortune not to be able to follow him wherever he goes (which would be the Delight and Honor of my Life), yet you can freely aſſure his Royal Highneſs, that he has not a more faithfull and zealous Partizan in *Scotland*: And tho' I am not able to mount a Horſeback, or travell a Foot, yet I have done his Royal Highneſs more Service than any one of my own Rank in *Brittain*; for I keep Life and Spirits in his Affairs more than any Man in the North: And tho' the Preſident tells me plainly, that I have forfeit Life and Fortune, and that my Perſon is not ſafe in this Houſe; yet I am reſolved to live and die with Courage and Reſolution in my King and Royal Prince's Service; but no Death that they can invent can leſſen my Zeal, or fright me from my Duty.

I beg, my dear Couſin, you may acquaint me what you know of our dear Couſin Mr. *William Drummond* of *Bochaldy*; for I can get no certain Accounts of him, which vexes my Soul and Heart; for he was one of the Men in the World that I loved moſt, and that loved me moſt.

I beg you ten thouſand Pardons for this very long Letter; but it is to puniſh you for your Sillence, and to convince that I am always the ſame Man to wards you and yours.

I intreat

I intreat you make my moſt affectionate Compliments to my dear Son-in-law *Cluny*.—I am perſwaded he will do Honor to all concerned in him.——I am convinced that you will eaſily beleive, that I am, as much as any Man alive, with unalterable Eſteem, Attachment, and Reſpect,

My dear Laird of *Lecheil*,

Beaufort, Nov . . . . .

The Signature of this Letter was torn.

Mr. Attorney General. My Lords, There was another Letter, which we take to be One of the Four which was ſent in that Packet; it is not a very material one; and we ſhall produce it to your Lordſhips, rather to connect the Evidence of this Witneſs, than for any thing contained in it. It is a Letter to the late Marquis of *Tullibardine*, by the Name of Duke of *Athol*.

Sir William Yonge *producing the Letter, the Signature to which, and Part of the Date, is torn off.*

Sir *W. Yonge.* Of whoſe Hand-writing is that Letter?
R. Fraſer. My own.
Sir *W. Yonge.* By whoſe Directions did you write it?
R. Fraſ. By my Lord *Lovat*'s.
Sir *W. Yonge.* Did he dictate it to you?
R. Fraſ. Every Word of it.
Sir *W. Yonge.* Was the Letter ſigned by Lord *Lovat*?
R. Fraſ. Yes, it was.
Sir *W. Yonge.* Did you ſee my Lord *Lovat* ſign it?
R. Fraſ. Yes, I did.
Sir *W. Yonge.* Is the Signature torn off?
R. Fraſ. Yes.
Sir *W. Yonge.* Was that Letter ſent with the others?
R. Fraſ. It was ſent with the former that have been read.
Sir *W. Yonge.* In the ſame Packet?
R. Fraſ. Yes.
Sir *W. Yonge.* Which was directed to the Maſter of *Lovat*?
R. Fraſ. Yes.
Sir *W. Yonge.* For whom did my Lord *Lovat* ſay that Letter was deſigned?
R. Fraſ. For the Duke of *Athol*.
Sir *W. Yonge.* Who did he mean by that?
R. Fraſ. The Marquis of *Tullibardine*, the Duke of *Athol* that was abroad.
Sir *W. Yonge.* By whoſe Order did you ſend that Letter?
R. Fraſ. By my Lord *Lovat's* Orders.

Then the Letter, N° V. *dated 5th* December, 1745, *was delivered at the Table, and read by the Clerk, as follows:*

No. V.

My good Lord Duke

I HAD the Honour to receive two very ob . . . . * from your Grace; for which I give you * * . . . nks; and I can freely aſure your Grace * * . . . neſs and Civilitys towards me, have had * * . . . preſſion upon me, that I will remember * * . . . ays of my Life with Gratitude and Thankf . . . And your Grace ſhall always find me moſt ready to ſerve your Perſon and Family.

I had the Honour to return Anſwers to both your Grace's Letters; one by Mr. *Mac Donell*, and the other by Mr *Mac Pherſon*, both of the Army; but as the Bearer has the Honour to be your Grace and is my Relation, and one whom I truſt as much as any of my Family, I have put it upon him to acquaint your Grace of every thing that happens in this Country worth your while to hear, ſince I had the Honour to receive your Grace's Letters; which I am ſure he will do very exactly and very faithfully; for he knows every thing that is done in this Country, and does not want Underſtanding.

I humbly beg the Continuance of your Grace's Goodneſs and Civilitys towards me; and be ſo juſt as to beleive that I will remain, while I live, with the utmoſt Eſteem, Attachment, and Reſpect,

My good Lord Duke,
Your Grace's moſt obedient, moſt oblidged,
Beaufort, Dec. 5. and moſt affectionate faithful humble Servant,
1745.

The Signature of this Letter was torn.

Mr. Attorney General. My Lords, The next Letter we beg Leave to produce, is a Letter from my Lord *Lovat* to his Son. My Lords, your Lordſhips have heard already of a Letter which was found in the Box, from the Son to the Father; to which this will appear to be an Anſwer. The Father's Letter we ſhall prove in the ſame Manner as we have done the others; and the Son's will be proved to be of his Hand-writing, and to have been in the Box, at the time it was examined and opened, in the Manner your Lordſhips have heard.

Mr. Att. Gen. Of whoſe Hand-writing is that Letter? [*Shewing the Letter to the Witneſs.*]
R. Fraſ. It is of my own Hand-writing.
Mr. Att. Gen. By whoſe Orders did you write it?
R. Fraſ. By my Lord *Lovat*'s.
Mr. Att. Gen. Was it ſigned by my Lord *Lovat*?
R. Fraſ. It was not ſigned.
Mr. Att. Gen. Was it ever ſent by my Lord *Lovat*'s Order?
R. Fraſ. Yes.
Mr. Att. Gen. To whom?
R. Fraſ. To the Maſter of *Lovat*.
Mr. Att. Gen. Did my Lord *Lovat* dictate it to you?
R. Fraſ. Yes, every Word of it.
Mr. Att. Gen. Did he order you to ſend it to the Maſter of *Lovat*?
R. Fraſ. Yes, he did.
Mr. Att. Gen. Did Lord *Lovat* frequently order Letters to be wrote, and order his Secretary to ſend them, without ſigning them?
R. Fraſ. Yes, my Lords, he did.
Mr. Att. Gen. Was not that generally to People the moſt intimate with him?
R. Fraſ. Yes, only to his Intimates.
Lord High Steward. Do you know any thing of the ſending of this Letter?
R. Fraſ. Yes.
Lord High Steward. By whom was it ſent?
R. Fraſ. By one of my Lord *Lovat*'s Tenants.
L. H. S. Was it ſent at the ſame time with the Packet?
R. Fraſ. Yes, I believe it was; but I am not poſitive as to the preciſe Time it was ſent; it was either then, or a little after: If I was to read the Letter, I could tell. [*The Witneſs having looked upon the Letter.*]
L. H. S. Does that enable you to recollect when the Letter was ſent?
R. Fraſ. Yes, my Lords, it does; it was ſent at the ſame time with the other Letters that I ſpoke of.
L. H. S. With that Packet which has been mentioned?
R. Fraſ. Yes.
Mr. Att. Gen. My Lords, This Letter conſiſts of two Pieces; one is a Poſtſcript: Therefore we beg Leave to aſk this Witneſs, Whether the Poſtſcript was wrote by him, and dictated by my Lord, and ſent at the ſame time with the other?
R. Fraſ. Yes, it was.

Then the Clerk read the Letter, No. X. *at the Table: Which is as follows:*

No. X.

My Deareſt Child,

I Received the Pleaſure of your Letter by the two Expreſſes that I ſent to you the firſt of this Month, which you forgot to mark the Date of. It gave me great Joy, my dear *Simon*, to know, that you are in perfect Health, and to ſee ſuch a handſome Letter of your own Write and Diction. But I muſt tell you, my dear Child, that you advance ſeverall Things in it that are not juſt, and that you cannot ſupport in Reaſon. In the firſt Place, your Reaſon for your not writeing to me before, ſince I made my Eſcape (though I accept of your Excuſe) was neither juſt nor relevant; for it was not to be ſuppoſed, that either *Loudoun* or the Preſident would be in Terms with me ſo ſoon, after having ſo ſignally affronted them: But, in the ſecond Place, it is impoſſible there could be any Terms 'twixt Lord *Loudoun*, the Preſident, and me, that ſhould keep you from writeing to me; no, if I ſhould be attainted: So your Reaſon for not writeing to me was ill-founded. As to your Advice, that comes immediately after it, in repreſenting to me, That if I could make my Peace with *Loudoun* and the Preſident, and ſave my Perſon and Eſtate, that you would content yourſelf with a thin Regiment: This Thought, my dear Child, was not at all digeſted, and entirely ignorant to my Circumſtances: For, in the firſt Place, *Loudoun* can no more ſave my Perſon and Eſtate, than any of your ſubaltern Officers can; nay, they cannot as much engage to make me free from Priſon for any Time: So that it would be Madneſs for me to make any Terms with them, but to ſpeak civilly, and to keep myſelf out of their Way. But the Fact is, my dear Child, which you forgot, or perhaps that I did not take Pains to inform you of it, That, above ſeven Years ago, I was one of thoſe that entered into a formal Aſſociation to venture our Lives and Fortunes to reſtore the King, and his Offspring; and we ſigned our mutual Engagements for this Purpoſe with our Hands and Seals, and ſent it to *France* to the Cardinall *de Fleury*, then Firſt Miniſter of *France*, by the Hands of Mr. *William Drummond* of *Bochaldy*. The Cardinall was ſo pleaſed with it, that he ſhewed our Engagements and Subſcriptions to the King his Maſter, and begged of his Majeſty to ſupport us: And the King deſired the Cardinall to aſſure us of his Protection, and that he would give us his Aſſiſtance and Succours to reſtore our King. When Mr. *Drummond* acquainted my own King of this Prooff of my Loyalty, and of my conſtant Zeal for his Perſon and Intereſt, from my younger Years till now, gave me evident Prooffs of his Goodneſs and Favours towards me ſince, as much as to any Subject. He gave Mr. *Drummond* a Commiſſion to carry to me of Generall of the *Highlanders*, which I have; and ſeverall Letters writt with the King's own Hand, that his Majeſty would pay all the Money I paid *Fraſerdale*, and his Creditors, for the Eſtate of *Lovat*; and, laſt of all, the King was ſo good as to give ſuch a ſingular Mark of his Favour to me, and to my Family, that he created me Duke of *Fraſer*, &c. and ſent me that Patent by *William Drummond*; of which I have ane authentick Copy, ſigned and counter-ſigned by the King. I would be a Monſter of Ingratitude, if this did not attach me to his Majeſty more than ever. *Bochaldy*, not thinking it ſafe to bring the Patent to *Britain*, left it with his Uncle, old *Lochiel*, at *Bullen* in *France*, who is now come over with Lord *John Drummond* his Collonell; and I hope he has taken my Patent along with him. I beg you may aſſure him of my moſt affectionate Reſpects. He and I always lived like two Brothers, and loved one another moſt dearly. I am ſure he ſtill retains affectionate Sentiments for me, as I do for him. I hope he will deliver you my Patent, or a good Account of it. So, my dear Child, ſince that Aſſociation, I made it my Buſineſs, where-ever I was, to promote the King's Intereſt, and to gain and engage faithfull Subjects to ſerve him; ſo that I have done more againſt this Government than would hang fifty Lords, and forfeit fifty Eſtates. I have therefore nothing for it now, but to promote every Thing that is for my dear Prince's Honour and Intereſt: And nothing made me ever ſpeak as much as a fair Word to Lord *Loudoun*, or the Preſident, but to endeavour to ſave my Perſon from Priſon, ſince I was not able to go to the Feild, and fight for my King; but, ſince that is over, and that I have no Safety from Priſon, but by being in Hills and Woods, and inacceſſible Places, my greateſt Deſire under the Sun is, that you ſhould make a good and handſome Figure in the Prince's Army; which I wiſh, and am as anxious to ſee done as yourſelf, and would do as much for it as I would do to ſave my Life, or keep myſelf from Priſon, which would be ſoon Death for me: And, as *Loudoun* told me the Day before I made my Eſcape, That he had as much to ſay againſt me as would hang all the *Fraſers* of my Clan, I have no Reaſon to hedge or diſſemble with any Man of the Government: So you may aſſure yourſelf, that I will put all Irons in the Fire to ſend you South, all the Men thats engaged with you, and as many more as I can get.

You

You are quite miſtaken, my dear Child, when you think, that your comeing North would not engage them to go South. I am ſure it would do much more than my Orders; for the Tenth Man would not go this Day at my Deſire, that would go firſt when you began this Work: However, I will be working at them all I can.

I am makeing up, with all the Heaſt poſſible, a Habitation for myſelf in the Houſe of *Muily*; for that Country is the ſtrongeſt Hold in *Scotland*; for I will make 100 good Men defend it againſt all Forces that King *George* can have in *Scotland*. Beſides, I ordered a Boat to be made, to carry me out and in to the Iſle of *Muily*, when I pleaſe; ſo that it is morally impracticable to attack me in that Country, where I am reſolved to go, if poſſible, next Week, if my Accommodation be finiſhed. I keep *Farraline* till I go out of the Country; for if he went away juſt now, when the People of the *Aird* are going South, and *Simon*, with ſome Men, out of this Country, I would be hunted like a Fox by *Loudoun* up and down the Country, which perhaps would coſt me my Life by Cold and Fatigue; ſo that I am reſolved to ſtay at my dear *Gertuleg*'s Houſe, which I reckon my Home as much as if I was at *Caſtle-Douny*, till my Accommodation is made up at *Glinſtraſarer*.

I ſhall ſend you my fine Piſtols and Furniture, after I cauſe put them up in a new Portmantua; for it would be a Pity to ſpoil them; for they will be few ſo good in the Army. I wonder that you are ſo long without writeing to me; for you may be ſure that it's a Comfort for me to hear often from you; and when I am a Week without hearing, in the Situation that you are in now, you may beleive that I moſt be very uneaſie. Therefore, my dear *Simon*, for Chriſt's Sake, don't be a Week without writeing to me; and let me know how all Matters goes with you, and what Situation the Prince's Army is in, and write encourageing News, that may be ſhewn to your People.

I ſhall long much for the Return of this Expreſs; and I ever am, with great Affection,

My deareſt *Simon*,

January 14th, 1746. Your dutyfull Father.

P. S. I ſend you encloſed the Four Letters that you ſhould have carry'd with you from *Caſtle-Douny*, which, I hope, you will have Occaſion to deliver out of your own Hand. You may tell the P. when you deliver the Letter to him out of your own Hand, That your Father thought it the greateſt Misfortune of his Life, that his Sickneſs and Infirmitys deprived him of the Honour of attending his Royal Highneſs where-ever he went; and that his only Comfort now is, that he is capable to give his R. H. ſuch a Mark of his Zeal as to ſend you, and his Kindred, to venture your Lives for him; and that he himſelf is every Day expoſed to be made a Priſoner, and be ſent to *London*, to have his Head ſtruck off; ſince it can be eaſily proven againſt him, that he has done more againſt the Government than any one of his Rank in *Brittain*; and hopes, that ſince, by God's Help, he has made what may be called a miraculous Eſcape out of the Hands of his cruell Enemy, he will yet expoſe his Perſon, with his Sword in his Hand, to ſerve his R. H. and to do his Duty before his Eyes. You will make your Court and mine to Mr. *Murray*, as much as you can; he is a very pretty honeſt Fellow; and, I am very ſure, would be ready to ſerve us. And tell young *Locheil*, and *John Roy*, That I expect that they will make my Court, and yours, to his R. H. in every Shape; and that they both know the entire Truſt and Confidence I put in them.

I hope your Captain-Leivt. is come home by this Time; and it was very right to ſend him; for he is certainly one of the prettieſt Fellows of your Clan: Give my Service to him, and tell him, That I beg of him to remember all that I ſpoke to him about my Patent; and when you talk ſeriouſly with him about it, I entreat that you both put all the Irons in Fire you can, to make the Thing ſucceed. I aſk nothing of his Royal Highneſs, but to give his Countenance, and own publickly what his Father has done for me; which if he refuſe, I moſt keep to the Oath that I gave before the Duke of *Perth*, the Earl of *Traquair*, *Locheil*, and other Gentlemen, that firſt engaged in the preſent Project with me, that I would never draw my Sword till that was done. And I cannot ſuppoſe or imagin, that his R. H. will make the leaſt Scruple about it, ſince it is for his own Honour and Intereſt, as well as for that of my Family. I beg over and over again, my dear Child, to let me hear more often from you: I give you my affectionate Bleſſing: I pray God, and his Angells, that you may be preſerved in Life and Health till you come to my Age. Adieu, my deareſt *Simon!*

I need not tell you who the Bearer is; he is a very honeſt pretty Fellow; the natural Head of the *M'Taviſhes*. One of the Deſerters goes in Company with the Bearer, and the reſt of them will be up with you in a Day or two, in Company with *John Dunchea*'s Son, and *John, Thomas Gortmore*'s Son: They came all to me here, and were inſinuating Complaints againſt their Officers; but I would not hear them, as the ſettleing the Matters of your Regiment is your Province, not mine: But I promiſed them, that you would uſe them well; and that they would meet not only with all Manner of Juſtice, but with Clemency, as this was the firſt Fault: So I hope they won't fare the worſe that I recommend them to you. I beg you may diſpatch the Bearer, and ſend a Man with him here.

To the Honoble the Maſter of Lovat, *commanding a Regiment of* Fraſers, *at* Perth, *or* Stirling.

Mr. Attorney General. My Lords, It will now be neceſſary, that we ſhould give your Lordſhips an Account of the Son's Letter, and likewiſe of his Hand-writing; and therefore beg Leave to ask the Witneſs, Whether he was acquainted with the Hand-writing of the Maſter of *Lovat?*

R. Fraſer. Yes, I have ſeen him write frequently.

Mr. Att. Gen. Is that his Hand-writing, as you believe, or recollect?

R. Fraſ. Yes.

Mr. Att. Gen. Have you ſeen him write?——*R. Fraſ.* Yes.

Lord High Steward. Have you often ſeen him write?—*R. Fraſ.* Yes.

Sir *William Yonge.* My Lords, We ſhall now beg Leave to call a Witneſs to prove where this Letter was found.

Captain Robert Duff *called into Court.*

L. H. S. My Lord *Lovat*, Has your Lordſhip any Objection to Captain *Duff* being ſworn as a Witneſs?

Lord *Lovat.* No, none at all.

Captain Duff *ſworn.*

Sir *W. Yonge.* My Lords, We beg Leave to ask this Witneſs, Whether he was preſent on board the *Furnace*, when my Lord *Lovat*'s ſtrong Box was opened?

Captain *Duff.* Yes, I was preſent.

The Letter was produced to the Witneſs.

Sir *W. Yonge.* Look upon that Paper, and acquaint my Lords, if that Paper was taken out of my Lord *Lovat*'s Strong Box at that Time. Look it all over, and be poſitive, if you can.

Captain Duff *looks over the Letter.*

Captain *Duff.* I ſaw this Letter taken out of Lord *Lovat*'s Strong Box.

Sir *W. Yonge.* Was that Letter taken out in the Preſence of the Lord *Lovat?*——Captain *Duff.* Yes, it was.

Sir *W. Yonge.* Did my Lord *Lovat* ſay any thing about that Letter at that Time? Or did any body elſe ſay any thing about it?

Captain *Duff.* I ſpoke to my Lord *Lovat* then, and told him, That I believed that Letter was not deſigned to fall into my Hands.

Sir *W. Yonge.* Did Lord *Lovat* make any Anſwer to you?

Captain *Duff.* My Lord *Lovat* made no Anſwer that I can remember.

Sir *John Strange.* My Lords, One Witneſs is enough to prove this Fact; but *Campbell* has alſo told your Lordſhips, That he took this Letter out of the Box.

Then the Letter, No. IX. *was delivered in at the Table, and read by the Clerk, as follows:*

No. IX.

This Letter is directed, To the Right Hon^ble *Simon* Lord *Fraſer* of *Lovat.*

Stratherick.

My Dr. Papa,

I Received this Day the Pleaſure of your Lop's Letter of the 1ſt. I'm very glad you have no Complaints of your Health, notwithſtanding the Fatigue you have of late undergone in your Eſcape from *Inverneſs*, which gave every body here great Joy. The Reaſon of my not writing your Lop by the Expreſs I ſent laſt was, that I did not know but you might be on Terms with Lord *Loudon* and the Preſident, after makeing your Eſcape.

I'm as ſorry at my bad Succeſs with the Commanders here, as your Lop can be; but there is no Help for it: Nor were they altogether to blame, as the Prince's ſudden Return to *Scotland* made it dangerous for them to take any Step of Conſequence, without his particular Orders; and theſe they had in a very few Days after I came to *Perth*; and the Orders were, That they ſhould all march directly to *Sterling*. This, your Lop ſees, put it out of their Power to march Northward: But as I ſaw your Lop's Safety, and the King's Intereſt, required an Expedition to the North, I left no Stone unturned to bring it about: I therefore immediately upon hearing of the Prince's being at *Glaſgow*, diſpatched my Captain-Lieutenant (who was of great Uſe in urging this Matter to the People at *Perth*) to *Glaſgow*, to negotiate the Affair there. He is not as yet returned; but I make no doubt, how ſoon the Affair at *Sterling* is ended, but a proper Body of Troops .... ordered to clear the North, and ſooner the Art ....an cannot bring it about.

As to your Lop's Conduct in the mean time, if I might give an Advice, it would be, not to loſe on both Sides: I am far from meaning by this, that you ſhould come to *Perth*; ſo far from it, that provided your Lop could make Conditions for your own Perſon and Eſtate, with L^d *Loudon*, and the Preſident, I ſhould be content with a thin Regiment; but, in caſe they have neither Authority or Inclination to give this, I humbly think you ſhould immediately come to a Reſolution, and put it in Execution: For, if your Lop's Clan do not all immediately join the Prince, the Cauſe will ſoon be found out. I would not much care if your Lop's Perſon and Eſtate were preſerv'd by their Stay; but it will be hard, if it does not better your Condition with the Government, when it muſt evidently make it worſe with the Prince.—I'm ſorry for the Opinion your Lop has of the Two *Charles*'s: I realy think you wrong them; but, tho' they had all the Inclination in the World, your Lop knows, you always accuſd me of not being very ſubject to Advice. As to what Sr *Archd. Grant* writes of *Inveralachie*, I have all the Reaſon in the World to believe t is a very great Falſhood, and I'm ſurprized your Lop ſhould give any notice to it. As to my going to *Sterling*, if it was the People at *Perth* that were to command in that Expedition, your Lop ..... ry right, and I would be quite a Conver .... your Argument; but the Prince's poſitive Orders to us all, his comeing there himſelf to command us, and venture his Perſon with us, in my Opinion, quite alters the Caſe.——As to my going North, I know your Lop's Influence over your Clan too well, to think, that, where your Orders fail, my Preſence will have any Weight. I'm certain your Commands, tho' only intimate by your Officers, will do in a Day more than my Preſence wou'd in a Week; and, I'm perſuaded that your People will come up to a Man, if you order them; and, if you do not, that they will ſtay at home; ſo that their comeing, or not, entirely depends on your Lop. Beſides, my going North at this time ....u'd look a little odd, when the Prince is co .... *Scotland*, has ſent us his poſitive Orders, let us know, that he himſelf is to come and command us in Perſon, that I ſhould, at ſuch a critical Time, run home, would look ill; and the Pretext (as it would be called) of r .... ing Men, wou'd not ſcreen me from an Imputation your Lop, I'm ſure, would alwiſe wiſh me to ſhun. Theſe Reaſons, I dare ſay, convince your Lop, that my going North is not only unneceſſary, but very improper, at this time.

All your Lops Fr ... ds here join me in wiſhing, that your Lop may live

live for many Years to serve your King and Country. (*a*) .... great Affection,

Your Lop's
Dutifull . . . .

FRASER.

Then the Lord *Sandys* moved to adjourn to the Chamber of Parliament: And the Lord High Steward going back to his Chair, the House was adjourned accordingly: And then the Lords and others returned in the same Order as before.

The House being resumed in the Chamber of Parliament,

Ordered, That this House will proceed further in the Trial of *Simon* Lord *Lovat* on *Monday* next, in *Westminster-Hall*, at Eleven of the Clock in the Forenoon: And

A Message was sent to the House of Commons, by Mr. *Spicer* and Mr. *Edwards*, to acquaint them therewith.

Ordered, That the Lieutenant of the *Tower* of *London*, or his Deputy, do take back the said Lord *Lovat*, and bring him again to the Bar of this House in *Westminster-Hall*, on *Monday* next, at Eleven of the Clock in the Forenoon.

Monday *the 16th of* March, 1746.

The FIFTH DAY.

ABOUT Eleven of the Clock in the Forenoon the Lords and others came from the Chamber of Parliament, in the same Order as on *Monday* last, into *Westminster-Hall*; where the Commons, and their Managers, were in the Seats prepared for them respectively, as before: And the Lords took their Places in the Court, and the Lord High Steward in his Chair.

Lord High Steward. The House is resumed. Is it your Lordships Pleasure, that the Judges have Leave to be covered?

Lords. Ay, ay.

Then the Serjeant at Arms made Proclamation for Silence, and afterwards the following Proclamation:

Serjeant at Arms. Oyes, Oyes, Oyes! Lieutenant of the *Tower* of *London*, bring forth your Prisoner *Simon* Lord *Lovat* to the Bar, pursuant to the Order of the House of Lords to you directed.

The Deputy Governor of the *Tower* brought the Prisoner to the Bar, in the like Form as before; and then he kneeled down.

Lord High Steward. Your Lordship may rise.

The Lord High Steward asked Leave to go down to the Table: And went accordingly.

Lord High Steward. Gentlemen of the House of Commons, You may proceed in your Evidence.

Sir *W. Yonge.* My Lords, We beg Leave to call *Robert Fraser* again.

Robert Fraser *called into Court.*

Sir *W. Yonge.* My Lords, He has been already sworn; and [*Shewing the Witness a Letter*] look upon that Letter; and acquaint their Lordships of whose Hand-writing it is.

R. Fras. It is mine; it was wrote by me.

Sir *W. Yonge.* By whose Order did you write it?

R. Fras. By my Lord *Lovat*'s Order.

Sir *W. Yonge.* Was it dictated by my Lord *Lovat?*

R. Fras. Every Word of it.

Sir *W. Yonge.* Is it signed?

R. Fras. It is not signed.

Sir *W. Yonge.* Did you send that Letter to any body?

R. Fras. Yes; it was sent from *Gortuleg* to the Master of *Lovat*, at *Inverness*.

Sir *W. Yonge.* By whose Order did you send that Letter?

R. Fras. By my Lord *Lovat*'s Order.

Then the Letter, No. XI. *was delivered in, and read by the Clerk at the Table, as follows.*

No. XI.

My deareſt Child,

Gortulegg came home last night, with *Inveralachy*'s Brother, and the Two *Sandy's*, *Fairfeild*'s Son, and mine: And I am glad to know, that you are in perfect Health; which, you may be sure, I wish the Continuance of. I am sure, for all *Sandy*'s Reluctancy to come to this Country, he will be better pleased with it than any where else; for he has his Commerade, *Gortuleg*'s Son, to travell up and down with him; and I shall not desire him stay ane Hour in the House but when he pleases.

My Cousin Mr. *William Fraser* tells me, That the Prince sent Notice to Sir *Alexander Bennerman*, by Sir *John M'Donell*, that he would go some of these Days, and veiw my Country of the *Aird*, and fish Salmon upon my River of *Beauly*: I do not much covet that great Honour at this time, as my House is quite out of Order, and that I am not at home myself, nor you: However, if the Prince takes the Fancy to go, you must offer to go along with him, and offer him a Glass of Wine, and any cold Meat you can get there. I shall send *Sandy Doan* over immediately, if you think that the Prince is to go: So I have ordered the glyd Post to be here precisely this night.

Mr. *William Fraser* says, That Sir *Alexander Bennerman* will not give his Answer to Sir *John M'Donell*, till he return, about the Prince's going to *Beaufort*; and that cannot be before *Saturday* Morning. So I beg, my deareſt Child, you may consider serriously of this, not to let us be affronted; for, after Sir *Alexander*, and other Gentlemen, were entertain'd at your House, if the Prince should go, and meet with no Reception, it will be ane Affront, and a Stain upon you and me while we breath: So, my deareſt Child, don't neglect this; for it is truely of greater Consequence to our Honour than you can imagine, tho' in itself it's but a Maggot: But, I fancy, since *Cumberland* is comeing so near, that those Fancys will be out of his Head. However, I beg you may not neglect to acquaint me (if it was by ane Express) when you are rightly informed, that the Prince is going there. I have been extreamly bad these Four Days past with a Fever and a Cough; but, I thank God, I am better since Yesterday Afternoon. I shall be glad to see you here, if you think it proper, for as short or as long a Time as you please. All in this Family offer you their Compliments: And I ever am, more than I can express,

March 20th. My deareſt Child,
1746. Your most affect^te and dutifull Father.

P. S. The Prince's Reason for going to my House is, to see a Salmon kill'd with the Rod, which he never saw before; and if proposes that Fancy, he must not be disappointed. I long to hear from you, by the glyd Post, some time this Night. I beg, my dear Child, you may send me any News you have from the East, and from the North, and from the South.

Lord *Halifax.* My Lords, I should be sorry to ask any Questions that might interrupt the Managers of the House of Commons in their Proceedings. I should likewise be sorry, that any Questions should be asked by me that should, in any degree, preclude the noble Lord at the Bar from any Defence he should think proper to make: But, my Lords, as the Answer, in Consequence of my Question, will thoroughly establish, or else greatly diminish the Credit which your Lordships may give to this Evidence; therefore I think it my Duty to ask, Whether, after the Writing of this Letter, my Lord *Lovat* did himself read the Letter, and approve of it? And I look upon it, this would be a necessary Question to ask, in regard to all the other Letters which have been, or shall be, produced.

R. Fraser. I never did write a Letter from my Lord *Lovat*, but I first made a Scraul, or a Draught of it; and whenever it was transcribed upon clean Paper, it was always read to my Lord *Lovat*.

Lord High Steward. Repeat what you said just now aloud.

R. Fras. I first made a Scraul or Draught of all the Letters that I wrote for his Lordship, and afterwards transcribed them upon gilt Paper, and then read them every Word to his Lordship. Sometimes my Lord read them himself, and sometimes I read them to him.

L. H. S. Upon your Oath, when you read any Letter to my Lord *Lovat*, after it had been written over fair, did you read it truly as it was written, Word for Word?

R. Fras. Yes, Word for Word.

Sir *William Yonge* produced another Letter to the Witness, and asked,

Sir *W. Yonge.* Look upon that Letter, and tell my Lords of whose Hand-writing it is.

R. Fras. It was written by my own Hand.

Sir *W. Yonge.* My Lords, We have done with this Witness for the present.

Lord High Steward. My Lord *Lovat*, would you now ask this Witness any farther Questions?

Lord *Lovat.* No; I hope to convince these Gentlemen, that no Footman should give Credit to his Evidence.

[*Then the Witness withdrew.*

Mr. Attorney General. My Lords, We beg that Mr. *John Murray* of *Broughton*, may be called in again.

Mr. Murray *called into Court.*

Mr. Att. Gen. My Lords, he has been already sworn. We pray, my Lords, that this Witness may be shewn the Letter, No. III. that was read to your Lordships before, and that was proved to have been written by my Lord *Lovat* to Mr. *Murray*.

The Letter, No. III. *was shewn to the Witness.*

Mr. Attorney General. Do you remember ever to have seen that Letter before?

J. Murray. I am sorry to say, that I received this Letter at *Inverness*, in the End of *February*, or Beginning of *March*, by the Hands of Mr. *Fraser* of *Gortuleg*.

Mr. Att. Gen. Mr. *Murray* says, He is sorry to have received it; but I desire to ask him, if he did in Fact receive it?

J. Mur. I did receive it, at *Inverness*.

Mr. Att. Gen. My Lords, We pray, that the Letter written by the Pretender's Son to my Lord *Lovat*, may be shewn to Mr. *Murray*. The Use which we shall make of it, we shall explain to your Lordships by-and-bye.

The Letter, No. VI. *was accordingly shewn to Mr.* Murray.

Mr. Attorney Gen. Of whose Hand-writing is the Name at the Bottom of that Letter?

J. Murray. The whole Letter is written by the Pretender's Son himself.

Mr. Att. Gen. The whole Letter?

J. Mur. Yes.

Mr. Att. Gen. Both the Body and the Subscription?

J. Mur. Yes.

Mr. Att. Gen. Is it directed to any body?

J. Mur. For the Lord *Lovat*.

Mr. Att. Gen. Is that Direction also of the same Hand-writing?

J. Mur. The same Hand.

Mr. Att. Gen. Do you know if that Letter was ever sent?

J. Mur. This Letter was delivered, together with the other Letters, to *Hugh Fraser*, at *Glasgow*.

Mr. Att. Gen. By whom was it delivered to him?

J. Mur. By me, to the best of my Remembrance.

Mr. Att. Gen. Was it, or was it not, sent and delivered by the Direction of the Young Pretender?

J. Mur. It was by his Direction.

Mr. Att. Gen. What was it delivered to *Hugh Fraser* for?

J. Mur. It was delivered to him, to forward to my Lord *Lovat*.

Lord High Steward. Have you ever seen the Pretender's eldest Son write?

J. Mur. Very often.

(*a*) *The Letter was torn where these Blanks are.*

L. H. S. Upon that Knowledge you have of his Hand-writing, do you, upon your Oath, believe that Letter to be of his Hand-writing?

J. Murray. Yes; I was present in the Room when he wrote it.

Then the Witness was shewn another Letter by Sir William Yonge, No. VII.

Sir *William Yonge.* Who was that Letter wrote by?

J. Murray. This Letter was wrote by *Cameron* of *Lochiel.*

Sir *W. Yonge.* By whose Order was it wrote?

J. Murray. It was wrote by the Direction of the Young Pretender himself.

Sir *W. Yonge.* Was that Letter signed? and by whom?

J. Murray. The Letter was signed by *Cameron* of *Lochiel*, *Mac Pherson* of *Clunie*, and by myself.

Sir *W. Yonge.* To whom was that Letter directed? Or, is there any Direction or Address to it?

J. Murray. No; there is none.

Sir *W. Yonge.* To whom was it intended to be sent?

J. Murray. To my Lord *Lovat.*

Sir *W. Yonge.* Was it, or was it not, delivered to any body to be sent to my Lord?

J. Murray. Yes; it was delivered to *Hugh Fraser.*

Sir *W. Yonge.* At the same Time with the Letter from the Pretender's Son?

J. Murray. Yes; at the same Time, and in the same Packet.

Sir *J. Strange.* What is the Reason why it was not addressed?

J. Murray. The Reason why it was not addressed was, that *Hugh Fraser* asked, If there was a Patent granted by the Pretender to create my Lord *Lovat* a Duke. To which *Lochiel* answered, That, if there was any such Patent, it was in the Hands of his Father *John Cameron*, who was then at *Dunblain*; and therefore that Packet was not addressed, because it was not then known, whether there was such a Patent, or no: And it was left without any Direction, till *Hugh Fraser* should inquire, whether there was any Patent of Duke, or not.

Sir *J. Strange.* Are you acquainted with *Cameron* of *Lochiel*'s Hand-writing, or not?

J. Murray. Perfectly well.

Sir *J. Strange.* Was you present when that Letter was written, or no?

J. Murray. There was none present but *Cameron* of *Lochiel*, *Mac Pherson* of *Clunie*, and I.

Sir *J. Strange.* Did you see them sign that Letter?

J. Murray. Yes; I did.

Mr. Att. Gen. My Lords, I mentioned to your Lordships, That I would explain the Use intended to be made of these Two Letters. Your Lordships have observed, That, among the several Species of Treason charged by the Articles upon the Prisoner at the Bar, one of them is, His corresponding with the Pretender's Son, and likewise with Persons employed by him. My Lords, in order to shew a Correspondence between the Prisoner and the Pretender's Son, and the Persons named in that Letter, we have shewn in Evidence, That the Prisoner at the Bar had an Interview with *Cameron* of *Lochiel*, *Mac Pherson* of *Clunie*, and Mr. *Murray*; which is one Kind of Correspondence: And, my Lords, it is material to shew, that those Persons, with whom the noble Lord at the Bar thus corresponded, were Persons employed by the Pretender's Son, it being, by an Act of the 17th of his present Majesty, made expresly High-Treason to correspond with any Persons employed by the Pretender's Son. My Lords, the First Letter now mentioned is a Letter wrote by the Pretender's Son to my Lord *Lovat*; in which, your Lordships will find, he refers to another Letter, which is the Second Letter produced to your Lordships, as a Letter written by his Order, and containing his Sense. Your Lordships have heard from Mr. *Murray*, that the First Letter was written by the Pretender's Son, and that the Second was written by his Order; and that proves expresly, that the Persons by whom they were written, were Persons employed by the Pretender; and consequently, any Persons corresponding with them were guilty of High-Treason within the Meaning of the Act: We therefore pray, That the Letters may be read. We do not offer them as Letters received by my Lord *Lovat*, but as Letters written by Persons employed by the Pretender's Son. The First is proved to be written by the Pretender's Son himself, and the Second by his Direction.

Then the Letter, dated the Second of January 1746, *signed* Charles *P. R. was delivered in, and read by the Clerk at the Table; as was also the other Letter of the same Date, from* Cameron *of* Lochiel, Mac Pherson *of* Clunie, *and Mr.* Murray: *Which said Letters are as follow:*

No. VI.

Glascow, Jan.ye 2d, 1746.

I Have just now read a Letter written to you by *Lochiel*, *Cluny*, and *Murray*; and you may depend on its containing my true Sentiments, as much as if it was all writ with my own Hand. I shall only add to it, that you cannot do me either more Pleasure, or more Service, than by coming to join me out of hand; and then you need doubt as little as I do of our being perfectly satisfied with one another

Charles, P. R.

For the Lord Lovat.

No. VII.

My dear Lord,

YOU need not be surprised, from the Situation we have been in for some time past, that we have faln out of the Way of writeing; notwithstanding of which, our particular Love and Affection for your Lordship, and Family, as well as our sincere Attachment to our King and Countrey, seems to render itt absolutely necessary to give your Lordship the Trouble of this Letter.

We are no Strangers to the great Pain and Trouble your Lordship had taken to persuade *Mac Leod* and Sir *Alexander* to act that Part, which was so consistent with their Honour and Interest, and, if we may venture to say so, the very Being of their Familys; for your Lordship well knows, that, upon the falling or standing of the severall *Highland* Familys now engaged in this Affair, theirs equally depends: For, did we faill in our Attempt, and the Conqueror prove either so weak or wicked, as to endeavour the Extirpation of our Familys (which perhaps wou'd not prove so easy as they imagine), these Two Gentlemen wou'd probably be taken (upon some false Pretext) into the general Corps of Disaffected, with a View to make a clean Stage of the Whole: Or allowing, that, from the scandalous Activity of one, and shamefull Indolence of the other, they were spared; yet their distant and small Influence, in proportion to the Body of the Clans, wou'd necessarily render them insignificant to any Party, that might, from unforeseen Causes, afterwards appear.

Your Lordship's firm and steady Behaviour, in spite of all the underhand Dealings, as well as open Threats, of the Lord *Loudon*, and your Neighbour the President (who has rendered himself a Scandall to all *Scotsmen*, and a Nauseance to all Society), together with the early, noble and generous Appearance of the Master of *Lovat* in the Cause of his King and Countrey, has not only gain'd your Lordship the Admiration of this Island, but has settled the Affection and Friendship of the Prince for your Family upon a more firm and solide Foundation, than we dare venture to say, it was ever on with any of the Royall Family of *Steuart*, notwithstanding your Lordship's many heavy Sufferings in that Cause: And this my Lord we don't assure you from ourselves alone, but by his Royall Highness speciall and repeated Orders.

Now, my Lord, allow us to congratulate you upon your happy Escape from *Inverness*. Had it been any other, we could not possibly have given Credite to it, from the Circumstances of the Story; but knowing with what Address Lord *Lovat* has so often extricate himself from Difficulties, unsurmountable by the rest of Mankind, we cou'd not allow ourselves to form the leaste Doubt of the Truth of it, and are now only in Pain to think of the Fatigue you must have undergone, and the Danger your Health must have run, in so sudden a Change of your usuall Way of Liveing.

The glorious Retreat his Royall Highness made from within Fourscore Miles of *London*, upon Intelligence of the *French* being landed in *Scotland*, haveing ane Enemy within 20 Miles in Front, and Mr. *Wade* within 3 Days March of *Lancaster* in his Rear, plainly shows what a great and enterprising Mind is able to perform. The Unactivity of the Enemy in not harrassing the Royall Army, when so much in their Power, with the feeble and weak Attack they made upon our Rear near to *Penrith*, where they were most severely handled, makes it evident how easy a Game we wou'd have, did *Scotsmen* act with that Unanimity and Vigour, that made their Ancestors so famous over all *Europe*. From the present Situation of the Prince's Army on this Syde of *Forth*, who are all in the highest Spirits, the Numbers in the North already in Arms, the Victory Lord *Louis Gordon* has obtain'd over *Mac Leod* and his Adherents, the landing of a Body of *French* Troops, with a fine Train of Artillery, the Kings of *France* and *Spain* declareing the Prince their Ally, and taking him under their speciall Protection, the *French* Ambassador haveing taken on his publick Character; and, in fine, ane absolute Promise from the Court of *France* of a Descent of 15,000 Men in *England*, as by Letters received Eight-and-Forty Hours agoe from his Royall Highness the Duke of *Albany* and *York*, and from Cardinal *Tencin*, makes itt plain, that it now depends on us alone to restore the Royall Family to the Throne of their Ancestors, the Rights and Liberties of the Subject, and *Scotland* to that Honour and Independency your Lordship has so long and ardently wish'd for; which last Article we are absolutely sure of, as *Scotland*, in the worst of Events, must be ours.

And now, my Lord, the only proper Means that appears to us, in common with all the Prince's Wellwishers, to bring this to the wished-for Issue, is your Lordship's openly appearing in Arms, and joining the Royall Standard; in which Case, we are certain, that there is not a Man beyond the *Forth*, however timorous or cautious (except some few who have already destined themselves to Perdition), but will appear with the greatest Alacrity and Chearfullness. But, not to take up too much of your Lordship's Time, what his Royall Highness above all Things wishes and desires is, to have your Lordship with him to take upon you the Command of the Army; for tho' the Prince knows, that your Lordship's Age makes it impossible for you to undergo the Drudgery Part of a Generall, yett he is sensible, that your Advice and Council will be of greater Value, than the Addition of several Thousand Men. Tho' your Lordship has your own Equipage, yett we are apt to believe, the Prince's Coach and Six (of which he himself makes no Use) will be as convenient a Voyture for your Lordship; and the *French* Ambassador, with Lord *Pitsligo*, who has been in itt all along, won't prove disagreeable Company.

In short, it is impossible for us to give the hundred Part of the Reasons, that makes us so sensible of the absolute Necessity of haveing your Lordship about the Prince's Person, which you will be fully satisfy'd of at Meeting.

This Moment *Hugh Fraser* is come here, and has given the Prince a Detail of your Lordship's Situation, and that of the Country, with the Proposall your Lordship sent to the Army at *Perth*; of which he approves exceedingly, and will To-morrow send Orders, by Express, to Lord *John Drummond* to meett him att *Bannockburn*, *Saturday* first, there to concert in what Shape it shall be putt in Execution, and to move 4 or 6 Piece of Cannon towards *Blair-Castle* without Delay: But of this your Lordship is most earnestly entreated not to mention one Word to any body, leaste the makeing it publick should procure the Escape of some Folks, who may otherwise be catch'd napping; and your Lordship is begg'd to cutt off all Intelligence from that Quarter.

We shall now only beg, that your Lordship give no Ear to any of the Storys spread in the North, as the Gazettes have not contained one Word of Truth in relation to us since we left *Edin.*; and do us the Justice to believe, that we are, with most sincere Regard, Attachment, and Esteem, wishing you many happy and prosperous new Years,

My dear Lord,

Glasgow, Janr. 2d, 1746. Your Lordship's most obedient, most faithfull, and most sincerely affectionate humble Serva...

The Signature of this Letter was torn off.

Mr. Attorney General.

Mr. Atterney General. My Lords, We have done with Mr. *Murray.*

Lord High Steward. My Lord *Lovat*, Would you aſk any Queſtions of Mr. *Murray?*

Lord *Lovat*, My Lords, I did aſk your Lordſhips before, if I might have Liberty to croſs-examine the Witneſſes brought againſt me; and your Lordſhip told me, I might have an Opportunity of doing it, when I came to make my Defence.

L. H. S. Your Lordſhip miſunderſtood me: I did not ſay, that you would have an Opportunity of croſs-examining any of the Witneſſes produced againſt you, when you came to make your Defence; but that you was at Liberty, when the Witneſſes were produced, to aſk them ſuch Queſtions as you ſhould think proper; and that, when you came to your Defence, you might make ſuch Obſervations upon their Evidence as you ſhould think fit: But if your Lordſhip has a Mind to call any of thoſe Witneſſes in your Defence, which have been produced againſt you, I do not doubt but the Managers of the Houſe of Commons will take care that they ſhall attend.

Sir *John Strange.* My Lords, if the Noble Lord at the Bar will give notice over Night of any of our Witneſſes, that he thinks neceſſary to call in his Defence, we will take care that they ſhall be in the Way.

L. H. S. My Lord *Lovat*, Would you now aſk any Queſtion of Mr. *Murray?*

Lord *Lovat.* My Lords, I ſhall ſay nothing till I come to make my Defence, and then I ſhall hope to have an Opportunity to ſay what is juſt againſt theſe Witneſſes.

Sir *William Yonge.* My Lords, We now beg Leave to call *Robert Fraſer* again.

Robert Fraſer *called into Court again.*

Sir *W. Yonge* [*ſhewing the Witneſs a Letter*, No. XXI.] aſked, Look upon that Letter, and tell my Lords of whoſe Hand-writing it is?

R. Fraſer. It is mine.

Sir *W. Yonge.* By whoſe Order did you write it?

R. Fraſ. By my Lord *Lovat*'s.

Sir *W. Yonge.* Did he dictate it to you?

R. Fraſ. Every Word.

Sir *W. Yonge.* Who is the Letter ſigned by?

R. Fraſ. By my Lord *Lovat.*

Sir *W. Yonge.* Did you ſee him ſign it?

R. Fraſ. Yes.

Sir *W. Yonge.* To whom did he order it to be ſent?

R. Fraſ. To the Duke of *Cumberland.*

L. H. S. Was that Letter read over by my Lord *Lovat*, or was it read over by you to him, before it was ſent?

R. Fraſ. It was read over both by my Lord *Lovat*, and by me to him.

Then a Letter, ſigned Lovat, *without any Date, was delivered in, and read by the Clerk at the Table, and is as follows:*

No. XXI.

SIR,

THIS Letter is moſt humbly addreſs'd to your Royal Highneſs, by the very unfortunate *Simon* Lord *Fraſer* of *Lovat.*

I durſt not preſume to ſolicit or petition your Royal Highneſs for any Favour, if it was not very well known to the beſt People in this Country, attached to the Government, ſuch as Lord Preſident, *&c.* and by thoſe that frequented the Court at that Time, that I did more eſſentiall Service to your Royal Family, in ſuppreſſing the great Rebellion in the Year 1715, with the Hazard of my Life, and the Loſs of my only Brother, than any of my own Rank in *Scotland:* For which I had three Letters of Thanks from my Royal Maſter, by the Hands of the Earl of *Stanhope*, then Secretary of State; in which his Majeſty ſtrongly promiſes to give me ſuch Marks of his Favour, as would oblige all the Country to be faithfull to him thereafter. Indeed the gracious King was as good as his Word to me; for as ſoon as I arrived at Court, and was introduced to the King by the late Duke of *Argyll*, I became, by Degrees, to be as great a Favourite as was about Court, of a *Scotſman:* And I often carried your Royal Highneſs in my Arms, in the Parks of *Kenſingtown* and *Hamptown-Court*, to hold you up to your Royal Grandfather, that he might embrace you; for he was then very fond of you, and of the young Princeſſes.

Now, Sir, all I have to ſay in my preſent Circumſtances is, That if your Royal Highneſs will be pleaſed to extend your Goodneſs towards me, in the generous and compaſſionate Manner, in my preſent deplorable Situation, if I have the Honour to kiſs your Royal Highneſs Hands, I would eaſily demonſtrate to you, that I can do more Service to the King and Government, than the Deſtroying a hundred ſuch old and very infirm Men, like me, paſt Seventy (without the leaſt Uſe of my Legs or Knees) can be of Advantage in any Shape to the Government.

Your Royal Father, our preſent Sovereigne, was very kind to me. In the Year 1715, I preſented on my Knee to his Majeſtie a Petn, in favours of the Laird of *M'Intoſh*, to obtain a *Noli Proſequi* for him, which he moſt graciouſly granted, and he gave it to *Charles Cathcart*, then Groom of his Bed-Chamber, and ordered him to deliver it into my Hands, that I might give it to the Laird of *M'Intoſh.* This was but one Teſtimony of ſeverall Marks of Goodneſs his Majeſty was pleaſed to beſtow on me while the King was at *Hanover:* So I hope I ſhall feell, that the ſame compaſſionate Blood runs in your Royal Highneſs Veins.

Major-General *Campbell* told me, That he had the Honour to acquaint your Royal Highneſs, that he was ſending me to *Fort William*; and that he begg'd of your Royal Highneſs to order a Litter to be made for me, to carry me to *Fort Auguſtus*, as I am in ſuch a Condition, that I am not able to ſtand, walk, or ride. I am, with the utmoſt Submiſſion, and moſt profound Reſpect,

SIR,

Your Royal Highneſs moſt obedient,
And moſt faithfull humble Servant,
LOVAT.

Sir *William Yonge.* My Lords, We have done with this Witneſs.

Lord High Steward. My Lord *Lovat*, Would your Lordſhip aſk him any Queſtions?

Lord *Lovat.* No.

[*Then the Witneſs, by the Direction of the* Lord High Steward, *withdrew.*]

L. H. S. Gentlemen of the Houſe of Commons, have you any other Witneſſes to produce?

Sir *W. Yonge.* No, my Lords, we have no more Witneſſes to produce.

Sir JOHN STRANGE.

My Lords,

THE Commons have now gone through all the Evidence they propoſe to lay before your Lordſhips, in Support of their Impeachment; and as that has unavoidably run this Cauſe into a great Length of Examination, they think it may not be improper to have the Whole that relates to the impeached Lord collected together, and preſented to your Lordſhips View, in as conciſe a Manner as the great Variety of Circumſtances that have attended this Caſe, will admit of.

This Province is aſſigned to me.

And we chooſe to enter upon it now, at the Cloſe of our Evidence, as the moſt fair and candid Way of Proceeding, with regard to the impeached Lord; For—ſhould the Commons reſerve the ſumming up, and obſerving upon their Evidence, to make a Part of the Reply (as they might do), the Noble Lord at the Bar (his Defence being then cloſed) might perhaps be under ſome Diſadvantage; whereas, in this Way of Proceeding, if any Miſtake ſhall be committed in Stating of the Evidence, or any Obſervations made upon it that the Caſe will not bear, an Opportunity is hereby given to the Party accuſed, to ſet it right.

My Lords, The Articles that have been read to your Lordſhips, contain Four diſtinct Charges of High-Treaſon.

The Firſt is, "The Compaſſing and Imagining the Death of the "King."

The Second is, "The Levying War againſt the King in his Realm."

The Third is, "Correſponding with the Pretender to his Majeſty's "Crown."

And the Fourth is, "Correſponding with the Pretender's Son, and "others employed by him, knowing them to be ſo employed."

The Two firſt of theſe are declared to be Treaſon, by the expreſs Words of the Statute of 25th *Edward* III.

The Third is made Treaſon, by the 13th & 14th *William* III. *cap.* 3. the Words of which extend to the correſponding with the Pretender, by Letters, Meſſages, or otherwiſe.

The Fourth Species of Treaſon is againſt the Statute of 17th *George* II. *cap.* 39. which makes it Treaſon to correſpond with the Pretender's Son, or others employed by him, knowing them to be ſo employed.

As I have no Imagination that any Doubt can ariſe, whether, when the Matters of Fact are proved to your Lordſhips Satisfaction, the Caſe will not come within the Proviſions of theſe Laws, I ſhall forbear entering into any Argument upon them; and ſhall only ſay, That, although the Articles have charged the Firſt Sort of Treaſon, in the preciſe Words of the Statute of 25 *E.* III. which are, "Compaſſing and Imagining the "Death of the King," yet the Law does not require Evidence of actually accompliſhing ſo horrid a Crime; for that ſacred Life is ſo guarded, that the bare going about, or contriving ſo flagitious a Scheme, is ſufficient to conſtitute this great Offence, provided thoſe Purpoſes are manifeſted by Overt Acts.

And that, although Levying of War is a diſtinct Branch of High-Treaſon, yet it is alſo an Overt Act of the former Species, "That of Com-"paſſing and Imagining the Death of the King."

My Lords, in ſtating this Evidence to your Lordſhips, I can no way do it ſo intelligibly, as by following the Example of the learned Manager who opened the Nature of the Caſe, and divided it into Three diſtinct Periods of Time.

The Firſt Period contains the Behaviour of the impeached Lord, before the Landing of the Pretender's Son in *Scotland*, in the Month of *July* 1745.

The Second Period includes the Facts proved to have been committed by the Noble Lord at the Bar, from the Time of the Pretender's Son's Landing, to the Battle of *Culloden.*

And the Third Period relates to what happened afterwards, to the Time of my Lord *Lovat*'s being ſent up, and committed to the *Tower.*

As to the Firſt Period of Time, your Lordſhips are pleaſed to obſerve, that our Evidence goes ſo far back as the Year 1719.

And, my Lords, we choſe to take it up there, becauſe, in the Noble Lord's Anſwer, he values himſelf much upon "Having given, in the "Year 1715, the ſtrongeſt Proofs of his Zeal for, and Attachment to his "late Majeſty, and the Succeſſion of the Crown in his illuſtrious Fami-"ly, againſt ſuch as had undertaken the Deſtruction of both: And now "laments his Misfortune, to have his Fidelity queſtioned, at the End of "his Days, when near worn out with Age and Infirmities; and to be "charged with intending the Subverſion of a Government he had, in the "Strength and Vigour of his Age, exerted his utmoſt Power and Ad-"dreſs to ſupport."

My Lords, I have faithfully rehearſed the Words of this Anſwer, which I think made it neceſſary for the Commons to ſhew, That the Noble Lord's engaging in the late Rebellion, was not the Effect of Dotage, or through the Conſtraint, or by the Impoſition of others; but proceeded from a long and deep-rooted Principle of Diſaffection to the Proteſtant Succeſſion, and of Attachment to the Cauſe of the Pretender.

To begin then, at the Year 1719:

Mr. *Chevis*, a near Neighbour of the impeached Lord, has ſworn, That the Noble Lord told him, that, in the Year 1719, when an Invaſion was attempted by *Spain* upon *Scotland*, and Lord *Seaforth* was raiſing his Men in favour of the Pretender, he (Lord *Lovat*) wrote a Letter to Lord *Seaforth*, to acquaint him, That Lord *Lovat* would join him with his Clan: That this Letter was delivered to Lord *Seaforth*, after it had been firſt

ſhewn

ſhewn to one *Chiſholm* of *Knockford*. This *Chiſholm*, it appears, informed the late Duke of *Athol* of the Contents of the Letter; and his Grace ſent up Notice of it to the Government. This came to my Lord *Lovat*'s Ears, who was greatly alarmed at it; but your Lordſhips find he had ſoon the Dexterity to get up his Letter, upon Terms he had an Opportunity of making with Lady *Seaforth*: After which he ſhewed it in Confidence to a truſty Friend of his, who declared it to be a treaſonable Letter; and as ſuch, it was thrown into the Fire.

My Lords, I cannot help obſerving to your Lordſhips, that it appears from this Tranſaction, that the noble Lord was then contriving to commit Treaſon, and yet ſcreen himſelf from Puniſhment; for he declared, he had not ſigned the Letter; and therefore, if it had been forthcoming, it could not be fixed upon him.

In the Year 1737, your Lordſhips find him ſending a Meſſage, by *Roy Stuart*, to the Pretender at *Rome*, to aſſure him of his Fidelity, and to haſten his Patent that had been promiſed him for a Dukedom.

It has likewiſe appeared in Evidence, That he afterwards ſent another Meſſage of the ſame Nature by *Drummond*.

In the Year 1739, he appears to have propoſed an Invaſion to *Drummond* of *Bochaldie*, in favour of the Pretender, his lawful Sovereign (as he called him); and in whoſe Cauſe he then declared he was determined to live and die.—An Expreſſion your Lordſhips cannot but have obſerved occurs alſo in his Letters.

And the ſame Propoſal Mr. *Chevis* has proved was afterwards made by my Lord *Lovat* to *Lochiel* and *Cluny M'Pherſon*.

My Lords, I paſs over the poetical Performance between *Roy Stuart* and the Noble Lord, and go on to the Year 1740. About this time it was he declared to Mr. *Chevis*, that he had ſigned and ſealed an Aſſociation of the *Highland* Chiefs, in favour of the Pretender; and which Lord *Lovat* declared was ſent over to Cardinal *Fleury*.

My Lords, This material Part of our Evidence is ſo far confirmed, that Mr. *Murray* (the Pretender's Son's Secretary) has proved his hearing of it at *Paris*; and that it was alſo mentioned to him, at a private Audience he had of the Pretender's eldeſt Son, in *France*.

He has likewiſe proved what paſſed between M. *Amelot* and him, upon the Foot of ſuch an Aſſociation; and the Aſſurances given by that Court, of Encouragement and Support.

But, above all, your Lordſhips have heard it confirmed by a Paſſage, in a Letter of the noble Lord's to his Son, that was read at the Table; wherein he tells him, "That, above Seven years ago, he was one of "thoſe that entered into a formal Aſſociation, to venture their Lives and "Fortunes to reſtore the Pretender (by him called King) and his Off-"ſpring; which Engagement (he ſays) was ſigned with their Hands "and Seals, and ſent to *France* to Cardinal *de Fleury*, then Firſt Miniſter "at that Court; and was by him ſhewn to the King his Maſter, who "promiſed them his Aſſiſtance, and Succours, to reſtore their King.

"Since which (ſays he) I have made it my Buſineſs to promote the "King's Intereſt, and to gain and engage faithful Subjects to ſerve "him."

And, in his Letter to the Pretender's Son, he appeals to all who have come into that Country, who (he ſays) will do him the Juſtice to declare, "That he has always been the moſt zealous and moſt active "Partizan they had in the North of *Scotland*; and in that, he owns, "he did but his Duty." This he repeats, in his Letter to *Lochiel*; and boaſts himſelf to be "the Perſon who kept Life and Spirits in the Pretender's Affairs, more than any Man in the North."

In the Year 1742, your Lordſhips find him declaring he had got a Commiſſion to be Lieutenant-General of the Highlands, and a Patent of Duke from the Pretender; and which he ſaid he had merited by his Services to that Family.

This Declaration is proved by Mr. *Chevis*. The Talk of it, and ſeeing a Copy in a Deſk, ſuppoſed to be ſigned by the Pretender, is proved by *Robert Fraſer*. And *Hugh Fraſer* ſays, my Lord *Lovat* ſhewed it him.

Mr. *Murray* told your Lordſhips, he found my Lord *Lovat* expected the original Patent had been brought over; but Mr. *Murray* not being certain, that ſuch a Patent had ever paſſed, he ſent his Letters to Lord *Lovat*, without an Addreſs, but incloſed in a Packet, with other Papers: And this, he has told your Lordſhips To-day, was done for fear of committing a Miſtake, either by directing them to his Grace, or only to Lord *Lovat*.

This Affair of the Commiſſion and Patent is alſo confirmed by a Paſſage in the Letter to his Son, that I appealed to before; wherein he tells him, "That, in Proof of the Senſe his own King had of his Loyalty "and Zeal, he had ſent him ſuch a Commiſſion and Patent, beſides a Num-"ber of Letters under his own Hand; the Original of which Patent, he "tells his Son, was in *Drummond*'s Hands; but he, Lord *Lovat*, had an "authentick Copy of it, ſigned and counterſigned by his King."

"Theſe Favours (he adds) had more than ever attached him to "that Intereſt; and he ſhould be a Monſter of Ingratitude if they had "not." And, in the Poſtſcript, he charges his Son to inquire for the Patent; adding, That "he aſked nothing of his Royal Highneſs (as he "calls the Pretender's Son) but to give his Countenance, and own pub-"lickly what his Father had done for him."

Your Lordſhips have likewiſe heard it proved, that, during all this time, the whole Turn of his Converſation was in favour of the Pretender.

He declared he had made an Alliance, by the Marriage of his Daughter, which added to his Strength, and would enable him to humble his Neighbours.

The Healths drank at his Table have been mentioned by the Witneſſes, particularly that execrable one propoſed by himſelf, of Confuſion to the White Horſe, and all their Generation.

The next Thing your Lordſhips heard of, were his Encomiums on the Pretender, whoſe Countenance he ſaid proclaimed him, to all Beholders, the rightful King.

There are likewiſe in Proof, his Exultations on the Taking of *Oſtend*, as laying open all the Coaſt of *Flanders*, and expoſing us to an Invaſion in the Compaſs of one Night, from the *French*, who, he declared, would carry all before them. And this we rely upon as a Circumſtance of great Malignity, when it is conſidered what Numbers of our Troops were then abroad, in the Cauſe of Liberty and *Europe*, and what a Situation our Power at home was in at that time.

Your Lordſhips have likewiſe heard his Declarations about the Reformation and the Revolution, and of the noble Lord's Scheme to get rid of both; which was to bring in the Pretender.

And as to Religion, his Declaration to Mr. *Chevis* was, That he believed there was no true Religion in the World but one; and that was the Church of *Rome*.

A very extraordinary Declaration this, to be made by one, who, by having had an Independent Company in the King's Service, and upon other Accounts, muſt have ſeemed (at leaſt) to have been of a different Opinion.

Thus circumſtanced, my Lords, and this Temper of Mind, was Lord *Lovat* in, at the Breaking out of the Rebellion, in the Summer of 1745:

Which is the Second Period of our Evidence.

And this Part of our Evidence, your Lordſhips will be pleaſed to remember, began with the early Notice it appeared my Lord *Lovat* had of the Pretender's Son's being landed in *Scotland*.

Upon the News of this, my Lords, he prepares immediately to ſupport him.

His Son, a Youth of about Nineteen Years old, either newly come home, or ſent for from the Univerſity on purpoſe, is appointed to head the Clan.

The Deſign of ſending him to travel is laid aſide.

A Propoſal made by thoſe who were willing to have kept the Son out of Rebellion, is (upon Conſideration) rejected by Lord *Lovat*, who, at the ſame time, declared, that his firſt Intention was to have headed the Clan himſelf; but that now his Son ſhould go, ſince others had diſappointed him, who he expected would have joined Forces with him.

And, in Conſequence of this, Orders are proved to have been given by my Lord *Lovat* for all Military Preparations.

My Lords, this Propoſal for the Son's travelling is proved by *Hugh Fraſer*, to have been made to, and rejected by the noble Lord; who alſo, in his Letter to *Murray*, makes uſe of theſe Words: "I have ſent (ſays "he) my eldeſt Son, the Hopes of my Family, and the Darling of my "Life, a Youth about Nineteen Years old, who was juſt going abroad "for his Studies and Education; I have ſent him (ſays he), inſtead of "this, to venture the laſt Drop of his Blood in the glorious Prince's "Service."

Hugh Fraſer has alſo proved his being charged with a verbal Meſſage to the Pretender's Son to the ſame Effect; and his being ſent back by *Murray*, with a Letter to Lord *Lovat*.

He has alſo proved, That, when he delivered the Letter, and told my Lord *Lovat* the true State of the Pretender's Affairs, which, he ſaid, were not very inviting, after ſo many regular Forces were come from *Flanders*, which the Rebels would not be able to encounter, my Lord's Declaration upon that Occaſion was, that "he had gone too far to go back;" and, for fear this News ſhould diſhearten his Son, he ordered *Fraſer* not to ſay a Word of it to him.

Before or about this time likewiſe, it was, that he received the Pretender's Manifeſto.

He orders his Son to read it aloud to the Company.

And when Mr. *Chevis* (who never went near him afterwards) was offering ſome Objection to it, my Lord *Lovat* told him, That he talked Treaſon; or it was Treaſon in him to object to the reading the Manifeſto.

Soon after this, your Lordſhips may recollect, it has appeared, that great Preparations were made for ſupporting the Cauſe of the Pretender.

Arms,—Colours,—Tents,—Powder, and Ball, are prepared, and laid in by Lord *Lovat*'s Order.

His Arms and Creſt are painted, ſuperviſed, and approved by himſelf.

So eager is he, that his Son is upbraided for his Backwardneſs, and the Retainers of the Family are ſpoke to, to haſten him.

He thunders out his Anathemas againſt a Gentleman, who, he thinks, had diſappointed him, which if he had not done, he ſays, in his Letter to *Lochiel*, "he had ſo managed that Part of the North, that above "6000 Men had marched South to the Prince's Aſſiſtance; which he "(Lord *Lovat*) thought would much encourage his (the Pretender's "Son's) own loyal Party, and fright the *Engliſh* to his Obedience."

At this time likewiſe it was, that he wrote thoſe Letters to the Pretender's Son, and his Secretary, which were ſo audibly and diſtinctly read to your Lordſhips, that they ſtand in no need of a Repetition to make their Impreſſion.

In the next place, your Lordſhips find him magnifying the Skirmiſh at *Preſton-Pans* into a Victory not to be paralleled in Hiſtory; which, I may venture to ſay, was certainly calculated by my Lord for the Encouragement of his People.

When the late Earl of *Cromertie*'s Men marched South, and paſſed by *Caſtle-Downey*, your Lordſhips obſerve him repining that they ſhould be firſt ready, and what a Shame it was they ſhould paſs by his Noſe.

He entertains the late Earl of *Cromertie*, and his Officers, then in Arms for the Pretender, and declaring, in my Lord's Hearing, they were going to aſſiſt the Pretender's Son.

And this (as it came out upon a noble Duke's Queſtion) was in a friendly, hoſpitable Manner, and not as a Perſon quartered on by Compulſion.

All this while his Men are gathering together.

There are Two Rendezvouſes of the Clan, and 700 *Fraſers* drawn up within half a Mile of his Houſe.

He offers (as it has been proved) Commiſſions to ſeveral Perſons;

Declares his Son was to be their Colonel:

Threats and Promiſes are made uſe of by him; and the Firy Croſs is carried about:

The diſtinguiſhing Mark of the Rebels, the White Cockade, is worn by the Officers in his Preſence:

He drinks to their Succeſs; and, in his Letter to the Pretender's Son, "begs of GOD to preſerve him, and give him Succeſs and Glory in all "his Enterprizes:"

He adviſes thoſe he is ſending forth not to let the Pretender's Son hazard his Perſon, by going into Engagements:

He propheſies Victory and Succeſs to him.

Let us all be thankful, that his Prophecies were not fulfilled!

All this while your Lordſhips find him balancing between Hopes and Fears:

He gives Orders, and contradicts them, either as our own Forces arrive, or there comes Aſſiſtance to the Rebels from *France*;

Inſomuch that his Son is at laſt forced, with Tears in his Eyes, to beg, "He may no longer be made a Fool or a Tool of;" but may then have ſuch Orders as the Father will ſtand by.

And then it was he directed the Clan to march; and ſaid, "Thoſe "were the Orders he would ſtand to."

And, to prove they marched by his Direction, I appeal to his Letter to the Pretender's Son; wherein he ſays, "I have ſent with my Son all "the principal Gentlemen, and Heads of Families of my Clan, with "800 of my common People." And the Words of his Letter to Mr. *Murray* are, "I have ſent my Son." He alſo tells his Son, in the Letter that has been read, that "he will put all Irons in the Fire to ſend "him Men: I will be working at them (ſays he) all I can."

His Friends and Dependents, however, were in doubt what to make of him, and whether it would be ſafe for them to exert themſelves, or not, ſuſpecting (and not without Cauſe), that he was keeping open a Back-door for himſelf; and therefore it was they alſo thought it neceſſary to call upon him to diſſemble no longer, but to take off the Maſk; which he performed before them, by pulling off his Hat, and laying it at his Feet, telling them "There it is then."

And, in the Letter addreſſed to him from the Pretender's Son, your Lordſhips muſt have obſerved a Jealouſy he had of him; for he is there preſſed to come and join him in Perſon; "and then (ſays the Letter-"Writer) you need doubt as little as I do of our being perfectly ſatis-"fied with one another."

In the Courſe of our Evidence, my Lords, it has appeared, That he was taken Priſoner by Lord *Loudon*, as fomenting the Rebellion; and his eſcaping afterwards has been proved.

He correſponds with his Son and *Lochiel*, when in Arms for, and employed by, the Pretender, knowing they were ſo employed; which is one of the Overt Acts of Treaſon laid in the Impeachment.

And what is the Game he is all the while playing againſt his Son? From firſt to laſt it is an Endeavour to avoid being fixed himſelf, and to throw it all upon his Son; that Son, whom he had, in a manner, forced into the Rebellion.

This appears by *Robert Fraſer*'s Evidence relating to a Draught of a Letter to the Lord Preſident, charging the young Man with Obſtinacy, and forcing out the Clan againſt the Father's Inclination, or Power to controul him: Which when the Maſter had diſcovered, by accidentally going into the Secretary's Room, and inſiſting to ſee the Draught, which the Father had ordered he ſhould not, he declares (in great Reſentment of ſuch Uſage from his Father,) "That he would go himſelf to the Pre-"ſident, and put the Saddle upon the right Horſe. Good God! (ſays "the Maſter) how can he uſe me ſo!"

And the Diſpoſition of the Son is further proved by the Circumſtance of pulling the white Cockade out of his Hat, in the Father's Preſence, and throwing it into the Fire.

And this likewiſe was confirmed by the Evidence of *Hugh Fraſer*, who has told your Lordſhips, That, both from the publick and private Diſcourſe and Behaviour of the Maſter, he is ſatisfied he was better diſpoſed, than to have gone, of his own Accord, into the Rebellion.

To this I may add what fell from *Chevis* on his Croſs-Examination; who, when he was aſked by the noble Lord about a Plot to hang the Old One, and ſave the Son, declared to your Lordſhips, he never heard of any other than directly the Reverſe.

A Behaviour this from a Father to a Son, which I the leſs wonder at in the noble Lord, when I conſider he was at the ſame time forgetting that natural Allegiance, which he owed to the FATHER OF HIS PEOPLE.

There is one Circumſtance more upon this Head, which is, that, when he began to find his Majeſty's Forces were likely to be an Overmatch for the Rebels, he privately ſent out *Hugh Fraſer* to find what Terms he could get from Lord *Loudon* and the Preſident; and what might probably be the Conſequence to himſelf, if his Clan continued in Arms.

And this, my Lords, brings me to the glorious Action at *Culloden*;

A Battle which, the noble Lord declared, was raſhly entered upon;

Contrary to his Opinion; which was, That the Rebels ſhould have retired to the Mountains, where, he thought, the Duke's Horſe could not follow them, and where they might eaſily have ſubſiſted themſelves till they had received a Reinforcement of Troops and Money.

Upon this Occaſion, he pointed out the Diſtreſs ſuch a Conduct muſt have brought upon the King's Troops, and upon that great Commander, who, under the wiſe Precautions of his Majeſty, and by the good Providence of Almighty GOD, has proved to be the Deliverer of his Country.

Surely, my Lords, there is no Need for me to dwell any longer on that Period of Time, which includes the Rebellion.

The Third and laſt Period is what happened afterwards:

And this, my Lords, conſiſts of a great Number of Particulars, which have been proved at your Lordſhips Bar.

The Firſt thing your Lordſhips have heard of is, his perſonal Conference with the Pretender's Son on the Night of the Battle of *Culloden*.

The Excuſes made by the noble Lord to that Perſon, for not coming himſelf to join him, on account of his Age and Infirmities, have appeared in Evidence, and are to the ſame Effect with thoſe which have been read out of his Letters.

They are proved to have been, to outward Appearance, ſatisfactory to the Perſon, to whom theſe Excuſes were made; and your Lordſhips find the Parting between them was with mutual Embraces.

The next thing your Lordſhips have heard of, in the Courſe of our Evidence, is the Flight of the noble Lord, in order to avoid being taken by the King's Troops.

To this End, he retires into a Part of the Country, where, he imagined, it would be impoſſible for them to find him out, or harraſs him.

In ſuch a Place it is he had that Meeting with the Rebel Chiefs; on which Occaſion his Behaviour is very remarkable.

For it has appeared, that, at that Conſultation, he continued to be what, at other Times, he boaſted to have been, the Life and Spirit of the Party.

Who ſo forward to reaſſemble their ſcattered Forces as he?

It was he that declared they had no need to be afraid; for he did not doubt but Eight or Ten thouſand *Highlanders* might yet be raiſed to defend themſelves, either to get Terms from the Duke, or fight the Elector of *Hanover*'s Troops; which was the Expreſſion he made uſe of.

In conſequence of this, it was then agreed to raiſe Men; and a Paper is drawn up for that Purpoſe. The noble Lord indeed avoided ſigning it himſelf, by deſiring *Lochiel* to vouch for his Son the Maſter's Proportion: But it is very obſervable, that when his Cunning ſuggeſted to him the Declaration, That he was a neutral Perſon, it preſently forſook him, or elſe he had not accompanied it with another Declaration, that denoted his repining at his not having joined the Pretender's Son on his firſt Landing.

This Agreement to raiſe Men is immediately followed by a Diſtribution of *French* Money for that Purpoſe; which Money, to the Amount of 35,000 *Louidors*, had been juſt received to ſupport the Rebels.

The Money indeed, that was intended to raiſe the *Fraſers* with, was not paid into the noble Lord's own Hands; but (the Maſter being abſent) it was delivered to a Servant that attended upon the noble Lord, and Part of it was by himſelf, ſoon after, ſent to his Son; which brings it home to my Lord *Lovat* as his own Act: It ſhews him privy to the Deſign for which it was advanced (which was treaſonable); and his own Hand is in the Tranſaction.

As this Money has appeared to have been ſent over to ſupport the Rebellion, and thoſe who joined in it, the noble Lord thought he had a Right to a Share of it; and therefore ſends to *Murray* for ſome of it, which he demanded, and received, for Twenty Days Pay of a Guard to attend his own Perſon, and defend him againſt the King's Troops, who were in Search of Rebels at that Time.

And when, ſoon after, his Son came to deſire he might be permitted to ſurrender himſelf to the Duke, he calls him a Perſon of a mean Spirit, and adviſes him againſt it; that Son who would have been contented with a thin Regiment, ſo the Father had been ſafe.

When taken, his Guilt immediately ſuggeſted to him, and he declares openly, That he expected to loſe his Head: He comforted himſelf, however, that his Eſtate was ſo ſettled, that it would be preſerved to his Family.

Your Lordſhips have likewiſe heard the Circumſtances that attended the Search of his Strong Box: When Papers were found in it, he declares in a jocular Way, that they would find no Treaſon in them: He continues in this Strain whilſt many private and immaterial Papers were reading; but, when the Letter from his Son (which has been read in Evidence) appeared, and he is aſked, Whether that came within his Deſcription, or was deſigned to be found there, he changes his Note, is ſurpriſed at its being found there, and agrees it was not in a proper Place.

After all this, I need only barely mention the Offers he made to merit his Life by Diſcoveries, and appeal to the Letter written by him to the Duke of *Cumberland*, juſt now read at the Table.—Thoſe muſt have proceeded from a Conſciouſneſs, that he had forfeited his Life before.

How the noble Lord will be able to reconcile all his ſoftening Inſinuations in his Letter to the Duke with what he before ſaid to *Lochiel*, wherein he declares, "He is reſolved to live and die in his King and Royal "Prince's Service; and that no Death the Government can invent can "leſſen his Zeal, or fright him from his Duty"—This I muſt leave to his Lordſhip; for, I own, it is paſt my Skill.

My Lords, I am very ready to acknowledge, that, in the Courſe of our Evidence, one of the Witneſſes has ſaid, That, by what he could obſerve, the noble Lord did not ſeem to be averſe to his preſent Majeſty; but his Reſentment, he ſaid, was againſt the Miniſtry, that had taken away his Company.

But how far that is agreeable to his Actions, Healths, and Declarations, that he was ready to join *Kouli Kan*, if he had come over, your Lordſhips will conſider.

And, as to his Objection to Mr. *Murray*'s Evidence, as remaining an attainted Perſon, I will only ſay (that it may appear in this Tryal when it comes abroad into the World), That although Sir *Thomas Armſtrong* ſuffered upon the Notion, that a compulſory taking within the Year was not ſtrictly a Surrender; yet, in the Second Year of his preſent Majeſty's Reign, in the Caſe of one *Roger Johnſon*, who had been outlawed for Treaſon, and was taken within the Year allowed by the Statute, the then Attorney General, like a true Friend to the Liberty of the Subject, diſdained to inſiſt upon *Armſtrong*'s Caſe; and the Court of King's Bench held it was immaterial, whether he came before them on a voluntary Surrender, or a Compulſory Caption, ſo long as it appeared the Man was there, and amenable to Juſtice within the Time: And, in Conſequence of this, the Man had his Trial, and was acquitted.

To apply this to our Witneſs, I need only obſerve, That it has appeared in Evidence, that his Time was not out till 12th *July* 1746, and he was committed Priſoner by the Lord Juſtice Clerk Fourteen Days before, and has ever ſince remained in Cuſtody, amenable to the Law. The Precedent, therefore, I have cited, is directly in the Point, and founded in the Juſtice and Equity of the Caſe; for a Man, who has a fixed Time given him to come in, ought not to be prejudiced by being taken up before.

Some Queſtions, my Lords, have been aſked our Witneſſes upon their Croſs-Examinations, and ſome Objections thrown out about Expectations of Mercy, which I do not ſee it is neceſſary to take Notice of at this Time: If they are relied upon by the noble Lord, in his Defence, the Reply will be the moſt proper Time to anſwer them; and to that I ſhall leave it.

All that now remains for me to do, in Diſcharge of the Commands I have been honoured with by the Commons, would be to take particular Notice of the Letters that have been read, and the Strength they communicate to the Evidence of the Witneſſes.

But, as I have attempted ſomething of this Nature as I went along, and they are alſo freſh in your Lordſhips Memory, it does not ſeem neceſſary to be making a ſeparate Head of them.

In Gratitude therefore to your Lordſhips, who have thus honoured me with your Attention, I forbear to deſcant any farther upon theſe Letters; and if, in this, I ſhall be thought by thoſe who ſent me hither, to have been remiſs in my Duty to them (to whom I own myſelf accountable), I ſhall humbly implore their Forgiveneſs for any Omiſſions I may have been guilty of in this Service.

This only I will ſay, upon the Letters, that whatever bodily Infirmities the noble Lord may labour under, yet whoever reads or hears thoſe Letters, and conſiders the Strength and Energy of the Expreſſions, dictated by himſelf, muſt agree with him in what he intimated to Sir *Everard Fawkener*, That the Faculties of his Mind were yet intire.

I have now done, my Lords, with ſtating the Evidence that has been given in Proof of the High-Treaſon charged in the Impeachment; and I ſhould abuſe your Lordſhips Patience, if (after this) I ſhould attempt to apply it particularly to the ſeveral Statutes I took Notice of in the Outſet.

Surely, my Lords, I may venture to ſay, that theſe Facts (if not anſwered by the noble Lord) muſt, in your Lordſhips Judgment, amount to a full Proof of all the High-Treaſon with which he is charged; and will abundantly juſtify me in alluding to that Expreſſion contained in the noble Lord's own Letter to his Son, wherein he boaſts "to have done "more againſt this Government than would hang Fifty Lords, and for-"feit Fifty Eſtates."

Thus, my Lords, have the Commons maintained their Impeachment, and ſupported it (as they think) with a Weight of Evidence ſuitable to the Dignity of their Interpoſition.

They think they have ſufficiently ſhewn your Lordſhips, that this unfortunate Lord was not fit to be truſted to bring his Clan about again, *Et verſare dolos*, as he offered to do. On the contrary, they think it appears, that they have properly ſingled him out, and brought him to this Bar, on their own Proſecution, here to receive your Lordſhips Judgment for the other Part of the Alternative pointed out by himſelf.

L. H. S. Gentlemen of the Houſe of Commons, have you any thing farther to offer in Support of your Impeachment?

Sir *William Yonge.* No, my Lords.

L. H. S. My Lord *Lovat*, the Gentlemen of the Houſe of Commons have cloſed what they have to offer by way of Evidence, and in Support of the Charge againſt you; and now is the Time for you to make your Defence, by making ſuch Obſervations as you ſhall think fit, upon the Evidence which has been given againſt you, and upon what they have offered, by way of Argument, to enforce it. Your Lordſhip may likewiſe open your own Evidence, which you have to offer, and call your Witneſſes, and purſue your own Method, as you ſhall think fit; provided it be agreeable to Law, and the Courſe of Proceeding in ſuch Caſes.

Lord *Lovat.* My Lords, I have already told your Lordſhips ſeveral Times ſince I came here, that I was very weak and feeble, and really afflicted with a Diſtemper that made me almoſt incapable to appear here, if it had not been to ſhew my Obedience and Reſpect to your Lordſhips: And I now humbly beg, that ſince you are ſo good as to indulge me to ſay ſomething for myſelf, that you will give me Four or Five Days, at leaſt, to recover my Health a little, and to prepare my Evidence. And, my Lords, I have another Thing humbly to propoſe to your Lordſhips: There is an Evidence, a very material Evidence for me who is a Member of the Houſe of Commons: I would humbly beg that your Lordſhips would be pleaſed to take ſuch Methods as you ſhall think proper, to make him appear at the Bar, and give his Evidence, which is but Two or Three Words, whatever Day your Lordſhips pleaſe.

L. H. S. My Lord *Lovat*, as to what you have mentioned, Firſt, in aſking for Four or Five Days, to make your Defence, and prepare your Evidence, that is an Interruption of a Trial I have not known; but it is in the Judgment of the Lords what Time they will be pleaſed to give you. As to what your Lordſhip hath ſaid, in regard to a Member of the Houſe of Commons being a material Evidence for you, you muſt be adviſed by your Counſel (who are to adviſe you as to Matters of Law, and the proper Methods of Application) in what Manner you are to make Application for that Purpoſe.

Lord *Lovat.* My Lord, I will take your Lordſhip's Advice, and will do ſo; but it will be impoſſible for me to appear before you, except I am better in Health.

L. H. S. Gentlemen of the Houſe of Commons, have you any thing to offer, in relation to what my Lord *Lovat* has now ſaid?

Sir *William Yonge.* My Lords, Nothing, but to ſubmit it to your Lordſhips, when you will be pleaſed to proceed. My Lords, the Time that the Priſoner at the Bar has deſired is very extraordinary, and will be very inconvenient: But, my Lords, a reaſonable Time the Commons will have no Objection to.

Lord *Lovat.* My Lords, I am at your Lordſhips Diſpoſal; I am a Priſoner here, and ſubmit entirely to your Lordſhips Determination, be it what it will.

The Lord Preſident moved to adjourn to the Chamber of Parliament; and the Lord High Steward going back to his Chair, the Houſe was adjourned accordingly. And then the Lords, and others, returned in the ſame Order as before.

And the Houſe being reſumed in the Chamber of Parliament,

Ordered, That a Meſſage be ſent to the Houſe of Commons, by Mr. *Sawyer* and Mr. *Mountague*, to acquaint them, That the Lord *Lovat* having requeſted, that *Normand M'Leod*, Eſquire, a Member of their Houſe, might be examined as a Witneſs at his Trial, the Lords do deſire, that they will give Leave to the ſaid *Normand M'Leod* to be ſo examined at the ſaid Trial: And that their Lordſhips will proceed further thereupon, in *Weſtminſter-Hall*, on *Wedneſday* next, at Eleven of the Clock in the Forenoon.

Ordered, That the Lieutenant of the *Tower* of *London*, or his Deputy, do take back the ſaid Lord *Lovat*, and bring him again to the Bar of this Houſe in *Weſtminſter-Hall*, on *Wedneſday* next, at Eleven of the Clock in the Forenoon.

Wedneſday, *the 18th Day of* March, 1746.

The Sixth Day.

ABOUT Eleven of the Clock in the Forenoon the Lords and others came from the Chamber of Parliament, in the ſame Order as on the Firſt Day, into *Weſtminſter-Hall*, where the Commons and their Managers were in the Seats prepared for them reſpectively, as before. And the Lords took their Places in the Court, and the Lord High Steward in his Chair.

L. H. S. The Houſe is reſumed. Is it your Lordſhips Pleaſure, that the Judges have Leave to be covered?

Lords. Ay, ay.

Then the Serjeant at Arms made Proclamation for Silence, and afterwards the following Proclamation:

Serjeant at Arms. Oyes, Oyes, Oyes! Lieutenant of the *Tower* of *London*, bring forth your Priſoner *Simon* Lord *Lovat*, to the Bar, purſuant to the Order of the Houſe of Lords to you directed.

The Deputy Governor of the *Tower* brought the Priſoner to the Bar, in the like Form as before; and then he kneeled down.

L. H. S. Your Lordſhip may riſe.

The Lord High Steward aſked Leave to go down to the Table: And went accordingly.

L. H. S. My Lord *Lovat*, your Lordſhip may now proceed to make your Defence.

The Priſoner then acquainted their Lordſhips with his great Age and Infirmities, which rendered him, as he alledged, incapable of ſpeaking what he had to offer; and that therefore he had put into Writing what he had conceived, and was adviſed to ſay on this Occaſion; and which he deſired their Lordſhips would be pleaſed to permit their Clerk to read at the Bar: And their Lordſhips permitting it, the ſame was read by the Clerk, as follows; *viz.*

My Lords,

IN my unhappy Situation, it is with the higheſt Pleaſure and Gratitude, that I return my Acknowledgements to your Lordſhips, for the Indulgence you have ſhewn me, during the Courſe of my long Tryal: And had I, my Lords, met with any Degree of Juſtice from thoſe who have appeared as Witneſſes againſt me, it would have been unneceſſary for me to have troubled your Lordſhips with any thing in my own Defence; but as there can be no Security againſt the Oaths of Perſons who are ſwayed by Malice, or intereſted by the Hopes of Life, and Fears of Puniſhment, it becomes neceſſary for me to trouble your Lordſhips with a few Obſervations: Firſt, As ariſing from the particular Circumſtances of my Caſe; and, Secondly, Upon the Nature of the Evidence that has been produced againſt me, and the Degree of Credibility which ſuch Sort of Evidence deſerves. With reſpect to the Firſt, my Lords, upon being ſerved with a Copy of the Articles of Impeachment, I immediately applied to your Lordſhips for an Order to bring up thoſe Witneſſes, whom I thought neceſſary for my Defence: And, conſidering the complicated Nature of the Treaſons charged upon me, and the great Period of Time they were intended to comprehend, it cannot ſurpriſe your Lordſhips, that my Liſt contained Sixty, or thereabouts. But, to my very great Misfortune, uncommon Methods have been uſed againſt me, to prevent their Attendance; The ordinary Judges have been diveſted of their Offices, and obliged to appoint others, who were recommended by the King's Officers to officiate for them: Nay, the ordinary Seats of Juſtice have been, in my particular Caſe, forſaken, and new Courts erected, to which Numbers have been forced under the ſevereſt Menaces, to attend as Witneſſes againſt me; whilſt all whom thoſe new Judges and Rulers, upon their Inquiſition, found might be ſerviceable to me in my Defence, have been overawed and intimidated; ſo that they durſt not attend my Tryal. Theſe, my Lords, are Facts as notorious in themſelves, as unprecedented in theſe Kingdoms; and Facts which I can inſtantly prove, to your Lordſhips Satisfaction, partly by Affidavits now in my Hands, and partly by Witneſſes of undoubted Credit, who have been brought Five hundred Miles from the *Highlands* of *Scotland*, with a View to be examined againſt me; and who, it is probable, have been laid aſide, leſt what I now take the Liberty to affirm to your Lordſhips, ſhould, upon their Examinations, have been made to appear.

My Lords, By theſe and ſuch-like Methods, have my Witneſſes been terrified from appearing; at leaſt, ſo very few have had the Reſolution to venture, that they ſcarcely deſerve to be named, and cannot be material for my Defence, without the Aſſiſtance of the others. I am therefore under the hard Neceſſity to forget yet a little longer the Inconveniencies of a cloſe and tedious Impriſonment, and to ſtifle that Deſire of Liberty which is ſo natural to me, for ſome longer time, till, by your Lordſhips effectual Interpoſition, I can command the Attendance of my Witneſſes; and, of Conſequence, juſtify my Innocence: For, if your Lordſhips conſider, that my very Words and Actions have been made the Subject of a critical Examination, from the Year 1719, my Caſe muſt appear extremely hard, and neceſſarily require a very circumſtantial Proof, by Examination of thoſe Perſons with whom I have had any Intercourſe, from that Period till now: But, if your Lordſhips ſhould inſtantly oblige me to proceed upon my Defence, unprepared as I am, I muſt ſubmit. Locked up a Priſoner in the *Tower*, I cannot make your Lordſhips Order effectual againſt the ſeveral Perſons in the Liſt I gave in to this Honourable Houſe; and to proceed to Tryal, whilſt I am under theſe Circumſtances, has the Appearance of ſo much Hardſhip, that I flatter myſelf it will move your Lordſhips effectually to interpoſe, and order ſome proper Method, by which my Witneſſes can be forced to attend; and not ſuffer a Peer of the Realm to be deſtroyed, becauſe he can-

not

not work Impoſſibilities, or oblige me, like the *Iſraelites* of old, to make Brick without Straw. I muſt therefore humbly move, and inſiſt with your Lordſhips, not to introduce a Precedent in my Caſe, which may be attended with the worſt of Conſequences to any Lord who ſhall hereafter be brought to your Lordſhips Bar. And, indeed, my Lords, I ſay this not altogether out of a Regard to myſelf: I am now Fourſcore Years of Age, have ſuffered many Changes, and, thank my God, have no unbecoming Fear for any Thing I can yet ſuffer: I know, by the quick Advances and Frailties of old Age, that, in the Courſe of Nature, I am haſtening to my End; and, by the Favour of the Almighty, I have been long preparing for that great and ſolemn Change: But this, my Lords, may produce a Precedent that ſhall prove fatal to many of younger Years. And, ſurely, your Lordſhips muſt be convinced I have the greater Reaſon to inſiſt on this Demand, upon conſidering what I propoſe to lay before your Lordſhips, in the Second Place, namely, a few Obſervations upon the Nature of the Evidence, and the Credit that thoſe Witneſſes deſerve who have ſworn againſt me.

In general, your Lordſhips have undoubtedly perceived the high Improbability that runs through the whole of *Chevis*'s Oath: He, my Lords, takes upon him to ſwear to Converſations as far back as the Year 1719; and mentions as if I was then engaged in Plots againſt his late Majeſty, at the very Time many of your Lordſhips know, and that it is notorious, I was highly in his Favour. It might, my Lords, carry the Air of Vanity for me to mention to your Lordſhips the many particular Services I was thought to have done his Majeſty in the Year 1715: But allow me, my Lords, to ſay, they were Services of ſuch a Nature, as made his Majeſty think me entitled to very diſtinguiſhing Marks of his Favour, as will appear by ſeveral Letters, which, by his Majeſty's Orders, I had the Honour to receive from the late Lord *Stanhope*, my great and very worthy Friend: So that, my Lords, *Chevis*'s Accounts are even more than improbable; beſides, that the minute and particular Manner in which he ſwears to Circumſtances that have happened ſo long ago, muſt render his Teſtimony too ſuſpicious to be believed. And allow me to obſerve a very remarkable Circumſtance, That he has carefully avoided to name any one Man who was preſent at any one of thoſe Converſations, and could poſſibly have been brought to confront him, leſt the ſame Providence which detected the Elder, in the Caſe of *Suſanna*, might have detected *Chevis*. A farther Circumſtance your Lordſhips will alſo allow me to obſerve, That it is not to be ſuppoſed, that I, or any Man of Common Senſe, ſhould have talked ſo often, and ſo freely, upon a Subject of that delicate Nature, to a Perſon, who, if your Lordſhips can poſſibly believe himſelf, was always ſo openly and zealouſly affected to the preſent Eſtabliſhment. But can your Lordſhips yet conceive any good Opinion of a Perſon who voluntarily offers himſelf as an Evidence to little trifling Converſations, which the only Opportunity he had of hearing was his eating at my Table, when he muſt have ſtarved at his own, and periſhed for Cold, unleſs my Money had furniſhed him with Cloaths? In Evidence of this, I was, till very lately, poſſeſſed of many of his accepted Notes, for greater Sums than I am afraid he is yet able to pay, I having prevailed with a Friend to let me have Money upon them, to ſupply my preſent Wants; and I ſhould be ſorry if he ſhall ſuffer by his Friendſhip to me.

The next Three Evidences, who have appeared at your Lordſhips Bar againſt me, are thoſe infamous Fellows, who call themſelves Secretaries; the one, and on this Occaſion I name *Murray*, the moſt abandoned of Mankind, who, forgetting his Allegiance to his King and Country, has, according to his own Confeſſion, endeavoured to deſtroy both, like another *Catiline*, to patch up a broken Fortune upon the Ruin and Diſtreſs of his native Country; To-day ſtealing into *France* to enter into Engagements upon, your Lordſhips may believe, the moſt ſacred Oaths of Fidelity; ſoon after, like a ſanguinary Monſter, putting his Hand and Seal to a bloody Proclamation, full of Rewards for the apprehending the ſacred Perſon of his Majeſty; and, leſt the Cup of his Iniquity had not been filled, to ſum up all in one, impudently appears at your Lordſhips Bar, to betray thoſe very Secrets, which he confeſſed he had drawn from the Perſon he called his Lord, his Prince, and Maſter, under the ſtrongeſt Confidence. Your Lordſhips will perceive, I have yet forbore to mention the other Circumſtances of his having received, ſince the Battle of *Culloden*, 35,000 *Louidors*, which he yet expects to live and riot on; but, my Lords, who can conſider the Price of Blood and Treachery, and not beſtow that Sort of Pity, which *Murray*, the greateſt Criminal, the true Diſciple of his Maſter *Iſcariot*, calls for? One Thing more, my Lords, I cannot omit; and that is, to take ſome Notice of the indecent and ſcandalous Liberty the Wretch has attempted to take, by aſperſing a Number of very noble, worthy, and honourable Perſons, of whoſe Innocence your Lordſhips were ſo fully perſuaded, as to ſtop him in his Career, leſt, like one of *Samſon*'s Foxes, he ſhould deſtroy ſome of the worthieſt Members of the Commonwealth. But if, after all that I have ſaid, your Lordſhips can pay the moſt diſtant Regard to this Secretary's Evidence, it is hard to determine how many of his Majeſty's other faithful Subjects may eſcape the licentious Liberty of his Impeachment; for let him once think, that, upon the Multiplicity of his Accuſations, his worthleſs Life depends, and there is no Reaſon to apprehend any of the moſt faithful Subjects can boaſt of a long Security. I will not, my Lords, trouble your Lordſhips much upon the Objections, to which my Counſel have ſpoke againſt the Competence of this Witneſs; but, if a Deſire of Life to ſo wicked a Perſon, who muſt be afraid to die, can be any Inducement to ſwear falſely, it is apprehended impoſſible any of your Lordſhips can give the leaſt Degree of Credit to the Oath of the Villain Secretary *Murray*.

My Lords, the next Secretary I chooſe to trouble your Lordſhips with, is *Robert Fraſer*, a Perſon who never had the good Fortune to be worth a Shilling, and whoſe Veracity and Truth never exceeded his Riches. He, my Lords, has taken upon him to ſwear to Letters wrote by himſelf, and many of them not pretended to have been ſigned by me: Others, my Lords, have neither Date or Direction; and no Sort of Proof has been attempted to be brought by the Managers, where, or in whoſe Cuſtody, they were ſaid to have been found. How weak an Evidence, therefore, this is to fix ſo heavy a Charge as High-Treaſon upon a Peer of this Realm, is humbly ſubmitted. But, my Lords, this Witneſs has alſo, to go through the whole Drudgery of Swearing, framed a very improbable and aukward Tale to your Lordſhips, of his having found, in a Writing-deſk in my Houſe, a Copy of a pretended Patent, creating me Duke of *Fraſer*, which, by-the-bye, the Managers have not offered to produce; and I muſt leave it with your Lordſhips, whether it is at all likely, that, if I had been poſſeſſed of ſuch a Patent, I ſhould have left it ſo carelеſly looſe; or that, if I had, this Witneſs ſhould have been the only Perſon in my numerous Family to have ſeen it; for I am not now ſpeaking of the Teſtimony of the other Witneſs *Hugh Fraſer*. My Lords, is it, or can your Lordſhips think it poſſible I could have had the Copy, and not have had the Original? The one was quite as eaſily ſent as the other; and your Lordſhips all know, that it is a mighty unuſual Thing to ſend Copies of Patents, where Dignities are intended to be conferred. As to the other Part of *Robert Fraſer*'s Teſtimony, that relates to his writing for Arms, Powder, and Ball, I am perſuaded it cannot make the leaſt Impreſſion upon your Lordſhips: Firſt, Becauſe he has not depoſed to expreſs Quantities; and, ſecondly, That it might have been ſo eaſy for the Managers to have brought a poſitive Proof, had the Fact been true, by the Perſons from whom theſe Things were ſaid to have been bought; or, at leaſt, by thoſe who carried them to my Houſe, though indeed I can make no manner of Doubt, that had this Gentleman, *Robert Fraſer*, thought it material, he would have gone a little farther, and ſworn to that, as he is one of thoſe honeſt Gentlemen, whoſe Mouth ſeldom opens, but for their Tongues to lye.

My Lords, I muſt next trouble your Lordſhips with *Hugh Fraſer*, and again repeat a general Obſervation, That a Perſon, himſelf in the Rebellion, and who did, upon his Oath, declare at your Lordſhips Bar, That he would give no Evidence, except in Expectation of Life, cannot be reckoned an unſuſpected Witneſs; for, according to the Value which he ſhall ſet upon his own Life, muſt his Evidence be leſs or more hurtful to me; ſince, my Lords, Life is the Purchaſe, and his giving Evidence the only Price. He ſays, That I ſhewed him a Copy of the Patent; and yet, long after this pretended Time of ſhewing, he, my Lords, was the very Perſon to whom *Murray* declared, he knew nothing of ſuch a Patent. He was alſo the Perſon who received thoſe treaſonable Letters that have been read againſt me; and it is not pretended, that after this Interview with *Murray* at *Glaſgow*, I ever ſaw him, or had any Intercourſe with him, till I was brought to your Lordſhips Bar; nor is it laid to my Charge, that I ever received any of thoſe Letters or Commiſſions, which *Fraſer* is ſaid to have brought from *Glaſgow*. And here, my Lords, I muſt repeat the ſame Obſervation againſt *Fraſer* of *Dunballoch*, who was himſelf in the Rebellion; and therefore in like manner ſwearing away my Life to preſerve his own.

Many other Particulars, my Lords, I purpoſely omit, reſerving my Obſervations, till I ſhall have your Lordſhips Order to bring up my Witneſſes; and then, my Lords, I ſhall be able to falſify thoſe Particulars, and, indeed, the whole Subſtance of this heavy Charge againſt me.

I muſt, my Lords, beg your Lordſhips Pardon for taking up ſo much of your Time. I labour under ſo many Diſadvantages from old Age, and the Decay of the Faculties of the Mind, that it is no Wonder I ſhould make a bad Defence for myſelf, unaſſiſted either by Counſel or Sollicitor; and that ſo many great and eminent Perſons, ſkilled in the Laws, and Maſters of *Ciceronian* Eloquence, have appeared to manage the Proſecution againſt me. But I hope, in your Lordſhips Hands my old Life is ſafe; and that your Lordſhips, whoſe noble Blood is like ſo many Fountains, from whence iſſue Streams of Humanity, Juſtice, and Honour, will not, nay, cannot, find me guilty upon the Evidence of ſuch Witneſſes as have defiled your Bar, and have no other Method left to expiate their own Crimes, but by laying them upon me: For your Lordſhips muſt allow me to obſerve, that all the Witneſſes, except Sir *Everard Fawkener*, have both their Lives and Eſtates depending upon their giving ſuch Evidence as may convict me: And even as to Sir *Everard*, he has Judgment enough to know, that, ſhould I be acquitted, he would find it difficult to defend an Action at my Inſtance, for Reparation of uncommon Wrongs, and Acts of Violence, done by his Order upon my Eſtate, in cutting very valuable Woods, and appointing Receivers of my Rents; and conſequently he has too great an Intereſt in my Conviction, to be conſidered or received by your Lordſhips as an unexceptionable Witneſs.

My Lords, to me, who am no Lawyer, it appears extremely ſtrange and unreaſonable, that *Socii Criminis* ſhould be admitted Witneſſes before they are pardoned; but if it is true, that the Law of *England* differs in this reſpect from the Law and Uſage of all other Nations, I ſhould be glad to know, how that Difference has been introduced.—I take it, my Lords, for granted, that it is not by the Force of any Statute; for, I am ſure, the great Learning and Ingenuity of the Managers have omitted to mention none that concerns the Caſe of Treaſon; and, if it is by the Common Law, my Objection is entire, and can only be determined by your Lordſhips, as in this Caſe my Jury.

In ſome Sort of Felonies, my Lords, I remember to have often heard of Statutes which authoriſe a Proof of that Nature; but, in Treaſon, I never heard of one: And, indeed, the Neceſſity does by no means appear to me to be the ſame; 1ſt, Becauſe the one is not ſo common as the other; and 2dly, Becauſe there can be no Room to plead a Penury of Witneſſes in Treaſon, which is laid to my Charge: whereas there may in Felonies. Another ſtrong Conſideration will naturally occur to your Lordſhips, that the Revenge or Malice of Power cannot operate in Felonies; but may in Treaſon.

If, my Lords, I ſhould be told, It has been eſtabliſhed by Cuſtom, I muſt beg Leave to ſay, That, as it ſeems contrary to Juſtice and Reaſon to truſt to the Evidence, which an Accomplice unpardoned is to give, it is incapable of being hallowed by Cuſtom; ſince I am aſſured, that it is an eſtabliſhed Rule, That, unleſs a Cuſtom is reaſonable, and according to Juſtice, it is void.

But allow me, my Lords, to aſk, What Reaſon can be given, why theſe confeſſed Rebels have not been honoured with a Pardon previous to my Trial? If it is that the Government believe, in that Caſe, they would not ſwear the Truth, can the Wit of Man invent a ſtronger Argument why your Lordſhips, in equal Diffidence, ſhould not believe them when they

they have no Pardon; for, if they are ſuch abandoned Villains (and, in Truth, my Lords, I believe them ſuch) as to perjure themſelves after a Pardon, when they can neither gain nor loſe by the Evidence they are to give; ſurely your Lordſhips ought not to truſt them, when their Lives depend upon giving ſuch Evidence as may convict me, who have yet the Honour to be a Brother Peer.

One thing more, my Lords, and I have done; and that is, Should this Sort of Proof be once eſtabliſhed, I may venture to ſay, that *Delatores* would become greater Nuiſances here than ever they were at *Rome*; and that all our noble and antient Families will be, by degrees, cut off, upon Pretence of *Jacobite* or Republican Plots; ſince the Hiſtory, my Lords, of all Ages ſhews, that Power can make Plots; and fatal Experience proves, that in every Age are Villains ready, like my Three Secretaries, to prove what Power ſhall hereafter dictate or expect.

Thus far I thought it my Duty, in Vindication of myſelf, to trouble your Lordſhips, and, without further treſpaſſing upon your Patience, freely ſubmit my Life, my Fortune, my Honours, and, what is deareſt of all, my Poſterity, to your Lordſhips.

Lord High Steward. My Lord *Lovat*, Do you think fit to call any Witneſſes?

Lord *Lovat.* No, my Lords.

Mr. Sollicitor General.

My Lords,

THOUGH the noble Lord perſeveres in denying the Charge, yet, as he has called no Witneſſes, but reſts his Defence altogether upon Complaints, Obſervations, and Objections to the Force and Credibility of the Evidence againſt him, if I was to follow my own Inclination and Judgment, I ſhould think it unneceſſary to ſay any thing upon a Matter already ſufficiently underſtood.

But I am told by the Opinion of thoſe, whoſe Opinion is to me a Law, That I ſhall not do my Duty, nor perform the Part aſſigned me, unleſs I cloſe this ſolemn Trial, by calling back your Lordſhips Memory and Attention to the principal Grounds upon which we have proceeded; eſpecially as they have now been objected to as inſufficient, and complained of as ſetting an Example, which may be dangerous to Innocence hereafter.

The Gentlemen who manage this Proſecution have, in the Courſe of it, meant to do Juſtice to their Truſt in ſuch a manner, that the noble Lord at the Bar ſhould feel the Weight of Truth, but not of his Accuſers: And it is not to aggravate Guilt, or to preſs down the Load heavier upon him, that I am at this time commanded to ſpeak; but to ſatisfy your Lordſhips now, and the World hereafter, from the Nature of the Evidence by which this Accuſation has been ſupported, why no Part is attempted to be anſwered.

He has put your Lordſhips in mind, that the Law requires you, as his Judges, to be his Counſel; which is certainly true: And I am perſuaded, Compaſſion, inſeparable from noble Minds, has been ingenious to ſuggeſt to your Thoughts, Doubts and Objections, in favour of one ſtanding in that Place, who certainly labours under ſome Infirmities, and is allowed to defend himſelf by no other Tongue than his own.

If Scruples have ariſen in the Minds of any of your Lordſhips, they will gain Strength from that Conſideration; and the honeſt Prejudice you muſt feel from his Want of Aſſiſtance, may be of more Advantage to him, than the ableſt Aſſiſtance he could have had.

It is proper, therefore, it may even be neceſſary, to endeavour to ſet the Whole in ſuch a View, as may tend to obviate every Poſſibility of Doubt.

There are but Two Things for your Lordſhips Conſideration upon this Occaſion:

Firſt, Whether the Evidence given is a convincing and legal Proof of the Charge, if it be believed? And next, Whether there be any Reaſon to induce your Lordſhips not to believe it?

The only thing, in the Courſe of this Proceeding, which has not yet been done to ſatisfy your Lordſhips with regard to both theſe Points, is, to apply the particular Evidence that has been given to the principal Overt Acts laid in the Articles of Impeachment.

As this is the only thing which has not yet been done, it is the only thing which I ſhall attempt to do.

There are Three Kinds or Species of Treaſon, of which the noble Lord at the Bar ſtands accuſed by the Articles:

Compaſſing and Imagining the Death of the King:

Levying War againſt his Majeſty within the Realm;

And Correſponding, contrary to a late Act of Parliament.

The Two firſt are Treaſons, declared to be ſo by the Statute of the 25th of *Edward* the Third.

Compaſſing or Imagining the Death of the King is an inward Thought, or Operation of the Mind; and therefore, as God alone can judge of Thoughts, becauſe He alone can know them, ſo, for this Kind of Treaſon, no Man can be convicted, unleſs he does ſome open Act, which proves the ſecret Intention of his Mind. It is not neceſſary, that the open Act ſhould have an immediate Tendency to take away the natural Life of the King; but any Deſign to ſubvert his Government, or to raiſe War againſt him, which may, in conſequence, draw on his Death, has been long ſettled to be an Overt Act of this Species of Treaſon.

In High Treaſon, for greater Security, the Law requires a formal, as well as convincing Proof; and therefore no Man can be found guilty of High Treaſon, which is not proved by the Teſtimony of Two Witneſſes. One, let his Credit be never ſo good, let him be ſupported by never ſo many Circumſtances, is not ſufficient.

But it is not neceſſary, that Two Witneſſes ſhould give Proof of the ſame Overt Acts: If they give Evidence in Proof of diſtinct Overt Acts, it is enough, provided they are Overt Acts of the ſame Species of Treaſon.

Having mentioned what legal Proof is required (for this was the Law before the 7th of King *William*, and is therefore applicable to the preſent Occaſion), I will ſtate the Overt Acts of each Species of Treaſon, whereof the noble Lord ſtands impeached; and apply the Evidence to them.

Of Compaſſing and Imagining the Death of the King, the principal Overt Acts laid in the Articles are Three:

1ſt. That he conſpired, with ſeveral of the King's Subjects, to induce a Foreign Power (the *French*) to invade this Kingdom.

2d. That he correſponded with the Pretender, in order to dethrone the King, and, with that View, ſolicited, and accepted, a Commiſſion from him to be Lieutenant-General of the *Highlands*; and alſo ſolicited and obtained from him a Patent creating him Duke, as a Reward of his engaging in that Deſign.

3d. That he conſpired to raiſe War and Rebellion againſt his Majeſty within this Realm.

That Conſpiring with a Foreign Power to invade the Kingdom is an Overt Act of Compaſſing the Death of the King, cannot now be doubted.

As to the Proof:

Robert Chevis proves, That, in *June* 1739, he heard Lord *Lovat* propoſe to *William Drummond* of *Bochaldie* the Project of an Invaſion;

That, in 1740, he heard him ſay, There was an Aſſociation; and drank Succeſs to it.

Robert Fraſer proves a Letter of the 14th of *January*, 1746, from the noble Lord to his Son, to have been dictated by him, afterwards read over to him, approved of, and ſent; in which are theſe Words:

" I was one of thoſe that entered into a formal Aſſociation to venture " our Lives and Fortunes to reſtore the King, and his Offspring; and " we ſigned our mutual Engagements for this Purpoſe with our Hands " and Seals, and ſent it to *France* to the Cardinal *de Fleury*, " then Firſt Miniſter of *France*, by the Hands of Mr. *William Drum-* " *mond* of *Bochaldie*. The Cardinal was ſo pleaſed with it, that he " ſhewed our Engagements and Subſcriptions to the King his Maſter, " and begged of his Majeſty to ſupport us; and the King deſired the " Cardinal to aſſure us of his Protection and Aſſiſtance, and Succours to " reſtore our King."

Here are Two Witneſſes who give Evidence of that; which is direct Proof againſt the noble Lord of this Overt Act: But this direct Proof is ſtrengthened by general Evidence.

John Murray of *Broughton* proves, That ſuch an Aſſociation and Memorial was ſent to the Court of *France*; and that *William Drummond* of *Bochaldie* was the Perſon who carried it; he names all who ſigned it; he was himſelf carried by this *Drummond* of *Bochaldie* to Monſieur *Amelot*, and introduced as coming from thoſe, who ſigned, and ſent the Aſſociation and Memorial: He was received by Monſieur *Amelot* upon that Foot: He had an Anſwer from the *French* King to carry to thoſe from whom he came.

This general Evidence is again corroborated by that, which is poſitive Proof againſt the noble Lord.

In his Poſtſcript to the Letter I mentioned before, he ſays, If his Patent of Duke was refuſed, he would keep to the Oath that he gave to the Gentlemen who firſt engaged in the Project with him, that he would never draw his Sword till that was done. He mentions Three of the Perſons by Name who firſt engaged with him; ſo that the general Evidence is ſupported by this Poſtſcript, as to ſome of thoſe who ſigned the Aſſociation, and particularly as to Lord *Lovat* himſelf.

The Authenticity of this Letter and Poſtſcript don't reſt upon the poſitive Teſtimony of *Robert Fraſer* only; but is ſupported by the Letter from my Lord's Son, to which this is an Anſwer, proved to be the Hand-writing of the Son, and to have been found in my Lord's Cuſtody.

There are other Circumſtances which give Credit to the Proof of his having entered into the Aſſociation, which was ſent to *France* by *William Drummond* of *Bochaldie*.

In his Letter to *Lochiel*, he inquires after Mr. *William Drummond*, as the Man whom he loved, and who loved him beſt.

Robert Fraſer ſays, Lord *Lovat* told him, That his Patent was in the Hands of one *Drummond* in *France*.

And, in his Letter of the 14th of *January* to his Son, he ſays, The Patent was ſent by *William Drummond*, as a Reward of his having joined in the Aſſociation.

The Second Overt Act of this Species of Treaſon, which I mentioned, was,

That he correſponded with the Pretender, in order to dethrone the King, and, with that View, ſolicited and accepted a Commiſſion from him to be Lieutenant-General of the *Highlands*; and alſo ſolicited and obtained from him a Patent creating him Duke, as a Reward of his engaging in that Deſign.

Tho' Correſponding with the Pretender be made Treaſon by Act of Parliament, yet Correſponding, in order to diſturb the King's Government, is an Overt Act of Compaſſing the Death of the King; and ſo it is laid in the Articles.

As to the Proof of this Overt Act:

Robert Chevis heard him, in 1736, ſend a Meſſage by *Roy Stewart* to the Pretender, with Aſſurances of his Fidelity, and that he would live and die in his Cauſe; and charged *Roy Stewart* to expedite the ſending over his Commiſſion of Lieutenant-General, and Patent of Duke.

This is corroborated by *Charles Stewart*, who met *Roy Stewart* in 1736 at *Boulogne*, and was told by him, That he was going to *Rome*; and hoped for a Place under the Pretender, thro' Letters of Recommendation which he carried from Lord *Lovat*.

Robert Chevis was told by Lord *Lovat* in 1742, That he had got a Commiſſion of Lieutenant-General, and obtained a Patent.

Robert Fraſer ſaw at *Gortuleg*, among Lord *Lovat*'s Papers, a Commiſſion from the Pretender, appointing him Lieutenant-General.

He ſaw the Copy of a Patent creating him Duke.

He was told by Lord *Lovat*, after his Eſcape from Lord *Loudon*, That his Patent of Duke was in the Hands of one *Drummond* in *France*.

Hugh Fraſer was told by Lord *Lovat*, That his Patent of Duke was in *Lochiel*'s Hands; and, in *November* 1745, my Lord ſhewed him a Copy of the Patent.

In his Letter to *John Murray* of *Broughton*, he refers to his Couſin the Bearer (who was this *Hugh Fraſer*) about a Suit he had to make.

John Murray of *Broughton* ſays, *Gortuleg* explained this to relate to his Patent.

In his Letter to his Son, ſpeaking of the Pretender, he ſays,

" When he was acquainted with the Aſſociation, he gave Mr. *Drum-* " *mond* a Commiſſion to me of General of the *Highlanders*, which I have."

"Laſt of all, the King was ſo good as to give ſuch a ſingular Mark "of his Favour to me and my Family, that he created me Duke of "*Fraſer*, and ſent me that Patent by *William Drummond*; of which I "have a Copy."

The Original, he ſays, was left with old *Lochiel*.

In the Poſtſcript to this Letter, he ſays,

"Tell your Captain-Lieutenant (*Hugh Fraſer*) I beg of him to re-"member what I ſpoke to him about my Patent.——Put all Irons in "the Fire.——I aſk nothing of his Royal Highneſs, but to give his "Countenance, and own publickly what his Father has done for me; "which if he refuſe, I muſt keep to the Oath, *&c.* never to draw my "Sword till it was done."

This is corroborated by general Evidence given by *Broughton*, and *Hugh Fraſer*: They talked at *Glaſgow* about it: The Packet was not directed till *Hugh Fraſer* ſhould learn from old *Lochiel*, whether he had ſuch a Patent.

Of this Overt Act there is direct poſitive Evidence, by the Teſtimony of Three Witneſſes, *Hugh Fraſer*, *Robert Chevis*, and *Robert Fraſer*, ſupported by Two more, *Charles Stewart*, and *John Murray* of *Broughton*; and all the Circumſtances, which confirm the Authenticity of the Letters.

The Third Overt Act, which I mentioned, of this Species of Treaſon, was,

That he conſpired to raiſe War and Rebellion againſt his Majeſty, within this Realm.

In his Letter to the Pretender's Son, he ſays,

"None of your Servants but will do me the Juſtice to declare, that I "am, and always have been, the moſt zealous and active Partizan your "Royal Highneſs has in the North of *Scotland*."

In his Letter to *John Murray*: "For many years paſt I was the Life "and Spirit of the King's Affairs in theſe Countries," *&c.*

"I made it my only Buſineſs to encourage and keep up the Hearts of of the King's Friends."

In his Letter to his Son, he ſays, "Since that Aſſociation, I made it "my Buſineſs, wherever I was, to promote the King's Intereſt, and to "gain and encourage faithful Subjects to ſerve him: So that I have "done more againſt this Government than would hang Fifty Lords, and "forfeit Fifty Eſtates."

In the Poſtſcript, "It can be eaſily proved againſt him (your Father), "that he has done more againſt the Government than any one of his "Rank in *Britain*."

Hugh Fraſer proves, That he ſaid he thought of heading the *Fraſers* himſelf, as he believed Four or Five thouſand Men would have riſen; but that was diſappointed.

He ſent a Meſſage to the Young Pretender, by the Witneſs, That he had intended to have gone at the Head of Four or Five thouſand Men, to ſupport his Intereſt.

When the Witneſs gave him the true State on both Sides, he ſaid he had gone too far to go back.

In his Letter to *Lochiel*, he ſays, He had ſo managed the North, that 6000 Men would have marched South to join the Pretender, had not the Deſign been fruſtrated.

Robert Fraſer proves, That he made Excuſes to *Lochiel*, *Keppoch*, and others, for not having joined them publickly: That he made Excuſes, after the Battle, to the Young Pretender; and they both embraced.

This is ſtrengthened by general Evidence given by *John Murray* of *Broughton*, that, when the Young Pretender landed, a Meſſage was ſent to Lord *Lovat* by Doctor *Cameron*, and *Gortuleg* came from him.

And alſo by general Evidence given by *Robert Fraſer*, that, ſoon after the Pretender landed, one *Cameron* came to Lord *Lovat*, and *Gortuleg* went to the Young Pretender.

This is ſtrengthened too by moſt of his Letters; which imply a previous Concert, and Aſſurances given: They are full of Apologies for his not acting up to that, which, he ſeems conſcious, was expected from him.

His Wavering and Irreſolution ſpeak a Mind divided between former Engagements and preſent Fear.

At firſt, when he thought Four or Five thouſand Men would be raiſed, he intended to have headed them himſelf: When that Scheme was diſappointed, he neither would join the Rebels himſelf, nor ſend his Men. Upon the News of the Battle of *Preſton-Pans*, he reſolved his Son ſhould go.

When an Account came of the Landing of the *Dutch* Forces in *England*, he reſolves his Son ſhould ſtay, ſo as to give Occaſion to that Expreſſion of his, That one Day undid what another did.

At laſt, when Lord *John Drummond* landed in *Scotland*, with a Body of *French* Forces, and Aſſurances of powerful Succours from *France*, he returns to the Deſign of ſending his Son.

This Conduct, and Fluctuation of Counſels, ſhew he equally dreaded either breaking former Engagements, when the Attempt wore a Face of Succeſs; or keeping them, when it looked deſperate; and gives Credit and Strength to all the direct and poſitive Evidence, that the Caſe was ſo.

Thus this Overt Act is proved by the Teſtimony of Two Witneſſes, *Robert* and *Hugh Fraſer*, and ſupported by all the Circumſtances which confirm the Authenticity of the Letters.

The Second Species of Treaſon, whereof the noble Lord ſtands accuſed by the Articles, is, Levying War againſt the King within the Realm.

My Lords, Levying War, properly ſpeaking, and in the Nature of the thing, is itſelf an open Act, and may be laid as an open Act, of Compaſſing the Death of the King: It is impoſſible to conſider a Man as levying War, without having done ſome Act. In Treaſon there are no Acceſſaries; all who aſſiſt are Principals. Tho' a Man ſhould not himſelf appear in Arms, nor commit any Hoſtilities with his own Hands, yet if he voluntarily aids, in any Manner, thoſe who are in Arms, and commit Hoſtilities, he is guilty of levying War.

But tho' levying War be really an Act itſelf, to be proved by the Hoſtilities committed, or Aſſiſtance given; yet, as the Letter of the Statute of *Edward* III. requires the Four Kinds of Treaſon firſt mentioned in that Act to be made out by open Deed, Overt Acts are always laid of this Species of Treaſon, tho', generally, they are only Deſcriptions of the Manner of levying War.

In the preſent Caſe, the Articles have pointed out particularly the Manner in which the noble Lord is charged with having levied War. And of this Species of Treaſon there are Three Overt Acts laid:

Firſt, That he encouraged, by Meſſages and Letters, the Pretender's Son, and his Adherents, then in Arms, waging War againſt his Majeſty, within this Realm.

Hugh Fraſer proves, That he carried a Meſſage from Lord *Lovat* to the Young Pretender; the Purport of which your Lordſhips have heard.

Robert Fraſer proves his Letters to the Pretender, *Lochiel*, and *John Murray* of *Broughton*.

His Evidence, as to the Letter I laſt-mentioned, is ſupported by its appearing to be written in Anſwer to a Letter of the 31ſt of *October*, from *Broughton*; and *Hugh Fraſer* ſwears, he brought ſuch a Letter from *John Murray* of *Broughton* to Lord *Lovat*, was privy to the Contents, and gives an Account of them: And *John Murray* of *Broughton* proves, That he received this Letter from *Gortuleg*.

All theſe Letters are eſtabliſhed by the Poſtſcript to his Letter to his Son, of the 14th of *January* 1746; in which he ſays,

"I ſend you incloſed the Four Letters which you ſhould have carried "with you from *Caſtle Downey*: You may tell the Prince when you de-"liver the Letter to him."

The Authenticity of this is ſupported by his Son's Letter, to which this is an Anſwer.

So that, to this Overt Act, there are Two poſitive Witneſſes, *Hugh* and *Robert Fraſer*; beſides all the Circumſtances which give them Credit.

The Second Overt Act of this kind of Treaſon laid in the Articles, is,

That he ſent his Son, at the Head of an armed Force, to join the Young Pretender, and his Adherents, and aſſiſt them in the War they were then carrying on againſt his Majeſty, within the Realm.

Robert Fraſer proves, That Lord *Lovat* ſent Letters early to Two Heads of different Tribes of the Name, to prepare their Men, in order to join the Maſter of *Lovat*:

That he ordered Colours and Bell-Tents to be got ready:

That his Men were twice rendezvouſed juſt by his Houſe, with his Privity:

That he ordered the Witneſs to give them Gunpowder, and delivered him the Key of the Place where it was, for that Purpoſe:

That he furniſhed them with Bonnets, Shoes, and Shot.

His Letters to the Young Pretender, *Lochiel*, *Broughton*, and the Son himſelf, ſhew that he ſent his Son, and the Men he led.

Hugh Fraſer ſays, after his Return from the Preſident, Lord *Lovat* gave his Opinion, that his Son ſhould march with all Diſpatch:

That this was his final Opinion, and ſhould not be countermanded.

Robert Chevis proves, That my Lord offered him a Captain's Commiſſion.

Hugh Fraſer of *Dumballoch* ſays, Lord *Lovat* aſked him what Number of Men he could raiſe; and ſaid the Maſter was to head and raiſe them. —Declared he would ſend his Son and Clan—Wiſhed himſelf younger, that he might go and command the Men himſelf——Blamed his Son's Slowneſs in raiſing the Men——Promiſed Gratuities to the Wives and Children of thoſe who went South to the Pretender, and engaged to ſupport their Families in their Abſence.

W. Walker was preſent at Part of a Diſpute between Lord *Lovat* and his Son, who threw his Cockade into the Fire.

He heard Lord *Lovat* ſay to *Fraſer* of *Byerfeild*, "What would you "have me do? I am forcing my Son out, the Life of me."

Peter Fraſer of *Balladrum* proves, That when the Men were rendezvouſed, the Officers uſed to go to Lord *Lovat*, and he bid them go to his Son, their Colonel.

There are more; but I have already named Six Witneſſes to this Overt Act, whoſe Evidence is confirmed by a Variety of Circumſtances.

The Third and only other Overt Act of this kind of Treaſon, which I ſhall mention, is, That he conſpired with many Perſons in Arms, how to renew the Rebellion, when it was almoſt ſuppreſſed, and to raiſe Forces to keep it alive.

John Murray of *Broughton* proves, That Lord *Lovat* met at *Mortligen*, in the Iſland of *Morar*, Fifteen of the Chiefs of the Rebels:

That he ſaid 3000 Men would be ſufficient; and mentioned 400 *Fraſers*, as the Quota of his Son; and deſired *Lochiel* to anſwer for his Son.

John Farquhar proves, That he embraced *Lochiel*'s Officers; and ſaid, He did not doubt their getting 7 or 8000 real honeſt Men, to fight the Elector of *Hanover*'s Troops.

Charles Stewart proves, That 3 or 400 *Fraſers* were propoſed as his Son's Quota; and that he deſired *Lochiel* to anſwer for his Son.

All agree *French* Money was diſtributed for the Purpoſe of raiſing Men; and that 70 or 80 *Louidors* were given to a Man belonging to Lord *Lovat*, for the *Fraſers*.

John Murray of *Broughton* ſays, That Four or Five Days after, my Lord talked of ſending the Servant who had received the Money, to his Son with it.

So that, to this Overt Act, there are Three concurring Witneſſes.

The Third Head of Treaſon laid in the Articles, which is, knowingly correſponding with the eldeſt Son of the Pretender, and Perſons employed by him, contrary to the late Act of Parliament, I paſs over, becauſe the Evidence to ſupport that Part of the Charge is alſo Evidence upon the Two other kinds of Treaſon; and, as ſuch, it has already been taken notice of.

All this particular Proof is ſtrongly corroborated, if it wanted any Support, by a general Evidence of Guilt.

Lieutenant *Dalrymple* proves, That Lord *Lovat*, after he was taken, being aſked, how he came to be engaged, ſaid It was in Revenge for the Loſs of his Company.

David Campbell aſking how he came to be engaged in a thing of this Kind, at his Years, Lord *Lovat* ſaid, He had been diſobliged by taking away his Company.

Sir *Everard Fawkener* has told your Lordſhips, that he did not take Pains to deny his Guilt: That he put the Part he had acted upon Reſentment to the Miniſtry, for having taken away his Company:---That he ſaid, for the Sake of Revenge, he would have joined *Kouli Kan*, had he come.

His eſcaping after he was firſt apprehended, the Condition and Place in which he was taken, ſhew, that he thought his only Safety lay in Flight.

After he was taken, his Declarations to thoſe who took him; his Converſations with Sir *Everard Fawkener*, well knowing who he was, ſhew an abſolute Conviction, that the Part he had acted was too notorious to be diſſembled.

My Lords, This being the Nature and Strength of the Evidence, upon which the Caſe now in Judgment depends: from the Precedent which may be made upon this Occaſion, I little thought to have heard of Danger to Innocence hereafter.

If this were a doubtful Matter, if it were a meaſuring Caſt, the Commons had rather the Guilty ſhould eſcape, than run a riſk of the Innocent being condemned. When they accuſe, they deſire the Perſon accuſed may be convicted upon clear, ſatisfactory, and unanſwerable Proof, or not at all.

The noble Lord at the Bar has complained of many Hardſhips: Few are the Tryals in which ſuch a Complaint would be ſo little founded.

He had full Time to prepare for his Defence: At his own Requeſt he has been indulged with Adjournments during the Tryal: He has had all the Advantages of Aſſiſtance which could be given, or connived at.

I wiſh the inflexible Rule of Law, as it ſtill ſtands in Proſecutions of this Kind, could have allowed him to make his full Defence by others.

The Appearance of a Hardſhip would have been removed; but, as this Caſe is circumſtanced, the removing that Appearance would have helped the Proſecution much more than the Priſoner.

I ſpeak it feelingly, I had rather reply to the ableſt Advocate, than do what my Duty now requires of me. It is painful to the laſt Degree, to obſerve upon any thing which has dropped from himſelf; but ſome Notice muſt be taken.

He has laboured to prove, That no Credit ought to be given to the Witneſſes againſt him, becauſe many of them are Accomplices, and ſpeak from the Danger of their Situation.

I will allow, that the Hopes of Life, or the Fear of Death, may have induced ſome of them to give Evidence upon this Occaſion, but not a falſe Evidence.

The ſame Hope or Fear is a Security againſt that: When the Commons accuſe, and your Lordſhips ſit as Judges, what Expectation can they have but from their Ingenuity and Veracity? Should they be caught prevaricating, ſhould they be detected in a falſe Accuſation, deſperate were their Condition indeed.

But the noble Lord is miſinformed, when he ſays an Accomplice ought not to be believed at all, till he is pardoned: If ſo, he could not be examined. The utmoſt Force of the Objection is no more than a Circumſtance, to weigh in the Scale againſt his Credit; but then it muſt be balanced with the Matter of the Evidence, the Manner in which it is given, the Proof by which it is ſupported, and that by which it is contradicted.

The Matter here is probable and conſiſtent: Nothing of Conſequence reſts upon a ſingle Teſtimony: They who ſupport each other, firſt told their Stories ſeparately; have never ſince had an Opportunity of conferring; and therefore could not agree in a Fiction.---One perhaps firſt examined in *London*, another at *Inverneſs*, neither knowing what the other had, could, or would ſay, kept in ſeparate Cuſtodies ever ſince,---it is impoſſible they ſhould unite in the ſame Falſhood.

The Manner too in which they gave their Evidence, carried with it a Degree of Conviction: To inſtance in one, the Behaviour of *Hugh Fraſer* demonſtrated what he told your Lordſhips: He ſaid, if he had no Hopes of Mercy he would not have ſpoke at all; for if he ſubmitted to be examined, he muſt ſpeak religiouſly the Truth.

The viſible Agonies, and Anguiſh of Mind, under which he laboured; the Ingenuity with which he anſwered the preciſe Queſtion put to him, without ever going a Syllable beyond it; could not but force Belief to all he ſaid; and ſhewed he gave the Anſwer becauſe it was true, but wiſhed not to have given it upon this Occaſion.

When he firſt diſcovered what he knew, he has told your Lordſhips, that he thought himſelf in the Article of Death; and from what he then ſaid he never has varied ſince.

The Proof by which their Teſtimony is ſupported, I have already laid together in one View: To contradict them nothing is offered.

The noble Lord ſays, the Witneſſes who could clear him are not here: Though, in the Courſe of the Tryal, we heard of his having Witneſſes, and what they would prove; he has not had Time enough to bring them;---he complains of their having been prevented: As he has not Witneſſes enough, he won't call any.

Theſe are Pretexts; but he let fall the true Reaſon why he has no Witneſſes,---There is no making Brick without Straw;---There is no calling Witneſſes without Facts;---There is no making a Defence without Innocence;---There is no anſwering Evidence which is true.

He has not ſo much as ſuggeſted what theſe Witneſſes could prove, if they were here.

I will do him the Juſtice to believe, that, if he could with Truth, he would not now throw the whole upon the ſtiff-necked, headſtrong Diſobedience of his Son---That unhappy Boy is already attainted, and now actually in Cuſtody. Though he might have been made the Scapegoat, if he were out of Reach, yet, in his preſent Situation, I am ſure the noble Lord would not defend his own Life by loading this unfortunate Youth: Much leſs would he attempt ſuch a kind of Defence, contrary to Truth; for ſo it muſt be, if either the Priſoner himſelf, or our Evidence, is believed.

Would he call Witneſſes to prove the Letters which have been read to be forged?---Conſider how they are authenticated.---To ſome his Signature ſtill remains---He don't controvert its being like his Hand---The Bodies are wrote by *Robert Fraſer*.---A Letter, unqueſtionably ſigned and ſent by the noble Lord to his Royal Highneſs the Duke, was produced:---The Body is wrote by the ſame *Robert Fraſer*. The Signature to this, and the Signature which remains to the others, appear manifeſtly of the ſame Hand.

One of the moſt material Letters is an Anſwer to a Letter wrote by his Son.---That too muſt be a Forgery;---yet it was found in his own Cuſtody.---But the intrinſick Evidence of Authenticity is ſtill ſtronger.

If the Letters are forged, how come they to give the ſame Account of the Aſſociation, and mention the ſame Perſons concerned, as your Lordſhips have heard from the general Evidence?

If the general Evidence is a Fiction, how could the ſame Story get into theſe Letters?

If *Robert Fraſer* invented the Letters, how came *Hugh Fraſer*, and others, to give the ſame Account of the Patent and Commiſſion which is to be found in them? If the Patent and Commiſſion never were ſeen or heard of, how could they be put into forged Letters?---But Remarks are unneceſſary, where the Caſe is ſo plain.---I have ſaid thus much, to ſhew, that the noble Lord's alledging he wants Aſſiſtance, or has not his Witneſſes, may be of more Service to him; than any Aſſiſtance, or Witneſſes, he could have; and to ſhew, that the Commons have not taken upon themſelves this Proſecution, to lay the noble Lord at the Bar under any Diſadvantages, *in* his Defence. From the Witneſſes who have been examined, the Caſe muſt appear to your Lordſhips ſuch as no Advantages could have enabled him to get the better of. There are many Circumſtances which induced them to ſingle out this Proſecution; many Circumſtances of a publick, many of a peculiar Nature. I am almoſt tempted to mention ſome of them;-- but, in Part, they have occurred to your Lordſhips in the Courſe of the Examination; and I refrain, leſt I ſhould drop any thing that might tend to inflame.---Every thing of that ſort has, by every body, been carefully avoided upon this Occaſion.---*That Ciceronian Eloquence*, as he calls it, from Principles of Juſtice and Humanity, has not been uſed againſt him. Every Gentleman, who has ſpoke in this Tryal, has made it a Rule to himſelf, to urge nothing againſt the Priſoner but plain Facts, and poſitive Evidence, without Aggravation.---They have addreſſed themſelves to your Judgment, and not to your Paſſions. I dare ſay your Lordſhips have obſerved, that, though the Evidence given conſiſts of a Variety of Facts, ſome more directly affecting the noble Lord, others leſs, and ſome, perhaps, not affecting him at all, neither in the Summing up the Evidence, nor in what I have now troubled your Lordſhips with, has any thing been mentioned as direct Evidence againſt him, which is not ſo. Circumſtances which only tend to corroborate, have been mentioned in that Light; and Evidence which no way affects him, has not been repeated, or obſerved upon at all.

My Lords, The Whole is now before your Lordſhips: It is your Province to make the Concluſion which ought to be drawn from the Premiſes.

Lord *Talbot*. My Lords, The Abilities of the learned Manager who juſt now ſpoke, never appeared with greater Splendour than at this very Hour, when his Candour and Humanity has been joined to thoſe great Abilities which have already made him ſo conſpicuous, that I hope one Day to ſee him add Luſtre to the Dignity of the firſt Civil Employment in this Nation. My Lords, I obſerve one thing in the Defence of the noble Lord at the Bar; which, for the Sake of the Managers for the Repreſentatives of *Great Britain*, and out of the Regard that I have for their Conſtituents who deputed them, I think *myſelf* obliged to take Notice of.

My Lords, The noble Lord at the Bar, in his Defence, complains, I believe, very unjuſtly, of the Hardſhips he has ſuffered, *in* being deprived of his Witneſſes; and, at the ſame time, mentions, that there are Witneſſes of indiſputable Credit, who were brought up in order to be Witneſſes againſt him, but who have not been examined by the Managers, for Fear they ſhould, on their Croſs-Examination, ſupport thoſe Facts.

My Lords, I therefore now deſire, for the Honour of the Gentlemen who are Managers of this Proſecution, that the noble Lord at the Bar may be aſked, Whether he is now willing to have thoſe Witneſſes produced, and to have them aſked any Queſtions concerning that Matter?

Mr. Attorney General. My Lords, What has been taken Notice of by the noble Lord, and what is deſired by him, is extremely irregular, after the Managers have cloſed and ſummed up their Evidence; and the noble Priſoner had Liberty and Time given him, in the moſt indulgent Manner, to make his Defence in ſuch Way as he ſhould be adviſed. He was pleaſed to make a Speech to your Lordſhips, containing a great Variety of Facts, but declined producing any Witneſſes; and though called upon for that Purpoſe, thought proper to acquaint your Lordſhips, that he ſhould offer none to ſupport thoſe Facts which he had alledged: Your Lordſhips have, upon that Declaration, been pleaſed to proceed to hear the Managers Reply.

My learned Friend on my left Hand hath executed that Part with great Juſtice to the Commands of the Commons, and all that Tenderneſs to the noble Priſoner, which was conſiſtent with his Duty. Your Lordſhips have heard and felt the Weight of it.

The Proceedings are cloſed, and wait only for your Lordſhips Opinion. The Managers therefore are ſurpriſed to find the noble Lord now calling upon the Priſoner, to examine Witneſſes which he did not think proper himſelf to examine, after the fulleſt Opportunity of conſidering it. And it appears by his own Speech, he has had Correſpondence with his Witneſſes ſince they came up. The Managers therefore muſt inſiſt, that your Lordſhips will proceed to give your Opinion upon the Whole of the Evidence, which is now fully before you.

My Lords, I cannot but take Notice of the Method which the Priſoner at the Bar has taken, of reflecting upon this Proſecution, in his Speech. He has complained in a heavy Manner, and endeavoured to induce your Lordſhips to believe, that thoſe who have had the Conduct of this Proſecution, have been uſing undue Methods, either to get Witneſſes to ſupport

support the Charge, or to prevent him from having any Witneſſes in his Defence. If the Priſoner at the Bar could have made out any thing of this Kind, your Lordſhips would certainly have heard it here, in Evidence; for his not doing it could not be out of Deference to the Commons, or to your Lordſhips, or to his Majeſty.

He has repreſented as if a new Method was taken, of erecting uncommon Courts of Juſtice, to compel ſome Witneſſes to give Evidence on one Side, and deter others from doing it on the other. My Lords, it is indecent to lay Reflections of this Kind before your Lordſhips, in this Manner. Is the noble Lord at the Bar now to ſay, I could have Evidence, if I had an Opportunity of producing it; and if your Lordſhips will give me Time, I will prove all that I have ſaid? My Lords, what has he been doing ever ſince the Articles were exhibited? Who are the Perſons he could now examine? Many of his Witneſſes, he has ſaid himſelf, are come up; has he made any Uſe of them? Have they been examined at your Lordſhips Bar? On the contrary, did not the Priſoner ſay, he would produce no Witneſſes? Yet, ſays he, I will reflect upon the Proceedings; and ſay, that I could have Witneſſes, if I had Leave and Time to produce them.

My Lords, a Priſoner who is tried for his Life, may think he has a Right to ſay any thing, how falſe, how unjuſt ſoever: But it is incumbent on your Lordſhips to prevent the Effect of ſuch Reflections, to do Juſtice to all Parties, to the Government, the Commons of *Great Britain*, and the Managers. The Priſoner ſeems to have Hopes, that your Lordſhips may be prevailed upon, by this Means, to believe, that there is ſome Truth in what he ſays. Your Lordſhips Indulgence now, of further Time, on this Pretence, would give ſome Colour to that Suggeſtion; and it will be imagined, that it was believed by your Lordſhips. I call upon the Priſoner himſelf, to declare, whether your Lordſhips did not indulge him with an Opportunity of calling any Witneſſes, even thoſe brought up on the Part of the Managers, on his giving them Notice for that Purpoſe? If your Lordſhips ſhould now, upon what has been ſaid by the noble Lord, which I do not doubt but he ſaid from the great Regard he has to Juſtice, and from his Compaſſion for a Perſon appearing in the Circumſtances of the Priſoner: I ſay, my Lords, if upon ſuch a Suggeſtion your Lordſhips ſhould now call again upon the Priſoner to produce his Witneſſes, it will be giving Credit to that falſe and injurious Inſinuation: And I hope your Lordſhips will not give Colour to imagine it was believed by You, by giving Leave to the Priſoner now to call Witneſſes for that Purpoſe.

Lord High Steward. Have you done with your Evidence on both Sides?

Lord *Lovat.* My Lords, I am an unfit Perſon to ſay any thing after that great Man that has ſpoken laſt; but, ſince I am now upon my Tryal for my Life and Fortune, I muſt tell your Lordſhips what is really Fact, though, perhaps, it may not be pleaſing to that great Man, That there is not one Syllable of what he has ſaid true. My Lords, it is certain, that I got your Lordſhips Order for bringing up Sixty Witneſſes to this Place; and it is certain that I ſent a Gentleman, who was once allowed to be my Sollicitor; and, though I was robbed of my whole Money, and did not get a Farthing out of my Eſtate ſince I was taken Priſoner, yet I had Intereſt enough to get 500 *l.* from Mr. *Roſs*, which was given to this Man, to bring up my Witneſſes. My Lords, he came there to *Inverneſs*, and found all the Witneſſes that I had named to him were very ready to come up; but I was extremely ſurpriſed to find, that there was a new Court, beſides the Court of the Houſe of Peers, a little Depute of the Sheriffs, that took upon him to leave the common Place of Juſtice in the Tolbooth at *Inverneſs*, and to go to a private Place in the Suburbs, and there to erect ſuch Courts as he thought fit; and there he examined what Witneſſes he pleaſed; and thoſe which he thought Friends to me were ſome of them put into Priſon, others overawed and terrified, and others chaſed out of their Houſes, their Houſes burnt, and their Cattle taken away, and moſt of the reſt obliged to go to the *Highlands*, and threatened to be undone, if they came to be Evidence for me. My Lords, after my Friend, that was ſent to bring up my Witneſſes, uſed all his Endeavours, and offered to bear their Expences, and to keep them, he could not get them to come up, becauſe there was an Influence uſed by the General Officers in his Majeſty's Service, and Perſons ſent up and down the whole Country, to threaten Part of the Witneſſes, and to bribe others of them: So that, my Lords, though I am no Lawyer, nor Orator, as the learned Gentleman on my left Hand is, yet I heard from a very great Man, that this was a Precedent which never happened in *Scotland*, and, he believed, not in *England*; and he ſaid to me, That it was moſt certain the Lords would take notice of it, becauſe the Affront had been done to themſelves. My Lords, after I was arraigned before your Lordſhips, and that the Houſe of Commons had brought up Articles againſt me, that your Lordſhips would not allow any little Court of Inquiſition to go afterwards, and to judge my Cauſe, as it were, before your Lordſhips. Therefore, my Lords, it is ſimply impoſſible for me to make my Defence, while I am not allowed the Witneſſes that your Lordſhips ordered for me. That what I ſay myſelf is true, there are two Affidavits here of it, if your Lordſhips pleaſe to let them be read by the Clerk.

Lord High Steward. My Lord *Lovat*, By our Law, Affidavits cannot be read as Evidence upon a Tryal: You muſt call Witneſſes to prove the Facts. But I would aſk your Lordſhip the Name of that Agent, whom you ſent down into *Scotland* to bring up the Witneſſes, and who gave you this Information?

Lord *Lovat.* His Name is *Hugh Fraſer*.

Lord High Steward. My Lord *Lovat*, I muſt put your Lordſhip in mind, that you made Three Applications to the Houſe of Lords, by Petition, to put off your Tryal: The firſt was on the 19th of *February*, and the others on the 2d and 3d of *March*. One of thoſe Petitions was ſupported by an Affidavit made by one *Hugh Fraſer*: Was that the ſame *Hugh Fraſer*, whom you ſent, as your Agent, into *Scotland*?

Lord *Lovat.* Yes, my Lord, it was.

Lord High Steward. Then, my Lord, there is another Affidavit annexed to your Petition to put off the Tryal, on the 3d of *March*, which is the Affidavit of *George Roſs*. Now, in neither of theſe Petitions, though one of them is ſupported by the Affidavit of *Hugh Fraſer*, whom you admit to be the Perſon you ſent into *Scotland* to ſummon your Witneſſes, is there any Allegation of any undue Practices, or any Reſtraint upon your Witneſſes. How comes it to paſs, when this *Hugh Fraſer* came back from *Scotland*, and made an Affidavit to ſupport the Petition to put off your Tryal, that this Complaint was not made then?

Lord *Lovat.* My Lords, In the firſt place, it could not be done before, becauſe they went upon theſe Methods but juſt before *Hugh Fraſer* came up. I have a Miniſter of the Goſpel, a very honeſt and worthy Man, whom they deſigned to make an Evidence againſt me; and, I believe, he will tell the Truth upon the Subject of the Hardſhips done to my People, to keep them from coming up here to be Evidences; I mean my Tenants.

Mr. Noel.

My Lords,

I DID not intend to have troubled your Lordſhips at all, not finding the noble Lord at the Bar had, in his Defence, made it neceſſary for me to take any Part in the Reply; ſince what he has ſaid (if it had been more material than the Nature of it appears to be), he hath ſaid unſupported by any Evidence at all; and the noble Lord very well knows, that, in every Court of Juſtice, a Priſoner is not expected to make his Defence by what he thinks fit to ſay himſelf; but he muſt ſupport it by Evidence, or it can have no Weight in Anſwer to the Evidence produced to ſupport the Charge againſt him; and, my Lords, it was for that Reaſon that I did not trouble your Lordſhips in that Part of the Caſe, which hath been ſo amply, minutely, and accurately gone through by my learned Friend, who has ſpoken to it. But, ſince the noble Lord has irregularly mentioned ſeveral Matters ſince the Reply was cloſed, I ſhall take the Liberty to make ſome Obſervations upon what he has inſiſted upon.

My Lords, the noble Lord at the Bar has made it Matter of Complaint to your Lordſhips, as if particular Methods of Practice had been uſed, to prevent his Witneſſes coming up to appear in his Behalf. Your Lordſhips will give me Leave to ſay, that ſuch Allegations ought to be conſidered as the higheſt Injuſtice, when his Lordſhip has not called one ſingle Witneſs to the Truth of them, or to his own Defence. My Lords, this Affectation of ſaying Things, without ſupporting them by any Proof, after hearing the Reply of the Commons, and the ſumming up of the whole Proceeding, is a Method which was never known to be endured in any Proceeding by way of legal Tryal. My Lords, it is extremely eaſy for any noble Peer upon this Occaſion, when he ſtands to be tried for his Life, and has no Defence to make, nor no Witneſſes to produce; it is eaſy, I ſay, my Lords, to throw in Matters by way of Calumny; but your Lordſhips will not endure it, unleſs it is made at a proper Time, and ſupported by proper Evidence.

My Lords, I am the more ſurpriſed at this from the noble Lord at the Bar, becauſe, whatever he may think of it, this I will ſay, that I know of no Inſtance in any Caſe where a Priſoner has been more fairly dealt with, or uſed with more Candour and Humanity on the Part of thoſe, whoſe Buſineſs it is to make out the Charge againſt him, nor on the Part of thoſe, by whom he is to be tried: And it is the more extraordinay, becauſe, if I am not miſtaken, till this very Day, he has declared to your Lordſhips, that he had Numbers of Witneſſes ready to produce, who would falſify every Fact which has been alledged againſt him.

My Lords, I will take notice, now I am up, of another Objection made by the noble Lord to ſome of the Witneſſes that have been produced againſt him. My Lords, it is a known Objection; it has been often made, and as conſtantly over-ruled.

The noble Lord ſays, Some of the Witneſſes are Perſons intereſted; that they are criminal, as Accomplices in this Rebellion; and therefore ought not to be believed. Your Lordſhips will give me Leave to ſuggeſt, whether the laying down that as a Rule would not be of very ill Conſequence, and, in effect, ſecure the moſt wicked Offenders from all Poſſibility of Puniſhment and Juſtice. My Lords, it is from a Principle of right Reaſon, and abſolutely neceſſary to the Preſervation of Government, that thoſe who are concerned with them, ſhould have Liberty to do Juſtice to the Publick by their Teſtimony. It is ſo in all Caſes of Robbery, Murder, and other Felonies, and much more in Caſes of Treaſon, where the Whole is in Danger. My Lords, if this was not ſo, the very End of Government would fail in every Particular, if thoſe who are concerned, and beſt able to diſcover the Truth, are not allowed to give Teſtimony, for the ſake of preſerving the Nation. But, my Lords, in the preſent Caſe, I don't recollect any material Fact againſt the noble Lord at the Bar, but what has been proved by every Witneſs *viva voce*, and by every Letter that has been read, wherein not only his correſponding and treaſonable Engagements have been made appear, but he has expreſſed himſelf, almoſt in every Letter, as manifeſting the Glory he took, and Zeal he ſhewed, in that wicked Service, which he is proved to be engaged in to the laſt.

My Lords, we have nothing now to do, but to expect your Lordſhips Opinions upon the Evidence and Facts that have been laid before you; and in Contradiction to which, there is not one ſingle Evidence produced by the noble Lord.

Here the Priſoner offered to ſpeak.

Lord High Steward. My Lord *Lovat*, My Lords will be ready to hear every thing that you can offer, which is material for your Defence; but I muſt acquaint you, That the Commons, by the conſtant Rules of Proceeding in Caſes of this Kind, are intitled to the laſt Word.

Lord *Lovat.* My Lords, I am far from blaming the Honourable Managers for the Commons, tho' they proſecute me with great Warmneſs, and eſpecially the Man at their Head, who was, ſome time ago, my Friend and Acquaintance. But, my Lords, whatever they were pleaſed to object againſt me, as I was forced to ſpeak for myſelf, I was obliged to anſwer; and my Lords, ſince I aſked the Favour of this Houſe to force up my Evidence in the Manner they thought fit, your Lordſhip ſaying, That no Affidavit was good upon the Subject, my Lords, I have Two very good Witneſſes, one a very Reverend Miniſter of the Goſpel, that will prove

the moſt extreme Hardſhips that ever were impoſed in this Country, to hinder my Witneſſes from coming up to me; ſo that, if your Lordſhips do not, in your great Juſtice and Goodneſs, think it proper to order, in the Manner your Lordſhips pleaſe, to have my Witneſſes come up, I muſt ſubmit to your Lordſhips. You may do what you pleaſe.

Lord High Steward. My Lord *Lovat*, I particularly aſked your Lordſhip, Whether you would call any Witneſſes to prove what you alledged in your Defence: To which you anſwered, That you would not.

Lord *Lovat.* My Lords, I would call Witneſſes upon no other Account than this that I have mentioned. I have Witneſſes to prove the Falſity of what has been ſaid by the Witneſſes againſt me; but, ſince I do not get Time to do that, I give it up.

Lord High Steward. Your Lordſhip does not attend to what I ſaid, which was, That I aſked you Two or Three times, Whether you would call any Witneſſes to prove any Part of your Defence: To which you ſaid, No. If you had any Witneſſes, why did you not call them at that Time?

Lord *Lovat.* This Miniſter was brought up as one of the Counter-Evidence. I told your Lordſhip, That I would call no Witneſſes that Day.

Lord High Steward. Is that Miniſter here?

Lord *Lovat.* He is here.

Lord High Steward. Gentlemen of the Houſe of Commons, It is certainly an irregular Method, in which the noble Lord at the Bar would proceed, to call Witneſſes after the Reply; but I deſire to know of you, Whether you oppoſe my Lord *Lovat*'s calling Witneſſes now?

Mr. Attorney General. My Lords, It is a Difficulty upon us, who are appointed Managers, to carry on this Proſecution, and would do it with all the Candour and Indulgence poſſible, to inſiſt, That the noble Lord, who is trying for his Life, ſhould not now be admitted to produce Witneſſes; but it is, perhaps, as difficult to know, how to diſpenſe with that which is the known Courſe and Method of Proceedings, merely becauſe the Priſoner, in an irregular and improper Manner, thinks fit to deſire it. The Managers do not oppoſe their being produced, from an Imagination that they would ſay any thing material for the noble Lord at the Bar; but, if your Lordſhips are to break through all Methods and Rules of Proceedings, your Lordſhips will conſider the Conſequence. The noble Lord at the Bar told your Lordſhips, That he did not intend to call any Witneſſes; and, upon that Foot, the Managers replied. He has now told you, That he would do it. But what is it that he would examine them to? Is it to make out any Part of his Defence to the Treaſon charged on him? That is not pretended; but to prove the Hardſhips he complains of, in being hindered from having his Witneſſes; and the noble Lord at the Bar wants your Lordſhips Order now for their coming. The Tendency of this, if it means any thing beſides Complaint, is to put off the Cauſe after it is heard; and, unleſs I had a greater Authority than I have at preſent, I cannot take upon myſelf, and I do not find that the reſt of the Gentlemen, who are Managers, can take upon them, to depart from the known eſtabliſhed Courſe of Proceeding, and to introduce a Precedent that may be of bad Conſequence. And, my Lords, I can hardly think, that the noble Lord at the Bar would inſiſt upon doing it, but becauſe he thought, that the Managers muſt inſiſt, that he ought not. There is nothing that has occurred now, that did not, muſt not, have occurred to him before; and when the Priſoner thought fit to declare to your Lordſhips, after having full Time allowed him for the matureſt Conſideration, and Counſel appointed for his Aſſiſtance, That he would not call any Witneſſes, you cannot but think ſuch Determination of his was upon the Advice that his Counſel gave him; and your Lordſhips will hardly think, that the noble Lord can, at preſent, thus unadviſedly determine to call any Witneſſes, which before, upon the Foot of the Advice he muſt be preſumed to have taken, he determined not to do, from any Expectation that they would be able to do him any real Service, but from Views of another Kind. The Managers therefore doubt not that your Lordſhips will proceed in this Caſe, as you would in any other, to conſider the Evidence, and give ſuch Judgment on the Whole, as your Lordſhips ſhall think moſt right and juſt.

Lord *Lovat.* My Lords, I have often told your Lordſhips of the Infirmities that I labour under: I have often mentioned them to you; and the Want of Memory is the thing I regret moſt. I have been a Cripple theſe Four Years, and therefore not very capable to go to head Men in the Rebellion; yet I am much ſurpriſed to hear that Honourable Perſon, that is at the Head of the Law, and very deſervedly placed there, that he ſhould loſe his Memory in an Hour's Time. My Lords, the Reaſon is plain to your Lordſhips, why I did not adduce Witneſſes this Morning: The Reaſon was, becauſe I begged of your Lordſhips Time to bring my Witneſſes up from *Scotland*, that they might be produced to prove my Innocence; and the only Reaſon that I now deſire to call theſe two Witneſſes, if your Lordſhips pleaſe, is, that they may prove before that great Man ſuch Examples of extreme Hardſhips, as he will never find out in all his Law-Books.

Lord High Steward. My Lord *Lovat*, You mentioned but One Witneſs at firſt; and now you mention Two: Who is the other?

Lord *Lovat.* The Two are, *Donald Fraſer* and *Alexander Fraſer*.

Lord High Steward. Gentlemen of the Houſe of Commons, Do you oppoſe my Lord *Lovat*'s being admitted, though it is irregular, to call theſe Two Witneſſes?

Mr. Attorney General. My Lords, I think we cannot, conſiſtently with our Duty to the Commons, give up this Point, which would be attended with many dangerous Conſequences, the whole of which your Lordſhips may not now be able to foreſee, if a Man, when he has cloſed his Defence, and ſays, That he will examine no Witneſſes, and the Managers have replied, ſhould afterwards be admitted, on ſuch a Pretence as this, to examine Witneſſes.

Earl of *Cholmondeley.* My Lords, I am ſatisfied that the Manner, in which the noble Lord at the Bar deſires now to call his Witneſſes, is totally different from any Proceeding that I ever ſaw; but, as the accuſed Lord, in his Defence, has alledged ſeveral Hardſhips that he has undergone, in having his Witneſſes prevented from attending his Tryal, and as that contains the higheſt Reflection upon the Government, and thoſe who are employed under it, I would therefore deſire to know of the noble Lord at the Bar, Whether, upon the Speech that he offered at the Bar, as it contains Objections to the Credit and Weight of the Evidence, and Complaints of undue Practices; whether, upon thoſe Complaints, the noble Lord at the Bar deſires the Opinion of the Lords, whether they will give him further Time, in order to produce his Witneſſes?

Lord *Lovat.* My Lords, I was fully determined never to examine any Witneſſes, when I found I was under ſuch Diſadvantages; and I humbly beg your Lordſhips Protection and Kindneſs to give me Time.

MR. SOLLICITOR GENERAL.

My Lords,

THE Matter now agitated is of the utmoſt Conſequence not only to the preſent, but to all future Proceedings of this Kind; and I doubt, whether it is yet thoroughly underſtood, in its full Extent.

The Witneſſes the noble Lord now propoſes to call, are not to his Defence, or in Support of his Innocence.

If they were, how irregular ſoever it may be to offer them now, in my Opinion, and, I dare ſay, the other Managers are of the ſame, I ſhould be for conſenting to their being called. We ſhould never contend, though in Strictneſs we might, that any Evidence of this Kind came too late to be heard.

But the Deſign of calling them, as now opened, is to ſhew, that, from ſome Obſtruction given to the bringing up his Witneſſes, his Tryal ought to be put off to an indefinite Time; and that he may have new Orders to ſummon and compel Witneſſes to come from *Scotland*. This we oppoſe, becauſe the Application intended to be ſupported by it cannot now be made.

The Speech made by my Lord conſiſted of Two Parts: Firſt, a Deſire to put off his Tryal indefinitely; and, if your Lordſhips ſhould not think fit to comply with this Deſire, then he reſted his Defence upon Obſervations, and Objections to the Force and Credibility of that Evidence which had been offered to prove his Accuſation.

In this he was very proper; for though a Perſon accuſed calls no Witneſſes, yet, if the Charge againſt him is not clearly made out by legal and credible Evidence, he ought to be acquitted. Being aſked, whether he had any Witneſſes to call, he declared he had none.

Had he deſired to take your Lordſhips Opinion, whether the Tryal ſhould not ſtay till he could ſend to *Scotland* for Witneſſes, we ſhould have oppoſed it. Your Lordſhips calling to the Managers to proceed, was a Determination, that you would not deliberate about ſtaying the Trial.

I own freely to your Lordſhips, the Reaſon why I did not take particular Notice of the noble Lord's Complaint, was, becauſe I underſtood it to be meant as an Artifice to palliate his not going into any Evidence: And I did not think it neceſſary, I did not care, to endeavour to wipe off from his Apology any Varniſh of this Kind with which he thought fit to colour it. One thing, had I thought of it, I would have taken notice of: He was pleaſed to ſay, that ſeveral Witneſſes, brought up in Support of the Proſecution, were not called by the Managers, becauſe they would have proved the Hardſhips he complains of. I can aſſure your Lordſhips, and every other Gentleman of the Committee will join in what I ſay, no one Witneſs was left unexamined for that Reaſon. It is true, more Perſons were brought up to be Witneſſes than we called; but the Reaſon of not calling them was, either becauſe we thought what they had to ſay not material enough; or elſe, becauſe they were liable to an Objection the noble Lord had made; which, whether well or ill founded, we did not care to give your Lordſhips the Trouble of diſputing.

In conſequence of what fell from your Lordſhips, we told the noble Lord, in the Courſe of the Tryal, that any Witneſs examined by us ſhould attend to be examined by him, if he deſired it, and would give Notice: We ſhould have done the ſame with regard to any Perſon brought up as a Witneſs, tho' not examined.

As to this whole Matter of Complaint, the Managers are intire Strangers to it. Nothing of that Kind has been done with their Privity or Knowledge.

And this brings me to the Point, Whether Witneſſes ſhall now be heard at this Time, to prove any ſuch Ground for putting off the Trial *ſine Die*.

We oppoſe it, becauſe, true or falſe, the Tryal cannot now be put off; and it would be a moſt dangerous Precedent, to go into an *Ex parte* Examination of ſuch collateral Matters. Hearing the Evidence ſuppoſes your Lordſhips can do ſomething in Conſequence of it: If you cannot, it would be irregular and improper to go into it.

Before your Lordſhips appoint the Time of Tryal you take into Conſideration the Nature of the Charge, and the Place where the Facts ariſe, in order to allow a reaſonable Time for Preparation, and bringing Witneſſes.

Your Lordſhips did ſo in the preſent Caſe; and, after weighing all Circumſtances, you appointed the 23d of *February*.

If, thro' any Accident, the Time fixed is too ſhort, your Lordſhips are always open to Applications, which muſt be ſupported by Evidence, to ſhew the Delay is not affected; that all due Diligence has been uſed; and that the Witneſſes are material, and expected to come within a certain Time.

Upon the Application of the noble Lord, your Lordſhips deferred this Tryal to the 5th of *March*.

Upon another Application by him, you deferred it to the 9th of *March*, the Day named in his Petition.

If he had any Ground ſufficient for deferring the Tryal longer, he ſhould have applied to your Lordſhips before it began; but, upon the Ground now mentioned, it could not have been deferred, even in that Way, becauſe it is plain, this Matter, whatever there be in it, was within his Knowledge, at the Time of the other Applications. *Hugh Fraſer*, his Agent, who went down, as his Lordſhip ſays, to bring up his Witneſſes, made an Affidavit, annexed to a Petition preſented by his Lordſhip on the 2d of *March*, for putting off the Tryal; and was called in, and examined at your Lordſhips Bar.

There was likewiſe an Affidavit annexed to his Lordſhip's Petition, preſented on the 3d of *March*; and not a Syllable of this Complaint ever ſuggeſted; which ſhews, that they thought no Streſs could be laid upon it;

it; and that it was not to be supported. In the Courſe of the Trial hitherto your Lordſhips have heard nothing of it; on the contrary, you have heard of his Witneſſes, and what they were to prove.

There is no Precedent of putting off a Trial indefinitely, after the Evidence for the Proſecution is cloſed; I dare ſay there never will be ſuch a Precedent. At ſooneſt this Trial could not come on again before the next Seſſion of Parliament.

We oppoſe the attempting to prove a Matter upon which your Lordſhips cannot now do any thing; but I deſire it may be underſtood, that we do not oppoſe, tho' it be at an improper Time, the calling any Witneſſes upon the Merits of his Defence, either to diſprove the Evidence againſt him, or to aſſert his own Innocence.

Then the Duke of *Newcaſtle* moved to adjourn to the Chamber of Parliament: And the Lord High Steward going back to his Chair, the Houſe was adjourned accordingly: And then the Lords returned in the ſame Order as before.

After ſome Time, the Lords, and others, returned into *Weſtminſter-Hall*, in the ſame Order as uſual; and the Peers having taken their Places, and the Lord High Steward being ſeated in his Chair, the Houſe was reſumed.

Then Proclamation was made for Silence, as uſual.

L. H. S. Lieutenant of the *Tower* of *London*, take the Priſoner from the Bar; but you are not to take him away to the *Tower* yet.

Lord *Lovat*. If your Lordſhips would ſend me to the *Highlands*, I would not go to the *Tower* any more.

[*The Priſoner was taken from the Bar accordingly.*]

L. H. S. Your Lordſhips have heard and conſidered the Evidence in this Cauſe, and every thing that has been alledged by the Managers for the Houſe of Commons, and by the Priſoner. The ſolemn and eſtabliſhed Method of your Proceedings requires, that I ſhould aſk your Lordſhips Opinions ſeverally upon the Queſtion, Whether the noble Lord the Priſoner is Guilty of the High-Treaſon whereof he ſtands impeached, or Not Guilty; and that thoſe Opinions ſhould be given in the Abſence of the Priſoner. My Lords, this has always been your Rule; and after that is done, the Priſoner is to be brought to the Bar again, and to be acquainted by me with the Reſult of thoſe Opinions. Is it your Lordſhips Pleaſure to proceed now to give your Opinions upon the Queſtion of Guilty, or Not Guilty?

Lords. Ay, ay.

Proclamation was then made for Silence, as before.

Then the Lord High Steward ſtood up uncovered; and, beginning with the youngeſt Peer, ſaid,

L. H. S. Henry Arthur Lord *Herbert* of *Chirbury*, What ſays your Lordſhip? Is *Simon* Lord *Lovat* Guilty of the High-Treaſon whereof he ſtands impeached, or Not Guilty?

Whereupon *Henry Arthur* Lord *Herbert* of *Chirbury*, ſtanding up in his Place uncovered, and laying his Right Hand upon his Breaſt, anſwered,

Lord *Herbert*. Guilty, upon my Honour.

In like Manner, the ſeveral Lords aftermentioned, being all that were preſent, being reſpectively aſked the ſame Queſtion, anſwered as followeth:

Samuel Lord *Sandys*. Guilty, upon my Honour.
Richard Lord *Edgecumbe*. Guilty, upon my Honour.
Stephen Lord *Ilcheſter* and *Stavordale*. Guilty, upon my Honour.
Henry Lord *Montfort*. Guilty, upon my Honour.
William Lord *Talbot*. Guilty, upon my Honour.
Robert Lord *Raymond*. Guilty, upon my Honour.
John Lord *Monſon*. Guilty, upon my Honour.
Matthew Lord *Ducie*. Guilty, upon my Honour.
Charles Lord *Cadogan*. Guilty, upon my Honour.
Robert Lord *Romney*. Guilty, upon my Honour.
Richard Lord *Onſlow*. Guilty, upon my Honour.
Allen Lord *Bathurſt*. Guilty, upon my Honour
Samuel Lord *Maſham*. Guilty, upon my Honour.
Thomas Lord *Trevor*. Guilty, upon my Honour.
Francis Lord *Middleton*. Guilty, upon my Honour.
Buſſy Lord *Manſell*. Guilty, upon my Honour.
George Lord *Hay*. Guilty, upon my Honour.
James Lord *Somervile*. Guilty, upon my Honour.
George William Lord *Hervey*. Guilty, upon my Honour.
Charles Lord *Cornwallis*. Guilty, upon my Honour.
John Lord *Berkeley* of *Stratton*. Guilty, upon my Honour.
John Lord *Ward*. Guilty, upon my Honour.
William Lord *Byron*. Guilty, upon my Honour.
Thomas Lord *Leigh*. Guilty, upon my Honour.
James Lord *Strange*. Guilty, upon my Honour.
Charles Lord *Maynard*. Guilty, upon my Honour.
John Lord *St. John* of *Bletſoe*. Guilty, upon my Honour.
Francis Lord *North* and *Guilford*. Guilty, upon my Honour.
Hugh Lord *Willoughby* of *Parham*. Guilty, upon my Honour.
Edward Lord *Wentworth* of *Nettleſted*. Guilty, upon my Honour.
Richard Lord *Willoughby de Broke*. Guilty, upon my Honour.
Ferdinando Dudley Lord *Dudley*. Guilty, upon my Honour.
John Lord *Delawar*. Guilty, upon my Honour.
James Viſcount *Leinſter*. Guilty, upon my Honour.
George Viſcount *Torrington*. Guilty, upon my Honour.
Simon Viſcount *Harcourt*. Guilty, upon my Honour.
Hugh Viſcount *Falmouth*. Guilty, upon my Honour.
John Viſcount *St. John*. Guilty, upon my Honour.
Henry Viſcount *Lonſdale*. Guilty, upon my Honour.
William Viſcount *Hatton*. Guilty, upon my Honour.
Charles Viſcount *Townſhend*. Guilty, upon my Honour.
Thomas Viſcount *Fauconberg*. Guilty, upon my Honour.
Richard Viſcount *Say* and *Seale*. Guilty, upon my Honour.
John Earl of *Buckinghamſhire*. Guilty, upon my Honour.
Francis Earl *Brooke*. Guilty, upon my Honour.
Hugh Earl *Clinton*. Guilty, upon my Honour.

Thomas Earl of *Leiceſter*. Guilty, upon my Honour.
John Earl of *Portſmouth*. Guilty, upon my Honour.
William Earl of *Bath*. Guilty, upon my Honour.
Robert Earl of *Orford*. Guilty, upon my Honour.
Thomas Earl of *Effingham*. Guilty, upon my Honour.
John Earl of *Aſhburnham*. Guilty, upon my Honour.
Benjamin Earl *Fitzwalter*. Guilty, upon my Honour.
James Earl *Waldegrave*. Guilty, upon my Honour.
Robert Earl *Ker*. Guilty, upon my Honour.
William Earl *Graham*. Guilty, upon my Honour.
Thomas Earl of *Pomfret*. Guilty, upon my Honour.
George Earl of *Macclesfield*. Guilty, upon my Honour.
Philip Earl of *Harborough*. Guilty, upon my Honour.
Philip Earl *Stanhope*. Guilty, upon my Honour.
William Earl *Cowper*. Guilty, upon my Honour.
George Earl of *Halifax*. Guilty, upon my Honour.
John Earl of *Granville*. Guilty, upon my Honour.
Charles Earl of *Tankerville*. Guilty, upon my Honour.
William Earl of *Strafford*. Guilty, upon my Honour.
Laurence Earl *Ferrers*. Guilty, upon my Honour.
Edward Earl of *Oxford*, and Earl *Mortimer*. Guilty, upon my Honour.
Charles Earl of *Portmore*. Guilty, upon my Honour.
James Earl of *Findlater* and *Seafield*. Guilty, upon my Honour.
James Earl of *Moray*. Guilty, upon my Honour.
George Earl of *Cholmondeley*. Guilty, upon my Honour.
Francis Earl of *Godolphin*. Guilty, upon my Honour.
John Earl *Powlett*. Guilty, upon my Honour.
William Earl of *Jerſey*. Guilty, upon my Honour.
William Earl of *Coventry*. Guilty, upon my Honour.
William Henry Earl of *Rochfort*. Guilty, upon my Honour.
George Earl of *Warrington*. Guilty, upon my Honour.
Robert Earl of *Holderneſs*. Guilty, upon my Honour.
Baptiſt Earl of *Gainsborough*. Guilty, upon my Honour.
Willoughby Earl of *Abingdon*. Guilty, upon my Honour.
Auguſtus Earl of *Berkeley*. Guilty, upon my Honour.
George Henry Earl of *Lichfield*. Guilty, upon my Honour.
Anthony Aſhley Earl of *Shaftesbury*. Guilty, upon my Honour.
Richard Earl of *Burlington*. Guilty, upon my Honour.
Francis Earl of *Doncaſter*. Guilty, upon my Honour.
Henry Earl of *Carliſle*. Guilty, upon my Honour.
George Earl of *Cardigan*. Guilty, upon my Honour.
Philip Dormer Earl of *Cheſterfield*. Guilty, upon my Honour.
Daniel Earl of *Winchelſea* and *Nottingham*. Guilty, upon my Honour.
Harry Earl of *Stamford*. Guilty, upon my Honour.
Charles Earl of *Peterborough* and *Monmouth*. Guilty, upon my Honour.
John Earl of *Weſtmorland*. Guilty, upon my Honour.
Edward Earl of *Warwick* and *Holland*. Guilty, upon my Honour.
Henry Earl of *Lincoln*. Guilty, upon my Honour.
Henry Earl of *Pembroke* and *Montgomery*. Guilty, upon my Honour.
Thomas Marquis of *Rockingham*. Guilty, upon my Honour.
William Marquis of *Lothian*. Guilty, upon my Honour.
John Marquis of *Tweeddale*. Guilty, upon my Honour.
Henry Duke of *Chandos*. Guilty, upon my Honour.
Robert Duke of *Manchester*. Guilty, upon my Honour.
William Duke of *Portland*. Guilty, upon my Honour.
Thomas Duke of *Newcaſtle*. Guilty, upon my Honour.
Evelin Duke of *Kingſton*. Guilty, upon my Honour.
Peregrine Duke of *Ancaſter* and *Keſteven*, Lord Great Chamberlain. Guilty, upon my Honour.
Archibald Duke of *Argyll*. Guilty, upon my Honour.
John Duke of *Montagu*. Guilty, upon my Honour.
John Duke of *Rutland*. Guilty, upon my Honour.
Thomas Duke of *Leeds*. Guilty, upon my Honour.
Charles Duke of *Bolton*. Guilty, upon my Honour.
Charles Duke of *St. Albans*. Guilty, upon my Honour.
Charles Noel Duke of *Beaufort*. Guilty, upon my Honour.
Charles Duke of *Richmond*. Guilty, upon my Honour.
Charles Duke of *Grafton*, Lord Chamberlain of his Majeſty's Houſhold. Guilty, upon my Honour.
William Duke of *Devonſhire*, Lord Steward of his Majeſty's Houſhold. Guilty, upon my Honour.
Lionel Cranfield Duke of *Dorſet*, Lord Preſident of the Council. Guilty, upon my Honour.

Then the Lord High Steward laying his Right Hand upon his Breaſt, ſaid,

Lord High Steward. My Lords, I am of Opinion, That *Simon* Lord *Lovat* is Guilty of the High-Treaſon whereof he ſtands impeached, upon my Honour.

L. H. S. My Lords, There are One hundred and Seventeen of your Lordſhips preſent; and you have unanimouſly found, That *Simon* Lord *Lovat* is Guilty of the High-Treaſon whereof he ſtands impeached.

Is it your Lordſhips Pleaſure, that he ſhould be brought to the Bar, and acquainted therewith?

Lords. Ay, ay.

Proclamation was made for Silence; and another Proclamation for the Lieutenant of the Tower *to bring the Priſoner to the Bar; which was done in the ſame Order as before: And then Proclamation was again made for Silence, as uſual.*

L. H. S. Simon Lord *Lovat*, The Lords have conſidered the Charge of High-Treaſon, which has been brought againſt you by the Houſe of Commons: They have conſidered the Evidence, and all that has been offered to maintain the Charge: They have alſo conſidered every thing that has been alledged in your Lordſhip's Defence: And, upon the whole Matter, their Lordſhips have unanimouſly found, that you are guilty of the High-Treaſon whereof you ſtand impeached.

Lord Preſident. My Lords, I move your Lordſhips to adjourn to the Chamber of Parliament.

L. H. S. Is it your Lordſhips Pleaſure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

The Houſe was accordingly adjourned to the Chamber of Parliament; and the Lords and others returned in the ſame Order as before.

And the Houſe being reſumed in the Chamber of Parliament,

Ordered, That this Houſe will proceed further, in order to the giving of Judgment againſt *Simon* Lord *Lovat*, To-morrow, at Eleven of the Clock in the Forenoon, in *Weſtminſter-Hall*.—And

A Meſſage was ſent to the Houſe of Commons, by the former Meſſengers, to acquaint them therewith.

Ordered, That the Lieutenant of the *Tower* of *London*, or his Deputy, do take back *Simon* Lord *Lovat*, and bring him again to the Bar of this Houſe in *Weſtminſter-Hall*, To-morrow, at Eleven of the Clock in the Forenoon.

Thurſday *the* 19*th of* March, 1746.

The Seventh Day.

ABOUT Eleven of the Clock in the Forenoon the Lords and others came from the Chamber of Parliament, in the ſame Order as on the Firſt Day, into *Weſtminſter-Hall*; where the Commons, and their Managers, were in the Seats prepared for them reſpectively, as before: And the Lords took their Places in the Court, and the Lord High Steward in his Chair.

Lord High Steward. The Houſe is reſumed. Is it your Lordſhips Pleaſure, that the Judges have Leave to be covered?

Lords. Ay, ay.

Then the Serjeant at Arms made Proclamation for Silence as uſual, and afterwards the following Proclamation:

Serjeant at Arms. Oyes, Oyes, Oyes! Lieutenant of the *Tower* of *London*, bring forth your Priſoner *Simon* Lord *Lovat* to the Bar, purſuant to the Order of the Houſe of Lords to you directed.

The Deputy Governor of the *Tower* brought the Priſoner to the Bar, in the like Form as before; and then he kneeled down.

Lord High Steward. Your Lordſhip may riſe.

The Serjeant at Arms, by Direction of the Lord High Steward, made another Proclamation for Silence.

Lord High Steward. *Simon* Lord *Lovat*, When your Lordſhip was laſt at this Bar, I acquainted you, That your Peers had found you Guilty of the High Treaſon whereof you ſtand impeached, by means whereof you are convicted of that High Treaſon: And I am now to aſk your Lordſhip, What you have to ſay, Why Judgment of Death ſhould not paſs upon you, according to Law?

Lord *Lovat.* My Lords, I am very ſorry I gave your Lordſhips ſo much Trouble in my Trial; and I give you a Million of Thanks for your being ſo good, in your Patience and Attendance, whilſt it laſted. I thought myſelf very much loaded by one *Murray*, who, your Lordſhips know, was the bittereſt Evidence there was againſt me. I have ſince ſuffered by another Mr. *Murray*, who, I muſt ſay with Pleaſure, is an Honour to his Country, and whoſe Eloquence and Learning is much beyond what is to be expreſſed by an ignorant Man like me. I heard him with Pleaſure, tho' it was againſt me. I have the Honour to be his Relation, tho' perhaps he neither knows it, nor values it. I wiſh, that his being born in the North may not hinder him from the Preferment that his Merit and Learning deſerves. Till that Gentleman ſpoke, your Lordſhips were inclined to grant my earneſt Requeſt, and allow me further Time to bring up Witneſſes to prove my Innocence; but, it ſeems, that has been over-ruled. All now that I have to ſay, is a little in Vindication of my own Character. I was pointed out by the Honourable Managers as a moſt inveterate Enemy of the Royal Family now upon the Throne, and the moſt zealouſly attached to a Family that is not like to come upon the Throne. My Lords, I humbly beg, that your Lordſhips will take notice, that my Attachment to the Family of *Hanover* is proved without Conteſt, after the great Services I have done. I was honoured by the King's Favour and Countenance, that made me ſo naturally and gratefully attached to his Perſon and Family; and as I was for Twelve Years in *Germany*, almoſt every Day in Converſation with his Majeſty and his Family, I thought it neceſſary to know the Hiſtory of his Family; and I read it very particularly; both the publick and private Hiſtory of it: And I muſt ſay, that ſince your Lordſhips, and this Nation in general, thought fit to have a King from *Germany*, you could not have choſe one from a more illuſtrious Houſe; ſo great, that ſeveral Emperors of *Germany* have been elected from out of that Family; and they always behaved with great Diſtinction, both in the Wars, and in their own Country. I will only give one Inſtance of that, which I had from my dear Maſter the late King's own Mouth (of glorious Memory). I heard him ſay this to the Emperor's Envoy, after the Siege of *Belgrade*, when the Envoy told him, That there were Forty thouſand Janiſſaries killed upon the Spot: "Why, ſays he to the Envoy, I ſhall be "very glad of it; but I know the Nature of thoſe Animals: If 40,000 "of them are killed at Night, in the very Place of thoſe that are killed "40,000 will riſe up the next Morning. I have had Experience of the "War with the *Turks:* I was with 6000 of my own Men, at the Siege "of *Buda:* And, I believe, they will do me the Juſtice to ſay, that both "I and my Men behaved as we ought to have done." This ſhews, my Lords, that I always had a true Notion of the Greatneſs and Illuſtration of the Family of *Hanover*. I gave ſignal Proofs of it in the Year 1715; and I beg your Lordſhips will indulge me to repeat a little of what paſſed at that Time, becauſe there are ſeveral Lords here that were not then born. My Lords, when I came into *England*, in the Year 1714, my Deſign was, that, with the Aſſiſtance of my Friends, the late Duke of *Argyll*, and the preſent Duke, I ſhould endeavour to get my Remiſſion, to go down into my own Country, to endeavour to recover my Fortune, and to ſerve the Government faithfully, in what I was able. In this Situation I was, when my Lord *Marſhal* ſet up the Pretender's Standard at *Aberdeen*. It did much alarm the Court. I was ſent for, and particularly ſpoken to by the Earl of *Sunderland*, and my Lord *Townſhend*, who were always my Friends. My Lords, this preſent Duke of *Argyll* was ſo generous, that he would follow his brother to *Scotland*, and expoſe his Life as a Volunteer; and he ſuffered by it; for at the Battle of *Sheriff-Muir*, he had a Ball went through his Side and Arm, and had almoſt loſt his Life, if it had not been by the extraordinary Skill and Diligence of one Mr. *Mac Gill*, a Surgeon, who attended him. When he went down, he told me, Dear *Lovat*, you muſt do your beſt for us now; and I deſire you may meet me in *Badenoch*, with all the Men you can get together; and I will gather all the Men I can in *Argyllſhire*, and meet you there. I went down on Horſeback, and he went down Poſt. Before I came to my own Country, I found that the Rebels were got together in vaſt Numbers; and as *Inverneſs* was the great Capital of all thoſe Parts, my Lord *Marſhal* reſolved to ſend 2000 Men to reinforce the Garriſon of *Inverneſs*, that it might not be ſurpriſed. The *Mac Intoſhes* and the *Mac Donalds* were gathered together, in order to go to *Inverneſs*. When I found it was impoſſible for the Earl of *Ilay* to come with his Men from *Argyllſhire*, I reſolved to diſtinguiſh myſelf, even though by a deſperate Stroke. I had gathered together 200 Men at *Strathbraan*; with theſe I marched to *Inverneſs*, and inveſted it. Sir *John Mac Kenzie*, the then Governor, had 1000 Men in the Town; ſo I found there was nothing for it but Boldneſs. I ſent a Meſſage, which, indeed, looked like a *French* Gaſconade, that I would blow him, and his Garriſon, and the Caſtle, and the ſtrong Steeple, into the Air, if they did not ſurrender to me before Ten o'Clock the next Day; though I had not Two Pounds of Powder. At the ſame time, I ſent a Party of Men, in which was a pretty Gentleman of Skill, one Captain *Roſs*, the Laird's Brother. Whether Sir *John Mac Kenzie* heard this Over-night, I can't tell; but he enquired, If I was fully reſolved to attack the Town. He told him poſitively, That I was. Says he, If *Simon* be there, he is a deſperate Fellow; I believe I muſt leave the Town to him: And accordingly, he run off that Night, with all his Men. This I did, my Lords, before any of the loyal Clans to this Government were raiſed. After this they were pleaſed to declare me General of the King's Forces there. When I got together near 2000 Men, of which 1000 were my own, I reſolved to attack Lord *Seaforth*, who was coming with 2500 Men, to join Sir *John Mac Kenzie*, at *Inverneſs*, or to fight any of the Rebels that ſhould meet him: He called them ſo. He ſtood his Ground till I came within Half a Mile of him. I drew up the little Army I had in pretty good Order, being an Officer for many Years before: And I can ſay to your Lordſhips, that, I believe, I am the oldeſt Officer in Commiſſion in *Great Britain*; for Fifty Years ago I was Captain of Grenadiers in King *William*'s Army. They were the *Sutherland* Men, Lord *Ray*'s Men, and ſome of the *Grants* and *Monros*: But when I came to march up the Hill, to attack Lord *Seaforth*, I had none followed me but the *Monros*. When they found I was come within Sight of them, they made a precipitate Retreat to a Bridge that was near them, over a River: And afterwards, by Lord Preſident's Advice, who was then in the Army, Lord *Seaforth* came, and ſubmitted to me, as General of King *George*'s Forces, promiſing immediately to lay down his Arms; which he did. This Submiſſion was brought up, and ſhewn to the Miniſtry. I then went, and reduced the Duke of *Gordon*, who gave me the moſt ample Submiſſion I ever read, to the King; and Aſſurances of Fidelity to him and to the Government. That Submiſſion I likewiſe ſhewed; and, if they are not conſumed in my Houſe that was burnt, they are ſtill extant. My Lords, then I purſued the Rebels from Place to Place, and chaſed them from Hill to Hill. On this Expedition I loſt my only Brother, who was a very brave young Fellow; and I never left off purſuing the Rebels till the Rebellion was ſuppreſſed and extinguiſhed: So that I may fairly ſay, that I aſſiſted to keep the Crown upon the late King's Head, as much, if not more, than any one Man of my own Rank in *Britain*. I had then ſeveral Invitations to come to Court; and had Three Letters of Thanks from the King's Perſon, by the Hands of the great Earl *Stanhope*, who was Secretary of State then; in which he ſays, that he was ſo ſenſible of my extraordinary and ſignal Services, that he would, all his Life, give me ſuch Marks of his Favour, as wou'd oblige all the Country to be zealous and faithful to me. Upon this I came to Court; and I was not diſappointed. I believe there are Lords in this Houſe, I am ſure there are a great many yet alive, that know I was a particular Favourite of the late King's; I believe more than any one of my own Rank in *Scotland*. I remember my Lord *Townſhend* told me one Day, who was my particular Friend, That I was certainly a great Favourite of the King; and if all the Miniſtry ſhould join together to hurt me, that it was not in their Power to do it; and that he would do me all the Service he could; and ſaid, the King would not refuſe any thing he ſhould aſk for me: And the King, to my own certain Knowledge, reproached the *Scotch* Miniſtry, that I was not provided for. But that unhappy Nation has been always divided amongſt themſelves, between the Family of the *Argylls*, and that of the *Montroſſes*; ſo that they, knowing me to be a Relation and Partizan of the Family of *Argyll*, they never would do any thing for me. At laſt, the King ſaid, he muſt do it himſelf; and ſent for the *Hanoverian* Miniſter, and told him, That he muſt immediately fix upon a Way to give me a Penſion: At laſt, it was ordered by the King's particular Inſtruction, that I ſhould have a Letter, or Patent, for myſelf, for 300 *l.* a Year; which I enjoyed till now, for any thing I know. Then all the *Engliſh* Miniſters, every one of them, were my Friends; and they propoſed that I ſhould go into the Army. Lord *Cadogan*, who, in the Year 1716, went with an Army into *Scotland*, ſent for me; and deſired me to bring up 500 Men to *Badenoch*, to eſcort him to *Inverneſs*: Which I did. They gave out, that the *Highlanders* were to attack him in the Woods: But when they heard, that I was with him, with the beſt Part of my Clan, they did not think it proper to attack him. After Lord *Cadogan* came to *Inverneſs* he ſent for Sir *Robert Munro*, who was killed at the Battle of *Falkirk*: He called me into his Cloſet with him, and told me, We are now fully convinced, Lord *Lovat*, that it was you, and a few of the King's Friends that were joined to you, that ſubdued and ſuppreſſed the Rebellion, and extinguiſhed it; and that all that was wrote in the Gazette about Lord *Sutherland*, was all Romance. Now, I am ſo ſenſible of thoſe Services that you have done the Government, that, if you will join yourſelf to the Duke of *Marlborough*, to the Earl of

of *Sunderland*, and to me, that are thought the Favourites of the King, we will, in the firſt Place, immediately make you a Major-General: You ſhall have a Regiment of Foot, or Dragoons, and 3000 *l.* a Year Penſion, during your Life. My Lords, if I had accepted of that Offer, I had now had the beſt Eſtate in *Scotland*; and would have been fair for being one of the Field-Marſhals of *England*, being the oldeſt Officer: But, my Lords, the Condition was too ſevere; and I had rather never have any Being than be ungrateful. The late Duke of *Argyll*, I mean this Duke of *Argyll*'s Father, who was one of the greateſt Men that has been in our Country for many Ages; he was a Father to me, and protected me as his own Child; he got me Two Remiſſions from King *William*; and, as he was carrying another Remiſſion in, to be ſigned by Queen *Anne* (King *William*, to my Misfortune, having died that Year), he found the Door ſhut; that is, he found that Three Men had turned out all King *William*'s Friends, of whom he was one, and the Duke of *Queensberry*, and ſeveral others; and that ſhe brought in Two Families, the Duke of *Hamilton*, and the Marquis of *Athol*, whom ſhe made a Duke; and to pleaſe him, with whom my Family unfortunately had a Quarrel about an Eſtate; to pleaſe him, I ſay, ſhe put 2000*l.* upon my Head, which was 1000*l.* more than ever was uſual. So I told the Duke of *Argyll*, that I had nothing for it, but to go to *Hanover*, and there to live and die with Fidelity to the Duke of *Hanover*. He told me, that he was well aſſured, that the Duke of *Hanover* would be glad to receive me; but, as he was then declared the Proteſtant Heir, and that Succeſſion depended much upon the good Will of Queen *Anne*, he muſt, upon her Deſire, be obliged to ſend me back to *England*; and that he did not know a ſafe Way for me but to go to *France*, becauſe we were at War with them then. And that was the firſt thing, my Lords, that obliged me to go to *France*, which was the Foundation of my Misfortunes. Now, my Lords, after what I have told you, I muſt humbly ſubmit it to your Lordſhips, whether you do not think it is improbable, that I ſhould be an Enemy to King *George*, and his Family: I, that received more Marks of Favour from the late King *George* than any Subject in the North; I, that got my Eſtate ſettled in his Time, both by the Houſe of Commons and Peers; I, that expected never to be out of Favour with the Government, being very zealous to promote any thing that was for the Good of it. My Lords, I commanded a *Highland* Company for Fifteen Years, as their Colonel: And the Country can teſtify, that there was no Depredation, Theft, or Robbery, committed there during that Time: I took Twenty-five *Highland* Robbers in the *Highlands* in one Night, and brought them all Priſoners to the Tolbooth of *Inverneſs*. I continued to act in the Manner that General *Wade* from time to time ordered me. I own I did not expect, that he, who reviewed my Company every Year, and called it the beſt Company that he ever ſaw in his Life—I muſt make the Lords laugh upon that Occaſion: He told me, that Mr. *Pulteney*, now Earl of *Bath*, ſaid, in the Houſe of Commons, that he knew old *Lovat* very well; that he would never have a Company but in his Pocket: And now I can tell him, That he did not ſpeak Truth. General *Handaſide* was preſent, and his Brother, who is a very pretty Gentleman, when he declared, that he never did ſee ſuch a fine Company in any Country that he was ever in: And he appealed to the Two *Handaſides*, and the other Officers that were there, whether it was not true; and they all agreed in it. So that, my Lords, after this, I very little expected, that, without ever blaming me, or imputing any Crime to me, my Commiſſion ſhould be broke; and not only ſo, but that I ſhould be ordered to keep 400 Men from it in the Country, to be put into another Company, to make up a Regiment that General *Wade* procured for his Favourite Colonel *Durore*. My Lords, I was certainly much out of Humour to ſee myſelf ſo uſed; but I never imputed it to the King, nor to his Prime Miniſter Sir *Robert Walpole*, afterwards Earl of *Orford*. And this is all the Grounds of my being out of Temper, or that they can lay hold of, to ſay I was againſt the Government. So, after what I have told your Lordſhips, and the Manner that I have been uſed, I hope your Lordſhips will not think I was capable of any malicious Deſign againſt the Government. And, indeed, it was a Loſs to the Government more than to me, that my Company was broke, becauſe, if I had commanded the *Highland* Company, as I did for Fifteen Years, the Country had been peaceable, and there had been no Rebellion.

Lord High Steward. My Lord *Lovat*, I muſt put your Lordſhip in mind of the Queſtion I aſked you, Whether you have any thing to offer in Arreſt of Judgment?

Lord *Lovat.* Whatever way I may be over-ruled, I will ſay, to my dying Hour, that I have met with the greateſt Hardſhips ever practiſed in *Britain*; and I ſtill inſiſt, that I ſhall get the Benefit that all Subjects have a Right to, of adducing Witneſſes, that may be for the Safety of their Lives and Intereſts.

L. H. S. Your Lordſhip has heard the Opinion of the Lords already.

Lord Preſident. I move your Lordſhips to adjourn to the Chamber of Parliament.

L. H. S. Is it your Lordſhips Pleaſure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

L. H. S. This Houſe is adjourned to the Chamber of Parliament.

Then the Lords, and others, returned to the Chamber of Parliament, in the ſame Order they came down: And the Houſe being there reſumed,

The Proceeding entered in the Journal of the 19th of *March*, 1715, in relation to the Giving of Judgment againſt *George* Earl of *Wintoun* was read: Which being done,

Their Lordſhips were informed, That the Commons, with their Speaker, and the Mace, were at the Door: Whereupon they were called in: And Mr. Speaker, at the Bar, ſaid,

My Lords,

THE Knights, Citizens, and Burgeſſes, in Parliament aſſembled, did, at this Bar, in the Name of themſelves, and of all the Commons of *Great Britain*, impeach *Simon* Lord *Lovat* of High Treaſon, and exhibited Articles againſt him, and have made good the ſame: I do therefore, in the Name of the Knights, Citizens, and Burgeſſes, in Parliament aſſembled, and of all the Commons of *Great Britain*, demand Judgment of your Lordſhips againſt *Simon* Lord *Lovat* for the ſaid High Treaſon.

And they being withdrawn,

Ordered, That, when Judgment ſhall be pronounced againſt the ſaid Lord *Lovat*, it be the ſame as was pronounced againſt the late Earl of *Wintoun*.

Then the Houſe was again adjourned into *Weſtminſter-Hall*: And the Peers, and others, went down in the ſame Order as before; and the Peers being in their Places, and the Lord High Steward in his Chair, and the Commons and their Managers in the Seats prepared for them reſpectively; the Houſe was reſumed: And the Serjeant at Arms made Proclamation for Silence, as uſual.

Lord High Steward. My Lord *Lovat*, As ſome Time has intervened ſince I laſt aſked you the Queſtion, Whether you had any thing to offer in Arreſt of Judgment, I am now to aſk you again, Whether you have any thing to ſay, why Judgment of Death ſhould not paſs upon you, according to Law?

Lord *Lovat.* No: I have ſaid all that I had to ſay; and beg your Lordſhips Pardon for the rude, long Diſcourſe I made to your Lordſhips. I had great need of my Couſin *Murray*'s Eloquence for half an Hour, and then it would have been more agreeable.

Proclamation was made for Silence, as uſual.

Lord High Steward.

Simon Lord *Lovat*,

YOU have been impeached by the Commons of *Great Britain*, in Parliament aſſembled, of High-Treaſon, charged upon you by particular Articles, containing different Species, and various Overt Acts, of that Treaſon.

To theſe Articles your Lordſhip thought fit to put in an Anſwer, amounting to a general Plea of Not guilty to the Whole; and, after a long and impartial Trial, upon the cleareſt and moſt convincing Evidence, againſt which you offered no Defence by Witneſſes, your Peers have unanimouſly found you Guilty.

What remains is the diſagreeable, but unavoidable, Part of proceeding to that Judgment, which is the neceſſary Conſequence of ſuch atrocious Crimes. Happy had it been for your Lordſhip, if before you engaged in them, you had ſuffered the Terrors of that Conſequence to have their due Weight, when the ſacred Ties of your Allegiance, and your Oaths, were not ſtrong enough to reſtrain you.

In this Proceeding, the Zeal and dutiful Affection of the Commons to his Majeſty, and their Country, and the Juſtice of the Houſe of Peers, have ſhone forth in their full Luſtre. The Commons found your Lordſhip to be one of the principal Conſpirators, who contrived and carried on the late deteſtable Rebellion, to deſtroy our Religion and Liberties, and to ſubvert that Legal Settlement of the Crown in his Majeſty, and his Royal Family, under which alone we can live Free and Happy.

They rightly judged, that this, which is the common Cauſe of all the People of *Great Britain*, ought to be proſecuted by the United Voice of the People: That it became them to inveſtigate and lay open, in full Parliament, the Source of thoſe Calamities, which we have lately ſuffered, and the deep-laid and long-meditated Conſpiracy, in which your Lordſhip had ſo conſiderable and ſo flagitious a Part. They rightly judged, that no Judicature was equal to ſuch an important Proceeding, but this High Court, on whoſe Penetration and Juſtice they relied, and before whom, in this Great Aſſembly, Publick and Indubitable Satisfaction might be given.

Before your Conviction, I have ſpoken to your Lordſhip upon a Preſumption of your Innocence; but now I am bound, by the unanimous Deciſion of my Lords your Peers, to take the Evidence againſt you to be True, and to addreſs myſelf to you as a Guilty Perſon.

Your Lordſhip has, in your Anſwer, endeavoured to avail yourſelf of former Services to his late Majeſty and the Proteſtant Succeſſion, which you have this Day enlarged upon at the Bar. How unfortunate have you been in referring back to ſuch cancelled Merit, ſince thereby you have furniſhed an Opportunity to the Commons, to ſhew, for how long a Track of Time you have conceived and nurſed up this Treaſon in your Heart! Whatever your Pretences were, ſo infected was your Mind, and ſo forward your Zeal, in the Cauſe of that Pretender, whom you had then abjured, as to engage in that raſh and weak Attempt from *Spain*, in his late Majeſty's Reign. Yet, at or very near that Time, it appears, by the Evidence (out of which every Obſervation I will make ſhall naturally ariſe), you were ſolliciting or accepting Favours and Truſts from that very Government, which you had thus engaged to deſtroy. What Uſe did you make of thoſe Truſts? The Inſtance of *Roy Stewart*, now an Attainted Rebel, ſpeaks it too plainly. Whilſt you were Sheriff of the Shire of *Inverneſs*, the largeſt County in *Scotland*, and one of the greateſt Conſequence, you ſuffered that Criminal, in the Year 1736, to eſcape out of your publick Priſon; harboured him afterwards in your own Houſe; then charged him with Meſſages, and Aſſurances of Fidelity, to the Pretender; and to procure for you a Commiſſion of Lieutenant-General, and a mock Title of Honour, from that Pretended Prince.

If any thing could ſurpaſs this Treachery, it is the Aſſociation, which your Lordſhip ſigned and ſealed, together with Six other Perſons, and ſent to *Rome* and *Paris*, by *Drummond* of *Bochaldie*, in the Beginning of 1740. The Subſtance of this was, to aſſure the Pretender, whom you always called your lawful King, of your Readineſs to appear openly in Arms for his Service; and to ſollicit an Invaſion from *France* againſt your Native Country, to ſupport this deſperate Deſign.

It ſhould ſeem, by the Evidence, that the Foreign Enemies of *Britain* were leſs forward in this Meaſure to diſturb her, than her degenerate, Unnatural Sons. Whether that Reluctance proceeded from a Diſtruſt of ſo falſe a Sett of Men, or from a Conviction, that the Body of this Great People was not to be ſhaken in their Loyalty to a King, who poſſeſſes the Throne by the moſt Rightful Title, and governs them in Juſtice and Mercy, according to their Laws and Conſtitution; in either Caſe they

they were in the Right. What Dependence could the Court of *France* have on a few abandoned Traitors? What Hopes could they entertain, that a general Infatuation would, on the ſudden, ſeize and delude a Brave, a Free, and a Happy People, to ſeek their own Slavery and Ruin?

From this Time till the Year 1743, the Conſpiracy lingered in its Progreſs, though great Efforts appear to have been made to render it more extenſive, and more formidable. Then it happened, as it always has happened, that when *France* ſaw ſuch an Enterprize, whether ſucceſsful or not, might be made a convenient Engine of her own Politicks, that Court ſet about an Invaſion in earneſt. Great Preparations were made, and ready at *Dunkirk*; but the Providence of God diſappointed them. To be capable of proving Tranſactions of this Kind by ſtrict Evidence in the Forms of Law, is not common, nor, in the Nature of the Thing, ordinarily to be expected. But this the Vigilance of the Commons has effectually done, to the Conviction of all well-intentioned Perſons, and to the Shame and Confuſion of thoſe, who, though they believed, and perhaps knew it themſelves, were induſtrious to propagate a pernicious Incredulity in others.

Thus the Commons have traced and brought down the Series of the Conſpiracy to the remarkable Æra of *July*, 1745, when the Eldeſt Son of the Pretender landed in *Moidart*, unſupported by any Foreign Troops, unattended, and almoſt alone.

The appearing Raſhneſs of this Attempt gave Riſe to ſome Apprehenſions, ſome Miſgivings, in the Breaſts of your Lordſhip, and your Fellow-Conſpirators, proceeding from a Concern, not for the King, or for your Country, but for your own private Intereſt and Safety. A *French* Invaſion had been long ſollicited; a *French* Force was depended on, to ſecure you againſt the juſt Vengeance of your Native Country; and the Failure of that damped your Hopes, and produced your Expreſſions of Diſappointment. However, ſuch was your Zeal, that, in this raſh Enterprize, your Lordſhip joined; not indeed perſonally (this you often excuſed, complaining of your Infirmities), but by Sending, or rather Forcing out your Clan; and committing every other Species of the blackeſt Treaſon, which the Articles of Impeachment have charged upon you.

Permit me to ſtop here a little, and lament the Condition of Part of this United Kingdom; happily United in Intereſts both Civil and Religious; happily United under the ſame Gracious Monarch, and the ſame Publick Policy: And yet the common People, in ſome of the remote Northern Counties, are ſtill kept in ſuch a State of Bondage to certain of their Fellow-Subjects, who, contrary to all Law, and every true Principle of Government, have erected themſelves into Petty Tyrants over them, as to be liable to be compelled into Rebellion againſt their Lawful Sovereign, under the Peril of Fire and Sword. Aſtoniſhing it is, that ſuch a dangerous Error in Government, ſuch a Remain of Barbariſm, ſhould have ſubſiſted ſo long in any Quarter of this Civilized, Well-governed Iſland: But, ſince ſuch is the Misfortune, let it be accounted one good Fruit of this Inquiry, that it has appeared in this ſolemn Manner. The Knowledge of the Diſeaſe ſhews the Way to the Cure; and it calls aloud for a Remedy.

This uſurped Power was audaciouſly made uſe of over your Clan. It is true, your Lordſhip's Activity in exerting it roſe and fell, in Proportion to the Appearances of the good or bad Succeſs of the Pretender's Cauſe; But, after the Advantage gained by the Rebels at *Preſton-Pans*, which you vainly called "A Victory not to be paralleled in Hiſtory," you thought it Time to throw off the Maſk; and, with leſs Caution, to eſpouſe a Party, which, you then hoped, might be eſpouſed with Impunity.

I forbear to enumerate the many Overt Acts of your Treaſon. It would be tedious to this Aſſembly, who have heard them ſo much better from the Witneſſes, and from the Recapitulation of the Managers. It would be grievous to your Lordſhip, if your Heart is, by this Time, touched with any Remorſe for your Guilt. But one Thing I cannot help obſerving upon,---the Excuſe you expreſly made for this traitorous Conduct, even after you were taken Priſoner; to which you have this Day artfully endeavoured to give a different Turn. Being aſked, How you could act ſuch a Part againſt a Government, from which you had received many Favours? Your Lordſhip's Anſwer was, "That it was in "Revenge to the Miniſtry, for their ill Uſage of you, in taking away "your Commiſſion of Captain of an Independent Company of *High-*"*landers*." An Excuſe almoſt as falſe as it was profligate. Falſe, becauſe ſome of your Treaſonable Practices were committed whilſt you were poſſeſſed of that very Commiſſion. Profligate it was, in the higheſt Degree. Is Allegiance no Duty? Are Oaths to His Majeſty, and His Government, no Obligation upon the Conſcience? Is Loyalty to our Lawful Sovereign, and the Love of our Country, to depend on the Enjoyment of extraordinary Favours and Emoluments, which no Man has a Right to; can, in the Nature of Things, be enjoyed but by a Few; and are in the Pleaſure of all Governments to confer or deny? A Perſon actuated by, and avowing, ſuch Principles as theſe, muſt be loſt to all Senſe of Virtue, and of Shame, and of every Natural, as well as Civil, Sanction of Society.

Sorry, very ſorry I am, to ſee this laſt Reflection ſo ſtrongly verified by the Proofs againſt your Lordſhip. It has appeared, that you uſed your Paternal Influence over your Eldeſt Son, a Youth not above the Age of Nineteen, to compel him to go into the Rebellion; and afterwards unnaturally endeavoured to caſt the Crime and Reproach of it upon him. If this be true, it is an Impiety which makes one tremble. It is the celebrated Saying of a wiſe Writer of Antiquity, and ſhews his perfect Knowledge of Human Nature, "That the Love of our Coun-"try includes all other Social Affections:" For we ſee, when that is gone, even the tendereſt of all Affections, the Parental, may be extinguiſhed with it.

I have ſaid theſe things, not with a View to aggravate your Lordſhip's Crimes, but, as becomes This Place, and This Occaſion, to rouſe your Mind, which, there is Reaſon to fear, may have been too much hardened, to a juſt and deep Senſe of your unhappy and dreadful Situation.

Were I to attempt this from Topicks of Religion, I ſhould be at a Loſs, whether to apply to you as a Proteſtant or a Papiſt. Your Open Profeſſion, your Solemn Oaths, and Publick Actions, ſpeak on one Side: But, if I am to believe the Evidence, your Private Diſcourſe and Declarations teſtify on the other. I will apply no Suppoſitions on this Head particularly to your Lordſhip; but from hence I would draw an inſtructive Leſſon, which well deſerves the ſerious Attention of this Whole Nation, of what important Conſequence it is, to preſerve not only the Name and outward Form of the Proteſtant Religion amongſt us, but the real Uniform Belief and Practice of it. Indifference to all Religion prepares Men for the External Profeſſion of any; and what may not That lead to? Give me Leave to affirm, before this Great Aſſembly, that, even abſtracted from Religious Conſiderations, the Proteſtant Religion ought to be held in the higheſt Reverence, as the ſureſt Barrier of our Civil Conſtitution. Eccleſiaſtical Uſurpation ſeldom fails to end in Civil Tyranny. The preſent Happy Settlement of the Crown is, in Truth, and not in Name only, THE PROTESTANT SUCCESSION. And the inviolable Preſervation of that Wiſe and Fundamental Law, made ſince the Revolution, whereby every Papiſt, or Perſon marrying a Papiſt, is abſolutely excluded from Inheriting to this Crown, will, in future Times, be a ſolid Security for our Poſterity, not only againſt the groundleſs and preſumptuous Claim of an Abjured Pretender, and his Deſcendants, but alſo to prevent this Kingdom from becoming a Province to ſome of the great Popiſh Powers, who have ſo long watched for the Deſtruction of our Liberties.

But, to return to your Lordſhip: Suffer me to exhort you, with great Earneſtneſs, and in great Charity, to deliberate ſeriouſly upon your own Caſe, and to deal impartially with your own Conſcience. If, according to the Evidence given at this Bar, you have led a Life of Craft, Diſſimulation, and Perfidy, conſider how that Scene has cloſed; what Deſolation you have thereby endeavoured to bring upon your Country; how fatally it has ended for yourſelf. Conſider, that the Sentence which I am obliged to pronounce, may ſoon ſend you to a Tribunal, where no Diſguiſe or Artifice can avail you.

The Sentence of the Law is, and this High Court doth adjudge;

"That you, *Simon* Lord *Lovat*, Return to the Priſon of the *Tower*,
"from whence you came; from thence you muſt be drawn to the
"Place of Execution; when you come there, you muſt be Hanged
"by the Neck, but not till you are Dead; for you muſt be cut
"down Alive; then your Bowels muſt be taken out, and burnt
"before your Face; then your Head muſt be ſevered from your
"Body, and your Body divided into Four Quarters; and theſe
"muſt be at the King's Diſpoſal."

And God Almighty be merciful to your Soul!

Lord *Lovat*. My Lords, I hope your Lordſhips will not take it amiſs, that I ſhould let you know, though it be in a very barbarous Language, both the Affection I had for his late Majeſty, and the Service I did for him and his Family. And I muſt ſay, I have for that the Teſtimony of one of the King's Evidence, that I declared my Affection to his preſent Majeſty: And I have Reaſon ſo to do; for when he was Regent of theſe Kingdoms, and his Father was in *Hanover*, he was ſo good as to give me a *Noli Proſequi* for the great Laird of *Mac Intoſh* that was at the Battle of *Preſton:* And when I complained of the Hardſhips the Duke of *Roxburgh* put every Day upon me, in an Audience he was pleaſed to admit me to, in his Cloſet at *Kenſington*, he was ſo good as to ſay, that, if he was King, he would defend me againſt all my Enemies, not only the Duke of *Roxburgh*, but all my other Enemies. Now, my Lords, when a Man has but a very few Days, in Appearance, to live, what he ſays ſhould be relied upon, if there is not immediate Evidence to the contrary. I have ſhewn your Lordſhips my Eſteem for the illuſtrious Houſe of *Hanover*. I have ſhewn my Attachment for my dear Maſter the late King, and my Reſpect for his preſent Majeſty; and therefore all that I have further to ſay, is moſt humbly to implore your Lordſhips Interceſſion, and to recommend me to his Majeſty for Mercy.

Lord High Steward. Have you any thing further to offer?

Lord *Lovat*. Nothing, my Lords, but that I make the ſame Prayer to the Honourable the Members and Managers of the Houſe of Commons; and that, I hope, as they have been ſtout, they will be merciful.

Lord High Steward. Would you offer any thing further?

Lord *Lovat*. Nothing but to thank your Lordſhips for your Goodneſs to me. God bleſs you all, and I bid you an everlaſting Farewel. We ſhall not meet all in the ſame Place again, I am ſure of that.

Lord High Steward. Lieutenant of the *Tower*, Take the Priſoner from the Bar.

Which being done, Proclamation was made for Silence, as uſual.

Then the White Staff being delivered to the Lord High Steward by the Gentleman Uſher of the Black Rod, upon his Knee, his Grace ſtood up uncovered; and, holding the Staff in both his Hands, broke it in two, and declared that there was nothing farther to be done by virtue of the preſent Commiſſion, and pronounced the ſame to be diſſolved; and then leaving the Chair, came down to the Wool-Pack, and ſaid, Is it your Lordſhips Pleaſure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

Then the Houſe was adjourned to the Chamber of Parliament; and the Lords and others returned in the ſame Order as they come down.

And the Priſoner was carried back to the *Tower* of *London*.

XLIII. The Trial of ARCHIBALD STEWART, Esq; late Lord Provost of *Edinburgh*, before the High Court of Justiciary in *Scotland*, *June* 8, 1747. for Neglect of Duty and Misbehaviour in the Execution of his Office, as Lord Provost of *Edinburgh*, before and at the Time the Rebels got Possession of that City, in the Month of *September* 1745.

[Extracted, under the Hand of the Clerk of Justiciary, from the Books of Adjournal of that Court.]

Curia Justiciaria S. D. N. *Regis, tenta in nova Sessionis Domo Burgi de* Edinburgh, *vigesimo quarto Die Mensis* Martii 1747. *per honorabiles Viros Magistros* Alexandrum Fraser *de* Strichen, Patricium Grant *de* Elchies, & Carolum Areskine *de* Tinwald, *Commissionarios Justitiarii dict.* S. D. N. *Regis.*

Curia legitimè affirmata.

Lord *Strichen* Præses:

THE which Day compeared *Patrick Haldane* of *Bearcrofts*, Esq; his Majesty's Solicitor, and Advocate-Depute, and produced, in presence of the said Lords, a Writ of Recognizance, signed by his Grace the Duke of *Newcastle*, of Date the 23d Day of *January* last by-past, which was ordered to be read and recorded; and whereof the Tenor follows.

Middlesex and *Westminster.*

To wit; Be it remembered, That, upon the 23d of *January*, in the Twentieth Year of the Reign of our Sovereign Lord *George* II. King of *Great Britain*, &c. came before me, and acknowledged themselves to be severally indebted unto our said Sovereign Lord the King as follows, *viz.*

Archibald Stewart, of *Edinburgh*, Merchant, the Sum of £.	5000 0 0
David Scot, of *Scotstarvet*, in the Shire of *Fife*, Esq; the Sum of	2500 0 0
James Oswald, of *Dunnikier*, in the said Shire of *Fife*, Esq; the Sum of	2500 0 0
Alexander Campbel, of the Parish of *Allhallows-Staining*, *London*, Doctor of Physick, the Sum of	2500 0 0
James Baird, of *Downing-street*, in the Parish of *St. Margaret's* Westminster, Esq; the Sum of	2500 0 0

To be levied upon their several Goods and Chattels, Lands, Tenements and Hereditaments, by way of Recognizance, upon Condition, that if the said *Archibald Stewart* do personally appear before his Majesty's Court of Justiciary at *Edinburgh*, at the first Sitting of the said Court after the Twentieth Day of *March* next, then and there to answer to all such Matters as on his Majesty's Behalf shall be objected against him; and also appear from time to time when thereunto required, and not depart the said Court without Leave thereof; and, in the mean time, be of the good Behaviour, then this Recognizance to be void, or else to remain in full Force and Virtue. *Signed*

HOLLES NEWCASTLE.

Immediately after reading whereof, compeared the said *Archibald Stewart*, Merchant in *Edinburgh*, and judicially sisted himself in Court before the said Lords, in Terms of and agreeable to the said Writ of Recognizance, and humbly insisted, that thereby the Condition of the said Writ was fulfilled, and the same fell to be voided, and he dismissed, if there was no Person on his Majesty's Behalf ready to insist against him.

To which Mr. *Patrick Haldane*, his Majesty's Advocate-Depute, made Answer: That the Writ of Recognizance was not only for Mr. *Stewart*'s Appearance this Day, but thereafter, from Time to Time, when thereto required; that, having only had occasion lately to see the said Writ, he was not just now ready to insist in any Matters on his Majesty's Behalf against the said *Archibald Stewart*, as therein mentioned; and moved their Lordships would appoint a farther Time for his Appearance again.

Mr. *Stewart*, without making any Reply, submitted his Case to the Court.

'The Lords Commissioners of Justiciary, having considered the said 'Writ of Recognizance, and above Debate, they continue the Diet, 'for the said *Archibald Stewart*'s Compearance, to *Monday* the eighth 'Day of *June* next, and ordain him to sist himself personally in Court 'that Day, without Prejudice to the Lord Advocate to insist against and 'prosecute the said *Archibald Stewart* sooner, in Behalf of his Majesty, 'if he shall see Cause.'

Signed ALEX. FRASER. *I. P. D.*

Curia Justiciaria S. D. N. *Regis, tenta in nova Sessionis Domo Burgi de* Edinburgh, *octavo Die Mensis* Junii 1747. *per honorabiles Viros Magistros* Alexandrum Fraser *de* Strichen, Patricium Grant *de* Elchies, Carolum Areskine *de* Tinwald, & Hugonem Dalrymple *de* Drummore, *Commissionarios Justiciarii dict.* S. D. N. *Regis.*

Curia legitimè affirmata.

Lord *Strichen* Præses.

THE said Day, in obedience to the foregoing Order, compeared the said *Archibald Stewart*, and sisted himself in Court, when he and Messieurs *Lockhart*, *Ferguson*, *Home* and *Stewart*, Advocates, his Procurators, insisted, That, in obedience to the last Order of Court, in consequence of the Recognizance therein mentioned, he had appeared a second Time; that, as he pled first, so he now did, that the Condition of the said Writ of Recognizance was fulfilled; and that the same ought to be voided, and he dismissed, if there was no Person yet ready to insist against him on his Majesty's Behalf, which he had Reason to believe was the Case.

To which Mr. *Patrick Haldane*, his Majesty's Advocate-Depute, made Answer: That the Lord Advocate, who, at the last Diet, attended the Service of his Country in Parliament, was, contrary to Expectation, still detained, although he intended to have been in *Scotland* long before now, when he could and would have proceeded to bring Mr. *Stewart* to Trial in the ordinary Way: That, for his Part, as Advocate-Depute, he had no such Instructions as he could move in that Matter, either just now, or by a proper Process; and all he was instructed to ask of their Lordships, was a Delay of eight Days, which could be no Prejudice either to Mr. *Stewart* or his Cautioners, and against which Time he was pretty well assured his Majesty's Advocate would be present, and shew Cause why the Writ of Recognizance should continue, and satisfy Mr. *Stewart* how or when he would be brought to Trial.

It was replied for Mr. *Stewart*, that he expected, if there was any thing to be objected to him on behalf of his Majesty, considering the long Space of Time interveening betwixt this and his former Appearance, he would have been brought under some Prosecution for it ere now; that the Absence of my Lord Advocate, however necessary, and his Depute's not being properly instructed, was to Mr *Stewart* or his Cautioners nothing to the Purpose; that Mr. *Stewart*'s Appearance, now and before, and nothing objected to him, was, as to his Cautioners, a Liberation of their Bail, which was so very great as must appear to be a Hardship if it should last any longer; and therefore craved that he might be dismist, and the Bond voided.

It was duplied by Mr. *Haldane*, that the Delay sought was so small, as plainly shewed that there was no Intention of putting a Hardship on any Person; and, without farther Argument, he doubted not but the Court would continue Mr. *Stewart*'s farther Compearance, in Terms of, and agreeable to the Writ of Recognizance, 'till *Monday* next the 15th Instant.

'The Lords Commissioners of Justiciary, having considered the above 'Debate, they continue the Diet for the said *Archibald Stewart*'s farther 'Compearance to *Monday* the 15th Day of *June* Instant, and ordain 'him to sist himself personally in Court that Day, without Prejudice to 'the Lord Advocate to insist against and prosecute the said *Archibald Stewart* sooner,' if he shall see Cause.'

Signed

ALEX. FRASER. *I. P. D.*

Curia Justiciaria S. D. N. *Regis, tenta in nova Sessionis Domo Burgi de* Edinburgh, *decimo quinto Die Mensis* Junii 1747. *per honorabiles Viros Magistros* Alexandrum Fraser *de* Strichen, Patricium Grant *de* Elchies, Carolum Areskine *de* Tinwald, & Hugonem Dalrymple *de* Drummore, *Commissionarios Justiciarii dict.* S. D. N. *Regis.*

Curia legitimè affirmata.

Lord *Strichen* Præses:

THE said Day compeared the said *Archibald Stewart*, in obedience to the last Order of Court, and sisted himself agreeable to his Writ of Recognizance, and craved the said Writ might be declared void; and he dismissed, in case the Lord Advocate was not yet ready to insist against him, as, if he was, he had at least got no Notice of it, nor so much as of any Time for his Trial.

The Lord Advocate thereupon appeared, and represented the former Delays were not owing to him, but, in some measure, to Mr. *Stewart*'s own Friends, who applied to him at *London* for a Delay, 'till he should come to *Scotland* and be present himself; which truly was the Reason of his not raising and executing a criminal Process against Mr. *Stewart* to the last Diet he appeared. That, to shew his Lordship had no Inclination to give Mr. *Stewart* any unnecessary Delay, he now was ready to insist, and for that End gave in, and presented to the Lords, a Bill signed by him, craving Warrant for criminal Letters against the said *Archibald Stewart*, for the Crimes and Misdemeanours therein mentioned, and fixing the Diet for his Trial to the third of *July* next.

Thereafter Mr. *Lockhart* moved, in Behalf of the Cautioners for Mr. *Stewart*, that the Writ of Recognizance should be voided; and for Mr. *Stewart*, in place thereof, that he was willing to find new Bail for any Sum the Lords should appoint and judge reasonable, as the Bail he was presently under was by far too extravagant.

To which the Lord Advocate made answer: That the Writ of Recognizance, on which Mr. *Stewart* was liberate, was still in force, and behoved to continue, as the Cautioners and Mr. *Stewart* not only became bound that he should appear such a Day, but from Time to Time thereafter, as the Lords should appoint, and not to depart, without Leave, out of the Court; that this Bail was taken by, and given to one of the highest Authority, and that it must necessarily continue, agreeable to the said Writ, 'till he be dismissed.

Whereupon Mr. *Stewart* himself, and Mr. *Elliot* his Procurator, waved the Motion made by Mr. *Lockhart* anent renewing the Bail, and agreed that the former stand good, and he had no Objection why the next Diet of Compearance might not be the third of *July* next.

'The Lords Commissioners of Justiciary, having considered the above 'Debate, they continue the Diet, for the said *Archibald Stewart*'s farther 'Compearance, 'till *Friday* the third Day of *July* next to come.' *Signed*

ALEX. FRASER. *I. P. D.*

Upon the third of *July* the Diet was continued to the Tirteenth of that Month.

Curia Juſticiaria S. D. N. *Regis, tenta in nova Seſſionis Domo Burgi de* Edinburgh, *decimo tertio Die Menſis* Julii 1747. *per honorabiles Viros Magiſtros* Alexandrum Fraſer *de* Strichen, Patricium Grant *de* Elchies, Carolum Areſkine *de* Tinwald, & Hugonem Dalrymple *de* Drumimore, *Commiſſionarios Juſticiarii dict.* S. D. N *Regis.*

Curia legitimè affirmata.

Lord *Strichen* Præſes.

Intran.

Archibald Stewart of the City of *Edinburgh*, Merchant, and late Lord Provoſt of the ſaid City, Pannel,

Indicted and accuſed at the Inſtance of *William Grant* of *Preſtongrange*, Eſq; his Majeſty's Advocate for his Majeſty's Intereſt, for the Crimes of Neglect of Duty, and Miſbehaviour in Offices and Places of publick Truſt, and the Violation of the Truſt and Duty of ſuch Offices, in manner at Length mentioned in the criminal Libel raiſed againſt him thereanent, making mention, That Whereas, by the Laws of this and all other well governed Realms, all Neglects of Duty, and Miſbehaviours of Perſons employed in Offices and Places of publick Truſt; and all Violations of the Truſt and Duty of ſuch Offices, are Crimes of a high Nature, and ſeverely puniſhable; and the public Juſtice of the Realm requireth a vigorous Proſecution of ſuch Offenders, eſpecially when ſuch Neglects of Duty and Miſbehaviours are incurred by the chief Magiſtrate of any great or conſiderable City, in a Time of publick Danger, and open Rebellion; and particularly by an Act made in the fourteenth Parliament of King *James* the Second of *Scotland*, Chapter ſeventy-ſixth, intitled, The Punition of negligent Officiars, 'It is ordained and determined, That if any of the King's Officiars or Sheriffs, 'Mayors, Bailies, Crowners, Serjeants, Provoſt of Burghs, and their 'Miniſters both to Land and to Burgh, be found faulty or negligent 'in the Execution of their Offices, and it may be lawfully proved on 'him, or notourly kend; if the ſaid Office pertains to him in Fie and 'Heritage, he ſhall tyne his Office, and the Profit thereof, for an Year 'and a Day, and to be puniſhed by the King in his Perſon and Goods 'after the Quantity of his Treſpaſs; and if his Office pertains to him 'not in Fie and Heritage, he ſhall tyne his Office for all the Times 'he has it, and to be puniſhed in his Perſon, after the Quantity of 'ſik Treſpaſs, at the King's Will.' Yet true it is and of Verity, That the ſaid *Archibald Stewart* of the City of *Edinburgh*, Merchant, and late Provoſt of the ſaid City, is guilty, Actor, or Art and Part of the ſaid Crimes, or one or other of them, aggravated as aforeſaid; In ſo far as he, being Lord Provoſt of the City of *Edinburgh*, in the Year One thouſand ſeven hundred and forty-five, when a moſt bold, deſperate, wicked, and unprovoked Rebellion was raiſed and carried on againſt his Majeſty within this Realm, by a large Body of armed Traytors, headed by the eldeſt Son of the Pretender to his Crown, and aſſiſted with Troops and Money from his Enemies abroad, and, at ſuch a Juncture, it being his Duty, as the chief Magiſtrate of the ſaid City, and the King's Lieutenant therein, having Authority to command the military Force of whatever Kind within the City, to have exerted himſelf with Fidelity, Vigilance and Zeal, for oppoſing the Progreſs of the Rebellion by all lawful Methods in his Power, and particularly for preſerving the City intruſted to his Care from falling under the Power of the Rebels, or becoming a Prey to them, he, the ſaid *Archibald Stewart*, was groſly faulty or negligent in the Execution of his ſaid Office and Duty on ſo important an Occaſion, in manifeſt Violation of the Truſt and Duty of his Office: and particularly was thus guilty on the Fifteenth and Sixteenth Days of *September*, in the Year of our Lord One thouſand ſeven hundred and forty-five, and upon ſeveral other Days and Times in the ſaid Month of *September*, and the Month of *Auguſt* preceding, within the ſaid City of *Edinburgh*, where he was reſident for the Time. And moreover, the ſaid *Archibald Stewart* was not only faulty or negligent in the Execution of his Office, and notoriouſly known to have been ſuch, but was guilty of Malverſations and counteracting the Duty of his Office, in ſuch an Exigency, in many Inſtances, and particularly, amongſt others, in theſe following: *Firſt*, That whereas the Preſervation of the City of *Edinburgh*, from falling into the Hands of the Rebels, was of great Importance to that City itſelf, and to the King and the Kingdom in general, and the Care of it eſpecially incumbent on the Lord Provoſt for the Time being, and ought to have been looked after with the utmoſt Attention, Zeal and Vigour, in ſuch an Exigency, as when the Rebels got to the Southward of the Body of the King's Troops under the Command of Sir *John Cope*, of which Advices came to *Edinburgh* in the latter End of *Auguſt* One thouſand ſeven hundred and forty-five, from which there was Reaſon to fear that the Taking of that City would be attempted by the Rebels, and to hope that the King's Army might ſoon after come to its Relief: Yet, in theſe Circumſtances, he, the ſaid *Archibald Stewart*, then chief Magiſtrate, and ſole military Governor of that City, did nothing of his own accord towards providing effectually for the Defence thereof; and, on the contrary, every Meaſure for that Purpoſe propoſed, and preſſed by the honeſt Zeal of the then Magiſtrates and Council, and of many of the Citizens and Inhabitants, inſtead of being heartily encouraged and promoted by him the Provoſt, were by him thwarted and retarded, or elſe abſolutely refuſed or declined; and in this Manner it was that he received a Propoſition made to him in the latter End of *Auguſt* One thouſand ſeven hundred and forty-five, for raiſing a Regiment of one thouſand Men, by voluntary Subſcription, for Defence of the City; againſt which he formed Objections on account of the Expence, and affected Doubts concerning the Legality thereof. And, *Secondly*, He treated in like manner another Application made to him in the Beginning of *September* One thouſand ſeven hundred and forty-five, by a Number of Gentlemen or Citizens, for Leave to aſſociate themſelves under his chief Command, as Volunteers, for the Defence of the City, and Service of the Government; and, after his Objections to the Legality of that Meaſure were over-ruled, he would not ſuffer it to be publiſhed or given out that he heartily approved, but barely that he acquieſced in that Meaſure; and yet his Reluctancy or Averſion to it, or Uneaſineſs under it, continued to diſcover itſelf on frequent Occaſions, and particularly by the cold, if not the rude Manner in which he behaved towards thoſe Volunteers, conſiſting of a Number of very reſpectable Gentlemen and Burgeſſes, when he went to a publick Meeting of them, in the New Church Iſle of *Edinburgh*, to name their Captains. *Thirdly*, That, in like manner, through the Miſbehaviour of the ſaid *Archibald Stewart*, when certain Repairs of the City Walls, and other Works for making it defenſible for ſome Time, againſt an Enemy who had no Artillery, and were very unſkilful in making Sieges, had been propoſed and adviſed, amongſt others, by the now deceaſt and famous Mr. *Colin Mac Laurin*, Profeſſor of Mathematicks in the College of *Edinburgh*, and were ordered by the Council of the City of *Edinburgh* to be made, the Execution whereof was chiefly incumbent on the Lord Provoſt for the Time being, yet the ſame was carried on very ſlowly and imperfectly, notwithſtanding frequent Remonſtrances and Complaints made by divers of the faithful and zealous Inhabitants; and, as late as *Sunday* the Fifteenth of *September* One thouſand ſeven hundred and forty-five, when the Rebels were marching to, and were come within a few Miles of the City of *Edinburgh*, he the ſaid *Archibald Stewart* refuſed to give Orders for loading the Cannon planted upon the City Walls, and, about the ſame Time, he refuſed to apply for ſome of the Sailors from on Board one of the King's Ships of War for managing of thoſe Cannon, when he could not otherways be provided of fit Perſons to act as Gunners. *Fourthly*, That, about the ſame Time, he the ſaid *Archibald Stewart* refuſed to liſten to, or to follow ſeveral ſalutary Propoſitions that were made and preſſed by well-affected Inhabitants, for the greater Safety and better Defence of the City; ſuch as, that the Trained Bands, conſiſting of a promiſcuous Number of Burgeſſes, whereof many were known to be diſaffected, ſhould be laid aſide, as had been practiſed during the Rebellion in the Year One thouſand ſeven hundred and fifteen, and that Arms ſhould only be truſted in the Hands of ſuch as were known to be well-affected, and that a general Search for Arms ſhould be made within the City, and that a Number of the ableſt bodied Men of the Tradeſmen's Servants ſhould be employed and armed for aſſiſting to defend the City when it ſhould be attacked, upon the Encouragement of a Guinea to be given to each of them; towards defraying which Expence an Offer was made to the ſaid *Archibald Stewart*, on the Part of the Volunteers, to have raiſed or advanced the ſum of Five hundred Pounds Sterling. *Fifthly*, That the ſaid *Archibald Stewart* miſbehaved himſelf in like manner, in reſpect of the Succours that were brought at the Time aforeſaid from the Country in the Neighbourhood of *Edinburgh*, conſiſting of Numbers of well-affected and zealous Subjects, under the Conduct of Gentlemen of known Loyalty and good Affection, who came and voluntarily offered their Service to aſſiſt in defending the City of *Edinburgh*, without any Fee or Reward, upon that dangerous and preſſing Occaſion, the Approach of the Rebels to that City; but theſe very ſeaſonable and laudable Offers were by the ſaid *Archibald Stewart* very coldly received and ill-treated: For Inſtance, he propoſed to Sir *Robert Dickſon* of *Invereſk*, who came to *Edinburgh* upon *Sunday* the fifteenth Day of *September* One thouſand ſeven hundred and forty-five, from *Muſſelburgh*, with about One hundred and fifty Volunteers, to offer their Services for the Purpoſes aforeſaid, that theſe Men ſhould inliſt themſelves for three Months as Soldiers in the *Edinburgh* Regiment; a Propoſition which, inſtead of being calculated ſincerely to provide for the better Defence of the City, could be no otherways received by thoſe Volunteers, than as an Inſult and Diſcouragement to their Zeal, who, being Tradeſmen or Huſbandmen, did not mean to leave their Occupations, and inliſt themſelves as Soldiers for Hire, but had bravely offered to ſerve gratis in the then preſent Exigency, which could not laſt above a few Days, before the End of which the City of *Edinburgh* muſt either have been relieved or ſurrendered. *Sixthly*, That, on the Morning of *Monday* the Sixteenth of *September* One thouſand ſeven hundred and forty-five, the ſaid *Archibald Stewart* received a Meſſage from the Camp of the Rebels, by *Andrew Alves*, Writer to the Signet, importing, that the City of *Edinburgh* would be ill treated by them, unleſs it ſhould be readily or ſpeedily ſurrendered; being a Meſſage to the ſame Effect with that contained in a Letter from the Pretender's Son, bearing Date from his Camp that ſame Day, addreſſed, *For the Lord Provoſt, Magiſtrates and Town-Council of* Edinburgh, and which Letter was thereafter that ſame Day delivered; and yet he the ſaid *Archibald Stewart* did not immediately commit the ſaid *Andrew Alves* to Priſon, for bringing or delivering to him ſuch Meſſage, neither did he give Notice to any other of the King's Officers, Civil or Military, that he had received ſuch Meſſage. *Seventhly*, That upon the ſame *Monday*, the Sixteenth of *September* One thouſand ſeven hundred and forty-five, about three of the Clock in the Afternoon, he received a Petition from certain of the Inhabitants of the City who oppoſed the Defence thereof, and inſiſted to have a general Meeting called of all the principal Inhabitants, to conſult what was proper to be done, and he accordingly held and preſided in a Meeting in the New Church Iſle in the Afternoon of that ſame Day, upon the ringing of the Fire-Bell, which was the appointed Signal for the Volunteers to repair to their Alarm-Poſt; the Conſequence of which was, that few or none of thoſe Volunteers, who conſiſted of a Number of the moſt ſubſtantial and beſt affected Burgeſſes, were or could be preſent at that general Meeting: In which Meeting, as every one who had a mind got Acceſs, there were Numbers of Perſons preſent of known Diſaffection to his Majeſty's Government; and thus, by ill Deſign upon their Part, and by the Timidity of others who were thus aſſembled in a tumultuous Manner, and a very improper Council with which to take Meaſures in a Time of immediate and preſſing Danger, the general Cry was given for ſurrendering the City, and giving up all Thoughts of making a Defence: And the ſaid *Archibald Stewart* thus held and took the Senſe of this Meeting, notwithſtanding that before he went to it, it was very well known that the Rebels were ill armed, and that an Offer had been made to him, in Aid of the other Forces with which the City was provided, to ſend one hundred out of two Regiments of Dragoons in the King's Service, or as many of the Dragoons of thoſe

thoſe Regiments as he ſhould deſire, to aſſiſt in defending the City; but he refuſed to give his Conſent or Authority for receiving any of theſe Dragoons, though he had requeſted ſuch Party of Dragoons, about an Hour or two before in that ſame Day, by a Writing under his Hand, addreſſed to Lieutenant General *Joſhua Gueſt*, then in the Caſtle of *Edinburgh*. And moreover, at this Meeting there was brought in and delivered to the ſaid *Archibald Stewart*, the Letter above-mentioned from the Pretender's Son; immediately, or ſoon after the receiving whereof, that Meeting was diſmiſſed, and he, with others of the Magiſtrates and Council, withdrew to the Council-Chamber, where (*which is the eighth Article* charged upon him the ſaid *Archibald Stewart*) he cauſed or ſuffered the ſaid Letter from the Pretender's Son to be publickly read, and moved or agreed that an Anſwer ſhould be given to it; which was accordingly ſent, firſt by one, and then by another Deputation from the Council: All which Intercourſe was in him the ſaid *Archibald Stewart*, then Lord Provoſt, the more criminal, that any Danger or Neceſſity that might be alledged, in order to avoid the ſame being puniſhable as High-Treaſon, was owing in great Meaſure to his own Backwardneſs to diſcharge his Duty, by taking all the proper Precautions againſt ſuch Danger, with that Fidelity and Vigour which he owed, by his Allegiance and his Station, to the City of *Edinburgh*, and to the King and Kingdom. *Ninthly*, That all this while he the ſaid *Archibald Stewart* refuſed or neglected, though frequently applied to for that Purpoſe, to give any Orders to the Volunteers of the City of *Edinburgh*, who had been long ſtanding upon the Street under Arms, how or in what Manner they ſhould diſpoſe of themſelves, and employ theſe Arms, or how they ſhould diſpoſe of the Arms, if they were not to be uſed or employed for the Defence of the City, for which they had been firſt taken up; and, upon ſuch his Refuſal or Neglect, the ſaid Volunteers took and executed the Reſolution to carry back their Arms to the Magazine in the Caſtle of *Edinburgh*, in order to prevent the ſame from falling into the Hands of the Rebels. *Tenthly*, That, on the Evening of the ſame *Monday* the ſixteenth of *September* One Thouſand ſeven Hundred and Forty-five, he the ſaid *Archibald Stewart* refuſed or declined to give his Licence or Authority for a Party ſent by the ſaid Lieutenant-General *Gueſt*, or by Lieutenant-General *George Preſton*, Governor of the Caſtle of *Edinburgh*, to remove or ſpike up the Cannon that were then planted upon the City-Walls; and, about the ſame Time, he the ſaid *Archibald Stewart* gave Orders to *Thomas Dalziel*, one of the Captains of the City-Guard of *Edinburgh*, whoſe Turn it was to be on Duty that Night, to keep Guard with the uſual Complement in peaceable Times, of One-third of the City-Guard, or Company, and no more; and, about the ſame Time, he the ſaid *Archibald Stewart* gave Orders to the Parties of the *Trained-Bands* of the City of *Edinburgh*, who had been upon Guard at the ſeveral Gates of the City, to quit their Poſts, and to diſpoſe of their Arms in the Parliament-Houſe, or ſome other Place or Places, where they muſt be expoſed to fall into the Hands of the Rebels, as ſoon as they ſhould enter or become Maſters of the City. And, *Eleventhly*, In the ſame Evening of the ſixteenth of *September*, One Thouſand ſeven Hundred and Forty-five, it was propoſed and urged in Council, where the ſaid *Archibald Stewart* was preſent, and preſided, That the whole City Arms, being in Number about twelve hundred Firelocks and Bayonets, ſhould be lodged and ſecured within the Caſtle of *Edinburgh*, in order to prevent their falling into the Hands of the Rebels; but he the ſaid *Archibald Stewart* refuſed or declined to give any Order for that Purpoſe, neither in Fact were the City-Arms ſo lodged and ſecured, but were ſeized by the Rebels upon their entering the City the Day following, who came to *Edinburgh* ſo imperfectly armed, that the Supply of Arms which they thus received, appears to have been one principal Cauſe of the Diſaſter that befel the King's Forces near *Preſton-Pans*, on the twenty-firſt Day of the ſame Month of *September*, One Thouſand ſeven Hundred and Forty-five. And, *laſtly*, By Occaſion or Means of the ſeveral Inſtances above-recited, and other Inſtances during the Time above-mentioned, upon one or other of the Days of the Months of *Auguſt* or *September*, One Thouſand ſeven Hundred and Forty-five, of the Miſbehaviour of the ſaid *Archibald Stewart* within the City of *Edinburgh*, of which he was then Lord Provoſt, it came to be very notoriouſly known, that he was highly faulty and negligent in the Execution of his Office, and to be farther violently ſuſpected and believed, amongſt the King's faithful Subjects in that City, that he the ſaid *Archibald Stewart* was ſecretly in the Intereſt of the Pretender, by reaſon of the Uniformity of his Behaviour from the Beginning to the End of theſe Tranſactions, diſcovering a conſtant Unwillingneſs or Backwardneſs to provide for, or heartily proſecute the Meaſures that were in a Manner forced upon him, in order to the Defence of that City, at a Time when, if he had obſerved a contrary Conduct, there was at leaſt a high Probability, that the City might have been preſerved from falling into the Hands of the Rebels: And in Fact the ſame did fall into their Hands, in a very ſtrange and ſuſpicious Manner, by a Party of the Rebels entering the City at the *Netherbow* Port, early in the Morning of *Tueſday* the ſeventeenth of *September*, One thouſand ſeven Hundred and Forty-five, when that Port was guarded with nothing more than a Serjeant's Command of the City-Guard, and was opened to ſuffer a Hackney-Coach to go out, which had juſt returned from bringing back the ſecond Deputation ſent by the ſaid *Archibald Stewart*, and other Magiſtrates and Councillors of *Edinburgh*, to the Pretender's Son: All which Misfortunes were, in great Meaſure, owing to the Miſconduct of the ſaid *Archibald Stewart*, and ſerved to bring a heavy Calamity on the City of *Edinburgh*, and the Kingdom in general; at leaſt, at the Time and Place aforeſaid, he, the ſaid *Archibald Stewart*, being Lord Provoſt of the City of *Edinburgh*, was highly faulty or negligent in the Execution of his Office, at a Time of publick Danger and open Rebellion againſt his Majeſty. And for proving that the ſaid *Archibald Stewart* was guilty as aforeſaid, there would be produced againſt him, by Way of Evidence, beſides very credible Witneſſes, certain Documents in Writing, which ſhould be lodged in the Hands of the Clerks to the Court of Juſticiary, that he might ſee the ſame, and whereof a Liſt ſhould be delivered to him, along with the Liſt of Witneſſes to be adduced againſt him. All which enormous Neglects of Duty, and Miſbehaviours, or Part thereof, or his being Art and Part of the ſame, being found proven againſt the ſaid *Archibald Stewart* by the Verdict of an Aſſize, before the Lords Juſtice-General, Juſtice-Clerk, and Commiſſioners of Juſticiary, he, the ſaid *Archibald Stewart*, ought to be puniſhed with the Pains of Law, to the Terror of others to be guilty of the like in Time coming.

Purſuers.

William Grant of *Preſtongrange*, Eſq. his Majeſty's Advocate,
Mr. *Patrick Haldane*, and Mr. *Alexander Home*, his Majeſty's Soliciters,
Mr. *Francis Garden*,
Mr. *John Grant*.

Procurators in Defence.

Mr. *James Ferguſon*,
Mr. *Henry Home*,
Mr. *Alexander Lockhart*,
Mr. *George Sinclair*,
Mr. *Charles Hamilton-Gordon*,
Mr. *John Stewart*,
Mr. *Gilbert Elliot*,
Mr. *David Dalrymple*,
Mr. *William Binning*.

The Pannel having, agreeable to a Clauſe contained in an Act paſt the laſt Seſſion of Parliament, intitled, *An Act for taking away and aboliſhing the heritable Juriſdictions in that Part of* Great Britain *called* Scotland, *&c.* given in to the Clerk in Writing a ſigned Account of the Facts relating to the Matters charged upon him in the ſaid Libel, with the Heads of ſuch Objections or Defences ſubjoined, as he was adviſed to make at his Trial;

And the ſaid Libel being this Day openly read, and full Debate thereupon, and upon the ſaid ſigned Account of Matters of Fact, and Heads of Defences given in for the Pannel, in Preſence of the Pannel, Court and Jury,

'The Lords Commiſſioners of Juſticiary, in reſpect of the Importance 'and Difficulty that may occur in this Caſe, and by virtue of the Power 'reſerved to them in the ſaid Act of Parliament, ordain both Parties to 'give in Informations to their Lordſhips, and the Clerks of Court; the 'Purſuers to give in their Informations againſt *Monday* the twentieth inſtant, at ſix o'Clock at Night, and the Procurators for the Pannel to 'give in theirs againſt *Friday* thereafter, the twenty-fourth inſtant, at the 'ſame Hour; and, at the particular Deſire of both Parties, ordain the Clerks 'of Court to record the ſaid Informations in the Books of Adjournal, in 'place of the Minute directed to be made up and ingroſſed in the ſaid 'Books by the Act of Parliament; and continue the Diet in this Cauſe, 'and the ſaid *Archibald Stewart* his Compearance, upon his Bond of Re'cognizance formerly recorded, till *Friday* the thirty-firſt of *July* cur'rent, at Four of the Clock Afternoon, in this Place; and ordain Par'ties, Witneſſes and Aſſizes, then to attend, each under the Pains of 'Law.'

July 20, 1747.

INFORMATION *for his* MAJESTY'S ADVOCATE *for his Majeſty's Intereſt, Purſuer,*

AGAINST

ARCHIBALD STEWART *of the City of* Edinburgh, *Merchant, and late Lord Provoſt of the ſaid City, Pannel or Defender.*

THE Libel, at the Purſuer's Inſtance, againſt Mr. *Stewart*, late *Lord Provoſt* of the City of *Edinburgh*, charges him the Pannel with being guilty of very high Crimes and Miſdemeanours, in having many ways acted contrary to his Duty, when he was chief Magiſtrate of the City of *Edinburgh*, in the Months of *Auguſt* and *September* 1745, a Time of publick Danger and open Rebellion, headed by the eldeſt Son of the Pretender to his Majeſty's Crown, aſſiſted with Troops and Money from his Majeſty's Enemies abroad; at which Juncture the Pannel, by his Miſbehaviour, ſuffered the City of *Edinburgh*, with the Cannon and Arms therein, as well as other Supplies of various Sorts, to fall into the Hands of the Rebels, in manifeſt Violation of the Truſt and Duty of his Office. This is the general Charge againſt the Pannel, which is in the Libel more particularly ſpecified, by a Deduction of many particular Inſtances of Miſbehaviour alledged againſt him in Support of that general Charge, which Particulars it is unneceſſary here to repeat; but for them the Purſuer begs Leave to refer to the Libel itſelf.

The Pannel having been duly ſerved with a Copy of this Libel, did firſt of all, in purſuance of the late Act of Parliament for aboliſhing the heritable Juriſdictions in *Scotland*, &c. give in to the Clerk of Court, the Day before his Trial was to come on, ſigned by one of his Counſel, his Account of the Facts relating to the Matters charged upon him, together with the Heads of certain Objections and Defences which he makes to the Libel, and therein ſays, 'That he is not guilty of all or any of the Ne'glects or Miſbehaviours laid to his Charge, and that there is no Ground 'for ſuppoſing him diſaffected to the Government, but much to the con'trary; and, in particular, he avers, that his Conduct, upon Occaſion 'and at the Time of the late Rebellion, will, upon Proof, afford the 'ſtrongeſt Evidence of his real Attachment to the Government;' and farther ſays, upon the ſeveral Matters charged againſt him,

In the firſt Article, 'That he thwarted no Meaſures that were pro'poſed that ſeemed legal and expedient; that where any Doubts or Diffi'culties occurred, either as to the Legality or Expediency of any Parti'cular propoſed, ſome of which ſeemed rather to be intended as a Snare, 'he delivered his Opinion with a becoming Freedom, ſubmitted his Rea'ſons to the Council or Committee, and heartily went into whatever 'they reſolved, after taking Advice, in Points of greateſt Importance, 'with thoſe who bore the higheſt Offices, both Civil and Military, that 'were at the Time in this Town.'

As to the ſecond Article of the Indictment, Mr. *Stewart* ſays, 'That 'the Propoſal made for aſſociating a Body of Volunteers was a Point of 'ſo much Delicacy, as muſt juſtify him for deſiring Advice as to the Le'gality of what was thereby propoſed. That ſo ſoon as the Magiſtrates 'found they could ſafely go into the Propoſal, the Lord Provoſt readily 'acquieſced, and ſhewed a Willingneſs to have it carried into Execution; 'and that, upon every Occaſion, he behaved towards them with the ut'moſt Civility.'

As to the third Article, 'The Magiſtrates of *Edinburgh*, with the reſt 'of a Committee appointed by the Council to provide for the Defence of 'the Town, readily liſtened, and chearfully received every Propoſal that 'appeared calculated for the Defence of the Town, in which nothing 'was by them delayed; and the Execution of theſe Matters was com-

'mitted

'mitted to proper Persons, chosen and appointed for that Purpose by the 'Council and Committee.' He does farther say, 'That the Guns were 'charged in the proper time, and all Endeavours used to supply the 'Town with proper Gunners.'

The Provost does in like manner say, 'That what is loosely charged 'in this Article of the Indictment, of his having refused the Proposals 'of those who were zealously affected, is not well understood: Every 'Conversation was freighted with a Proposal, many of them contra-'dictory, and some of them from sinister Motives; such particularly was 'the Proposal mentioned in this Article, which, if sincerely meant, 'ought to have been proposed in Council, which never was done.'

As to the fifth Article, 'The Provost thinks he behaved kindly to 'every Man who came, or pretended that he came, to the Assistance of 'the Town; and denies the Instance charged in the Libel, nor can he 'imagine that it was, or can be presumed an Affront, although he had 'offered the putting Sir *Robert Dickson*'s Volunteers in the Way of re-'ceiving Pay, supposing that to have been the Fact.'

As to the sixth Article, 'Mr. *Stewart* apprehends there can be no 'Crime in it; for he did communicate the Message by Mr. *Alves*, im-'mediately after he received it, to the Gentlemen of the Council, who 'were of Opinion, that the Message delivered by Mr. *Alves* ought not 'to be divulged, for fear of intimidating the Inhabitants; and soon 'after he waited of the then Lord Advocate, to impart that Affair, and 'get his Advice what ought to be done, and, conform to the Advice 'then given, committed the said *Andrew Alves*, so soon as he under-'stood that it was lawful and proper, and there was no criminal De-'lay in committing him.'

As to the seventh Article, 'Mr. *Stewart* says, That the Meeting in 'the *New Church Isle* was not in consequence of any Petition delivered 'him by the Inhabitants, which Petition was never once under Consi-'deration of the Committee, nor did he order the Alarm-Bell to be rung 'to convocate the Inhabitants. Denies that he ever refused to admit 'any Dragoons into the Town; but, on the contrary, he expressed a 'Willingness to receive them, providing they were sent.'

As to the eighth Article, 'Mr. *Stewart* refuses that he received or 'gave Orders to read any Letters from the Pretender, or that he gave 'Orders in consequence of any such Letter; any Deputation that might 'have been sent, was the Effect of the Fears of the Inhabitants, who 'had more of the Government of the Town at that time than the Ma-'gistrates.'

As to the ninth Article, 'The Volunteers carried their Arms to the 'Castle without applying to Mr. *Stewart* for his Orders, and before he 'understood the Town to be in a defenceless State.'

As to the tenth Article, Mr. *Stewart* says, 'That it was the Sense of 'the Committee the Provost should give no Orders; and he believes it will 'appear, that the Messenger from Mr. *Guest* was told he was at Liberty 'to spike up the Cannon, if the General thought proper; nay, he far-'ther believes the Messenger was farther told, that he should be shewn 'where the Cannon were. Mr. *Stewart* does not remember that Captain '*Dalziel* was ordered to have but a Third of his Guard on Duty, but 'believes that the whole Guard at that time were not in a Condition to 'do Duty, after the Fatigue they had previously undergone; the Inha-'bitants had before this time resolved not to stand upon their Defence; 'the Provost remembers nothing of the Orders said to have been given 'to the Trained-Bands, but believes the contrary will be proven.'

As to the eleventh Article, the Provost repeats the first Part of his Answer to the preceding Article, and says, 'That if any of the City-'Arms fell into the Hands of the Rebels, it must have proceeded from 'various unavoidable Causes, but cannot be imputed to any Fault of 'Mr. *Stewart*.'

As to the twelfth Article, 'Mr. *Stewart* is confident there must appear, 'upon his Part, a zealous Attachment to the Interest of the Govern-'ment, by the Uniformity of his Conduct from the Commencement of 'the Rebellion, until the Time that the Town fell unhappily into the 'Rebels Hands; for such is and must be the natural Construction of 'his unwearied Application to every Part of his Duty, and upon con-'sidering the Proposals made by him in Council, with the Directions 'given to those that acted under him.'

From this Account of the Provost's Conduct, in relation to the Matters charged upon him, his Defences against the Libel are:

'1*mo*. That the Whole of the Charge is laid in a Manner too loose 'and general to be past to the Knowledge of an Assize.'

'2*do*. That the Facts therein contained are either misrepresented, or 'in their Nature not criminal.'

'3*tio*. That no Error in point of Judgment, if any thing of that 'kind shall appear, ought to be made the Foundation of a criminal Pro-'secution, especially that he was only one of a Committee, and acted 'by their Direction.'

Before the Pursuer proceed to recite the Arguments that were offered on behalf of the Pannel, in Support of these Defences, when the Trial came on in the Court of Justiciary on *Monday* the 13th current, together with the Replies made on the Part of the Pursuer to these Defences, he shall here, for the better understanding of the true Merits of the Case, first of all briefly set forth, without any Argument, the principal Facts which occurred at and about the Time libelled, such as he believes can be proved to be true, either by Authentick Writings, or by parole Evidence.

[23d *August* 1745. *Council Record.*] The Lord Provost produced in Council a Letter from one of his Majesty's Principal Secretaries of State, by Direction of the Lords Justices, bearing Date 13th *August* 1745, giving him Notice, 'That they had received Intelligence that the Pre-'tender's Son was already landed, or intended to land in *Scotland*, and 'recommending it to him the Lord Provost to exert his Care and Vigi-'lance on this Occasion, and make use of such Precautions as he should 'judge necessary for preserving the publick Peace within the City of '*Edinburgh*.' And produced also a Copy of his Answer to that Letter, bearing Date 17th of *August*, promising, *inter alia*, 'not to sit down in 'Security, but to keep a watchful Eye, in order to prevent, as far as 'possible, every thing that might disturb the Peace of this City;' of which Answer the Council approved.

The same Day the Council resolved to levy and raise the Number of thirty Centinels to be added to the City-Guard, and recommended to the Lord Provost and Magistrates to direct and ordain the Captains and Sub-alterns of the Trained-Bands to make up full Lists of the Persons be-longing to their several Companies, and to report the same to the Ma-gistrates against *Wednesday* then next.

At the same time another Order was made, for directing the Constables of the City, to make out Lists of all the Inhabitants and Residenters within their several Bounds and Districts, and that they be diligent in inquiring and finding out what Strangers may happen, from Time to Time, to come within this City, and lodge within their several Districts; and that all Inn-keepers, Stablers, and others, who lodge and entertain Strangers, should from Time to Time, and as oft as any Strangers shall lodge with them, give in to the Captain of the City-Guard, a Note of their Names and Designations at their Arrival, and of the Time of their Departure from thence, and order the Captain of the Guard to re-port to the Magistrates in Writing, every Morning, Lists of the Parti-culars that should be delivered in to them by the Inhabitants.

[*Tuesday*, 27th *August* 1745.] These Resolutions were reported by the Lord Provost, and the other Magistrates, with the Conveener of the Trades, to a Meeting of substantial and well-affected Burgesses, which it had been proposed to summon to give Advice on the present Occasion. This Proposal was made to the Lord Provost on the *Saturday* preceding, being the 24th of that Month, by a Citizen of *Edinburgh*, who had been some time a Magistrate, and had been commissioned by other well-affect-ed Citizens to propose such Meeting to the Provost, as had been for-merly practised on important Occasions, and which he represented as what they judged necessary at this Time, in order to take Measures for putting the City in a Posture of Defence. This Proposition the Provost received at first with a Sneer or Laugh; but, upon the other's pressing him, as being the Opinion and the Wish of many substantial Burgesses, and what had been formerly practised on the like Occasion, the Provost at last consented that there should be such Meeting, but said it could not be that Day, being *Saturday*, as many of the Burghers would be out of Town; and accordingly it was not held till the *Tuesday* following.

At this Meeting, which was held in the *New Church Isle* at Five o'Clock in the Afternoon, consisting of a great Number of the most re-spectful Burgesses, of undoubted Loyalty to his Majesty, they unani-mously approved of the Steps already taken, and offered their Advice as to the farther Steps to be taken, and particularly 'That the City should 'be forthwith put in a Posture of Defence, and a Body of Men raised 'and armed for the Defence thereof and the Service of the Government.' The former of these could be of little Use without the latter; and to the latter the Provost objected, that the same would be treasonable or illegal, without special Warrant from the Crown. They replied, That if a War-rant was necessary, That might be applied for and obtained. Then the Provost said, That, supposing they should get a Warrant, he doubted much if Money could be raised by Subscription for paying them. To which last Objection it was answered by some Citizens of considerable Wealth and Credit there present, That they were ready to undertake and oblige them-selves to find Money to pay a Regiment for three Months. Upon this it was resolved, that a Committee should be named, out of the Council and of the other Burgesses, to consult with and take the Advice of the Lord Justice-Clerk, and such of the other Judges as could be found in Town, and his Majesty's Advocate and Solicitor, with regard to what farther Steps the Magistrates and Council and Community could legally take for preserving the Peace of the City, and contributing to defeat the Designs of the Rebels; and next Day the Council named their Com-mittee accordingly; the Result of which was, that Application was made to his Majesty, in order to remove all Doubts, for his special War-rant and Licence to raise such Regiment.

[*Saturday*, *August* 31*st*, 1745.] Advice was received at *Edinburgh*, that Sir *John Cope*, with the Troops under his Command, instead of march-ing directly to the Rebels, as he had proposed, and was expected, had, upon his March at *Dalwinnie*, the Place where the *Fort-Augustus* and *In-verness* Roads meet, marched foreward towards *Inverness*, whereby the Rebels were now got to the southward of the King's Army, when there was no Force left to oppose their marching southward where they should think fit, which gave no small Alarm to the Cities of *Edinburgh* and *Glasgow*, and all the Country to the southward of the Rivers or Friths of *Forth* and *Clyde*.

[*Monday*, *September* 2.] The Council of *Edinburgh* ordered the Town-Guard to be augmented to the full Number of 126 Men, Officers, Ser-jeants, and Drums included.

[*Eodem die. The deceast Mr. Mac Laurin's Journal.*] 'The Accounts 'from the North becoming more and more unfavourable, above twenty 'Gentlemen of known good Affection to his Majesty and the Govern-'ment, met at Mrs. *Clark*'s Tavern, and agreed to apply to the Lord 'Provost, that he would give Orders for putting the Town in as good a 'State of Defence as possible with all Expedition. It was complained 'of in this Meeting, that an Application which had been made the 'Week before to his Lordship had not met with due Encouragement, 'but that the Persons who waited on his Lordship, and their Zeal, 'had been ridiculed, and made the Subject of insipid Jokes. The 'Company (however) resolved, that, whatever Discouragements they 'might meet with from those whose Duty it was to have animated 'them, they should meet frequently, and promote, to the utmost of 'their Power, whatever may tend to the Defence of the Town: 'In the mean time they appointed two of their Number, a 'Gentleman who had formerly been a Baily, and Mr. *Mac Laurin*, to 'wait on the Provost next Morning, with a general Instruction to beg 'he would see to the Defence of the Town, and offer their Assistance; 'and three particular Instructions, *first*, That he would order making 'Moulds for Bullets, it having been found on Trial that all in the Shops 'had been bought up of late by Cadies, (or Link Boys) who had been 'sent for them. 2*dly*. That the Sluice of the *North Loch*, by which the 'Water issues from it, should be shut and secured, that it might fill up. '3*dly*. That they should propose to his Lordship the making a Distinction 'betwixt the Inhabitants of known good Affection, and such as were 'suspected, when he came to intrust them with the Town's Arms,

and

'and take proper Meaſures that the City ſhould not be in Danger from 'within, as (had been taken) in 1715.

'Lord Provoſt did give a ſatisfactory Anſwer to the two firſt of theſe, but 'as to the third, he did not give the Satisfaction deſired; but, after a good 'deal of Reaſoning, he ſaid, That, if the Town came to be attacked, he 'would ſo far make a Diſtinction as to intruſt the Town's Arms with 'the moſt ſubſtantial Burghers; he ſaid, That, if a thouſand Men had a 'mind to get into this Town, he could not ſee how he could hinder 'them. In anſwer to this, the Number of Trades-Lads in *Edinburgh*, of 'the Gentlemen who would aſſociate to ſave the Town, the Unſkilfulneſs 'the *Highlanders* had always ſhewn in attacking Stone-Walls, their 'Want of Artillery, and being ill-armed, with the Aſſiſtance that would 'be got from the Dragoons, in all Probability, were urged: It was inſiſt-'ed, our doing ſomething was requiſite to ſave the Reputation of the 'Town, to divert the Enemy from coming this Way, and to raiſe a Spirit 'in the Country.'

'To this he anſwered, That, to pretend to do when we could do little, 'was to expoſe us to Ridicule. Other diſcouraging Expreſſions were 'uſed; but, at the End, he ſaid he would be glad of Advice from ſenſible 'Burghers, and have regard to it.'

[*Thurſday, Sept.* 5th.] 'Little material paſt till *September* the 5th, 'when the ſame Company, with ſome Addition of other Gentlemen, met 'at the ſame Place; and now the Danger appearing more imminent, 'they entered into an Aſſociation, as Volunteers, to ſerve for the Defence 'of the City at the Hazard of their Lives and Fortunes, under the Di-'rection of the Lord Provoſt. This was ſigned by all preſent, and by a 'hundred before Twelve the next Day. They appointed ſome of their 'Number to preſent this to the Lord Provoſt, to deſire they might be al-'lowed to chuſe their Officers, and that he would apply to General *Gueſt* 'for Arms to them: They were likewiſe ordered to intreat that the Pa-'rapet of the Town-Wall might be cleared, which, in many Places, had 'been ſtopt up with Stone and Lime to prevent ſmuggling; that Stairs 'ſhould be made for getting up to it at proper Diſtances; that Cannon 'ſhould be got from the Ships to be placed on the Flanks and Gates.'

This Spirit for putting the Town in a Poſture of Defence was ſo generally prevalent amongſt the well-affected, and even the leaſt warlike Part of the Inhabitants, that, of this Date, a Repreſentation to the Lord Provoſt, Magiſtrates and Council, was ſigned by the Principal and Profeſſor of Divinity, and Twelve more of the Miniſters of the City of *Edinburgh*, of whom the total Number is Sixteen, ſo that three only were abſent or wanting; which Repreſentation ſets forth, that they have ſeen and conſidered a Petition to their Lordſhip and Honours, ſubſcribed by a conſiderable Number of the Inhabitants of this City, well-affected to his Majeſty's Perſon and Government, praying, that the City may be put in a proper Poſture of Defence againſt the common Enemy; that they, the Miniſters of *Edinburgh*, judged it their Duty to teſtify their hearty Approbation of ſuch Deſign, and their firm Reſolution to promote the ſame in their Sphere and Station, and thereby engage chearfully to contribute for defraying the neceſſary Expence with their Fellow-Citizens.

The Miniſters were as good as their Word as to this Article; for, out of their moderate Stipends, they joined in ſubſcribing for the Pay of one hundred Men out of the thouſand propoſed to be raiſed.

The Lord Provoſt, however, found alſo conſiderable Difficulties as to the Legality of this Meaſure, which was preſſed upon him, of raiſing the *Volunteers*, and did not give way to it until he had firſt one ſigned Opinion of his Majeſty's Advocate and Sollicitor, 'That it was lawful for the 'Magiſtrates to authorize the Subſcribers, and other well-affected Inha-'bitants, to take up Arms in Defence of the City, and Support of the Go-'vernment.' And the Provoſt, it ſeems, not being fully ſatisfied with this Opinion, there was ſubjoined to it, and ſigned by the ſame Gentlemen, a farther Opinion, [*Eodem die, Sept.* 6th] 'That it was lawful, and 'not treaſonable, for the Magiſtrates to comply with the Deſire of the 'ſaid Petition of the Volunteers.'

[Mr. *Mac Laurin's Journal.*] The Lord Provoſt declared now, and always afterwards, 'That he would inſiſt on the Privileges of his Office, 'and did not leave the Nomination of the Officers to the Volunteers, but 'allowed them to make up a Liſt of 30 or 40, or more, from which he 'would chuſe them. He walked with ſome of the Magiſtrates and Vo-'lunteers about a Part of the Town-Wall; he then ſaid, he could not 'ſee but if two thouſand Men had a mind to get into the Town, they 'muſt ſucceed; after looking at a Part of the Wall, he deſired Mr. '*Mac Laurin*, one of the Volunteers, to take the Trouble to make a Plan 'of it; which he promiſed to do.

'It was thought proper to draw up an Article of News concerning this 'Aſſociation, to encourage others to join, and rouze the lethargick Spirit 'of the Country: After it was written, it was thought decent and dutiful 'to ſhew it to the Provoſt; the Words, *That this Propoſal was accepted by 'the Lord Provoſt*, were altered by him; he would have it, *that the Lord 'Provoſt acquieſced in this Propoſal.* This Alteration was much regretted 'by thoſe who were ſincerely zealous in this Cauſe, being ſenſible, that, 'in ſo critical a Time, more than acquieſcing was requiſite in the Ma-'giſtrates, to animate the Burghers, and foreſeeing, as it happened, that 'the Trades would not be warm when the Magiſtrates were ſo cool. The 'Volunteers however ſoon roſe to 400. The Expences of the Works 'propoſed were much talked and complained of, at this Time and af-'terwards.'

[*Saturday, Sept.* 7th.] The Lord Provoſt moved in Council, that an Addreſs ſhould be drawn up and preſented to his Majeſty, which was unanimouſly agreed to; and accordingly a very dutiful Addreſs was made out and ſigned; and that ſame Day it was reſolved in Council to authoriſe the Magiſtrates and Conveener to employ Perſons, with all poſſible Speed, to *put the City in a Poſture of Defence*, and particularly *the Walls thereof.*

[*Eodem die, Sept.* 7th, Mr. *Mac Laurin's Journal.*] 'The Plan of the 'Wall was made ready, and preſented to the Council at Six o'Clock; the 'weak Places were pointed out, and what was moſt neceſſary to be done 'propoſed. The Lord Provoſt deſired an Eſtimate might be made of the 'Expence; but it was anſwered, That it could not eaſily be done, and 'would require Time. It was propoſed the Flanks ſhould be firſt taken 'care of, as the Time which the Rebels would take to come to *Edin-'burgh* was uncertain; that the doing as much as we could did not hin-'der the capitulating, if neceſſary; that there was a double Chance for 'Relief, either from Sir *John Cope*, or the *Dutch*, ſo that holding out one 'Day or two might ſave the Town; but that Diſpatch was neceſſary 'above all things, and all the Workmen that could be got ought to be 'employed.'

[*Sunday, Sept.* 8th. Mr. *Mac Laurin's Journal.*] 'The Workmen clear-'ed a Part of the Parapet; but the Number was very ſmall for this Day, 'and indeed for the whole Week, till *September* 15th. Of this Complaints 'were made every Night, but to little, or no Purpoſe; ſometimes there 'were only two Dozen, when there ought to have been as many Hun-'dreds; for now the Rebels were at *Perth*. It was found that the Para-'pet, when cleared, was too narrow in ſeveral Places, and that it was ne-'ceſſary to add to it by Scaffolding. This was done in ſome Places, but 'ſo few Men were employed, that in others it was not executed.'

[*Monday, Sept.* 9th. *Council Record.*] The Lord Provoſt produced in Council a Sign-Manual from his Majeſty, addreſſed to the Lord Provoſt, Magiſtrates, and Town-Council of *Edinburgh*, reciting: 'That it had 'been repreſented to his Majeſty, that the Lord Provoſt, Magiſtrates, 'Town-Council, Burgeſſes, and others of the City of *Edinburgh*, from 'their great Loyalty and Affection to his Perſon and Govern-'ment, were at this Juncture willing and ready to raiſe and maintain, at 'their own proper Charge and Expence, by voluntary Subſcription and 'Contribution, one thouſand Foot for the Defence of the ſaid City and 'the Support of his Government, and that they were deſirous of obtaining 'his Royal Licence and Authority for the ſame: His Majeſty does grant 'the ſame accordingly; and does farther ordain and command, that the 'ſaid one thouſand Men ſhall be under the Direction of the Lord Pro-'voſt, Magiſtrates and Town-Council of *Edinburgh*.'

This Warrant having been read and conſidered by the Magiſtrates and Council, 'They appointed, as a Committee, the preſent and old Ma-'giſtrates, Conveener, Deacons *Lauder* and *Porteous*, or any five of 'them, the Lord Provoſt being always one; and, in caſe of his Ab-'ſence, any Nine of them to be a *Quorum*, to conſider what is moſt pro-'per to be done upon this Occaſion, for levying the ſaid 1000 Foot, 'and particularly to take in the Subſcriptions of ſuch of the Inhabitants 'as are willing to contribute for levying and maintaining the ſaid 1000 'Foot, with their proper Officers to be named, for the Purpoſes men-'tioned in the ſaid Sign-Manual, for the Space of three Months after 'they ſhall be ſo inliſted; as alſo to conſider what is proper to be done 'farther for the Safety of the City, and for Support of the Government; 'which Committee ſhall meet at the Goldſmiths Hall twice each Day, at 'the Hours of Eleven in the Forenoon, and Four in the Afternoon; and 'recommended to the ſaid Committee to keep a Book, into which all their 'Proceedings and Actings ſhall be regularly ingroſſed, to the end the ſame 'may be reported to the Council from Time to Time.

'And the Magiſtrates and Council nominate and appoint the Lord 'Provoſt to be Colonel and Commander of the ſaid 1000 Foot, with 'Power to his Lordſhip to conduct and direct them, and the other Of-'ficers who ſhall be named to command under him, as the Council ſhall 'think proper, or as the Exigencies of Matters ſhall require.'

[*Eodem die, Sept.* 9th. Mr. *Mac Laurin's Journal.*] 'The Work went on 'but ſlowly; ſome of the Embrazures in the Flanks for the Cannon, and 'in the Curtain for the Muſqueteers, were opened.'

[*Eodem die.*] 'A Letter was delivered to the Lord Provoſt, ſigned by 'three old Provoſts, *Drummond*, *Mac Aulay*, *Oſburn*; and three old Bailies, '*Nimmo*, *Blackwood*, *Wilſon*; on Behalf of themſelves and the other Vo-'lunteers, praying his Lordſhip to apply to the Commander in Chief for '200 Stand of Arms; and that he would appoint a Place where the 'Volunteers might be inſtructed in the Uſe of the Firelock and Bayonet.'

[*Sept.* 10th. *Council Record.*] 'The Council appointed *Allan Burns*, late 'of the Lord *Rothes*'s Regiment, to be Adjutant to the 1000 Foot com-'manded by the Lord Provoſt, which were now levying, and recom-'mended to his Lordſhip to find out proper Perſons to be Officers, to 'command each hundred Men under his Lordſhip.

[*Eodem die.* Mr. *Mac Laurin's Journal.*] 'A Scheme of what was moſt 'neceſſary to be done was drawn up by a Volunteer above-mentioned, 'and ſhewn to General *Gueſt*, and at his Deſire to an old Officer of the 'Dragoons; being approved by him, it was preſented to the Lord Provoſt. 'It was inſiſted, that a high Houſe, which rakes a Part of the Wall near 'the *Potter-Row* Port, ſhould be poſſeſſed by a Party, and a Communica-'tion made from the Wall to the Houſe, to relieve or bring off the Men as 'Occaſion might require; but this, ſo much inſiſted on, was not yielded 'till *September* 16th, when Captain *Murray* approved of it; and then, 'though it was begun, there was not Time to finiſh it.

'Unhappily at this Time the Elections of their Deacons ſo much em-'ployed the Trades, that few came to work on the Wall; and it never 'appeared, that, after repeated Complaints, proper Authority was em-'ployed to oblige them to work in this Time of the greateſt Danger.'

The Lord Provoſt reported, That he had procured from General *Gueſt* an Order to *David Lyon*, Store-Keeper of the Caſtle, to deliver to his Lordſhip, or his Order, upon Receipt, two hundred Muſkets, Bayonets, and Cartouch-Boxes, and the like Number of Flints, with one Barrel of Powder, and an equal Proportion of Ball, which are to be diſtributed among the Gentlemen Volunteers.

The Council alſo authorized the Bailies of *Petter-Row* and *Portsburgh* to give Receipts for ſixty Stand of Arms, to be by them diſtributed amongſt the Inhabitants on proper Receipts.

The Council appointed the reſpective Deacons to make Choice of ſix Perſons out of each of their Incorporations, to be given in to the Council on *Friday* next, that, out of the ſame Liſts of ſix, three may be choſen by the Council, to the Effect the Corporations may elect their ſeveral Deacons for the Year enſuing.

[*Eodem Die. Sept.* 11*th.*] The Committee above-mentioned, appointed by the Council on the 9th, met for the first Time, the Lord Provoſt preſent, when they gave their Opinion concerning ſome Things to be done for the Reparation of the Walls, that the ſame ſhould be forthwith executed ſo far as hitherto undone.

[*Eodem Die. Mr. Mac Laurin's Journal*] 'Some Cannon were got 'from Ships; and it having been earneſtly recommended to the Lord 'Provoſt, that ſome Hand Granadoes ſhould be got, and the City-Guard 'and Volunteers taught to uſe them, a Meſſage was ſent to the General, 'and by him to the Caſtle; but it was anſwered, That they had not 'above two hundred, and could not ſpare them. Afterwards, however, 'one of the Volunteers, ſurpriſed that there ſhould be ſo few in ſuch a 'Garriſon, ſo well provided with Stores, made a Viſit to the Caſtle, 'and was told by the Store-Keeper, that he had five times that Num-'ber, and was deſired to tell the Provoſt, that he had a hundred at his 'Service, if he had a mind for them. The Meſſage was delivered, but 'the Granadoes never appeared. We found twenty-three that had lien 'in a Cheſt ſince 1715, in the Town's Armoury, but they were never 'examined.

'A Ditch that had been ordered at *Wallace*'s Tower, had been carried 'on right for ſome time, but was afterwards, by ſome Miſtake, or bad 'Advice, caſt on the wrong Side of the Dyke. This Day this was ſtopt, 'and a Remedy propoſed, but not executed for want of Time.

'[*September* 12. *A. M.*] The Committee above named, came to ſome 'farther Reſolutions about fortifying the City-Walls, and, *inter alia*, 'recommended to Mr. *Mac Laurin* to go along with the Tradeſmen to 'explain the tenth Article of his Memorial, in relation to the putting 'the Wall at *Leith-Wynd* in a better Poſture of Defence.'

[*Committee's Record.*] In purſuance of the Lord Provoſt's Recommendation, the Committee reſolved, That it be recommended to ſome of the City-Guard, *Edinburgh* Regiment, and Gentlemen Volunteers, that they do learn the Exerciſe of throwing the Hand-Granadoes.

'[*Eodem Die. P. M.*] The Committee reſolve, That the Council 'ſhould invite thoſe who have any Quantities of Grain at *Leith*, or other 'Parts near to the Town, to bring the ſame into this City, to be lodged 'in the City's Granaries, to be kept therein from the Enemy, Rent-free.'

'[*September* 13. *Council Record.*] The Provoſt reported, That, on the '12th current, he had given Receipt to the Store-Keeper of the Caſtle 'for a hundred Muſkets, Bayonets, and Cartouch-Boxes, with half a 'Barrel of Powder, and Ball in proportion, for the Uſe of the Volunteers 'of this City; and alſo that he had given Receipt for two hundred 'Stand of more Arms to the Uſe of the City's Regiment.

'The Proceedings of the Committee for levying the City-Regiment, 'and forwarding the neceſſary Steps to be taken for the Safety and De-'fence of the Place, named the 9th current, were read over, and una-'nimouſly approved by the Council, which recommended to the Com-'mittee to continue in their Diligence.'

The Council then proceeded to make the ſhort Leets for the Election of new Deacons; after which there is nothing entered in the Council Record, 'till the 18th of *September*, the Day after the Rebels got Poſſeſſion of the Town, when there were ſome Proceedings relating to the annual Election, which did not take effect.

[*Eodem Die. Minutes of the Committee.*] 'The Lord Provoſt, and other 'Members of the Committee preſent, recommended to Bailie *Robert 'Baillie*, and his Committee upon the publick Works, and ſuch of this 'Committee as pleaſed to attend, or any three of them, Bailie *Baillie* 'being always one, to ſee the whole Particulars contained in the former 'Minutes fully executed, without Loſs of Time, and to take the Advice 'and Direction of ſuch proper Perſons without Doors, as they ſhall 'judge neceſſary for executing the whole Particulars: with Power to 'the ſaid Committee to preſs ſuch Workmen as ſhall be judged pro-'per for compleating the whole Works before ſpecified.

'[*September* 13. *Mr. Mac Laurin's Journal.*] The Day of the Election 'of the Deacons there was very little done on the Wall; the Deacons could 'not be got; ſome Houſes in St. *Mary's Wynd*, that had large Windows 'into the Town, were ſhewn to ſome Magiſtrates, and afterwards to the 'Provoſt: but no Orders were given about them. This Day the Car-'riages of the Cannon were examined, and any neceſſary Reparation 'ordered.

'[*Saturday, September* 14*th, Committee Record.*] The Lord Provoſt in 'the Committee reported, That he had this Day ſigned an Order for 'Payment of 1000 *l. Sterling* to the Receiver General, to Account of the 'Ceſs due by the City.

'The Committee reſolve, That the Ceſs Books, and thoſe by which 'the Annuity and Poor's Money is collected, ſhall be tranſported from 'the ſeveral Collectors Offices to the Caſtle of *Edinburgh* for Preſerva-'tion; and the Provoſt wrote a Letter to General *Preſton*, the Governor 'of the Caſtle, praying him to receive the ſaid Books, and keep them for 'the Uſe of the City.'

This is the laſt Entry made in the Regiſter of the Proceedings of this Committee, which does not appear to have met again after this *Saturday* the 14th.

'[*Eodem Die. Mr. Mac Laurin's Journal.*] Little Work on the Walls 'and Scaffoldings, the Cannon were all proved and the Shot got ready.

'[*Sept.* 15. *dit. Journal.*] The Lord Provoſt brought Captain *Murray* 'to Town to give his Advice, and, not 'till this Day, he ordered ſome 'Works within the Gates, which were begun immediately. There were 'more Men employed this Day than ever before; and every body ſeemed 'to exert themſelves: But the Lord Provoſt having never named the 'Field-Officers to the Volunteers, they were now nine independent Com-'panies; and, upon a Motion to go out with Colonel *Gardner*, they 'unhappily divided in Opinion, which produced ſome Heat amongſt 'them. A moſt unlucky Signal was pitched on to call them to their 'Arms, the ringing of the Fire-Bell, which never fails to raiſe a Pan-'nick in *Edinburgh*. This happened in time of divine Service; the 'Churches diſmiſſed in Confuſion and Terror: And this was the firſt 'Appearance of Feat in the Place: This Signal ought not to have been 'propoſed or allowed by the Magiſtrates at ſuch a Time, the Rebels not 'being far from us.

'This Day moſt of the Cannon were carried to the Flanks, and in 'this as much Regard as poſſible was had to the weakeſt Places; ſo that 'there were three on *St. Mary's Wynd*, which raked it. About Six, one 'of the Volunteers, with the Chief of the Bombardiers, came to the 'Provoſt, to have an Order to load them; he kept them waiting till 'Eight, and then deſired another to ſign the Order for him. They 'begun, though in the Night; but, after they came to the *Briſto* Port, 'they were obliged to wait from Half an Hour after Ten, till near One, 'for want of a Centinel to place on the loaded Gun, though they ſent 'Meſſages for Centinels to the Guard and Council. This put a Stop 'to their Progreſs that Night; the Guns were all loaded with ſmall 'Shot, and, as they flanked the Curtains and Gates, it was the more 'dangerous to leave them without Centinels during all that Time, while 'the reſt of the Wall was guarded, and, *All is well*, was heard go round 'regularly; there were no Centinels from *Briſto* Port to the *Weſt* Port, 'but one or two below.'

On the Evening of this 15th of *September*, when the Rebels were within a few Miles of the City, and it was apprehended that they might have come up to it during that Night, it was reſolved at a Meeting with the Lord Provoſt, and others of the Council, with the Captains of the Volunteers, That 700 Men ſhould be upon Duty all Night, to guard the Walls all round the Town, who were to conſiſt of 400 Trained Bands, 40 of the new Regiment, 100 Volunteers, 90 Seceders, 40 *Dalkeith* Volunteers, 30 Exciſe-Officers.

[*Monday, September* 16. *Mr. Mac Laurin's Journal.*] 'The Works 'went on chearfully till Four or Five at Night; a Work was thrown 'up to defend the Paſs to *Mountreſay*, ſome Gates were ſhut up, 'ſome more Cannon were got, and carried to the Baſtions and Gates; 'we were told that only five Gunners were got at One o'Clock, but 'were promiſed that Pains ſhould be taken to get more.

'Betwixt Two and Three o'Clock, ſome Burghers were ſaid to be 'carrying about for Subſcriptions a Petition to the Magiſtrates, praying 'the Town ſhould capitulate. The Alarm being great at the *Weſt* Port, 'the Guns there were loaded, and the other Works preſſed on, ſo that 'they were almoſt finiſhed, when an Account came, that a Meeting in 'the *New Church* had agreed to capitulate. One of the Volunteers 'called for the Provoſt, to know what was to be done to the Cannon; but 'was told, that his Lordſhip had not Time to ſpeak to him. The Call 'of, *All is well*, did not go round the Wall this Night as the former, 'and the Town ſeemed to be quite off its Defence; the Volunteers 'delivered their Arms into the Caſtle.'

Here Mr. *Mac Laurin*'s Journal ends, which is all in his own Hand-Writing; and, as he was himſelf a Volunteer, and ſerved the Town as a chief Engineer, to deviſe and direct the Methods of fortifying the ſame; as he was a Perſon of great and eminent Abilities, of excellent Judgment as well as great Learning, and of perfect Probity and Veracity; as he had Opportunity to know all the Facts which he relates, and which he ſet down in Writing recently after they happened, with great Diſtinctneſs and Preciſion; and as the Purſuer has reaſon to believe that his Relation will be confirmed by the Teſtimony of living Witneſſes, he has choſen, in this Deduction of the Facts, in order to make the Charge and the Defence better underſtood, to make uſe of the very Words of Profeſſor *Mac Laurin*, as the moſt accurate and genuine Relation of the Facts that could be made, ſo far as he goes.

The Events of *Monday* the 16th, when, after ſo much Preparation for a Defence, the City of *Edinburgh* was in effect ſurrendered, and opened its Gates to the Rebels, were various, and deſerve to be more minutely recited. In the Morning of that Day Provoſt *Stewart* received a Meſſage from the Camp of the Rebels, which was delivered to him by *Andrew Alves*, Writer to the Signet, importing, That the City of *Edinburgh* would be ill-treated by them, unleſs it ſhould be readily or ſpeedily ſurrendered. Upon receiving which, the Provoſt did not commit the ſaid *Andrew Alves* to Priſon, neither did he give Notice of this Incident to any other of the King's Officers, Civil or Military, nor did he ſo much as adviſe or charge Mr. *Alves* to forbear repeating or relating that Meſſage of his in the Town, who went directly from the Provoſt to the Street, and repeated his Story to a Circle of People who came round him, amongſt whom one Gentleman adviſed Mr. *Alves* to go and tell what he had been relating to his Majeſty's Advocate; upon his doing which, the Advocate adviſed the Lord Provoſt to commit Mr. *Alves* to Priſon, which was now done too late to prevent the diſcloſing or ſpreading the threatening Meſſage which he had brought.

About Two o'Clock in the Afternoon of that Day, a Petition was ſet on foot, which was put into the Lord Provoſt's Hands about Three, addreſſed to the Lord Provoſt, Magiſtrates and Council, and intitled, *Repreſentation of the under-ſubſcribing Inhabitants of the City of* Edinburgh, and it is ſigned by 48 Perſons, ſetting forth, 'That being deeply affected 'with a Senſe of the great Danger to which the City is preſently ex-'poſed, by a rebellious Army marching up thereto in order to attack it, 'and being, at the ſame time, ſenſible of our Inability to make ſuch a 'Defence as with any Probability may defeat their Deſign of entering 'the ſame, without endangering the Lives and Properties of the Inha-'bitants, and expoſing the City to Rapine and Plunder, in the Event 'of our being obliged to ſurrender, and that there is but ſmall, if any 'Proſpect of Aſſiſtance from the Military; therefore praying them, who 'are the Governors of the City, that, before they came to any Reſolu-'tion, either of defending or giving up the Town, they will call a 'Meeting of all the principal Inhabitants and Heritors at preſent in the 'Place, to conſult with them what is proper to be done in an Affair of 'ſo great Importance.'

About the very time that this Petition was going forward, a Letter was ſigned by the Lord Provoſt, together with his Majeſty's Advocate and Sollicitor, addreſſed to the honourable Lieutenant-General *Gueſt*, in the Words following. '*Edinburgh*, 16th *September* 1745. Sir, We are of 'Opinion, that it would be for his Majeſty's Service, that one hundred 'of the Dragoons ſhould be ordered in to the Town of *Edinburgh*, to aſ-'ſiſt in defending this Town.'

A little after this, and betwixt the Hours of Three and Four of the Afternoon of this Day, Mr. *Walter Greſet* was ſent by the Lord Juſtice-Clerk to the Lord Provoſt of *Edinburgh*, to know whether he the Provoſt intended to defend the Town or not, to preſs the Defence thereof, and to

to assure him, that, if he resolved to defend it, not only the 100 Dragoons he had applied for, but as many more as he pleased to desire, should forthwith be ordered in to his Assistance. Mr. *Groset*, in his Way to *Edinburgh*, met the Lord Advocate coming from the Town, and having acquainted him with the Message Lord Justice-Clerk had sent by him *Groset* to the Provost, he the Advocate approved thereof, and desired Mr. *Groset* to make all possible Haste in delivering the same, and getting the Provost's Answer.

Mr. *Groset* found the Lord Provost in the Goldsmiths-Hall, delivered to him the above Message, and insisted for a direct Answer, and that, to prevent Mistakes, the same might be put in Writing; which, after some Conversation on the Subject, the Provost gave him in Writing, directed to the Lord Advocate and the Lord Justice-Clerk, in the following Words: 'You know the Councils I was Witness to: Was I to desire 'his Majesty's Troops to come into the Town now, I might be upbraid-'ed, after that, for having laid a Snare for his Majesty's Forces; should 'I refuse them, I may afterwards be accused for tamely delivering up the 'Town of *Edinburgh*: I desire your Lordships to be explicit, and tell me 'whether it is your Opinion or not they should come in; and send your 'Orders in Writing.'

Upon Mr. *Groset*'s receiving this Answer, he told the Lord Provost, that he had already assured him, that it was the Lord Justice-Clerk's Opinion, that the Town should be defended, and that therefore he must answer for the Consequences of this unnecessary Delay; and as for the Lord Advocate's Opinion, That had already been given in Writing an Hour or two before, when he, along with the Lord Provost himself, had signed a Letter to General *Guest*, requesting 100 Dragoons to assist in defending the City.

About Four o'Clock in the Afternoon, that is, about an Hour after the Petition above-recited was presented to the Lord Provost, praying for a general Meeting of the Inhabitants, to consult or deliberate with the Magistrates and Council, whether to defend or give up the Town; such Meeting was accordingly held in the *New Church Isle*, the Lord Provost being in the Chair, and presiding.

At this Meeting there happened to be present some of the Reverend Ministers of the City of *Edinburgh*, and some other Persons of known good Affection to his Majesty and his Government, according to whose Observation, the far greater Part of the Persons there assembled were reputed of a quite contrary Character; and indeed it was impracticable, at this Meeting, to gather the true Sense of the Citizens in general, supposing it had been now seasonable or fit to deliberate in a popular Assembly, whether to give up or pursue the Defence of the City, for which hitherto so many Preparations had been making, because the greater Part of the most substantial and well-affected Burgesses, who were in Arms as Volunteers, had no Notice of this Meeting, or the Intent of it, and could not possibly attend it, being at that very Time under Arms with their respective Officers, waiting for Orders from the Lord Provost or Colonel, in what Manner they should be disposed of, or act for the Defence of the City.

At the Meeting thus assembled, and thus composed, the general Cry was for giving up the City without making any Defence; and the Reverend Mr. *Logan* Minister, and others, who attempted to speak in Opposition to this Measure, were borne down with Clamour and Noise.

During this Meeting Mr. *Lindsay*, Deputy Secretary of War, came with a Message from General *Guest* to the Lord Provost, upon the General's hearing the Rumour that there was a Meeting of the Inhabitants to deliberate about giving up the Town to the Rebels, to ask the Provost if he continued to be of Opinion that the Dragoons should come into the Town. To which the Provost answered, That he would neither bid nor forbid them, but that the General might do what he thought proper. Upon which Mr. *Lindsay* very naturally asked him, how he came to scruple about giving Directions concerning the Dragoons, when he had an Hour or two before sent a written Request to the General to obtain them. To which the Provost answered, That he had only signed that Request at the Desire of the Lord Advocate.

Towards the Close of this general Meeting, there was brought into it, in a Manner that appeared somewhat mysterious, being handed in from the Door, from one Person to another, in the Crowd, a Letter addressed, For the Lord Provost, Magistrates, and Town-Council of *Edinburgh*, signed *Charles* P. R. bearing Date, *From our Camp this 16th* September, 1745, and in the following Words:

'Being now in a Condition to make our Way into the Capital of his 'Majesty's ancient Kingdom of *Scotland*, we hereby summon you to re-'ceive us, as you are in Duty bound to do; and, in order to it, we 'hereby require you, upon Receipt of this, to summon the Town-council, 'and take proper Measures in it for securing the Peace and Quiet of the 'City, which we are very desirous to protect: But if you suffer any of 'the Usurper's Troops to enter the Town, or any of the Cannon, Arms, 'or Ammunition now in it, whether belonging to the Publick, or to 'private Persons, to be carried off, we shall take it as a Breach of your 'Duty, and a heinous Offence against the King and us, and shall resent 'it accordingly. We promise to preserve all the Rights and Liberties of 'the City, and the particular Property of every one of his Majesty's Sub-'jects: But if any Opposition be made to us, we cannot answer for the 'Consequences, being firmly resolved at any Rate to enter the City; and, 'in that Case, if any of the Inhabitants are found in Arms against us, 'they must not expect to be treated as Prisoners of War.'

This Letter was not read out in the general Meeting in the Church; for, as soon as the Subscription to the same was read, the Meeting broke up, and the Lord Provost, with the Members of Council there present, returned to their Council-Chamber, where this Letter was again produced and read; after which it was moved, or agreed to by the Provost, that an Answer should be sent to it, which was accordingly sent, first by one, and then by another Deputation from the Council, who went out to the Camp of the Pretender's Son, who was then about two Miles to the South-West of the City, upon the Water of *Leith*, in the Parish of *Collington*. The Return, brought in Writing, to the first of these Deputations, was in the Words following: 'His R. H. the Prince Regent thinks his '*Manifesto*, and the King his Father's Declaration already published, are 'a sufficient Capitulation for all his Majesty's Subjects to accept of with 'Joy. His present Demands are, to be received into the City as the Son 'and Representative of the King his Father, and obeyed as such when 'he is there. His R. H. supposes, that since the Receipt of his Letter 'to the Provost, no Arms or Ammunition have been suffered to be car-'ried off or concealed, and will expect a particular Account of all Things 'of that Nature. *Lastly*, He expects a positive Answer to this before 'Two o'Clock in the Morning, otherwise he will think himself obliged 'to take Measures conform. At *Gray's-Mill*, 16th *September*, 1745. 'By his Highness's Command,

'(Signed) J. MURRAY.'

It is proper here to observe, that after the first Deputation was sent out to the Camp of the Pretender's Son, Notice was brought to the Lord Provost, and the others assembled with him in the Council-Chamber, that Sir *John Cope*, with the Troops under his Command, was arrived off *Dunbar*. This News was brought by Mr. *Walter Groset*, who brought the original Letters from *Dunbar*, giving Notice of this Event, together with a Letter from the Lord Advocate, who was then at *Musselburgh*, certifying, that these were the original Letters. All these Mr. *Groset* delivered to the Lord Provost in the Council-Chamber; upon perusing which the Provost said, This News had come too late, for they had come to a Resolution to capitulate, and had sent a Deputation to the Camp of the Rebels for that Purpose, and shewed to Mr. *Groset* the Letter above-recited from the Pretender's Son, as the Occasion of that Resolution. Mr. *Groset* then proposed to send after the Deputies to bring them back; and for that Purpose another Member of the Council was accordingly sent, but he did not overtake them.

About this Time Mr. *Drummond* and Mr. *Mac Aulay*, Captains of the Volunteers, and who had been both formerly Provosts of *Edinburgh*, (as the former now is) upon hearing of Sir *John Cope*'s Arrival, came to the Council-House, and insisted that the Defence of the Town should be now resumed, as there was so near a Prospect of their obtaining Relief, and proposed the ringing of the Alarm-Bell, as a Signal to bring every Body back to their Posts.

To this the Provost answered, That he must be careful of the Blood of the Inhabitants; and that, as certain of their Number had been sent out as Deputies to treat, should they be in the Hands of the Rebels whilst the Alarm-Bell was rung, they, the Deputies, might be ill used by the Rebels; and also urged the former Objections, of the Difficulty and Danger of defending the Town. To this Mr. *Groset* replied, That he knew the Situation of the Town so well, and the Condition of those who were to come against it, who had no Cannon and few Arms, that he would undertake to be one of Fifty that should defend the weakest Place of it, 'till the Troops should come to their Relief. To which one of the Council assenting, the Lord Provost seemed to give Way to the Resolution of defending the Town, provided General *Guest* would agree to let them have from the Castle what Arms should be wanted. This Mr. *Groset* undertook to procure, and went directly, accompanied by Provost *Coutts*, one of the Council, to General *Guest* in the Castle; who told him for Answer, That he was glad the Provost had come to a Resolution to defend the Town, who might depend upon the utmost Assistance that he the General could give them; and that as soon as the City Arms should be put into proper Hands for that Purpose, what farther Arms were wanting should be ready to be delivered to them from the Castle.

Upon their Return to the Provost, and reporting the General's Answer, Mr. *Groset* was told, 'That as the Person who had been sent to bring 'back the Deputies had not overtaken them, the Provost and Council, 'as they had entered upon a Treaty, had come to a Resolution not to 'defend the Town.'

It was then proposed and insisted on, that the Cannon and Arms should be delivered into the Castle. For Answer to which the Provost referred to the Letter from the Pretender's Son, and observed the Danger which the Town would incur, if they should remove their Arms. To which Provost *Drummond* replied, That if they, by giving up the Town, assisted the Rebels with Arms to fight against the King's Troops, would not they, upon retaking the Town, be apt to look upon the Inhabitants as Enemies, and use them accordingly?

After Receipt of the above Answer to the first Deputation, the Council agreed to send out a second Deputation, in order, if possible, to gain some more Time. The Answer to which second was also brought in Writing, though not signed, as the former was, and in the following Words: 'His Royal Highness has already given all the Assurances he can, that 'he intends to exact nothing of the City in general, nor of any in parti-'cular, but what his Character of Regent entitles him to: This he re-'peats, and renews his Summons to the Magistrates to receive him as 'such.'

This second Deputation returned to *Edinburgh* early in the Morning of *Tuesday* the 17th of *September*, in a Hackney-Coach, which entered the City at the *West* Port, and set down the Deputies at Mrs. *Clark*'s Tavern, where the Lord Provost and others of the Council were waiting for them, to receive their Report, and then the Coach drove down the Street towards the *Cannongate*; and at the *Netherbow* Port, which was then kept by a Serjeant's Command of the City-Guard, the Gate was opened to let out the Hackney-Coach, and a Body of Rebels, who were waiting without the Gate, headed by *Sullivan* and *Lochiel*, rushed in at the Gate, and became at once Masters of this Capital.

The Rebels, immediately after their becoming Masters of the City, seized all the Cannon, Arms, and Ammunition belonging to it; and the Day following, being *Wednesday* the 18th, they issued a Proclamation, requiring all Persons in the Shire of *Edinburgh*, forthwith to deliver up, at the Palace of *Holy-Rood-House*, all the Arms and Ammunition they had in their Custody, on Pain of being treated as Rebels. And on *Thursday* the 19th, they sent a Message in Writing to the City of *Edinburgh*, requiring, on Pain of military Execution, that one thousand Tents, two thousand Targets, six thousand Pairs of Shoes, and a proportional Number of Water Cantines, should be furnished to their Army against the 23d, and promising Payment as soon as the present Troubles should be over. All which were accordingly furnished; and for that Purpose a Tax laid upon the Inhabitants of 2*s.* 6*d.* upon each Pound of their real Rent, within the City, *Cannongate*, and *Leith*.

Thus was the City of *Edinburgh*, which had, in their Address to the King of the 7th of this very Month, said with great Truth, 'That this City 'hath

'hath always diſtinguiſhed itſelf by a firm and ſteddy Attachment to 'Revolution and Whig Principles, and a hearty Abhorrence of all 'Popiſh and arbitrary Government: and particularly, that, during the 'Rebellion in the Year 1715, their Zeal for his late Majeſty was 'equalled by few, and ſurpaſſed by none; and, at the ſame Time, 'aſſured his preſent Majeſty, that, at this Time, they would ſtand by 'him with their Lives and Fortunes, and employ every Power they were 'poſſeſſed of, and all the Means his Majeſty ſhould put in their Hands, 'to diſappoint the Attempts of *France* and the Pretender.' This City, which had given ſo many Reaſons to expect better Things of it, was, after mighty Preparations for a vigorous Defence, thus poorly delivered up, without ſtriking one Blow, to an half-armed Rabble, at a Time when the King's Army was within a Day's March of the City, to the great Diſcredit and Reproach of the City itſelf, in the Eyes of the World, who were ignorant of the particular Circumſtances and Cauſes of ſo ſtrange an Appearance, to the hearty Grief and Sorrow of all its well-affected Inhabitants, who are by far the greater Part of them, to the Triumph of the Pretender's Son and his Adherents, to the Ruin of many unfortunate Perſons, who, by this Appearance of Succeſs, were encouraged to engage in the Rebellion, to the real and high Detriment, not of the City itſelf only, but of the Publick; the Rebels, by this Capture, having been there furniſhed with Arms, Tents, and Proviſions of all Kinds, which contributed chiefly to their obtaining the Victory at *Preſton Pans* a few Days after; and that again, to the Continuance and farther Progreſs of the Rebellion, to the immenſe Addition to the Expence of the Publick, the great Interruption of Commerce and Credit, the Progreſs of his Majeſty's Enemies abroad, and the Interruption of the internal Tranquillity of this Kingdom, until that was happily reſtored by the Conduct and Succeſs of his Royal Highneſs the Duke.

It was natural for all the World, at firſt Sight, to lay the Blame of an Event, which has brought on and contributed to ſo many and great Miſchiefs, principally on the Lord Provoſt of *Edinburgh* for the Time, being the chief Magiſtrate and Governor of the City; and the Queſtion now brought to Trial is, Whether he was, or was not guilty or culpable in his Deportment in that high Office, during the Tranſactions libelled, and above more particularly recited? The Libel charges, That he was guilty of groſs Neglect of Duty, and Miſbehaviour in his Office on that Occaſion; and whether he was or not, muſt depend upon a due Compariſon of the Duty of his Office, with his actual Behaviour, to ſee how far the one comes up to the other, and wherein he was alledged to be deficient; and to have counteracted his Duty, the Libel fairly and particularly ſets forth, and thereby gives him the better Opportunity to clear himſelf, if he be able.

Upon the Libel being read in Court on the 13th current, and the Pannel being aſked by the Court, as uſual, what he had to ſay for himſelf, he ſaid, in effect, that he was not guilty, and that his Conduct, upon the Occaſion libelled, had been agreeable to his Duty; and then left it to his Counſel to offer and make good his Defence at large; of whom five were accordingly heard at great Length, and the Subſtance of their Arguments, as far as the Purſuer could obſerve and recollect them, was as follows.

They took Notice that the Pannel had already ſuffered very great Hardſhips by his long Confinement, for the Space of fourteen Months, without being brought to Trial, which, to a Man engaged, as he is, in conſiderable Trade and Buſineſs, they ſaid was a Puniſhment greater than he merited, ſuppoſing all that is alledged in this Libel were true. They ſaid, that the Source of this hard Uſage was the Malice of certain Enemies of the Pannel in the City of *Edinburgh*, who, in order to ruin his Credit and Intereſt in this City, had ſet themſelves to find Fault with his Conduct during the Rebellion, had induſtriouſly miſrepreſented that Conduct, and raiſed a popular Clamour againſt him, which, having reached the Seat of Government, had produced the Severities he has already met with.

That he was however now glad of an Opportunity of having his Conduct brought to Trial by the certain Teſt of judicial Evidence, hoping that he would now be declared innocent upon Examination, who, by popular Clamour, had been pronounced guilty without Examination.

At the ſame Time it was alſo urged, though not very conſiſtently with this laſt Declaration, that the Pannel could not competently be brought to Trial at all in this Court upon this Libel; that the particular Statute of King *James* the Second, upon which it is laid, was almoſt three hundred Years old, and was gone into Diſuetude; that, whilſt it was in force, it was never meant to concern any more than the Behaviour of Magiſtrates in their judicial Capacity, or ordinary Adminiſtration on ſuch Occaſions as commonly or yearly occur, but never to concern the extraordinary Office of Magiſtrates in Time of War or open Rebellion, when it may be very incident to them to err or commit Miſtakes, as many an honeſt Burgeſs may be very well qualified to diſcharge the Duty of Provoſt, or other Magiſtrate of his Burgh, in quiet and peaceable Times, from whom it cannot be expected, that, in ſuch an Exigency as an open Rebellion, he ſhould be able to act the Part of an expert military Commander or Governor of a Town, and that the Deportment of the Provoſt on ſuch Occaſion, could not be tried at all at common Law; that it was an improper Queſtion to be tried by a Jury, who might very properly try a ſingle Iſſue, as whether a Man was guilty of Murder, Robbery, or the like, but very unfit to give Judgment upon a Series of Facts relating to the Deportment of a Provoſt, whether it was or was not agreeable to his Duty; and therefore it was ſaid, that the only competent Method, by the Conſtitution of this Kingdom, for trying and puniſhing Treſpaſſes ſuch as thoſe alledged in this Libel, was by the Authority of the Legiſlature itſelf, in ſuch Manner as had been practiſed in the Caſe of *Alexander Wilſon*, who had been Lord Provoſt of *Edinburgh* at the Time of the Murder of Captain *John Porteous*.

It was farther ſaid, by way of more particular Anſwer to the Matters charged in this Libel, that the ſame contained nothing criminal; that, as to the firſt Article, concerning the raiſing of the *Edinburgh* Regiment, it was no Crime in the Provoſt to entertain a Doubt concerning the Legality thereof, and to heſitate to commit what he apprehended might have been treaſonable, and that he was juſtified in his Doubt by the ableſt Advice given for applying for his Majeſty's ſpecial Warrant, which was accordingly obtained.

That, as to the ſecond, concerning the Volunteers, he had the ſame Reaſon to doubt concerning the Legality of that Meaſure, and it was no Crime in him that he could not perceive any Difference betwixt authorizing a Body of armed Men who were to ſerve without Pay, and another Body who were to receive Pay; or that the one might be authorized without his Majeſty's ſpecial Warrant, which had been adviſed to be neceſſary or proper in reſpect of the other; that, more particularly, as to this Article, the Provoſt had Reaſon to take Offence, that the Meaſure was ſo far concerted and carried on by the Volunteers, as that they brought him a Petition, ſigned by ninety or a hundred Perſons, without his Privity, or previouſly conſulting with him: This he had Reaſon to conſider as a deſigned Neglect and Inſult upon him; and yet, as ſoon as he was adviſed that the Thing might be lawfully done, he gave way to it; and it was a very ſlender Circumſtance to be charged as a Crime, that he choſe to have it ſaid that he acquieſced in that Meaſure, rather than that he heartily approved it, or that he ſhould be charged with a Defect of Civility or good Manners towards theſe Volunteers.

As to the Third, concerning the Repairs of the City Walls, it was obſerved in general, That the Provoſt was not the ſole Perſon anſwerable for any Slowneſs or Defect of Care and Diligence in this reſpect, though he had been ſingled out, and made the ſole Object of this Proſecution. He was but one of many, who behoved to act by the Authority of his Council, and of the Committee appointed to take the ſpecial Direction of what concerned the Defence of the City; and that all his Conduct was agreeable to the Senſe of theſe two Bodies, and approved by them, and without them he could do nothing; for that the King's Warrant concerning the Regiment, being addreſſed to the Lord Provoſt, Magiſtrates and Council, and having ordered that the Regiment ſhould be under the Direction of them all, and the Council having appointed a Committee for that Purpoſe, and to conſider what farther ſhould be done for the Safety of the City, the Provoſt was thus limited in the legal Exerciſe of the known Duty of his Office; that, however, the Committee, whereof he was one, had given the neceſſary Orders for the Repairs, and Warrants for impreſſing Workmen for that Purpoſe; that the Cannon upon the Walls were actually loaded on *Sunday* the 15th, and Applications were made to procure Gunners for managing them.

To the fourth Article it was ſaid, That no Propoſition could be accepted or rejected by the Provoſt alone, but by the whole Council; that as to the Propoſition in the Article mentioned concerning the Trained Bands, of the purging that Body of diſaffected or ſuſpected Perſons, it was true that the Provoſt was averſe to it, and choſe rather to undergo any Hazard, than take upon him to fix ſuch Mark of Infamy upon a Number of his Fellow-Citizens, without any certain Ground of Charge againſt them.

To the fifth Article, That here again the Pannel was charged with Defect of Civility or good Manners (a very unuſual Point of Ditty); and that ſuppoſing the Fact true, of the Converſation with Sir *Robert Dickſon*, it was not unreaſonable, nor could juſtly give Offence, for the Provoſt to propoſe ſuch Method for finding Subſiſtence to the ordinary Men, as inliſting them in the *Edinburgh* Regiment, which would alſo be a Means to inſure their Attendance and Service for a limited Time, ſo as they might not be at Liberty to withdraw at Pleaſure, and this perhaps when the City ſhould be under the moſt preſſing Exigency.

To the ſixth, That the only Thing here imputed to the Pannel as an Offence, was his not immediately committing *Andrew Alves* to Priſon, the doing which might have been of bad Conſequence, to deter others from bringing Intelligence to the Provoſt concerning the Rebels or their Deſigns; and that at beſt it was not a very clear Caſe, that it was at all lawful or competent to commit Mr. *Alves* for only repeating to the Provoſt what the Rebels had ſaid to him, when they ſeized him and made him their Priſoner; that his receiving the Meſſage, or hearing what Mr. *Alves* ſaid, could be no Crime; and, as ſoon as he heard it, he repaired to the Council-Chamber, then held in the Goldſmiths Hall, where he imparted this Piece of Intelligence to ſome others of the Council, who agreed that it ſhould be concealed, leſt it ſhould intimidate the Inhabitants that, however, ſoon after, the Lord Provoſt ſaw the Lord Advocate, and, in purſuance of his Advice, actually committed Mr. *Alves*.

To the ſeventh and eighth Articles it was ſaid, That *Monday* the 16th of *September* 1745. was a Day of univerſal Diſtraction in the City of *Edinburgh*; that the two Regiments of Dragoons of *Hamilton* and *Gardner*, who, with the whole City-Guard, had been poſted at the *Coltbridge*, a Mile Weſt from *Edinburgh*, about three Afternoon, retreated, and paſt by the North Side of the Town, Eaſtward, which greatly heightened the Pannick of the Citizens, being thus abandoned by the only military Force they had in their Neighbourhood, and no News of Sir *John Cope* or his Army was now come, and at the ſame Time the chief civil Officers of the Crown had left the City; and yet, in this Situation, the Lord Provoſt, in the Goldſmiths Hall, where many of the Council and other Inhabitants were aſſembled, declared himſelf ready to act his Part for the Defence of the Town; but that he was now ſeconded by few: But at this Juncture, one Mr. *Groſet* arrived, and delivered a Meſſage to the Provoſt, that he ſhould ſend for, or conſent to receive a Party of Dragoons; at which he, the Provoſt, was ſurpriſed, having been preſent the Night before at a Council of War, where it was reſolved to be improper to bring any of the Dragoons into the City; upon which he gave his Anſwer in Writing to that Meſſage, which is above recited: That the Inhabitants, anxious to know the Reſolutions of the Council, preſſed into the Room in a Crowd; and then Somebody elſe, not the Provoſt, propoſed to adjourn to the New-Church Iſle; that, on the Way thither, a Gentleman on Horſeback told loudly, that the Rebels were near eight thouſand ſtrong, which ſtill heightened the Pannick; that yet, in the New-Church Iſle, the Lord Provoſt ſpoke as he had in the Council-Room, declaring himſelf ready, if the Citizens were ſo diſpoſed, to do his Part for Defence of the City; that at this Meeting, the Letter from the Pretender's Son was brought in, to the Reading of which he, the Provoſt, objected, and thereupon returned with his Council to the Goldſmiths Hall.

That the Inhabitants had now the Direction of Affairs in their Hands, and they were governed by their Fears and Terrors; that the higher Civil

Officers

Officers of the Crown being gone, the Magiſtrates ſent to their own Aſſeſſors for Advice; but they alſo were all gone, excepting one, who declined giving any explicit Opinion on ſuch high Matters; upon which the Letter was read, and found to be to the ſame Purpoſe with *Alves*'s Meſſage, and then they thought themſelves under an unavoidable Neceſſity to ſend out a Deputation, in order to procure a Delay, and gain ſome Time for the expected Relief to come.

To the *ninth* and *tenth* it was ſaid, That the Defence of the Town was now given up as impracticable; and that upon ſerious Deliberation it was the unanimous Opinion of the Council, that no direct Order ſhould be given by the Lord Provoſt concerning the Arms of the Volunteers, or the Cannon upon the City-Walls, for fear of incenſing the lawleſs Multitude of Rebels to put their Threats in Execution.

The ſame Anſwer was given to the *eleventh* Article relating to the City-Arms, to which there was now added, and not till now, a Matter of Fact never formerly alledged by the Pannel; neither in his Examination before the Committee of the Privy-Council, on the 7th *December* 1745, nor in the ſigned Anſwers returned by him to his Libel, and it muſt appear very ſtrange, if it was true, that the moſt plauſible Anſwer he had to make to this very heavy Article ſhould never have been once mentioned till now, being, that he the Provoſt could prove that he ſent a Meſſage to General *Gueſt*, propoſing that he ſhould ſend a Party of Soldiers to take away the City-Arms and carry them up to the Caſtle.

Upon the *twelfth* Article it was ſaid, That the Opinion of the Citizens of *Edinburgh*, or any Number of them, concerning the Pannel, could afford no Evidence that he was actually guilty; and that, upon the whole, the Surrender of the City was owing to a Train of unavoidable Accidents, for which he the Provoſt was not blameable.

Notice was alſo taken more than once, by the Pannel's Counſel, that he himſelf had a very large Property, conſiſting of a Stock of Wines, lying in his Cellars at *Leith*, which would be expoſed to the Diſcretion of the Rebels in caſe of their coming to *Edinburgh*; but the Concluſion drawn from this Fact was not, to the Purſuer's Obſervation, diſtinctly ſpoke out or explained by his Counſel; ſo that the Purſuer is ſtill at a Loſs to know what Uſe was meant to be made of that Obſervation, whether by way of Argument to evince the Sincerity of Mr. *Stewart*, in deſiring to keep the Rebels at a Diſtance, that his own moveable Eſtate, of ſo great Value, might not come under their Power; or if it was meant to be offered by way of Excuſe for him, that he was afraid of giving offence to the Rebels, by oppoſing them with Vigour and Zeal, becauſe they might have it in their Power to hurt him deeply in his private Fortune or Effects; and therefore the Purſuer muſt leave it to them to explain their own Meaning or Intent, in alledging and inſiſting on this Matter of Fact.

It was farther obſerved for the Pannel, though not very conſiſtently with the Allegation, that there was nothing material relevant or criminal charged upon him in theſe Articles; that the Charge therein contained, if it amounted to any Crime at all, was no leſs than that of High-Treaſon; for that ſuch, no doubt, it was, if he purſued Meaſures that had no other Tendency than to betray the City, whereof he was chief Magiſtrate, into the Hands of the Rebels: It would have been this Crime in caſe the Provoſt had acted with that ill Intention, which is the eſſential Requiſite to render the Actions of Men at all criminal or puniſhable; and if the Provoſt had no ſuch Intention, then, ſuppoſing he had committed ſeveral Errors in his Conduct, theſe were no more than Errors in Judgment, and ſuch Miſtakes in Matters prudential, in difficult and dangerous Times, when a Magiſtrate muſt act one Way or other, ought never to be imputed to him as a Crime; for though the Part he chuſes do not prove ſucceſsful, the oppoſite Conduct might have been no more ſo, and, in that Caſe, that very oppoſite Conduct might, with the ſame Facility, have been laid hold of as the Ground of a Proſecution: For Example, if he had brought in the Dragoons into the City, and theſe afterwards had fallen into the Hands of the Rebels; or, ſuppoſe he had found Means to ſuppreſs the threatening Letter from the Pretender's Son, and the Inhabitants had ſtood to their Defence, and yet the Town had been ſtormed, and the Rebels had then cut the Throats of the Inhabitants, ſuppoſing he had eſcaped the Maſſacre, it is eaſy to imagine what a heavy Charge might have been formed againſt him, as having been the Author or Cauſe of ſuch Calamities: And therefore, ſince his Conduct is not alledged to have been directly treaſonable, it proceeded at worſt from Miſtake, or Errors in Judgment, which is no Crime at all that is puniſhable by the Law in a free Country, ſuch as this is.

It was farther obſerved, that the Pannel was not ſo much as charged in the Libel with Diſaffection to his Majeſty's Government; and that however the Facts libelled might be apt to make ſome Impreſſion, in maintaining a Charge of that Sort, they could not be combined or laid together to an End or Purpoſe that was not directly libelled; that the Facts alledged in the Libel might indeed amount to a Proof of this Propoſition, that the Provoſt was in his Judgment averſe to the Meaſure of defending the City of *Edinburgh*, as a thing that was impracticable, and therefore not eligible or prudent to be attempted; and it was contended, that this was not even an Error in Judgment, for that he was in the right in being of that Opinion, for that the City of *Edinburgh* is no ſtrong or fortified Place; and though it is ſurrounded by an old Wall, and a Lake upon one Side, and that the Rebels had no Artillery, it had been very practicable for them to have made their Way into the Town; they might have blown up the Gates, or a Part of the Wall, with Gun-Powder, or have ſet Fire to the Houſes on the Weſt-Side of St. *Mary's Wynd*, that enter from without, and yet are a Part of, and adjoining to the Town.

All this was, ſo far as the Purſuer could obſerve or recollect, the Subſtance of what was urged by the ſeveral Counſel for the Pannel in his Defence; and in reply to theſe Things, it was, and is now, on behalf of his Majeſty, and for the publick Intereſt, obſerved as follows:

It is admitted for the Purſuer, that the Counſel for the Pannel have rightly obſerved, that the Facts charged upon him, if it had been charged that they were done *doloſe & malo animo*, of *ſet Purpoſe* or *Deſign*, to have put the City of *Edinburgh* into the Hands of the Rebels, would have amounted to High-Treaſon; for the Lord *Hale* ſays, in his *Pleas. of the Crown*, Vol. I. p. 168. 'If a Captain, or other Officer that hath the Cuſtody of any of the King's Caſtles or Garriſons, ſhall treacherouſly, by 'Combination with the King's Enemies, or by Bribery, or for Reward, 'deliver them up, this is Adherence to the King's Enemies.'

And again, p. 169. he ſays, 'The Truth is, if it were delivered up by 'Bribery or Treachery, it might be Treaſon: But if delivered up upon 'Cowardice or Imprudence, without any Treachery, though it were an 'Offence againſt the Laws of War, and the Party ſubject to a Sentence 'of Death by Martial Law; yet it is not Treaſon by the Common Law, 'unleſs it was done by Treachery.'

And if the Pannel, without being engaged in the Intereſt of the Pretender, or without receiving any direct Bribe from him or his Adherents, did even ſuffer himſelf to be moved by the Fear of their hurting his private Property in his Wine-Cellars at *Leith*, to neglect or counteract any Part of his Duty as Lord Provoſt of *Edinburgh*, this was at leaſt bordering extremely near upon High-Treaſon.

The Atrocity and the Nature of High-Treaſon is excellently deſcribed in the Digeſts of the Civil Law, in the Title *Ad legem Juliam majeſtatis*, *l.* 1. in theſe Words: *Proximum ſacrilegio crimen eſt, quod majeſtatis dicitur,* § 1. *majeſtatis autem crimen illud eſt, quod adverſus populum Romanum, vel adverſus ſecuritatem ejus committitur, quo tenetur is, cujus operâ, dolo malo, concilium initum erat,—quo armati homines cum telis lapidibuſve in urbe ſint, conveniantve adverſus rempublicam; locave occupentur, vel templa; quove cœtus conventuſve fiat, hominеſve ad ſeditionem convocentur:——Quove quis contra rempublicam arma ferat: quique hoſtibus populi Romani nuncium literaſve miſerit, ſignumve dederit, feceritve dolo malo, quo hoſtes populi Romani concilio juventur adverſus Rempublicam.*

It is true, that, in this Deſcription, the *dolus malus*, or the ill Deſign, is an eſſential Ingredient; and it is in general true concerning all Crimes, as it is well expreſſed in the Reſcript of the Emperor *Hadrian*, *l.* 14. *ad legem Corneliam de ſicariis,—in maleficiis voluntas ſpectatur, non exitus:* But the *voluntas*, or the *dolus malus*, is to be gathered from the Facts by the Judgment of the Court or the Jury, by whom the Party is tried, againſt whom the Facts are charged, which may very poſſibly have proceeded from a treaſonable Deſign againſt the Crown or the Publick.

The King, however, may, if he be ſo graciouſly pleaſed, wave the inſiſting againſt a Criminal for the higheſt Crime with which he may be poſſibly chargeable; ſo the Lord *Hale*, p. 374. 'All Treaſon is Miſpriſion of 'Treaſon and more; and therefore, he that is aſſiſting to a Treaſon, may 'be indicted of Miſpriſion of Treaſon, if the King pleaſe.' *Stanf. P. C.* 37. 6. *Co. P. C.* 36. 2 *R.* III. 10. 6.

'The Judgment in Caſe of Miſpriſion of Treaſon, is Loſs of the Pro'fits of his Lands during his Life, Forfeiture of Goods, and Impriſon'ment during Life.'

And the ſame Lord *Hale*, p. 143. reports 'a Caſe, where there was a 'Conſultation of the Judges, where he was preſent, in the Year 1675. 'relating to the Weavers in and about *London*, being offended at the En'gine-Looms for making of Ribbons, who roſe in great Numbers to de'ſtroy thoſe Engines in different Counties, and did Damage to the Value 'of ſeveral Thouſand Pounds.

'Five of the Judges ſeemed to be of Opinion, that this was Treaſon 'within the Act 25th *Edward* III. upon the Clauſe of levying War 'againſt the King; or at leaſt upon the Clauſe of the Statute of the 13th '*Charles* II. *Chap.* 1.

'The other five Judges were not ſatisfied that this was Treaſon with'in either of theſe Statutes.

'Many of them therefore concluded, that if Mr. Attorney ſhould think 'fit to proceed as for a Treaſon, the Matter might be ſpecially found, and 'ſo left to farther Advice——

'Upon the Concluſion of this Debate,—Mr. Attorney, upon Conſider'ation of the whole Matter, it ſeems, thought fit to proceed for a Riot, 'and cauſed many of them to be indicted for Riots, for which they were 'convicted, and had great Fines ſet upon them, and were committed in 'Execution, and adjudged to ſtand upon the Pillory.'

In the preſent Caſe, the Doubt is not concerning the Tendency of the Facts charged upon this Pannel, namely, That it was to give up the City of *Edinburgh*, the Capital of *North-Britain*, not to the King's Enemies only, but to a Pretender to his Crown; and the Doubt is only, *quo animo* this was done, whether with a treaſonable Intent, or through Cowardice, or Negligence, or Imprudence; and this might have been left to the Jury to judge, in caſe he had been charged with High-Treaſon. It is therefore one ſignal Inſtance of the Mildneſs and Benignity of his Majeſty's Government, that the Purſuer has been ordered to proſecute this Pannel, 'not for High-Treaſon, but for a High Miſdemeanour, in hav'ing many Ways acted contrary to his Duty, and thereby ſuffered the 'City of *Edinburgh*, with the Cannon, Arms, Ammunition, and Provi'ſions, to fall into the Hands of the Rebels;' and when the Pannel's own Counſel are ſenſible that the Facts charged upon him are ſuch, as, at leaſt, border ſo near upon High-Treaſon, and might have been charged as ſuch, they cannot be permitted at the ſame Time to plead, or, at leaſt, they ought not to be liſtened to when they plead, that the Facts here charged have no Relevancy in them, or do not amount to any Crime or Offence whatſoever.

The other Obſervations above recited were extremely groundleſs, That this Libel does not charge the Pannel with Diſaffection to the Government, and that the Opinion of the well-affected Citizens, mentioned in the 12th Article, That he was ſecretly in the Intereſt of the Pretender, cannot infer his being actually guilty of any Crime whatever, for Diſaffection is not the Name of a Crime known in the Law; no Man can be tried for that Diſpoſition of his Mind, but for the Effects which it produces; and, if the Facts here charged had been alledged to have been done by the Pannel through Diſaffection to his Majeſty and his Government, that would have been in Reality, or in Effect, a Charge of High-Treaſon, which was not the Thing intended in the preſent Caſe.

And as for the other Remark, it was far from the Meaning of the Purſuer to alledge, that any Man can be puniſhed merely for the Opinion of others concerning him: But that Fact is mentioned in the Libel for this Reaſon, That, when the main Queſtion, moved by this Trial, is, Whether the

the Pannel was, or was not culpable or negligent in the Execution of his Office as Lord Provoſt of *Edinburgh*, during the Rebellion, it is a Fact or Circumſtance ſtrongly tending to evince that he was ſo guilty, if it be true that the whole Tenor of his Behaviour was ſuch, as to induce a general Suſpicion or Belief amongſt the well-affected Inhabitants, that their Provoſt was ſecretly in the Intereſt of the Pretender; for, whether they were or were not in the right in that Suſpicion or Belief, they, being ſo immediately and ſo deeply intereſted, could not fail to be conſtantly attentive to the Conduct of their Provoſt; and, if that was ſuch as produced in them ſuch Apprehenſion or Belief, that very Thing is one Demonſtration, ſuppoſing that they carried their Concluſion too far, that his Conduct was not ſuch as became a faithful, vigilant, and zealous Magiſtrate upon that Occaſion.

The Nature of the Office of Lord Provoſt of the City of *Edinburgh* is well known to this Court. It is partly the ſame that belongs to the chief Magiſtrate of every Royal Burgh in the Kingdom, and partly ariſes from the particular Grants to the City of *Edinburgh*; they are Sheriffs within themſelves; the Lord Provoſt is the High Sheriff, and, of late Years, as well as formerly, has acted as ſuch, and tried Cauſes even capital, and the Bailies are, *ex officio*, his Deputy Sheriffs.

The Lord Provoſt is the King's Lieutenant within the City, he is Colonel of the City-Guard by the Act of Parliament authoriſing that, and he is chief Commander of the City Trained-Bands or Militia; and this very Provoſt claimed, and was allowed to be the Colonel of the Volunteers, and was by the Council declared to be Colonel of the *Edinburgh* Regiment of 1000 Men, that was to be raiſed and paid by the voluntary Subſcriptions of the Inhabitants: In ſhort, the whole military Power within the City was in him, and the chief executive Power, in all Reſpects.

Neither is it true, that the Order in the King's Sign-Manual for the Regiment, that the ſame ſhould be under the Direction of the Lord Provoſt, Magiſtrates, and Council of *Edinburgh*, was either intended, or had the Effect to derogate in the leaſt from the legal Powers and Privileges of the Lord Provoſt; that Warrant was granted on the Application of the whole Council of *Edinburgh*, the Regiment was to be maintained by them and their Fellow-Citizens, the End propoſed by it was the Defence of his Majeſty's Government, but more eſpecially the Preſervation of the City of *Edinburgh* againſt the Rebels; it was therefore very properly and graciouſly declared, that this Regiment ſhould be under the Direction of the Magiſtrates and Council of *Edinburgh*; that is, it ſhould not be withdrawn from the immediate Service of that City, or ſent elſewhere, like the reſt of his Majeſty's Troops, at the Diſcretion of his Generals, where it might be of Uſe for his Service, without the Conſent of the Magiſtrates and Council of *Edinburgh*. But this did not hinder the Lord Provoſt from being, according to the Conſtitution of the City, the Colonel or chief Commander of that Regiment, as well as of all the other Military Force within the City. It cannot be ſuppoſed to have been the Senſe of his Majeſty's Order, that the whole Town-Council, conſiſting of thirty-three Perſons, ſhould act the Part of a Colonel, or have the immediate Command of a Regiment; the utmoſt Effect that Order could have, was, that the whole Council ſhould have Power to give general Orders as to the Manner of employing the Regiment, ſuch as every Prince or State are daily known to give to the Generals or Commanders of their Armies, who are not the leſs veſted with the Powers of Commanders, that they are ſubject to ſuch Direction or Controul.

Neither is it true, that the Appointment of a Committee, in the Terms above-recited, was an Obſtruction or Hindrance to the Provoſt's acting in the Manner that the Libel requires of him, unleſs he can ſay, which he has not done, nor can do by any Thing that appears on Record, that either the Council or the Committee reſiſted his Will, or that they oppoſed or over-ruled him, by Majority of Voices, in any one Thing that he propoſed to be done towards the Preſervation of the City.

His Station, therefore, gave him Power ſufficient, and rendered it his Duty to be the chief Perſon to deviſe, order, and execute every Thing that was proper for preſerving his own City from the Rebels; and, if the Facts be true that are in this Libel charged, it is left to the Judgment of this Court, whether his Conduct was agreeable to his Duty; or if he was not, on the contrary, faulty or negligent in the Execution of his Office, and guilty of manifold Miſbehaviours in it on the Occaſion libelled.

That Occaſion called for the moſt earneſt, vigilant, and active Diſcharge of the Duty of chief Magiſtrate, veſted with ſuch Powers as he had; and, to illuſtrate this, the Purſuer begs Leave to quote a Paſſage from a learned Author, *Ærodii rerum ab omni antiquitate judicatarum pandectæ*, in the Title, *De officio præfecti vigilum*, whereof the Rubrick is in theſe Words: *Negligentiam, in iis qui ad ſummum reipublicæ pertinent, eſſe capitalem, cap.* 1. *M. Militius, Cn. Lolius, L. Sextilius, triumviri nocturni, cùm incendii arcendi cauſâ, quod Romæ in ſacra via exortum eſſet, cum hamis & dolabris, omnique familiâ publicâ evocati, tardius adveniſſent: à tribuno plebis die dictâ ad populum, damnati ſunt: leves ob cauſas, inquit Valerius: ſed diſciplina neceſſaria.*

Idem ferè apud nos, ſenatûs judicio, cùm adhuc illic eſſemus advocati, Gabaſtoni, præfecto vigilum, accidit: qui vocatus ad ſedandam ſcholarium de ſuo prato ſeditionem, non veniſſet. Nam indignum eſſe, qui, ut excubet reipublicæ, ab omnibus aliis muneribus excuſatur, & præſens vice eſt abſentis: is in tanta neceſſitati, ubi minima mora ſummi momenti eſt, ſegnem, tardum ac negligentem ſe prabeat, aut (quòd minus quoque eſt ferendum) contumacem.——Et quando omnibus viribus opus eſt, nulla cauſa, nulla excuſatio proficit.

Cap. 2. *P. Bilius quoque triumvir nocturnus, à P. Aquilio, tribuno plebis accuſatus, quòd vigilias negligentiùs circumiſſet, populi judicio concidit. Nam quod levius ſit in aliis cauſis: in his, ut in re militari, capitale eſſe. Quia puncto ſæpe temporis, maximarum rerum occaſiones amittuntur: neque in hujuſmodi his errare fas eſt, aut dicere, Non putabam.*

It was upon the ſame Principles that are here ſet forth, and followed in Practice in the *Roman* Republick, as well as the *French* Monarchy, that our old Statute 1457, in the Libel recited, was made, *for the Punition of negligent Officiars*, and namely, 'Provoſts of Burghs, and others, 'who ſhould be found faulty and negligent in the Execution of their Offi-'ces, and it may be lawfully proved on them, or notoriouſly known;' but with this Difference indeed, that every Offence of this Kind is not made capital, as *mitiores pœnæ nobis ſemper placuere*, 'but only that they be 'puniſhed, in their Perſons and Goods, after the Quantity of their 'Treſpaſs, at the King's Will.' This is ſuch a Statute as hardly enacts any thing poſitive, or other than what is included in the Common Law of this and all other civilized Nations, and therefore never can go into Diſuetude. And it ſeems unneceſſary to offer any Anſwer to the groundleſs Diſtinction advanced by the Pannel's Counſel, betwixt the Duty of a Provoſt, or other Magiſtrate, upon common or ordinary, and extraordinary Occaſions, there is neither Law nor Reaſon for that Diſtinction. No Man ſhould undertake the Office of a Pilot, who can only hold the Helm in his Hand in ſerene Weather, and is incapable to do his Duty when a Storm riſes. And the Allegation of this Diſtinction ill becomes the Pannel, who is a Gentleman by Birth and Education, and, as ſuch, ſuperior to the ordinary Rank of Burgeſſes, who may be, and often are raiſed to the Office of chief Magiſtrates.

Such, for Inſtance, was the Character of Provoſt *Wilſon*, a Brewer in *Edinburgh*, who was Lord Provoſt of that City when Captain *Porteous* was murdered, who, upon the ſame Principles that are above-mentioned, was puniſhed by an Act of the 10th of his Majeſty, merely for being faulty or negligent in the Execution of his Office; for the Act recites the Murder of Captain *Porteous*, 'And that, for ſome Time before the committing the 'ſaid Murder and Riot, it was commonly reported in the ſaid City of '*Edinburgh*, that ſome ſuch atrocious Fact would be attempted, which, by 'proper Care in the Magiſtrates, Citizens and Inhabitants of the ſaid City, 'might have been prevented; notwithſtanding which, *Alexander Wilſon*, Pro-'voſt of the ſaid City, and then actually reſident therein, and fully appriſed 'of the ſaid wicked Deſign, did not take any Precautions to prevent the 'ſaid Murder and Riot, nor uſe the proper or neceſſary Means to ſup-'preſs the ſame, or to preſerve the Peace of the ſaid City, or, after the 'Perpetration of the ſaid Fact, to diſcover, apprehend, or ſecure the 'Authors, Actors or Abettors thereof, in manifeſt Violation of the Truſt 'and Duty of his Office of Chief Magiſtrate of the ſaid City.——And 'to the End that the ſaid enormous Miſbehaviours and Neglects of Duty 'may not go unpuniſhed, and that other Perſons may not preſume, 'through Hopes of Impunity, to be guilty of the like for the future, it 'is enacted, that the ſaid *Alexander Wilſon* be diſabled from holding any 'Office of Magiſtracy, *&c.*'

Here the Conviction by the Parliament itſelf proceeds altogether upon Negatives, or Neglects of Duty in the Provoſt or chief Magiſtrate, upon a very ſingular and extraordinary Occaſion; and ſo far it is a Precedent in point to the preſent Caſe, which in other reſpects appears to be vaſtly more atrocious than what Provoſt *Wilſon* was guilty of, who, it ſeems, did not give Credit to the Reports that were current before that extraordinary Attempt was made, and ſuffered himſelf to be ſurpriſed and diſconcerted, when the Mob was ſuddenly raiſed which committed that Murder; inſtead of which, here was long Warning, and many Precautions ſeemingly taken by the Provoſt, heartily intended by many of the Citizens, to avert Evil of a much higher Nature, tending to overthrow the Conſtitution and Eſtabliſhment of this united Kingdom.

It appears quite unneceſſary to anſwer the Allegation offered for the Pannel from this Precedent, which has ſurely not the leaſt Tendency to prove, that the Offence, which was here puniſhed by the Legiſlature itſelf, was no ways puniſhable by the Common Law, or the general Statutes of this Realm.

And as little can it avail the Pannel to enter now into an Argument upon the Expediency of the Reſolution in general, of putting the City of *Edinburgh* in a Poſture of Defence againſt the Rebels; for though it be true, that before any Reſolution was taken upon this Queſtion, it was very lawful and competent for the Lord Provoſt to declare his Opinion, if it was ſuch, for the Negative; yet, after it was a Reſolution formed by the Council of the City, with the Conſent and Approbation of the moſt conſiderable Citizens of all Ranks, many of whom had previouſly ſollicited that ſuch Meaſures ſhould be taken; and after he, the Lord Provoſt, had ſeemingly concurred, and given way to the general Senſe of the Citizens, as well as of the Council, it ſurely then became his Duty as the firſt Magiſtrate, who had the chief executive Power in his Hands, to exert himſelf, *bona fide*, for the Execution of the general Meaſure that had been thus reſolved; for better indeed had it been never to attempt ſuch Defence, than not to go through with it until actually overpowered by ſuperior Force; or that, to the great Expence and Diſcredit of the City, after many Preparations to provide a Force for its Defence, and Application to the Crown, which was readily granted, for a Warrant to authorize the Regiment, and to the Inhabitants for a Subſcription to pay it, which was filled up with great Alacrity, and many of the chief of them preſſed for Leave to venture their Perſons, as well as contribute their Money for the Cauſe which they had ſo much at Heart, when, to furniſh Arms, the King's Arſenal in the Caſtle was at their Command, and a conſiderable Force aſſembled, that the Provoſt ſhould ſo manage Matters, as that the Defence ſhould be thrown up juſt at the Time that it became needful to make uſe of all theſe Preparations.

This will require ſome better Excuſe, than that the Provoſt, in his private Opinion, was averſe to the Meaſure in general of defending the City, or that he was afraid of provoking the Rebels to rob his Wine-Cellars at *Leith*, (if that be meant by taking notice of his great Property there) for it is certain the Provoſt profeſſed to concur with the general Senſe of the City, to provide for and reſolve to make a Defence; and, even upon *Monday* the 16th of *September*, in the Afternoon, in the Council-Chamber, and at the general Meeting in the New-Church, it has been alledged, as a Part of his Defence, that he ſtill declared ſtoutly for adhering to that Reſolution; and in theſe Circumſtances, for his Counſel to ſay for him, by way of Apology for his Conduct in the Articles libelled, that the ſame proceeds from, or is to be accounted for, by his diſapproving in his Judgment of the general Meaſure of making any Defence, and offering Reaſons now in ſupport of the Juſtice of that Opinion, inſtead of excuſing him, is in reality to accuſe him very deeply of acting all along with a Duplicity, which muſt have been highly criminal, profeſſing to concur in the Execution of a Meaſure, which

which in his Heart he disliked, and, as the Execution of it chiefly belonged to him in virtue of his Office, managing that in such a Manner as to defeat the Design.

As to that Design itself, the most sanguine Promoters of it never pretended to maintain that the City of *Edinburgh* was capable of holding out a regular or a long Siege; the very Number of the Inhabitants, and the Mouths to be fed, must render this impracticable; but, as the Circumstance which exposed them to be at all visited by the Rebels, was the Misfortune of Sir *John Cope*'s getting to the Northward of the Rebel Army in the *Highlands*, and as he was known to be returning from *Inverness*, through the low Country, along the Eastern Coast, and as other Succours were daily expected from *Holland*, it was very reasonably concluded, that the Pressure upon the City of *Edinburgh* could be but of short Endurance, and that, very possibly, keeping out the Rebels a single Day might save the City altogether from falling into their Hands; and the Event in a great measure justified the Expectation; for, upon the Evening of *Monday* the 16th *September*, when the first Deputies were sent out by the Provost and others to the Rebels Camp, to treat about the Surrender demanded by the Letter from the Pretender's Son, those Deputies had not yet reached that Camp, when authentick Advice came, that Sir *John Cope*, with his Army, was arrived at *Dunbar*, which is but twenty Miles from *Edinburgh*: A very signal Instance of the Truth of what is said in the Passage above quoted from *Ærodius*, *Quòd puncto sæpe temporis maximarum rerum occasiones amittuntur.*

What then was the Occasion, or whence arose the Necessity that obliged the Pannel, on the Afternoon of *Monday* the 16th *September*, to abandon the Defence of the City, for which so many Preparations had been made and continued till this very Hour, and when, though the Enemy was at hand, there was all the Reason in the World to believe that Succour and Relief from the King's Troops was not far off, as the Event that very Evening accordingly proved, by the actual Arrival of Sir *John Cope* off *Dunbar*, and authentick Notice thereof being sent to *Edinburgh* at the Juncture of Time already mentioned.

The Answer to these Questions made for the Pannel, in the Debate upon his Libel, have been, 'That, on the Afternoon of this *Monday*, 'the 16th of *September* 1745. the City of *Edinburgh* was in great Consternation, occasioned by the Approach of the Rebels, and the threatening Messages sent from them, by the Retreat of the Dragoons from '*Coltbridge*, and the withdrawing of the Civil Officers of the Crown 'from the City; that, in these Circumstances, the general Cry of the 'Inhabitants, at a publick Meeting assembled, was for abandoning the 'Defence of the City; after which the Fears of the Inhabitants was the 'governing Principle, the Multitude had the Power in their Hands, and 'there was no longer any Regard paid to Magistrates or legal Authority.'

But to this it is replied, That the Retreat of the Dragoons the Pursuer does not take upon him to approve or justify; very possibly it was made sooner and farther than it was necessary, though it cannot be said that the two Regiments of Dragoons, with the City-Guard of *Edinburgh*, if the whole Rebel Army had come up to them, ill armed as it was, would have been a Match for such a Superiority of Numbers: But when the Resolution was taken to defend the City of *Edinburgh*, they did not, nor could reckon upon these two Regiments of Dragoons, as what they could rely upon, or promise themselves to be always attending for their Assistance; and when the Defence of the City was abandoned, they were no farther removed than *Musselburgh*, which is but four Miles off, and an Offer was made to the Lord Provost to bring them back, or any Number of them he should desire, to assist in the Defence of the City.

That the withdrawing of the Civil Officers could afford no just Cause for abandoning that Defence; the Lord Justice-Clerk had only gone from *Edinburgh* that Day about Noon, to dine at his own House about three Miles off, and was returning in the Afternoon to the City, when he got Notice by the Way, that the Rebels were by that Time at the *West* Port of the City, which was not true, but afforded a very just Reason for his returning to his own House; and though the Lord Advocate at this Time also withdrew from the City, and went as far East as *Musselburgh*, yet, before he left the Town, he had concurred with the Provost and the Sollicitor, in procuring an Order from General *Guest*, for one hundred Dragoons to march into the City, to encourage and support the loyal Inhabitants in Defence of the Town. And he renewed his Advice by Mr. *Groset*, whom he met going into the City in the Afternoon, with a Message from the Lord Justice-Clerk relating to those Dragoons. And of what use could a single Civil Officer be in the Case of a Siege? Or, to what purpose should he shut himself up within the Walls, and expose himself, in case of the Town's being taken, to become a Prisoner in the Hands of the Rebels?

And as for the affrighted Multitude, who are said to have got the Government into their Hands, it was the Fault of the Lord Provost if he permitted this to be: None of the Forces under his Command were withdrawn, and he had still at least twelve hundred well-armed Men under his Command, the Walls of the City repaired and planted with Cannon, and the Castle and its Garrison ready to assist him: And, in this Situation, why did he suffer himself to be despoiled of his Authority, or to be governed by the real, or by the affected Terrors of the timorous, or of the disaffected Multitude? Why did he give way to a general Meeting, in the Church, of an Assembly so composed? Why did he not tell them that the City had already taken its Measures and its Resolution to stand upon its Defence, and order all who did not chuse to depart the City, or to act in its Defence, to repair to their respective Houses, and keep within Doors? He had still the legal Authority in him, and the Means in his Hands to make that to be respected, when he had so great a Body of Men in Arms under his Command.

In these Circumstances, the Methods he pursued demonstrated the End which he had in View, namely, to deliver up, instead of defending the City; for, in order to justify himself in abandoning that Defence, he ought to have gone another Way to work, than to assemble a promiscuous Multitude in the Church, exclusive of the Volunteers. If there was truly any Change of Circumstances occurred, that made it reasonable now to lay aside Thoughts of that Defence which had been so long provided for and pursued, he should have summoned a Council of the same, or the like Persons with those who had first contributed to the Resolutions of making any Defence at all, that is, his own Fellow-Magistrates and Councillors, with the Chief Officers of the Volunteers and Trained-Bands, and deliberated with them upon the supposed Change of Circumstances; and if, in such Council, it had been debated and resolved, by Plurality of Voices, to be now impracticable, or inexpedient to persist any longer in the Measure formerly concerted, of defending the City, that Resolution might have justified or acquitted him; but nothing of this Kind is alledged, and thereby he has taken the whole upon himself. He consulted with a disaffected Multitude, as some of the Persons present in it, of undoubted Credit, say it was: And there is no Record of any Resolution of the Town-Council, or of the Committee abovementioned, of *Monday* the 16th of *September*, when this Change of Measures was brought about, nor any Record of the Council after *Friday* the 13th, before the Rebels entered the City, nor of the Committee after *Saturday* the 14th.

As for the particular Facts or Articles charged upon the Pannel, the Pursuer has Reason to believe he can prove every one of them; but he now says, that neither the separate Relevancy, nor the Proof of every one of them, is essential to the Conclusion of this Libel, whereof the general Scope and Averment is, That the Pannel, at the Time and upon the Occasion libelled, was faulty and negligent, or guilty of Malversation in the Discharge of his Duty; and, for making out this, particular Articles are specified: And altho' every one of these shall not appear separately material, or shall not be proved, it is no Matter, if enough be proved to make out or support the general Charge.

The Case is of the same Nature as if a civil Action were brought, for Instance, for removing a suspected Tutor by the Kindred of the Infant, in order to which a Number of Articles of Misbehaviour were alledged in the Libel; in which Case, tho' some of these Articles should not be proved, or well accounted for by the Defender, yet, if any Number should be made good and accounted for, the general Allegation of the Libel would be proved, and the Pursuers behoved to prevail in the Conclusion of their Action.

At the same time, to touch briefly at the particular Articles, it is replied to the Answer to the first, That it is not the Pannel's Doubt concerning the Point of Law that is charged as a Crime, but his urging that Doubt, *inter alia*, demonstrates his Backwardness to pursue any Measures for Defence of the City, for the Doubt itself was extremely groundless. There are sundry old Laws against private Leagues or Bonds among the Subjects, which have nothing to do with the present Case; but the only Law, upon which the Pannel's Objection, that it would have been High-Treason to arm without Authority from the Crown, can be founded, is the 5th Act of the Restoration Parliament 1661, intitled, *Act asserting his Majesty's Royal Prerogative in the Militia, and in making Peace and War*, &c. which Act declares, 'That it is and shall be 'High-Treason to the Subjects of this Kingdom, or any Number of 'them more or less, upon any Ground or Pretext whatsoever, to rise, 'or continue in Arms, to maintain any Forts, Strengths or Garrisons, to 'make Peace or War, or to make any Treaties or Leagues with foreign 'Princes or Estates, or among themselves, without his Majesty's special 'Authority and Approbation first interposed thereto.'

Now, in the first place, whilst this Act continued in force, it surely could never be meant to comprehend the Case of the King's Subjects being called out, by the Magistrates acting under his Authority, to take Arms for his Service; for Instance, if the Militia of any County should be called out by the High Sheriff, or Lord Lieutenant, to resist a foreign Enemy, or a domestick Rebel: And the chief Magistrate of a Burgh, within his District, has the like Power to the Sheriff, or Lord Lieutenant, to defend the Burgh over which he presides.

But, 2*dly*. This Act, upon which the Doubt is singly founded, is repealed by the Act of the 7th of Queen *Anne*, *Chap.* 21. which provides, That nothing shall thereafter be High-Treason in *Scotland*, but what is such in *England*. And farther provides concerning certain Crimes therein mentioned, *viz.* Theft in landed Men, Murder under Trust, Fire-raising and Assassination, which were declared to be Treason by particular Statutes in *Scotland*, shall hereafter be adjudged and deemed to be capital Offences. But concerning the Fact which is made Treason by this Act 1661, no such Provision is made.

The Pursuer's Replies concerning the other Articles are already in Substance made in the foregoing Argument, and he shall not prolong this Paper to go through them minutely, and shall only farther observe, That, as to the new Defence offered to the eleventh Article, concerning the *City-Arms*, that though it comes with a bad Grace to be now for the first Time proposed, the Pursuer does not oppose the Pannel's being allowed to prove this Allegation, and all other Facts and Circumstances that have been by him alledged for his Vindication or Defence against the Charge contained in this Libel.

In respect whereof, &c. WILL. GRANT.

July 28, 1747.

INFORMATION *for* ARCHIBALD STEWART, *of the City of* Edinburgh, *Merchant, and late Lord Provost of the said City, Pannel or Defendant*,

AGAINST

His MAJESTY'S ADVOCATE *for his Majesty's Interest, Pursuer.*

BEFORE entering upon the Objections to the Relevancy of this Libel, it may not be improper, first of all, to lay before the Court a genuine and succinct Account of every Fact and Circumstance which any way concerns the Conduct of the Pannel, or can give any Light to form a Judgment of it during the Period mentioned in the Libel.

Upon the 17th of *August* 1745, the Pannel, then Lord Provost of the City of *Edinburgh*, had the Honour to receive a Letter from the Marquis of *Tweeddale*, one of his Majesty's Principal Secretaries of State of the 13th current, acquainting him, 'That their Excellencies the Lords 'Justices, having received Intelligence, that the Pretender's Son was 'already landed, or intended to land in *Scotland*, had recommended it to him

'him to give Notice to the Provoſt thereof, that he might exert his Care 'and Vigilance on this Occaſion, and make uſe of ſuch Precautions as he 'ſhould judge neceſſary for preſerving the publick Peace within the 'Bounds of his Juriſdiction.

To this Letter the Lord Provoſt wrote an Anſwer on the 17th, as follows: 'It is with Pleaſure I aſſure your Lordſhip, that this Town 'was never better affected, nor more peaceable than at preſent. Nothing 'ſhall be neglected on my Part to preſerve People in their Duty to-'wards their King and their Country; and we truſt in God that no 'threatened Dangers ſhall ever reach us; at the ſame Time, we are not 'to ſit down in Security, but will keep a watchful Eye, in order to 'prevent, as far as it is in our Power, every thing that may diſturb the 'Peace of this Place.'

The above Letter was laid before the Magiſtrates when it came to Hand, and the Anſwer was approved of by the Town-Council, at a Meeting on the 23d of *Auguſt*, and, in purſuance of theſe Reſolutions taken by the Lord Provoſt and Council, the following Orders were forthwith iſſued.

Auguſt 23. Orders were given to levy and raiſe thirty Centinels to be added to the City-Guard, agreeable to the Powers given them by Act of Parliament, and to provide them with Clothing and all other Neceſſaries.

Recommended to the Lord Provoſt and Magiſtrates to direct the Captains and Officers of the Trained-Bands, forthwith to make up full Liſts of all the Perſons belonging to their ſeveral Companies, and to report the ſame to the Magiſtrates againſt *Saturday* next; and that the Captains warn and premoniſh them all to be ready, in caſe of any Diſturbance, to appear with their beſt Arms, upon an Hour's Warning, at the ordinary Places of Rendezvous.

Orders were given for directing the Conſtables of the City to make out full and ample Liſts of all the Inhabitants and Reſidenters within their Diſtricts, and report the ſame to the Magiſtrates; and to be diligent in inquiring and finding out what Strangers may happen from time to time to come within the City, and lodge within their ſeveral Diſtricts.

Orders for a Proclamation, requiring and ordaining all Inn-Keepers, Strangers, and others, who lodge and entertain Strangers, from time to time, and as oft as any Stranger ſhall lodge with them, to give in to the Captain of the City-Guard a Note of their Names and Deſignations at their Arrival; and of the Time of their Departure, under a Penalty for each Tranſgreſſion; and the Captains of the Guard ordered duly to report to the Magiſtrates, in Writing, every Morning, Liſts of the Particulars that ſhould be delivered in to them by the Inhabitants.

Theſe Orders, moſt of which proceeded upon Motions made by the Lord Provoſt, were all agreed to by the Magiſtrates and Council, and ſigned by him in their Preſence; and Care was taken of the due and punctual Execution of them all, without any Loſs of Time.

The next Day, being *Saturday*, *Auguſt* 24th, it was ſuggeſted to the Lord Provoſt that it might be fit to call a general Meeting of the Inhabitants, to conſider what was to be done on this Occaſion; to which he agreed, and communicated the Propoſal to the Council at their next Meeting on *Monday*, *Auguſt* 26. who alſo approved of it; and accordingly the Meeting was ordered, and the moſt ſubſtantial and well-affected Burgeſſes were invited to aſſiſt with their Counſel and Advice; and at the Meeting, which could not be convened ſooner than next Day, *Auguſt* 27. the above Reſolutions and Orders were reported to them by the Lord Provoſt; and the Meeting 'unanimouſly approved thereof, and gave his 'Lordſhip and the Council their hearty Thanks for the wiſe and pru-'dent Meaſures they had already taken; and, farther, offered it as their 'Advice to the Magiſtrates and Council, to name ſome of their own 'Number, and ſuch other of the Burgeſſes as they ſhould think fit, as 'a joint Committee to conſult with and take the Advice of the Lord 'Juſtice-Clerk, Lord Advocate, Mr. Sollicitor, and ſuch of the Lords 'of Seſſion as can be found in Town, with regard to what farther Steps 'the Magiſtrates, Council and Community can legally take for preſerv-'ing the Peace of the City, and contributing to defeat the dangerous 'and wicked Deſigns of the Enemies to his ſacred Majeſty, his Royal 'Family, and preſent happy Conſtitution.

Auguſt 28. The Committee were accordingly named by the Council next Day, and that very Evening met with the King's Counſel, and ſuch of the Judges as were in Town, at the Lord Juſtice-Clerk's Houſe, where it was propoſed, that a Regiment of a thouſand Men ſhould be levied for the Defence of the Town, and Service of the Government, to be ſubſiſted, for three Months, on the Charges of ſuch of the Inhabitants as were willing to ſign an Aſſociation for that Purpoſe. And as it had been, for ſome time, a general Subject of Converſation and Debate without Doors, how far it was legal to levy ſuch Regiment without a ſpecial Order from his Majeſty, the Opinion of the learned and honourable Perſons preſent was aſked upon this Point, and they all agreed, that it could not be legally done without his Majeſty's Warrant. Upon which it was reſolved that the Lord Advocate ſhould make Application for ſuch Warrant; and that, in the mean Time, Trial ſhould be made of the Inclinations of the Inhabitants to concur in this Meaſure, how ſoon the Warrant ſhould be obtained from his Majeſty.

Auguſt 30. The Lord Provoſt and Magiſtrates were employed in receiving Propoſals for putting the Town in a Poſture of Defence; and the Lord Provoſt wrote Letters to the Magiſtrates of Boroughs, and Miniſters, for about the Diſtance of fourteen Miles round the City, begging that they would ſend as early Intelligence as poſſible, by Expreſs on Horſeback, of any Bodies of armed Men they could diſcover marching towards this City.

Auguſt 31. About the ſame time many different Orders were given by the Lord Provoſt to proper Perſons, with a View to put the Town in a Poſture of Defence, which were afterwards executed, particularly for clearing the Town Wall, building Stairs to get up to the Wall, making Communications from one Place to another, raiſing a Work at *Wallace*'s Tower, to prevent the Communication by the Back of the Caſtle. This laſt Work had been directed at firſt in a very proper Manner by Bailie *Robert Baillie*, Overſeer of the publick Works for this Year; but Bailie *Gavin Hamilton* afterwards ſtopt it, and gave a different Direction, by which that Work was for ſome time retarded.

Monday, *September* 2. The Lord Provoſt ſigned an Order in Council for augmenting the Town-Guard to the Number of 126 Men.

September 3. Bailie *James Stewart* and Mr. *Colin Mac Laurin* applied to the Lord Provoſt, with a Meſſage from ſome Gentlemen who had met the Evening before, deſiring in general that he would ſee to the Defence of the Town; and particularly, *firſt*, That he would order Moulds to be made for caſting Bullets. *2dly*, That the Sluices of the *North-Loch* ſhould be filled up. And, *3dly*, That a Diſtinction ſhould be made betwixt the Inhabitants of known good Affection and others, before he came to intruſt them with the Town's Arms.

The Lord Provoſt agreed to the firſt two Propoſals, and ordered the immediate Execution of them; but as to the third, he demurred. He obſerved to them the Inconvenience of making Diſtinctions amongſt Inhabitants upon bare Suſpicions, eſpecially about the Time of an approaching Election, when Parties were forming, which would lead them to ſpread Calumnies againſt one another upon By-Views; that this might occaſion Heats and Diſſentions dangerous to the Peace of the Town, and even ſtrengthen the Diſaffected by combining them together; that, where any real Ground of Complaint could be condeſcended, he was ready, not only to exclude ſuch Perſons from ſerving in the Trained-Bands, but alſo to oblige them to find Security for their good Behaviour. After this Reaſoning the Gentlemen did not inſiſt farther upon that Part of their Propoſal, nor lay it before the Council, who were the proper Judges of the Expediency of ſuch Meaſures, had they thought it fit to be inſiſted on.

September 4. The Lord Provoſt met with the ſame two Gentlemen, and ſeveral other Burgeſſes, in a Tavern, and, after a good deal of Converſation upon the ſeveral Expedients propoſed for Defence of the Town, he deſired they would digeſt their Propoſals, and give them in, in Writing, which he would either immediately comply with, or give them an Anſwer in Writing. This they ſeemed chearfully to agree to, and promiſed to give him in their Propoſals, but never did it.

September 6. Some of the ſame Gentlemen preſented to the Provoſt a Petition ſigned by about 80 or 90 of the Inhabitants, offering to ſerve as Volunteers for Defence of the City againſt any Attack, and particularly in contributing to erect the neceſſary and proper Barricado's for defending the Ports and ſeveral Avenues to the City, and praying that the City-Wall might be inſtantly repaired, and Stairs put up, &c. to appoint proper Places of Rendezvous, furniſh them with neceſſary Arms, and allow them to name their Officers.

The Provoſt told the Gentlemen who had met with him two Days before, That, after what had paſt at that Meeting, he expected they would have communicated to him their Intentions, as they promiſed; but he never would mind any perſonal Neglect in a Matter where the publick Safety was concerned, and therefore ſhould take care to preſent their Petition to the Magiſtrates without Delay, and return their Anſwer.

September 7. He did accordingly order a Meeting of the Magiſtrates to be ſummoned againſt Eleven next Forenoon; and, that there might be no unneceſſary Delay from any Doubtfulneſs concerning the Legality of this Meaſure, the Provoſt adviſed with the Lord Advocate upon that Point in his Way to the Meeting; and, having got his and the Sollicitor's Opinion of the Lawfulneſs of it, he forthwith met with the Magiſtrates, and laid the Petition and Opinion before them; upon which they chearfully approved of the Propoſal, and applauded the Zeal of the Petitioners.

Immediately after the Provoſt went to the Volunteers, who were met in the *New Church Iſle*, and told them their Petition was to be complied with in every Particular, except the Nomination of their Officers: But, notwithſtanding that did of Right belong to him, yet, as he wiſhed of all Things they might have ſuch Officers as they inclined to obey, if they would give him a Liſt of 20 or 30 of their Number, he would confine his Nomination to that Liſt. They complied. He named ſix of the fitteſt Perſons in the Liſt for Captains, with whom they were highly pleaſed, and he left the Nomination of the Subalterns to themſelves, for which they returned him Thanks.

The ſame Day the Lord Provoſt moved in Council, that an Addreſs ſhould be drawn up and preſented to his Majeſty, which was unanimouſly agreed to; and a dutiful Addreſs was accordingly drawn out, approven and ſigned; after which it was reſolved, 'To authorize the Magiſtrates 'and Conveener to employ Perſons with all poſſible Speed to put the 'City in a Poſture of Defence, and particularly the Walls thereof.'

In conſequence of this, Workmen were immediately ſent for, and the Lord Provoſt ordered them forthwith to fall to work, under the Direction of Mr. *Mac Laurin*, and to work Night and Day, *Sundays* not excepted, till all was finiſhed, and gave Warrants for impreſſing Workmen.

September 8. The Provoſt, of his own Accord, ordered all the Powder that was in the Town's Magazine to be carried to the Caſtle; which was ſo punctually executed, that he behoved afterwards to take from the Caſtle what was neceſſary for the Service of the Town.

About the ſame Time he wrote an Order to *Robert Davidſon*, Tackſman of the Meal-Market, to clean out the Granaries, and provide Meal.

September 9. This Morning the Provoſt having occaſionally heard that his Majeſty's Sign-Manual, authorizing to levy the Regiment propoſed, had come the Day before to the Lord Advocate's Hand, he went and waited on his Lordſhip, and, upon receiving the Sign-Manual, he immediately called a Council, and produced the ſame, which was addreſſed to the Lord Provoſt, Magiſtrates and Town-Council of *Edinburgh*; and recites, 'That it had been repreſented to his Majeſty, that the Lord 'Provoſt, Magiſtrates, Town-Council, Burgeſſes, and others of his 'City of *Edinburgh*, from the great Loyalty and Affection to his Perſon and Government, were at this Juncture willing and ready to raiſe 'and maintain, at their own proper Charge and Expence, by voluntary Subſcription and Contribution, One thouſand Foot for the Defence of the ſaid City, and the Support of his Government; and they 'were deſirous of obtaining his Royal Licence and Authority for the 'ſame: His Majeſty therefore, repoſing intire Truſt and Confidence 'in the Lord Provoſt, Magiſtrates and Town-Council of his ſaid City, 'did thereby authorize and impower them to raiſe, form and diſcipline 'One thouſand Foot to be employed for the Purpoſes above mentioned; 'and his Majeſty did thereby farther order and command, that the ſaid 'One thouſand Men ſhall be under the Direction of the Lord Provoſt, 'Magiſtrates and Town-Council of *Edinburgh*: For the doing whereof 'this ſhall be a ſufficient Warrant.'

As by this Warrant the Direction of the Regiment was placed in the Magiſtrates and Town-Council, ſo, as ſoon as it was read, they took the Direction into their own Hands, 'and appointed, as a Committee, 'the preſent and old Magiſtrates, Conveener, Deacons *Lauder* and *Por-* 'teous, or any five of them, the Lord Provoſt being always one, and, in 'caſe of his Abſence, any Nine of them, to be a Quorum, to conſider 'what is moſt proper to be done upon this Occaſion for levying the ſaid 'Thouſand Foot; and particularly to take in the Subſcription of ſuch 'of the Inhabitants as are willing to contribute for levying and main-'taining the ſaid Thouſand Foot, with their proper Officers, to be named 'for the Purpoſes mentioned in the ſaid Sign-Manual, for the Space of three 'Months after they ſhall be ſo inliſted; as alſo to conſider what is proper 'farther to be done for the Safety of this City, and for Support of the 'Government; which Committee ſhall meet at the Goldſmiths-Hall, 'twice each Day, at the Hours of Eleven in the Forenoon, and Four in 'the Afternoon; and recommended to the ſaid Committee, to keep a 'Book, into which all their Proceedings and Actings ſhall be regularly 'ingroſſed, to the end the ſame may be reported to the Council from 'Time to Time.'

At the ſame Time, the Council 'ordered the Serjeants, Corporals and 'Drums of the City-Guard to beat up for Volunteers to compleat the 'Thouſand Foot; and they nominated the Lord Provoſt to be Colonel 'and Commander of the ſaid Thouſand Foot, with Power to him to 'conduct and direct them, and the other Officers who ſhall be named to 'command under him, as the Council ſhall think proper, or as the Exi-'gencies of Matters ſhall require.'

And the Lord Provoſt ſhewed his chearful Concurrence in this Meaſure, by a Subſcription far beyond any other that was made to this Regiment.

September 10 to 13. From this Day, to the 13th of *September*, there are daily Proceedings of the Council and Committee above named, who went on with all Diligence in raiſing the Men, taking in Subſcriptions, providing Arms, Grain, and other Neceſſaries, and doing every thing that was judged proper for putting the Town in a Poſture of Defence. It is unneceſſary to trouble the Lords with reciting minutely every Particular which appears to this Purpoſe from the Records of the Council, and the Minutes of the Committee, which regularly met for carrying on the Buſineſs intruſted to them; and the Lord Provoſt appears, by their Minutes, to have been preſent at every Sederunt.

The Pannel is deſirous to abridge the Trouble of the Court, in reading a long Story, as much as poſſible; and therefore ſhall but juſt mention a few of the many Inſtances of his Care and Concern in carrying on the general Meaſure now reſolved on, for the Defence of the Town, about this Period.

That whenever any Complaints were made of the Slowneſs of the Workmen, that they were not going on with that Diligence they ought, the Lord Provoſt ſeverely reprimanded them, and gave freſh Warrants to preſs Men and Carts, with ſtrict Orders to loſe no Time.

That Bailie *Robert Baillie*, who had the Inſpection of the publick Works, with his Committee, were ordered to ſee that every thing was done that was neceſſary for the Defence and Preſervation of the Town; and he had the Charge of impreſſing Workmen and Carts, and exerciſing all the Authority that was neceſſary for carrying on the publick Works with the utmoſt Diſpatch.

That the Provoſt, on the 10th of *September*, wrote a Letter to Captain *John Dalrymple*, and alſo applied to Captain *James Murray*, to take upon them the Command of the Volunteers: But they both refuſed to accept of a Command of Men who had not been accuſtomed to military Diſcipline.

That the Provoſt moved in the Committee, to recommend to ſome of the City-Guard, *Edinburgh* Regiment, and Gentlemen Volunteers, that they ſhould learn the Exerciſe of throwing the Hand-Granadoes.

That, in order to preſerve the publick Money from falling into the Hands of the Rebels, the Provoſt called a Council, and propoſed, that what was owing of the King's Ceſs ſhould be paid up to the Receiver-General, though it had not been paid by the Inhabitants to the Collector; and for that Purpoſe the Provoſt forthwith ſigned an Order on the Caſh Accompt for 1000 *l.* Sterling, payable to the Receiver-General, to Account of the Ceſs due by the City, which was delivered to the Receiver-General.

September 13. That the Proceedings of the Committee for levying the City's Regiment, and forewarding the neceſſary Steps to be taken for the Safety and Defence of the Place, were read over in Preſence of, and conſidered by the Council, and unanimouſly approven of, and the Council recommended to the Committee to continue in their Diligence.

September 14. Notice having come to Town this Morning, that the Rebels had paſſed the *Forth* ſome Miles above *Stirling*, and were directing their March towards *Edinburgh*, and Colonel *Gairdner*'s Dragoons were retiring before them, the Lord Juſtice-Clerk ſent a Meſſage to the Provoſt, deſiring he would meet with him, and ſome Lords and Gentlemen of the Army, and others, whom he was to bring from the Country, in order to concert what was to be done in this Exigence. The Provoſt immediately went to Lord Juſtice-Clerk's Houſe, and told his Lordſhip he was ſenſible how much he ſtood in need of ſuch Advice; that he would always be ready to follow it, and would be ſure to attend them whenever called for.

He went on ſtill in doing every thing that could be thought of as neceſſary to provide for the Defence of the Place. He ſigned a Warrant this Day, along with Lord *Somerville* as Juſtice of Peace, to preſs Men and Carts for carrying Sand and other Materials to the Ramparts and Works about the Walls, which was accordingly executed; and alſo to bring in Hay, Corn, and Proviſions into the Town, and *John Walker* and *William Mercer* were ſent to *Leith* for that Purpoſe.

This Day alſo the Provoſt ordered twenty-four Men to attend Captain *Bryden* in mounting the Cannon upon the Walls;

And granted Warrant to bring into the Town all the Ladders, Arms and Ammunition, which were in the *Cannongate*, *Potter-Row*, and other Suburbs adjacent to the Town, that they might not be ſeized by the Rebels.

Sunday, *September* 15. We are now come to *Sunday* the 15th of *September*; and as the Proceedings of this Day, and the next, are greatly miſrepreſented, as well as curtailed in the Purſuer's Information, it is neceſſary to be a little more particular in reciting them.

Upon *Sunday* Morning, when the Committee were met in the Goldſmiths-Hall, a Gentleman came with a Meſſage from General *Gueſt*, to acquaint them, that when it was propoſed, at a Meeting at his Houſe, to order *Hamilton*'s Regiment of Dragoons to join *Gairdner*'s, and make a Stand againſt the Rebels, the General made a Difficulty, in regard he had no Body of Foot to ſuſtain them. Upon which a Captain of the Volunteers undertook, that, at leaſt, two hundred and fifty of theſe Gentlemen would be ready to march upon any Service the General would order them; he believed more would, but he could anſwer for two hundred and fifty, providing the Provoſt would allow Fifty of the Town-Guard to go along with them; and the Gentleman deſired to know if the Provoſt would conſent.

On firſt hearing of this Propoſal, the Provoſt had ſome Difficulty to part with the Town-Guard, as being the Body of Men he could moſt depend upon, in caſe of any Occaſion, to defend the Town; on which Bailie *Robert Baillie* ſaid, he thought fifty of the Town-Guard could not be better employed than in ſupporting ſo many of the Volunteers, if they marched out; and inſtantly the Provoſt, upon Recollection, agreed, and anſwered, 'Mr. *Baillie*, you are in the right; in place of 'Fifty, they ſhall have the whole Town-Guard, and as many of the '*Edinburgh* Regiment as are capable of doing Service.'

The Provoſt immediately went down in a Coach, along with the Gentleman who had brought the Meſſage, and told the General the Reſolution of the Committee as to ſending out the Town-Guard and the *Edinburgh* Regiment; upon which the General ſent Orders to *Hamilton*'s Regiment to march through the Town and join Colonel *Gairdner*'s.

The Provoſt came up to Town from the General's in a Coach, along with Provoſt *Drummond*, the firſt Captain of the Volunteers, and by the Way met two of their Officers, who came into the Coach, and told them, they were ſure the Volunteers would not comply with the Meaſure propoſed, and that they were now ſeparated, and had gone home.

The Provoſt aſked Mr. *Drummond* what would be the beſt Signal to bring the Volunteers together? He ſaid they had only two, three Guns from the Caſtle, or ringing the Alarm-Bell. The firſt, ſays the Provoſt, is not in our Power, as the Caſtle is ſhut; and the other, in Time of divine Service, may alarm the Town. No help for it, ſays Mr. *Drummond*, the Bell muſt be rung.

The Bell was accordingly rung, which alarmed the People, and made them leave the Church. The Volunteers conveened in the *Lawn-Market*, and huzza'd *Hamilton*'s Dragoons as they paſt along. Their Officers applied to the Provoſt, and aſked if he had ordered them to go out and join the Dragoons? He told them, he had no Power to order them any where out of Town; but he had conſented, that as many as were inclined ſhould go out with the Town-Guard and *Edinburgh* Regiment, to ſuſtain the Dragoons in oppoſing the Rebels. The Meaſure was generally not liked by the Volunteers, and was imputed to the Provoſt as if he had been the firſt Propoſer, as one of their Officers told him with a good deal of Warmth.

After many Expoſtulations among themſelves, at laſt Mr. *Drummond* marched up on the Head of his Company, and ſome others followed. They went the Length of the *Weſt* Port and then returned.

Two of their Officers went foreward to ſtop the Town-Guard and *Edinburgh* Regiment, who had marched on to ſuſtain the Dragoons, and found them between the *Coltbridge* and *Brucehill*: But the Provoſt being informed of this, ſent Orders that the City Regiment and Town-Guard ſhould march foreward, and take their Orders from the commanding Officer. General *Gueſt*, when he heard of the Return of the Volunteers, was vexed at the Diſappointment, and ſaid, if he had expected it, he would not have ordered *Hamilton*'s Regiment to go out to join the other in Defence of the Town.

The Provoſt ſent up Mr. *Stewart*, chief Conſtable, to the Caſtle, with a ſigned Order for a Number of Matches for the Uſe of the Cannon mounted on the Town-Walls, which were accordingly delivered, and brought down to the Goldſmiths-Hall.

The Provoſt conveened the Trained-Bands under their proper Colours and Officers, and gave them Notice to hold themſelves in Readineſs upon a Minute's Warning, and three Companies of them were ordered to mount Guard.

He alſo ordered the Conſtables to ſearch Houſes, of which there was any Suſpicion, for Arms and treaſonable Papers.

This Afternoon Brigadier *Fowkes* came to Town, and the Provoſt was called in the Evening to Lord Juſtice-Clerk's, where Lord Advocate, General *Gueſt*, Brigadier *Fowkes*, and ſeveral other Gentlemen of the Army were preſent. A Propoſal was made, that the Dragoons might be brought into Town, with a View to give them ſome Reſt and Refreſhment, and have their Horſes fed on the Street: But after the Thing was debated among the Gentlemen of the Military, who conſidered that the Avenues of the Town might be taken Poſſeſſion of by the Rebels, the Streets barricadoed, and the Houſes lined, and that the Dragoons might very probably, by this Means, fall into the Hands of the Rebels, it was agreed to be a Thing not to be attempted.

From this the Provoſt went along with Major *Cochran*, Captain *Murray*, Provoſt *Drummond*, and others, to the Houſe of Mrs. *Clark* Vintner, where a Diſpoſition was made of the ſeveral Corps of armed Men into different Quarters of the Town, particular Guards aſſigned them, and Places for their Alarm-Poſt condeſcended on, where each of them ſhould appear on the proper Signals; Copies of which were given to the commanding Officers of the different Corps.

This Afternoon the Provoſt met with Sir *Robert Dickſon* upon the Street, who had come in with a conſiderable Number of Volunteers; he received him with great Civility, as both his perſonal Character and Errand deſerved; immediately gave Orders that his Men ſhould be lodged in the Kirk, and that a ſufficient Quantity of Bread and Ale ſhould be carried there for a Refreſhment to them without Delay.

About this Time Meſſages were ſent to the Caſtle and *Leith*, to procure Gunners for loading the Cannon. Mr. *Gueſt* could afford us none out of the Caſtle; Bailie *Set* made ſearch over all *Leith*, aſſiſted by *David Dryburgh*, *Charles* and *Alexander* Sheriffs, and ſent us up what could be found

found there; Application was alſo made to the *Urſilla* Man of War, and the Anſwer returned, That the Captain could ſend none.

By Orders from the Lord Provoſt, the great Guns upon the Walls were begun to be charged on *Sunday* Evening, and the Gunners employed continued to charge them till Two o'Clock next Morning.

The Provoſt this Evening ſent up an Officer of the Town-Guard to beg the General would order a Signal to be put up in the Caſtle, to diſcover the Road the Rebels ſhould take to *Edinburgh*, that Meaſures might be taken to turn the whole Force as much as poſſible to that Side; and an Anſwer was returned, That his Requeſt ſhould be complied with.

All this *Sunday* Evening, from Seven to Twelve, the Provoſt was conſtantly employed, either in the *Goldſmiths-Hall*, or at the different Guards of the Town, converſing with the Military Men about Orders, or with the Captains of the Trained-Bands. At Twelve at Night he began the grand Round, which laſted till about Four o'Clock in the Morning.

Monday, September 16. Having gone home for an Hour or two, he was upon the Streets again at Six in the Morning, reviewing the Barricadoes that were making at the Ports, and ſuperintending the other publick Works about the Town.

At Nine o'Clock, He ordered Bread and Ale to be carried out to the Dragoons; and upon Mr. *Fowkes's* applying to him for the Town-Guard and *Edinburgh* Regiment to be ſent out to join the Dragoons, he immediately ordered them to parade in the Parliament-Cloſe, and march out, which they did.

He next gave orders that Mutton, Beef, *&c.* ſhould be bought, and boiled in all the Taverns in Town, for the Uſe of the Dragoons; and went through ſeveral of the Taverns with Mr. *Baillie* and Mr. *Hamilton*, and gave Directions thereanent.

Being informed by Colonel *Clayton*, that the Proviſions firſt ſent out were not ſufficient, he expreſſed his Diſpleaſure that his firſt Orders had not been fully obeyed, ſent to the Bakers and Brewers, and cauſed preſt Carts to carry out Proviſions.

Betwixt Ten and Eleven o'Clock, When ſitting in a Cloſet in the Coffee-Houſe with Commiſſary *Leſlie*, *Andrew Alves* came in to them, and ſaid, That, in his Way to Town, he happened to ride near the Rebels; that the Duke of *Perth* knew him, and ordered him to come nearer; and upon hearing he was going to *Edinburgh*, ſaid, I underſtand the Provoſt and Magiſtrates are making great Preparations againſt us, but we are reſolved to pay them a Viſit; if they will keep their Arms in their Poſſeſſion, and allow us to come peaceably into Town, they ſhall be civilly dealt with; if not, they muſt lay their Account with Military Execution, or Words to that Purpoſe: And turning to a young Man he called the Prince, he aſked him, Whether or not that was his Pleaſure? Which the other ſeemed to aſſent to. The Provoſt ſaid, 'Mr. *Alves*, this is a very extraordinary Meſſage; but they will find we are not to be intimidated by 'Threats.'

The Provoſt went immediately over to the Goldſmiths-Hall, and acquainted two Gentlemen of the Committee of what Mr. *Alves* had ſaid, and conſulted with them what was proper to be done. They were of Opinion it was moſt proper to neglect it, and take no Step that might publiſh to the Inhabitants the Threatning they had received.

The Provoſt, after reviewing ſome of the Works about the Town, on his Return to the Street, was informed, that *Andrew Alves* had adventured to repeat to others what had paſſed betwixt him and the Rebels; upon which he went ſtraight to the Lord Advocate to aſk his Advice, where he found Mr. *Alves*; and, by the Advocate's Advice, he ſigned a Warrant for committing him.

Monday, September 16*th, Afternoon about Three o'Clock*, The Provoſt being then in Mrs. *Wilſon's*, was called out from the Company by Mr. *Baillie* and Mr. *Farreſt*, who acquainted him, that a Petition to the Magiſtrates was handing about among the Inhabitants, deſiring they might be conſulted upon what was proper to be done upon this Juncture. At this the Provoſt was ſurpriſed, as well as vexed: However, as ſoon as he came out to go to the Goldſmiths-Hall, he was met by a great Crowd of Inhabitants, who delivered to him the Petition, which is produced in Proceſs, praying, 'That the Magiſtrates, before they came to any Reſolution, 'either of defending or giving up the Town, would call a Meeting of all 'the principal Inhabitants and Heritors, at preſent in the Place, to con-'ſult with them what is proper to be done in an Affair of ſo great Im-'portance.' Upon this the Provoſt immediately went to the Goldſmiths-Hall; they followed him, and endeavoured to crowd in: Upon which he was provoked, and aſked, If they meant to inforce their Petition by Numbers; begged they would be gone, and leave it to the Magiſtrates, who were to conſider what was moſt expedient to be done with reſpect to the Place; and immediately he cauſed the Drum to go about, and order the Inhabitants to retire from the Streets, who were all in an Uproar upon hearing that the Dragoons had retreated from the Rebels.

The Provoſt, in his Way to the Ports, met with the Lord Advocate and Sollicitor, who aſked him, If he did not think 100 Dragoons might be of Uſe to be brought into the Town; and he agreeing that they might, the Advocate aſked him to ſign a Letter in Conjunction with him and the Sollicitor, to General *Gueſt*, to ſend in 100 Dragoons; which the Provoſt immediately did, and then went on to ſee the Gates barricadoed.

After the Gates were barricadoed, he ordered Mr. *Stewart* the Conſtable to mount the Walls, and look out for the Dragoons; and ſo ſoon as he ſhould ſee them come near the Walls, to open the Gates and let them in: He had before provided a large Quantity of Hay for the Uſe of their Horſes.

As he was returning up the *Weſtbow*, a Citizen of very conſiderable Subſtance, and undoubted Loyalty, came to him, and ſaid, 'He applied to 'him in Name of himſelf, and many of the moſt conſiderable Citizens, 'to expoſtulate and beg, that the Defence of the Town might not be in-'ſiſted on, which could only tend to expoſe the Lives of the Citizens.' To which the Provoſt anſwered, 'That his Requeſt could not be granted.'

In returning to the Goldſmiths-Hall, the Provoſt gave Captain *Hamilton* Orders with reſpect to the City-Guard, 20 of them to remain at the *Weſt* Port, 20 to go to *Briſto* Port, 20 to the *Netherbow*, and 40 of them to remain in the Guard, to move to any Place where they ſhould be moſt needed, which was allowed to be a very proper Diſpoſition.

During all the Way in his Return, the Cries of the People were heard on every Side, 'What, would he have them all murdered, by defending 'the Town after the Dragoons had run away?' And other Words to that Purpoſe.

As ſoon as he was returned to the Hall, where the Committee was met, he ſent Bailie *Hamilton*, *Robert Baillie*, and *John Forreſt*, for the Lord Juſtice-Clerk, Lord Advocate, and the Sollicitor, to beg they would come and aſſiſt them with their Counſel, ſaying, He chuſed to be determined only by their Advice. They returned, and reported that they had all gone out of Town.

The Provoſt expreſſed great Concern when he found himſelf deſtitute of the Advice he moſt relied upon at ſo critical a Juncture, and then deſired that the Officers of the Army ſhould be ſent for, and the Officers of the Volunteers who were conveened at their Poſts by the ringing of the Alarm-Bell: Moſt of the Captains, and ſome other Officers of the Volunteers came; but no other Military Men were found in Town, except Captain *James Murray* and Major *Cochran*. The Lord Provoſt addreſſed himſelf to them, and ſaid, 'That, for his Part, he was willing to en-'counter any Danger for the Defence of the Town: He hoped the In-'habitants would do their Duty, and hoped the Enemy might be kept 'out until Aſſiſtance ſhould come to their Relief; and aſked Mr. *Murray* 'what was his Opinion?' Who ſaid, he pitied him, but was at a Loſs what Advice to give: And being farther preſſed by the Provoſt, he anſwered, That if the Volunteers, Trained-Bands, and other armed Men within the Town, were diſpoſed to do their utmoſt, he believed they might make a good Defence; but if they were not diſpoſed to fight, he would adviſe the ſending the Government's Arms to the Caſtle.

The Provoſt ſaid, 'He hoped thoſe Gentlemen who had undertaken 'the Defence of the Town, would not now abandon it when the Danger 'drew near, but remember what Expence the Town had been at, what 'Aſſurance they had given to his Majeſty, and what they had promiſed 'to perform, when the Danger was at a greater Diſtance.' He then aſked all the Captains and Officers of the Volunteers that were preſent, what he could expect from them? One ſaid, he did not find any Diſpoſition in his Men to fight: Another told, That there did not remain fifteen of the Company to which he belonged; but as he had promiſed to riſque his Life in Defence of the Town, he would ſtill do it; though he was ſure not five of the fifteen would follow him: And others of them declined to make any Anſwer at all.

About this Time *Walter Groſet* came into the Goldſmiths-Hall, and he ſaid he was ſent by the Lord Juſtice-Clerk and Lord Advocate, to deſire the Provoſt would ſend an Order to General *Fowkes* to bring the Dragoons into Town. To which he anſwered, That he was ſurpriſed at the Meſſage, after what had paſſed the Night before; that he would ſign no Order, as he had no Power over the Dragoons; but if they pleaſed to ſend them in, they ſhould be made very welcome, and we ſhould join them in Defence of the Town.

Mr. *Groſet* ſaid, That the Lord Advocate and Juſtice-Clerk thought it proper that the Provoſt ſhould ſign the Order. To which he anſwered, That he did not chuſe to make himſelf accountable for the Dragoons, after what he had heard in the Lord Juſtice-Clerk's laſt Night; but thought it more proper that they ſhould ſend their Orders, if they had altered their Way of Thinking about that Matter. Mr. *Groſet* deſired to have the Provoſt's Anſwer in Writing, with which he readily complied.

About this Time the Fears of the Inhabitants had brought a great Crowd into the Goldſmiths-Hall, and about the Door of it, who all cried out againſt the Madneſs of defending the Town, when all the Officers Civil and Military had left it, which ſhewed they underſtood it could not be defended. The Crowd ſtill increaſing, a Member of the Council propoſed they ſhould go to the *New Kirk Iſle*, as they were like to be ſmothered in that narrow Place: Upon which the Lord Provoſt left the Hall, and went out to the *Parliament-Cloſe*, where great Numbers came up to him, remonſtrating, in the ſtrongeſt Terms, againſt attempting any Defence, which could have no other Effect, but to expoſe them to Military Execution.

The Provoſt did all he could to reanimate the People; but when he was talking to them, Mr. *Cunningham* of *Gairdner's* Dragoons came up to him on Horſeback, with a Meſſage from Lieutenant-Colonel *Whitney*, deſiring he would order the Dragoons Baggage to be forthwith ſent out to them, becauſe they were going to *Haddington*; that they found they had been greatly deceived in the Number of the Rebels; for now they computed them to be near Eight Thouſand. This Account, which was given by Mr. *Cunningham* in the Hearing of the Crowd, did greatly contribute to increaſe the Terror of the Inhabitants, who were heard crying every where, *What a Madneſs it was to pretend to ſtand out againſt ſuch a Number.*

The Provoſt expoſtulated with them in the *New Kirk Iſle*, 'That he 'hoped they would not now abandon the Defence of the Town; that he 'was ready to concur in it to the utmoſt of his Power, and expected the 'Danger would not be ſo great as ſome Men's Fears made it.' But upon this ſuch a Noiſe was raiſed, that nothing could be heard but a general Cry for giving up the Town, not above two or three of the whole Multitude preſent appearing to be of a different Opinion.

About this Time a Letter was thrown in, directed to the Lord Provoſt and Magiſtrates, which was opened by *Walter Orrock*; and when he told it was ſigned by *Charles* P. R. the Provoſt ſtopt him, and ſaid, he would not witneſs the reading ſuch a Letter: Upon which many calling out to read, he ſaid he had been too long there, and with Difficulty got to the Door, and returned to the Goldſmiths-Hall, where the Magiſtrates alſo came, and a great Number of the Inhabitants, and immediately they ſent to conveen the Town's Aſſeſſors; but only one of the four was to be found: They aſked his Opinion what was to be done with reſpect to the Letter, and whether it ſhould be read? But he having declined to give any Opinion, and the Inhabitants expreſſing the utmoſt Uneaſineſs both within and without Doors, the Letter was read without any Authority from the Provoſt, and contained a Threatening of their higheſt Reſentment, in caſe any Oppoſition was made to their Entry, or that any of the Cannon or Arms were allowed to be carried off.

After

After this nothing was to be heard but loud Cries againſt a fruitleſs Oppoſition, and againſt Delivery up of the Town's Arms to the Caſtle, which, it was ſaid, would occaſion Deſtruction to the City; and many in the Hall inſiſted that a Deputation ſhould be ſent out, to beg that Hoſtilities might not be commenced againſt the City, until they had Time to deliberate what Anſwer they ſhould return; and, as it was believed the Enemy was at the Gates, the Deputation was immediately hurried away, *viz.* Bailies *Gavin Hamilton*, *John Yetts*, *David Inglis*, and Conveener *Norrie*.

The Volunteers in the mean time did, without applying to the Lord Provoſt for Orders or Directions, of their own Accord, take a Reſolution to give up their Arms to the Caſtle, which they forthwith executed, and thereby diſmiſt themſelves from the Service.

One of their principal Officers, whoſe Zeal or Bravery was never at any time called in queſtion, upon his Return from the Caſtle, was met on the Street by a Gentleman, who told him, the Rebels were not near ſo numerous or formidable as they had imagined, and that it would be a Shame to ſurrender the Town to them. But the Officer anſwered, It might be ſo, but it could not now be helped; that Information had come too late.

And, ſome Hours before, another Gentleman of the ſame Corps had ſent a Meſſage to his Wife, begging her not to be under any Fear about him, for the Town was to be given up.

At this Time a Meſſage came from the Caſtle, by *Robert Griffith* a Gunner, deſiring that the Cannon on the Town-Walls might be nailed up. It was the Opinion of the Committee, that the Provoſt ſhould give no Orders in theſe Matters, after what had paſt; but he told the Meſſenger, that Mr. *Gueſt* was at Liberty to do what he thought beſt for the Service of the Government, and nothing hindered him to ſpike up the Cannon, if he thought fit: And he was alſo told, that the Town-Officers would ſhew him where the Cannon were, for that Purpoſe.

About the ſame time the Adjutant of the City Regiment wanted to know what ſhould be done with the Arms under his Care; and was told, that it was not thought proper the Provoſt ſhould give Orders thereanent; that the Council was afraid the City might ſuffer from the Cruelty of the Rebels, and even that they themſelves might ſuffer from the Populace, if ſuch Orders were given; but, at the ſame time, that the Soldiers of the new-levied Regiment, poſſeſt of thoſe Arms, ſhould be privately acquainted to return them to the Caſtle; and by this means the whole Arms of the City-Regiment were returned, except thoſe of the Men upon Guard.

But it was not practicable to get the Arms of the Trained-Bands conveyed to the Caſtle in this Manner. Theſe Arms were in poſſeſſion of the ſubſtantial Burgeſſes and Houſholders of the Town, who conſidered them as their own Property, having been bought with their own Money when admitted Burgeſſes: And as moſt of them had not only their Wives and Children, but the greateſt Part of their Subſtance within the Town, they would not conſent to expoſe all that is dear to them to the Rage of an incenſed Enemy, for the ſake of keeping thoſe Arms out of their Hands, eſpecially as they were in themſelves of very little Value, being generally old Guns without Bayonets, bought at Half-a-Crown or three Shillings a-piece, more for Shew than Uſe, as they were never otherways employed than at a Birth-Day Parade.

But, of little Value as they were, the Provoſt was deſirous, if poſſible, they ſhould be ſaved out of the Hands of the Rebels; and as neither he nor the Council were able of themſelves to compel the Inhabitants to part with them, he thought of the only Expedient that could be taken in ſuch a Caſe, which was, to ſend a Meſſage to the Caſtle to inform Mr. *Gueſt* of the Situation of the Town, and the general Conſternation of the Inhabitants, and to beg that he would ſend a Party down to take up their Arms, as the Council was not at liberty to give Orders, for fear of the Conſequences with regard to the Town. This Meſſage was delivered to General *Gueſt*, but was not complied with.

From the Goldſmiths-Hall the Committee went to the Council-Houſe, and were alarmed with the Cry, that the Rebels had broke into the Town. This was owing to the Fright of a Party of Dragoons, who guarded their Baggage at the *Netherbow* Port, and when the Port was opened to let out the Baggage, a great Crowd burſt in, which the Dragoons imagined were the Rebels, and rode off as hard as they could, in great Terror, to the Caſtle.

Upon this Alarm the Commandant put the Provoſt in mind of the Threatning ſent to the Town, that every Man who was found in Arms ſhould be put to death; and aſked the Provoſt what the Trained-Bands ſhould do at the *Weigh-Houſe* and *Weſt* Port, when the Rebels had already burſt in at the other End of the Town? The only Anſwer any Man alive could give, in ſuch Circumſtances, was, they ſhould quit their Arms to avoid being maſſacred.

After this Alarm was over, Mr. *Groſet* arrived with Accounts that Sir *John Cope* had been ſeen off *Dunbar*, and, as the Wind was unfavourable for bringing them up the Frith, it was thought he would land that Night at *Dunbar*, and might ſoon come to their Relief. Upon which Bailie *James Mansfield* was immediately diſpatched to call back the Deputies, and a Town Officer was alſo ſent to run the ſhorteſt Way and ſtop them; but neither could overtake them.

It being now again reſolved, upon this Proſpect of Relief, to put the Town in a State of Defence, Mr. *Groſet*, and Mr. *Lindſay* Secretary at War, went up to the Caſtle along with Provoſt *Coutts*, and acquainted the General with the good News of Sir *John Cope*'s Arrival, and aſked if he would think it proper to order the Dragoons back for the Defence of the City, and whether he would deliver back the Arms that had been returned to the Caſtle. General *Gueſt*'s Anſwer was, That he did not think it for his Majeſty's Service to order the Dragoons back to *Edinburgh*, it being more fit they ſhould join Sir *John Cope*'s ſmall Army: That the Gentlemen of the Council might put the Burghers Arms into the beſt Hands; and if, thereafter, the Lord Provoſt ſhould find a Diſpoſition in the Inhabitants to defend the Town, he might let him know: And added, that he would ſend down a Meſſage to the Serjeant that was nailing up the Cannon on the Walls, to ſtop him.

After the Gentlemen had returned from the Caſtle, it was propoſed in Council, by a Captain of the Volunteers, that the Alarm-Bell ſhould be rung: But it was objected by ſome of the Members, that nothing of that Kind ought to be done till the Deputies were returned, leſt the Rebels, who were apprehended to be very near, ſhould thereby be enraged, and make them ſuffer for it. One of the Reverend Miniſters of the City, who had been moſt active and zealous in the Service of the Government, and ſome other well-affected Burgeſſes, agreed in this Opinion; and all of them were poſitive that nothing could be done for Defence of the City, unleſs the Dragoons were brought back: Upon which Mr. *Groſet* roſe up, and ſaid he would go and endeavour to bring them back; and Provoſt *Drummond* and he went off upon that Errand, but did not again return.

Mr. *Lindſay*, the Secretary at War, aſked the Lord Provoſt, if he would ſend an Order to General *Gueſt* to re-deliver the Arms which had been ſent up to the Caſtle. Had the Provoſt been capable of any Degree of the bad Intention the Purſuer would now ſuppoſe, it was eaſy to comply with this Requeſt, for one-tenth Part of thoſe Arms would have been of more Value to the Rebels, than the whole Arms that were in the Hands of the Burghers: But, as his conſtant Intention was to bring no Arms or Ammunition from the Caſtle, but as there was neceſſary Occaſion for them, leſt they ſhould fall into the Hands of the Rebels, ſo, agreeably to his Intention, he anſwered Mr. *Lindſay*, 'That, before he gave 'ſuch Orders, he behoved to ſee a better Diſpoſition in the Inhabitants 'to Defend the City.'

For, ſince the Alarm of the Rebels burſting into the Town, moſt of the Inhabitants, dreading the Execution of their Threats againſt ſuch as ſhould be found in Arms, had quitted their Arms and gone home.

The Gentlemen who had gone to the Rebel Camp returned, and brought their Anſwer, requiring the City to receive their Prince as Prince Regent, and that no Arms or Ammunition ſhould be ſuffered to be carried off or concealed; and demanding an Anſwer againſt Two o'Clock in the Morning, their Camp being then at *Gray's Mill*, about two Miles diſtant from the City. After receiving this Anſwer, the Gentlemen of the Council, with ſome other Citizens, continued together deliberating what was to be done, till Two o'Clock in the Morning, many of them expecting Relief from the Dragoons, which Provoſt *Drummond* and Mr. *Groſet* had been ſent ſome time before to bring back, if poſſible, to their Aſſiſtance.

When the Clock ſtruck Two, and no Relief came, it was propoſed to ſend a ſecond Deputation, in order to gain a further Time, which was unanimouſly agreed to; and Bailie *Robert Baillie*, Provoſt *Coutts*, with two or three other Councillors, were ſent off to beg a Delay till nine or ten o'Clock, by reaſon the Burghers were all in Bed, and could not be conveened for ſeveral Hours: At the ſame time they were authorized by the Provoſt to ſay, 'That he would rather die than comply with the 'Condition of receiving their Prince as Regent of *Scotland*.'

Meſſages were at the ſame time ſent to the principal Inhabitants and Citizens, to come and meet with the Council, and concert what was proper to be done; but few of them had come, when the Deputies returned with an Anſwer much to the ſame Purpoſe with the former; and ſoon after Notice was brought, that a Part of the Rebel Army had ruſhed in at the *Netherbow* Port, and made themſelves Maſters of the City Guard, who had been ſo harraſſed with the extraordinary Duty all the preceding Week, and by being out under Arms for two Days before along with the Dragoons, that they were hardly fit to do any Duty, far leſs able to oppoſe an Army of Rebels, who were numerous and hardy enough to defeat a regular diſciplined Body of the King's Forces a few Days after.

From the above Narrative, which is in every Particular ſtrictly agreeable to the Fact as it happened, it appears in what manner this City had the Misfortune to fall into the Poſſeſſion of the Rebels, after all poſſible Care taken by the Provoſt, Magiſtrates and Council, to prevent it. Some of them indeed were of Opinion, as well as many other of the wiſeſt and beſt-affected Citizens in the Town, that the Scheme of defending the City, againſt an Attack, was in itſelf impracticable. The old Walls are hardly ſufficient to keep out ſmuggled Goods, but by no means able to endure any Siege or Attack: Beſides, there were ſo many other obvious Ways the Town might be forced to ſurrender, by throwing in Fire, burning the Houſes which adjoin to the Town in ſome Places where there is no Wall, cutting the Water-Pipes, which would ſtarve the Town in a Day, &c. that a great many well-affected Burgeſſes thought the beſt thing could be done for the Service of the Government, was to diſpoſe of any thing that could be of uſe to the Rebels, and leave the Gates of the City open.

But, though this was the Opinion of the Provoſt, as well as many of the Council and moſt ſubſtantial Citizens, yet, when the other Scheme was reſolved, the Provoſt exerted all the Vigilance he was capable of to make it effectual, as appears from the Circumſtances above related. He ſpent his whole Time in the publick Service, from Six o'Clock in the Morning to Twelve at Night, ſometimes till Four next Morning, going about viewing the publick Works, giving Orders, adviſing Expedients, taking and deſiring to have the beſt Advice: And, at laſt, when the Thing came to the Puſh, he was aſhamed to ſee many, who had appeared keen for the Scheme in the Beginning, unwilling to carry it to the laſt Execution; and that, in general, the Inhabitants were ſo terrified by the frightful Notion they had got of the Rebels, that he could find no Concurrence to make an Oppoſition, and keep out the City, not even from thoſe who had firſt taken Arms in its Defence. He expreſſed his Sentiments in as ſtrong a Manner in time of Danger, as the Proſecutors can now declaim at Eaſe, of the Reproach it would be to the City to be ſurrendered without Defence, after all the Preparations that had been made, and the Aſſurances they had given his Majeſty to that Purpoſe; and declared himſelf ready to mount the Walls with the ſmalleſt Number of Men that could ſupport him: But the Terror they were in from the Cruelty of the Rebels, and the little Proſpect they had of making an effectual Defence, without farther Aſſiſtance than they had within the Town, prevailed over his Expoſtulations, and rendered his Deſign abortive, which he was willing to have proſecuted at the Hazard of his Life.

At

the moſt extreme Hardſhips that ever were impoſed in this Country, to hinder my Witneſſes from coming up to me; ſo that, if your Lordſhips do not, in your great Juſtice and Goodneſs, think it proper to order, in the Manner your Lordſhips pleaſe, to have my Witneſſes come up, I muſt ſubmit to your Lordſhips. You may do what you pleaſe.

Lord High Steward. My Lord *Lovat*, I particularly aſked your Lordſhip, Whether you would call any Witneſſes to prove what you alledged in your Defence: To which you anſwered, That you would not.

Lord *Lovat.* My Lords, I would call Witneſſes upon no other Account than this that I have mentioned. I have Witneſſes to prove the Falſity of what has been ſaid by the Witneſſes againſt me; but, ſince I do not get Time to do that, I give it up.

Lord High Steward. Your Lordſhip does not attend to what I ſaid, which was, That I aſked you Two or Three times, Whether you would call any Witneſſes to prove any Part of your Defence: To which you ſaid, No. If you had any Witneſſes, why did you not call them at that Time?

Lord *Lovat.* This Miniſter was brought up as one of the Counter-Evidence. I told your Lordſhip, That I would call no Witneſſes that Day.

Lord High Steward. Is that Miniſter here?

Lord *Lovat.* He is here.

Lord High Steward. Gentlemen of the Houſe of Commons, It is certainly an irregular Method, in which the noble Lord at the Bar would proceed, to call Witneſſes after the Reply; but I deſire to know of you, Whether you oppoſe my Lord *Lovat*'s calling Witneſſes now?

Mr. Attorney General. My Lords, It is a Difficulty upon us, who are appointed Managers, to carry on this Proſecution, and would do it with all the Candour and Indulgence poſſible, to inſiſt, That the noble Lord, who is trying for his Life, ſhould not now be admitted to produce Witneſſes; but it is, perhaps, as difficult to know, how to diſpenſe with that which is the known Courſe and Method of Proceedings, merely becauſe the Priſoner, in an irregular and improper Manner, thinks fit to deſire it. The Managers do not oppoſe their being produced, from an Imagination that they would ſay any thing material for the noble Lord at the Bar; but, if your Lordſhips are to break through all Methods and Rules of Proceedings, your Lordſhips will conſider the Conſequence. The noble Lord at the Bar told your Lordſhips, That he did not intend to call any Witneſſes; and, upon that Foot, the Managers replied. He has now told you, That he would do it. But what is it that he would examine them to? Is it to make out any Part of his Defence to the Treaſon charged on him? That is not pretended; but to prove the Hardſhips he complains of, in being hindered from having his Witneſſes; and the noble Lord at the Bar wants your Lordſhips Order now for their coming. The Tendency of this, if it means any thing beſides Complaint, is to put off the Cauſe after it is heard; and, unleſs I had a greater Authority than I have at preſent, I cannot take upon myſelf, and I do not find that the reſt of the Gentlemen, who are Managers, can take upon them, to depart from the known eſtabliſhed Courſe of Proceeding, and to introduce a Precedent that may be of bad Conſequence. And, my Lords, I can hardly think, that the noble Lord at the Bar would inſiſt upon doing it, but becauſe he thought, that the Managers muſt inſiſt, that he ought not. There is nothing that has occurred now, that did not, muſt not, have occurred to him before; and when the Priſoner thought fit to declare to your Lordſhips, after having full Time allowed him for the matureſt Conſideration, and Counſel appointed for his Aſſiſtance, That he would not call any Witneſſes, you cannot but think ſuch Determination of his was upon the Advice that his Counſel gave him; and your Lordſhips will hardly think, that the noble Lord can, at preſent, thus unadviſedly determine to call any Witneſſes, which before, upon the Foot of the Advice he muſt be preſumed to have taken, he determined not to do, from any Expectation that they would be able to do him any real Service, but from Views of another Kind. The Managers therefore doubt not that your Lordſhips will proceed in this Caſe, as you would in any other, to conſider the Evidence, and give ſuch Judgment on the Whole, as your Lordſhips ſhall think moſt right and juſt.

Lord *Lovat.* My Lords, I have often told your Lordſhips of the Infirmities that I labour under: I have often mentioned them to you; and the Want of Memory is the thing I regret moſt. I have been a Cripple theſe Four Years, and therefore not very capable to go to head Men in the Rebellion; yet I am much ſurpriſed to hear that Honourable Perſon, that is at the Head of the Law, and very deſervedly placed there, that he ſhould loſe his Memory in an Hour's Time. My Lords, the Reaſon is plain to your Lordſhips, why I did not adduce Witneſſes this Morning: The Reaſon was, becauſe I begged of your Lordſhips Time to bring my Witneſſes up from *Scotland*, that they might be produced to prove my Innocence; and the only Reaſon that I now deſire to call theſe two Witneſſes, if your Lordſhips pleaſe, is, that they may prove before that great Man ſuch Examples of extreme Hardſhips, as he will never find out in all his Law-Books.

Lord High Steward. My Lord *Lovat*, You mentioned but One Witneſs at firſt; and now you mention Two: Who is the other?

Lord *Lovat.* The Two are, *Donald Fraſer* and *Alexander Fraſer*.

Lord High Steward. Gentlemen of the Houſe of Commons, Do you oppoſe my Lord *Lovat*'s being admitted, though it is irregular, to call theſe Two Witneſſes?

Mr. Attorney General. My Lords, I think we cannot, conſiſtently with our Duty to the Commons, give up this Point, which would be attended with many dangerous Conſequences, the whole of which your Lordſhips may not now be able to foreſee, if a Man, when he has cloſed his Defence, and ſays, That he will examine no Witneſſes, and the Managers have replied, ſhould afterwards be admitted, on ſuch a Pretence as this, to examine Witneſſes.

Earl of *Cholmondeley.* My Lords, I am ſatisfied that the Manner, in which the noble Lord at the Bar deſires now to call his Witneſſes, is totally different from any Proceeding that I ever ſaw; but, as the accuſed Lord, in his Defence, has alledged ſeveral Hardſhips that he has undergone, in having his Witneſſes prevented from attending his Tryal, and as that contains the higheſt Reflection upon the Government, and thoſe who are employed under it, I would therefore deſire to know of the noble Lord at the Bar, Whether, upon the Speech that he offered at the Bar, as it contains Objections to the Credit and Weight of the Evidence, and Complaints of undue Practices; whether, upon theſe Complaints, the noble Lord at the Bar deſires the Opinion of the Lords, whether they will give him further Time, in order to produce his Witneſſes?

Lord *Lovat.* My Lords, I was fully determined never to examine any Witneſſes, when I found I was under ſuch Diſadvantages; and I humbly beg your Lordſhips Protection and Kindneſs to give me Time.

MR. SOLLICITOR GENERAL.

My Lords,

THE Matter now agitated is of the utmoſt Conſequence not only to the preſent, but to all future Proceedings of this Kind; and I doubt, whether it is yet thoroughly underſtood, in its full Extent.

The Witneſſes the noble Lord now propoſes to call, are not to his Defence, or in Support of his Innocence.

If they were, how irregular ſoever it may be to offer them now, in my Opinion, and, I dare ſay, the other Managers are of the ſame, I ſhould be for conſenting to their being called. We ſhould never contend, though in Strictneſs we might, that any Evidence of this Kind came too late to be heard.

But the Deſign of calling them, as now opened, is to ſhew, that, from ſome Obſtruction given to the bringing up his Witneſſes, his Tryal ought to be put off to an indefinite Time; and that he may have new Orders to ſummon and compel Witneſſes to come from *Scotland*. This we oppoſe, becauſe the Application intended to be ſupported by it cannot now be made.

The Speech made by my Lord conſiſted of Two Parts: Firſt, a Deſire to put off his Tryal indefinitely; and, if your Lordſhips ſhould not think fit to comply with this Deſire, then he reſted his Defence upon Obſervations, and Objections to the Force and Credibility of that Evidence which had been offered to prove his Accuſation.

In this he was very proper; for though a Perſon accuſed calls no Witneſſes, yet, if the Charge againſt him is not clearly made out by legal and credible Evidence, he ought to be acquitted. Being aſked, whether he had any Witneſſes to call, he declared he had none.

Had he deſired to take your Lordſhips Opinion, whether the Tryal ſhould not ſtay till he could ſend to *Scotland* for Witneſſes, we ſhould have oppoſed it. Your Lordſhips calling to the Managers to proceed, was a Determination, that you would not deliberate about ſtaying the Trial.

I own freely to your Lordſhips, the Reaſon why I did not take particular Notice of the noble Lord's Complaint, was, becauſe I underſtood it to be meant as an Artifice to palliate his not going into any Evidence: And I did not think it neceſſary, I did not care, to endeavour to wipe off from his Apology any Varniſh of this Kind with which he thought fit to colour it. One thing, had I thought of it, I would have taken notice of: He was pleaſed to ſay, that ſeveral Witneſſes, brought up in Support of the Proſecution, were not called by the Managers, becauſe they would have proved the Hardſhips he complains of. I can aſſure your Lordſhips, and every other Gentleman of the Committee will join in what I ſay, no one Witneſs was left unexamined for that Reaſon. It is true, more Perſons were brought up to be Witneſſes than we called; but the Reaſon of not calling them was, either becauſe we thought what they had to ſay not material enough; or elſe, becauſe they were liable to an Objection the noble Lord had made; which, whether well or ill founded, we did not care to give your Lordſhips the Trouble of diſputing.

In conſequence of what fell from your Lordſhips, we told the noble Lord, in the Courſe of the Tryal, that any Witneſs examined by us ſhould attend to be examined by him, if he deſired it, and would give Notice: We ſhould have done the ſame with regard to any Perſon brought up as a Witneſs, tho' not examined.

As to this whole Matter of Complaint, the Managers are intire Strangers to it. Nothing of that Kind has been done with their Privity or Knowledge.

And this brings me to the Point, Whether Witneſſes ſhall now be heard at this Time, to prove any ſuch Ground for putting off the Trial *ſine Die*.

We oppoſe it, becauſe, true or falſe, the Tryal cannot now be put off; and it would be a moſt dangerous Precedent, to go into an *Ex parte* Examination of ſuch collateral Matters. Hearing the Evidence ſuppoſes your Lordſhips can do ſomething in Conſequence of it: If you cannot, it would be irregular and improper to go into it.

Before your Lordſhips appoint the Time of Tryal you take into Conſideration the Nature of the Charge, and the Place where the Facts ariſe, in order to allow a reaſonable Time for Preparation, and bringing Witneſſes.

Your Lordſhips did ſo in the preſent Caſe; and, after weighing all Circumſtances, you appointed the 23d of *February*.

If, thro' any Accident, the Time fixed is too ſhort, your Lordſhips are always open to Applications, which muſt be ſupported by Evidence, to ſhew the Delay is not affected; that all due Diligence has been uſed; and that the Witneſſes are material, and expected to come within a certain Time.

Upon the Application of the noble Lord, your Lordſhips deferred this Tryal to the 5th of *March*.

Upon another Application by him, you deferred it to the 9th of *March*, the Day named in his Petition.

If he had any Ground ſufficient for deferring the Tryal longer, he ſhould have applied to your Lordſhips before it began; but, upon the Ground now mentioned, it could not have been deferred, even in that Way, becauſe it is plain, this Matter, whatever there be in it, was within his Knowledge, at the Time of the other Applications. *Hugh Fraſer*, his Agent, who went down, as his Lordſhip ſays, to bring up his Witneſſes, made an Affidavit, annexed to a Petition preſented by his Lordſhip on the 2d of *March*, for putting off the Tryal; and was called in, and examined at your Lordſhips Bar.

There was likewiſe an Affidavit annexed to his Lordſhip's Petition, preſented on the 3d of *March*; and not a Syllable of this Complaint ever ſuggeſted; which ſhews, that they thought no Streſs could be laid upon it;

it; and that it was not to be supported. In the Courſe of the Trial hitherto your Lordſhips have heard nothing of it; on the contrary, you have heard of his Witneſſes, and what they were to prove.

There is no Precedent of putting off a Trial indefinitely, after the Evidence for the Proſecution is cloſed; I dare ſay there never will be ſuch a Precedent. At ſooneſt this Trial could not come on again before the next Seſſion of Parliament.

We oppoſe the attempting to prove a Matter upon which your Lordſhips cannot now do any thing; but I deſire it may be underſtood, that we do not oppoſe, tho' it be at an improper Time, the calling any Witneſſes upon the Merits of his Defence, either to diſprove the Evidence againſt him, or to aſſert his own Innocence.

Then the Duke of *Newcaſtle* moved to adjourn to the Chamber of Parliament: And the Lord High Steward going back to his Chair, the Houſe was adjourned accordingly: And then the Lords returned in the ſame Order as before.

After ſome Time, the Lords, and others, returned into *Weſtminſter-Hall*, in the ſame Order as uſual; and the Peers having taken their Places, and the Lord High Steward being ſeated in his Chair, the Houſe was reſumed.

Then Proclamation was made for Silence, as uſual.

L. H. S. Lieutenant of the *Tower* of *London*, take the Priſoner from the Bar; but you are not to take him away to the *Tower* yet.

Lord *Lovat*. If your Lordſhips would ſend me to the *Highlands*, I would not go to the *Tower* any more.

[*The Priſoner was taken from the Bar accordingly.*]

L. H. S. Your Lordſhips have heard and conſidered the Evidence in this Cauſe, and every thing that has been alledged by the Managers for the Houſe of Commons, and by the Priſoner. The ſolemn and eſtabliſhed Method of your Proceedings requires, that I ſhould aſk your Lordſhips Opinions ſeverally upon the Queſtion, Whether the noble Lord the Priſoner is Guilty of the High-Treaſon whereof he ſtands impeached, or Not Guilty; and that thoſe Opinions ſhould be given in the Abſence of the Priſoner. My Lords, this has always been your Rule; and after that is done, the Priſoner is to be brought to the Bar again, and to be acquainted by me with the Reſult of thoſe Opinions. Is it your Lordſhips Pleaſure to proceed now to give your Opinions upon the Queſtion of Guilty, or Not Guilty?

Lords. Ay, ay.

Proclamation was then made for Silence, as before.

Then the Lord High Steward ſtood up uncovered; and, beginning with the youngeſt Peer, ſaid,

L. H. S. Henry Arthur Lord *Herbert* of *Chirbury*, What ſays your Lordſhip? Is *Simon* Lord *Lovat* Guilty of the High-Treaſon whereof he ſtands impeached, or Not Guilty?

Whereupon *Henry Arthur* Lord *Herbert* of *Chirbury*, ſtanding up in his Place uncovered, and laying his Right Hand upon his Breaſt, anſwered,

Lord *Herbert*. Guilty, upon my Honour.

In like Manner, the ſeveral Lords aftermentioned, being all that were preſent, being reſpectively aſked the ſame Queſtion, anſwered as followeth:

Samuel Lord *Sandys*. Guilty, upon my Honour.
Richard Lord *Edgecumbe*. Guilty, upon my Honour.
Stephen Lord *Ilcheſter* and *Stavordale*. Guilty, upon my Honour.
Henry Lord *Montfort*. Guilty, upon my Honour.
William Lord *Talbot*. Guilty, upon my Honour.
Robert Lord *Raymond*. Guilty, upon my Honour.
John Lord *Monſon*. Guilty, upon my Honour.
Matthew Lord *Ducie*. Guilty, upon my Honour.
Charles Lord *Cadogan*. Guilty, upon my Honour.
Robert Lord *Romney*. Guilty, upon my Honour.
Richard Lord *Onſlow*. Guilty, upon my Honour.
Allen Lord *Bathurſt*. Guilty, upon my Honour
Samuel Lord *Maſham*. Guilty, upon my Honeur.
Thomas Lord *Trevor*. Guilty, upon my Honour.
Francis Lord *Middleton*. Guilty, upon my Honour.
Buſſy Lord *Manſell*. Guilty, upon my Honour.
George Lord *Hay*. Guilty, upon my Honour.
James Lord *Somervile*. Guilty, upon my Honour.
George William Lord *Hervey*. Guilty, upon my Honour.
Charles Lord *Cornwallis*. Guilty, upon my Honour.
John Lord *Berkeley* of *Stratton*. Guilty, upon my Honour.
John Lord *Ward*. Guilty, upon my Honour.
William Lord *Byron*. Guilty, upon my Honour.
Thomas Lord *Leigh*. Guilty, upon my Honour.
James Lord *Strange*. Guilty, upon my Honour.
Charles Lord *Maynard*. Guilty, upon my Honour.
John Lord *St. John* of *Bletſoe*. Guilty, upon my Honour.
Francis Lord *North* and *Guilford*. Guilty, upon my Honour.
Hugh Lord *Willoughby* of *Parham*. Guilty, upon my Honour.
Edward Lord *Wentworth* of *Nettleſted*. Guilty, upon my Honour.
Richard Lord *Willoughby de Broke*. Guilty, upon my Honour.
Ferdinando Dudley Lord *Dudley*. Guilty, upon my Honour.
John Lord *Delawar*. Guilty, upon my Honour.
James Viſcount *Leinſter*. Guilty, upon my Honour.
George Viſcount *Torrington*. Guilty, upon my Honour.
Simon Viſcount *Harcourt*. Guilty, upon my Honour.
Hugh Viſcount *Falmouth*. Guilty, upon my Honour.
John Viſcount *St. John*. Guilty, upon my Honour.
Henry Viſcount *Lonſdale*. Guilty, upon my Honour.
William Viſcount *Hatton*. Guilty, upon my Honour.
Charles Viſcount *Townſhend*. Guilty, upon my Honour.
Thomas Viſcount *Fauconberg*. Guilty, upon my Honour.
Richard Viſcount *Say* and *Seale*. Guilty, upon my Honour.
John Earl of *Buckinghamſhire*. Guilty, upon my Honour.
Francis Earl *Brooke*. Guilty, upon my Honour.
Hugh Earl *Clinton*. Guilty, upon my Honour.

Thomas Earl of *Leiceſter*. Guilty, upon my Honour.
John Earl of *Portſmouth*. Guilty, upon my Honour.
William Earl of *Bath*. Guilty, upon my Honour.
Robert Earl of *Orford*. Guilty, upon my Honour.
Thomas Earl of *Effingham*. Guilty, upon my Honour.
John Earl of *Aſhburnham*. Guilty, upon my Honour.
Benjamin Earl *Fitzwalter*. Guilty, upon my Honour.
James Earl *Waldegrave*. Guilty, upon my Honour.
Robert Earl *Ker*. Guilty, upon my Honour.
William Earl *Graham*. Guilty, upon my Honour.
Thomas Earl of *Pomfret*. Guilty, upon my Honour.
George Earl of *Macclesfield*. Guilty, upon my Honour.
Philip Earl of *Harborough*. Guilty, upon my Honour.
Philip Earl *Stanhope*. Guilty, upon my Honour.
William Earl *Cowper*. Guilty, upon my Honour.
George Earl of *Halifax*. Guilty, upon my Honour.
John Earl of *Granville*. Guilty, upon my Honour.
Charles Earl of *Tankerville*. Guilty, upon my Honour.
William Earl of *Strafford*. Guilty, upon my Honour.
Laurence Earl *Ferrers*. Guilty, upon my Honour.
Edward Earl of *Oxford*, and Earl *Mortimer*. Guilty, upon my Honour.
Charles Earl of *Portmore*. Guilty, upon my Honour.
James Earl of *Findlater* and *Seafield*. Guilty, upon my Honour.
James Earl of *Moray*. Guilty, upon my Honour.
George Earl of *Cholmondeley*. Guilty, upon my Honour.
Francis Earl of *Godolphin*. Guilty, upon my Honour.
John Earl *Powlett*. Guilty, upon my Honour.
William Earl of *Jerſey*. Guilty, upon my Honour.
William Earl of *Coventry*. Guilty, upon my Honour.
William Henry Earl of *Rochfort*. Guilty, upon my Honour.
George Earl of *Warrington*. Guilty, upon my Honour.
Robert Earl of *Holderneſs*. Guilty, upon my Honour.
Baptiſt Earl of *Gainsborough*. Guilty, upon my Honour.
Willoughby Earl of *Abingdon*. Guilty, upon my Honour.
Auguſtus Earl of *Berkeley*. Guilty, upon my Honour.
George Henry Earl of *Lichfield*. Guilty, upon my Honour.
Anthony Aſhley Earl of *Shaftesbury*. Guilty, upon my Honour.
Richard Earl of *Burlington*. Guilty, upon my Honour.
Francis Earl of *Doncaſter*. Guilty, upon my Honour.
Henry Earl of *Carliſle*. Guilty, upon my Honour.
George Earl of *Cardigan*. Guilty, upon my Honour.
Philip Dormer Earl of *Cheſterfield*. Guilty, upon my Honour.
Daniel Earl of *Winchelſea* and *Nottingham*. Guilty, upon my Honour.
Harry Earl of *Stamford*. Guilty, upon my Honour.
Charles Earl of *Peterborough* and *Monmouth*. Guilty, upon my Honour.
John Earl of *Weſtmorland*. Guilty, upon my Honour.
Edward Earl of *Warwick* and *Holland*. Guilty, upon my Honour.
Henry Earl of *Lincoln*. Guilty, upon my Honour.
Henry Earl of *Pembroke* and *Montgomery*. Guilty, upon my Honour.
Thomas Marquis of *Rockingham*. Guilty, upon my Honour.
William Marquis of *Lothian*. Guilty, upon my Honour.
John Marquis of *Tweeddale*. Guilty, upon my Honour.
Henry Duke of *Chandos*. Guilty, upon my Honour.
Robert Duke of *Mancheſter*. Guilty, upon my Honour.
William Duke of *Portland*. Guilty, upon my Honour.
Thomas Duke of *Newcaſtle*. Guilty, upon my Honour.
Evelin Duke of *Kingſton*. Guilty, upon my Honour.
Peregrine Duke of *Ancaſter* and *Keſteven*, Lord Great Chamberlain. Guilty, upon my Honour.
Archibald Duke of *Argyll*. Guilty, upon my Honour.
John Duke of *Montagu*. Guilty, upon my Honour.
John Duke of *Rutland*. Guilty, upon my Honour.
Thomas Duke of *Leeds*. Guilty, upon my Honour.
Charles Duke of *Bolton*. Guilty, upon my Honour.
Charles Duke of *St. Albans*. Guilty, upon my Honour.
Charles Noel Duke of *Beaufort*. Guilty, upon my Honour.
Charles Duke of *Richmond*. Guilty, upon my Honour.
Charles Duke of *Grafton*, Lord Chamberlain of his Majeſty's Houſhold. Guilty, upon my Honour.
William Duke of *Devonſhire*, Lord Steward of his Majeſty's Houſhold. Guilty, upon my Honour.
Lionel Cranfield Duke of *Dorſet*, Lord Preſident of the Council. Guilty, upon my Honour.

Then the Lord High Steward laying his Right Hand upon his Breaſt, ſaid,

Lord High Steward. My Lords, I am of Opinion, That *Simon* Lord *Lovat* is Guilty of the High-Treaſon whereof he ſtands impeached, upon my Honour.

L. H. S. My Lords, There are One hundred and Seventeen of your Lordſhips preſent; and you have unanimouſly found, That *Simon* Lord *Lovat* is Guilty of the High-Treaſon whereof he ſtands impeached.

Is it your Lordſhips Pleaſure, that he ſhould be brought to the Bar, and acquainted therewith?

Lords. Ay, ay.

Proclamation was made for Silence; and another Proclamation for the Lieutenant of the Tower *to bring the Priſoner to the Bar; which was done in the ſame Order as before: And then Proclamation was again made for Silence, as uſual.*

L. H. S. Simon Lord *Lovat*, The Lords have conſidered the Charge of High-Treaſon, which has been brought againſt you by the Houſe of Commons: They have conſidered the Evidence, and all that has been offered to maintain the Charge: They have alſo conſidered every thing that has been alledged in your Lordſhip's Defence: And, upon the whole Matter, their Lordſhips have unanimouſly found, that you are guilty of the High-Treaſon whereof you ſtand impeached.

Lord Preſident. My Lords, I move your Lordſhips to adjourn to the Chamber of Parliament.

L. H. S. Is it your Lordſhips Pleaſure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

The Houſe was accordingly adjourned to the Chamber of Parliament; and the Lords and others returned in the ſame Order as before.

And the Houſe being reſumed in the Chamber of Parliament,

Ordered, That this Houſe will proceed further, in order to the giving of Judgment againſt *Simon* Lord *Lovat*, To-morrow, at Eleven of the Clock in the Forenoon, in *Weſtminſter-Hall*.—And

A Meſſage was ſent to the Houſe of Commons, by the former Meſſengers, to acquaint them therewith.

Ordered, That the Lieutenant of the *Tower* of *London*, or his Deputy, do take back *Simon* Lord *Lovat*, and bring him again to the Bar of this Houſe in *Weſtminſter-Hall*, To-morrow, at Eleven of the Clock in the Forenoon.

Thurſday *the* 19*th of* March, 1746.

The Seventh Day.

ABOUT Eleven of the Clock in the Forenoon the Lords and others came from the Chamber of Parliament, in the ſame Order as on the Firſt Day, into *Weſtminſter-Hall*; where the Commons, and their Managers, were in the Seats prepared for them reſpectively, as before: And the Lords took their Places in the Court, and the Lord High Steward in his Chair.

Lord High Steward. The Houſe is reſumed. Is it your Lordſhips Pleaſure, that the Judges have Leave to be covered?

Lords. Ay, ay.

Then the Serjeant at Arms made Proclamation for Silence as uſual, and afterwards the following Proclamation:

Serjeant at Arms. Oyes, Oyes, Oyes! Lieutenant of the *Tower* of *London*, bring forth your Priſoner *Simon* Lord *Lovat* to the Bar, purſuant to the Order of the Houſe of Lords to you directed.

The Deputy Governor of the *Tower* brought the Priſoner to the Bar, in the like Form as before; and then he kneeled down.

Lord High Steward. Your Lordſhip may riſe.

The Serjeant at Arms, by Direction of the Lord High Steward, made another Proclamation for Silence.

Lord High Steward. *Simon* Lord *Lovat*, When your Lordſhip was laſt at this Bar, I acquainted you, That your Peers had found you Guilty of the High Treaſon whereof you ſtand impeached, by means whereof you are convicted of that High Treaſon: And I am now to aſk your Lordſhip, What you have to ſay, Why Judgment of Death ſhould not paſs upon you, according to Law?

Lord *Lovat.* My Lords, I am very ſorry I gave your Lordſhips ſo much Trouble in my Trial; and I give you a Million of Thanks for your being ſo good, in your Patience and Attendance, whilſt it laſted. I thought myſelf very much loaded by one *Murray*, who, your Lordſhips know, was the bittereſt Evidence there was againſt me. I have ſince ſuffered by another Mr. *Murray*, who, I muſt ſay with Pleaſure, is an Honour to his Country, and whoſe Eloquence and Learning is much beyond what is to be expreſſed by an ignorant Man like me. I heard him with Pleaſure, tho' it was againſt me. I have the Honour to be his Relation, tho' perhaps he neither knows it, nor values it. I wiſh, that his being born in the North may not hinder him from the Preferment that his Merit and Learning deſerves. Till that Gentleman ſpoke, your Lordſhips were inclined to grant my earneſt Requeſt, and allow me further Time to bring up Witneſſes to prove my Innocence; but, it ſeems, that has been over-ruled. All now that I have to ſay, is a little in Vindication of my own Character. I was pointed out by the Honourable Managers as a moſt inveterate Enemy of the Royal Family now upon the Throne, and the moſt zealouſly attached to a Family that is not like to come upon the Throne. My Lords, I humbly beg, that your Lordſhips will take notice, that my Attachment to the Family of *Hanover* is proved without Conteſt, after the great Services I have done. I was honoured by the King's Favour and Countenance, that made me ſo naturally and gratefully attached to his Perſon and Family; and as I was for Twelve Years in *Germany*, almoſt every Day in Converſation with his Majeſty and his Family, I thought it neceſſary to know the Hiſtory of his Family; and I read it very particularly; both the publick and private Hiſtory of it: And I muſt ſay, that ſince your Lordſhips, and this Nation in general, thought fit to have a King from *Germany*, you could not have choſe one from a more illuſtrious Houſe; ſo great, that ſeveral Emperors of *Germany* have been elected from out of that Family; and they always behaved with great Diſtinction, both in the Wars, and in their own Country. I will only give one Inſtance of that, which I had from my dear Maſter the late King's own Mouth (of glorious Memory). I heard him ſay this to the Emperor's Envoy, after the Siege of *Belgrade*, when the Envoy told him, That there were Forty thouſand Janiſſaries killed upon the Spot: "Why, ſays he to the Envoy, I ſhall be "very glad of it; but I know the Nature of thoſe Animals: If 40,000 "of them are killed at Night, in the very Place of thoſe that are killed "40,000 will riſe up the next Morning. I have had Experience of the "War with the *Turks:* I was with 6000 of my own Men, at the Siege "of *Buda:* And, I believe, they will do me the Juſtice to ſay, that both "I and my Men behaved as we ought to have done." This ſhews, my Lords, that I always had a true Notion of the Greatneſs and Illuſtration of the Family of *Hanover*. I gave ſignal Proofs of it in the Year 1715; and I beg your Lordſhips will indulge me to repeat a little of what paſſed at that Time, becauſe there are ſeveral Lords here that were not then born. My Lords, when I came into *England*, in the Year 1714, my Deſign was, that, with the Aſſiſtance of my Friends, the late Duke of *Argyll*, and the preſent Duke, I ſhould endeavour to get my Remiſſion, to go down into my own Country, to endeavour to recover my Fortune, and to ſerve the Government faithfully, in what I was able. In this Situation I was, when my Lord *Marſhal* ſet up the Pretender's Standard at *Aberdeen*. It did much alarm the Court. I was ſent for, and particularly ſpoken to by the Earl of *Sunderland*, and my Lord *Townſhend*, who were always my Friends. My Lords, this preſent Duke of *Argyll* was ſo generous, that he would follow his brother to *Scotland*, and expoſe his Life as a Volunteer; and he ſuffered by it; for at the Battle of *Sheriff-Muir*, he had a Ball went through his Side and Arm, and had almoſt loſt his Life, if it had not been by the extraordinary Skill and Diligence of one Mr. *Mac Gill*, a Surgeon, who attended him. When he went down, he told me, Dear *Lovat*, you muſt do your beſt for us now; and I deſire you may meet me in *Badenoch*, with all the Men you can get together; and I will gather all the Men I can in *Argyllſhire*, and meet you there. I went down on Horſeback, and he went down Poſt. Before I came to my own Country, I found that the Rebels were got together in vaſt Numbers; and as *Inverneſs* was the great Capital of all thoſe Parts, my Lord *Marſhal* reſolved to ſend 2000 Men to reinforce the Garriſon of *Inverneſs*, that it might not be ſurpriſed. The *Mac Leods* and the *Mac Donalds* were gathered together, in order to go to *Inverneſs*. When I found it was impoſſible for the Earl of *Ilay* to come with his Men from *Argyllſhire*, I reſolved to diſtinguiſh myſelf, even though by a deſperate Stroke. I had gathered together 200 Men at *Strathardle*; with theſe I marched to *Inverneſs*, and inveſted it. Sir *John Mac Kenzie*, the then Governor, had 1000 Men in the Town; ſo I found there was nothing for it but Boldneſs. I ſent a Meſſage, which, indeed, looked like a *French* Gaſconade, that I would blow him, and his Garriſon, and the Caſtle, and the ſtrong Steeple, into the Air, if they did not ſurrender to me before Ten o'Clock the next Day; though I had not Two Pounds of Powder. At the ſame time, I ſent a Party of Men, in which was a pretty Gentleman of Skill, one Captain *Roſs*, the Laird's Brother. Whether Sir *John Mac Kenzie* heard this Over-night, I can't tell; but he enquired, If I was fully reſolved to attack the Town. He told him poſitively, That I was. Says he, If *Simon* be there, he is a deſperate Fellow; I believe I muſt leave the Town to him: And accordingly, he run off that Night, with all his Men. This I did, my Lords, before any of the loyal Clans to this Government were raiſed. After this they were pleaſed to declare me General of the King's Forces there. When I got together near 2000 Men, of which 1000 were my own, I reſolved to attack Lord *Seaforth*, who was coming with 2500 Men, to join Sir *John Mac Kenzie*, at *Inverneſs*, or to fight any of the Rebels that ſhould meet him: He called them ſo. He ſtood his Ground till I came within Half a Mile of him. I drew up the little Army I had in pretty good Order, being an Officer for many Years before: And I can ſay to your Lordſhips, that, I believe, I am the oldeſt Officer in Commiſſion in *Great Britain*; for Fifty Years ago I was Captain of Grenadiers in King *William*'s Army. They were the *Sutherland* Men, Lord *Ray*'s Men, and ſome of the *Grants* and *Monros*: But when I came to march up the Hill, to attack Lord *Seaforth*, I had none followed me but the *Munros*. When they found I was come within Sight of them, they made a precipitate Retreat to a Bridge that was near them, over a River: And afterwards, by Lord Preſident's Advice, who was then in the Army, Lord *Seaforth* came, and ſubmitted to me, as General of King *George*'s Forces, promiſing immediately to lay down his Arms; which he did. This Submiſſion was brought up, and ſhewn to the Miniſtry. I then went, and reduced the Duke of *Gordon*, who gave me the moſt ample Submiſſion I ever read, to the King; and Aſſurances of Fidelity to him and to the Government. That Submiſſion I likewiſe ſhewed; and, if they are not conſumed in my Houſe that was burnt, they are ſtill extant. My Lords, then I purſued the Rebels from Place to Place, and chaſed them from Hill to Hill. On this Expedition I loſt my only Brother, who was a very brave young Fellow; and I never left off purſuing the Rebels till the Rebellion was ſuppreſſed and extinguiſhed: So that I may fairly ſay, that I aſſiſted to keep the Crown upon the late King's Head, as much, if not more, than any one Man of my own Rank in *Britain*. I had then ſeveral Invitations to come to Court; and had Three Letters of Thanks from the King's Perſon, by the Hands of the great Earl *Stanhope*, who was Secretary of State then; in which he ſays, that he was ſo ſenſible of my extraordinary and ſignal Services, that he would, all his Life, give me ſuch Marks of his Favour, as wou'd oblige all the Country to be zealous and faithful to me. Upon this I came to Court; and I was not diſappointed. I believe there are Lords in this Houſe, I am ſure there are a great many yet alive, that know I was a particular Favourite of the late King's; I believe more than any one of my own Rank in *Scotland*. I remember my Lord *Townſhend* told me one Day, who was my particular Friend, That I was certainly a great Favourite of the King; and if all the Miniſtry ſhould join together to hurt me, that it was not in their Power to do it; and that he would do me all the Service he could; and ſaid, the King would not refuſe any thing he ſhould aſk for me: And the King, to my own certain Knowledge, reproached the *Scotch* Miniſtry, that I was not provided for. But that unhappy Nation has been always divided amongſt themſelves, between the Family of the *Argylls*, and that of the *Montroſſes*; ſo that they, knowing me to be a Relation and Partizan of the Family of *Argyll*, they never would do any thing for me. At laſt, the King ſaid, he muſt do it himſelf; and ſent for the *Hanoverian* Miniſter, and told him, That he muſt immediately fix upon a Way to give me a Penſion: At laſt, it was ordered by the King's particular Inſtruction, that I ſhould have a Letter, or Patent, for myſelf, for 300 *l.* a Year; which I enjoyed till now, for any thing I know. Then all the *Engliſh* Miniſters, every one of them, were my Friends; and they propoſed that I ſhould go into the Army. Lord *Cadogan*, who, in the Year 1716, went with an Army into *Scotland*, ſent for me; and deſired me to bring up 500 Men to *Badenoch*, to eſcort him to *Inverneſs*: Which I did. They gave out, that the *Highlanders* were to attack him in the Woods: But when they heard, that I was with him, with the beſt Part of my Clan, they did not think it proper to attack him. After Lord *Cadogan* came to *Inverneſs* he ſent for Sir *Robert Munro*, who was killed at the Battle of *Falkirk*: He called me into his Cloſet with him, and told me, We are now fully convinced, Lord *Lovat*, that it was you, and a few of the King's Friends that were joined to you, that ſubdued and ſuppreſſed the Rebellion, and extinguiſhed it; and that all that was wrote in the Gazette about Lord *Sutherland*, was all Romance. Now, I am ſo ſenſible of thoſe Services that you have done the Government, that, if you will join yourſelf to the Duke of *Marlborough*, to the Earl of

of *Sunderland*, and to me, that are thought the Favourites of the King, we will, in the firſt Place, immediately make you a Major-General: You ſhall have a Regiment of Foot, or Dragoons, and 3000 *l.* a Year Penſion, during your Life. My Lords, if I had accepted of that Offer, I had now had the beſt Eſtate in *Scotland*; and would have been fair for being one of the Field-Marſhals of *England*, being the oldeſt Officer: But, my Lords, the Condition was too ſevere; and I had rather never have any Being than be ungrateful. The late Duke of *Argyll*, I mean this Duke of *Argyll*'s Father, who was one of the greateſt Men that has been in our Country for many Ages; he was a Father to me, and protected me as his own Child; he got me Two Remiſſions from King *William*; and, as he was carrying another Remiſſion in, to be ſigned by Queen *Anne* (King *William*, to my Misfortune, having died that Year), he found the Door ſhut; that is, he found that Three Men had turned out all King *William*'s Friends, of whom he was one, and the Duke of *Queensberry*, and ſeveral others; and that ſhe brought in Two Families, the Duke of *Hamilton*, and the Marquis of *Athol*, whom ſhe made a Duke; and to pleaſe him, with whom my Family unfortunately had a Quarrel about an Eſtate; to pleaſe him, I ſay, ſhe put 2000*l.* upon my Head, which was 1000*l.* more than ever was uſual. So I told the Duke of *Argyll*, that I had nothing for it, but to go to *Hanover*, and there to live and die with Fidelity to the Duke of *Hanover*. He told me, that he was well aſſured, that the Duke of *Hanover* would be glad to receive me; but, as he was then declared the Proteſtant Heir, and that Succeſſion depended much upon the good Will of Queen *Anne*, he muſt, upon her Deſire, be obliged to ſend me back to *England*; and that he did not know a ſafe Way for me but to go to *France*, becauſe we were at War with them then. And that was the firſt thing, my Lords, that obliged me to go to *France*, which was the Foundation of my Misfortunes. Now, my Lords, after what I have told you, I muſt humbly ſubmit it to your Lordſhips, whether you do not think it is improbable, that I ſhould be an Enemy to King *George*, and his Family: I, that received more Marks of Favour from the late King *George* than any Subject in the North; I, that got my Eſtate ſettled in his Time, both by the Houſe of Commons and Peers; I, that expected never to be out of Favour with the Government, being very zealous to promote any thing that was for the Good of it. My Lords, I commanded a *Highland* Company for Fifteen Years, as their Colonel: And the Country can teſtify, that there was no Depredation, Theft, or Robbery, committed there during that Time: I took Twenty-five *Highland* Robbers in the *Highlands* in one Night, and brought them all Priſoners to the Tolbooth of *Inverneſs*. I continued to act in the Manner that General *Wade* from time to time ordered me. I own I did not expect, that he, who reviewed my Company every Year, and called it the beſt Company that he ever ſaw in his Life—I muſt make the Lords laugh upon that Occaſion: He told me, that Mr. *Pulteney*, now Earl of *Bath*, ſaid, in the Houſe of Commons, that he knew old *Lovat* very well; that he would never have a Company but in his Pocket: And now I can tell him, That he did not ſpeak Truth. General *Handaſide* was preſent, and his Brother, who is a very pretty Gentleman, when he declared, that he never did ſee ſuch a fine Company in any Country that he was ever in: And he appealed to the Two *Handaſides*, and the other Officers that were there, whether it was not true; and they all agreed in it. So that, my Lords, after this, I very little expected, that, without ever blaming me, or imputing any Crime to me, my Commiſſion ſhould be broke; and not only ſo, but that I ſhould be ordered to keep 400 Men from it in the Country, to be put into another Company, to make up a Regiment that General *Wade* procured for his Favourite Colonel *Durore*. My Lords, I was certainly much out of Humour to ſee myſelf ſo uſed; but I never imputed it to the King, nor to his Prime Miniſter Sir *Robert Walpole*, afterwards Earl of *Orford*. And this is all the Grounds of my being out of Temper, or that they can lay hold of, to ſay I was againſt the Government. So, after what I have told your Lordſhips, and the Manner that I have been uſed, I hope your Lordſhips will not think I was capable of any malicious Deſign againſt the Government. And, indeed, it was a Loſs to the Government more than to me, that my Company was broke, becauſe, if I had commanded the *Highland* Company, as I did for Fifteen Years, the Country had been peaceable, and there had been no Rebellion.

Lord High Steward. My Lord *Lovat*, I muſt put your Lordſhip in mind of the Queſtion I aſked you, Whether you have any thing to offer in Arreſt of Judgment?

Lord *Lovat.* Whatever way I may be over-ruled, I will ſay, to my dying Hour, that I have met with the greateſt Hardſhips ever practiſed in *Britain*; and I ſtill inſiſt, that I ſhall get the Benefit that all Subjects have a Right to, of adducing Witneſſes, that may be for the Safety of their Lives and Intereſts.

L. H. S. Your Lordſhip has heard the Opinion of the Lords already.

Lord Preſident. I move your Lordſhips to adjourn to the Chamber of Parliament.

L. H. S. Is it your Lordſhips Pleaſure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

L. H. S. This Houſe is adjourned to the Chamber of Parliament.

Then the Lords, and others, returned to the Chamber of Parliament, in the ſame Order they came down: And the Houſe being there reſumed,

The Proceeding entered in the Journal of the 19th of *March*, 1715, in relation to the Giving of Judgment againſt *George* Earl of *Wintoun* was read: Which being done,

Their Lordſhips were informed, That the Commons, with their Speaker, and the Mace, were at the Door: Whereupon they were called in: And Mr. Speaker, at the Bar, ſaid,

My Lords,

THE Knights, Citizens, and Burgeſſes, in Parliament aſſembled, did, at this Bar, in the Name of themſelves, and of all the Commons of *Great Britain*, impeach *Simon* Lord *Lovat* of High Treaſon, and exhibited Articles againſt him, and have made good the ſame: I do therefore, in the Name of the Knights, Citizens, and Burgeſſes, in Parliament aſſembled, and of all the Commons of *Great Britain*, demand Judgment of your Lordſhips againſt *Simon* Lord *Lovat* for the ſaid High Treaſon.

And they being withdrawn,

Ordered, That, when Judgment ſhall be pronounced againſt the ſaid Lord *Lovat*, it be the ſame as was pronounced againſt the late Earl of *Wintoun*.

Then the Houſe was again adjourned into *Weſtminſter-Hall*: And the Peers, and others, went down in the ſame Order as before; and the Peers being in their Places, and the Lord High Steward in his Chair, and the Commons and their Managers in the Seats prepared for them reſpectively; the Houſe was reſumed: And the Serjeant at Arms made Proclamation for Silence, as uſual.

Lord High Steward. My Lord *Lovat*, As ſome Time has intervened ſince I laſt aſked you the Queſtion, Whether you had any thing to offer in Arreſt of Judgment, I am now to aſk you again, Whether you have any thing to ſay, why Judgment of Death ſhould not paſs upon you, according to Law?

Lord *Lovat.* No: I have ſaid all that I had to ſay; and beg your Lordſhips Pardon for the rude, long Diſcourſe I made to your Lordſhips. I had great need of my Couſin *Murray*'s Eloquence for half an Hour, and then it would have been more agreeable.

Proclamation was made for Silence, as uſual.

Lord High Steward.

Simon Lord *Lovat*,

YOU have been impeached by the Commons of *Great Britain*, in Parliament aſſembled, of High-Treaſon, charged upon you by particular Articles, containing different Species, and various Overt Acts, of that Treaſon.

To theſe Articles your Lordſhip thought fit to put in an Anſwer, amounting to a general Plea of Not guilty to the Whole; and, after a long and impartial Trial, upon the cleareſt and moſt convincing Evidence, againſt which you offered no Defence by Witneſſes, your Peers have unanimouſly found you Guilty.

What remains is the diſagreeable, but unavoidable, Part of proceeding to that Judgment, which is the neceſſary Conſequence of ſuch atrocious Crimes. Happy had it been for your Lordſhip, if before you engaged in them, you had ſuffered the Terrors of that Conſequence to have their due Weight, when the ſacred Ties of your Allegiance, and your Oaths, were not ſtrong enough to reſtrain you.

In this Proceeding, the Zeal and dutiful Affection of the Commons to his Majeſty, and their Country, and the Juſtice of the Houſe of Peers, have ſhone forth in their full Luſtre. The Commons found your Lordſhip to be one of the principal Conſpirators, who contrived and carried on the late deteſtable Rebellion, to deſtroy our Religion and Liberties, and to ſubvert that Legal Settlement of the Crown in his Majeſty, and his Royal Family, under which alone we can live Free and Happy.

They rightly judged, that this, which is the common Cauſe of all the People of *Great Britain*, ought to be proſecuted by the United Voice of the People: That it became them to inveſtigate and lay open, in full Parliament, the Source of thoſe Calamities, which we have lately ſuffered, and the deep-laid and long-meditated Conſpiracy, in which your Lordſhip had ſo conſiderable and ſo flagitious a Part. They rightly judged, that no Judicature was equal to ſuch an important Proceeding, but this High Court, on whoſe Penetration and Juſtice they relied, and before whom, in this Great Aſſembly, Publick and Indubitable Satisfaction might be given.

Before your Conviction, I have ſpoken to your Lordſhip upon a Preſumption of your Innocence; but now I am bound, by the unanimous Deciſion of my Lords your Peers, to take the Evidence againſt you to be True, and to addreſs myſelf to you as a Guilty Perſon.

Your Lordſhip has, in your Anſwer, endeavoured to avail yourſelf of former Services to his late Majeſty and the Proteſtant Succeſſion, which you have this Day enlarged upon at the Bar. How unfortunate have you been in referring back to ſuch cancelled Merit, ſince thereby you have furniſhed an Opportunity to the Commons, to ſhew, for how long a Track of Time you have conceived and nurſed up this Treaſon in your Heart! Whatever your Pretences were, ſo infected was your Mind, and ſo forward your Zeal, in the Cauſe of that Pretender, whom you had then abjured, as to engage in that raſh and weak Attempt from *Spain*, in his late Majeſty's Reign. Yet, at or very near that Time, it appears, by the Evidence (out of which every Obſervation I will make ſhall naturally ariſe), you were ſolliciting or accepting Favours and Truſts from that very Government, which you had thus engaged to deſtroy. What Uſe did you make of thoſe Truſts? The Inſtance of *Roy Stewart*, now an Attainted Rebel, ſpeaks it too plainly. Whilſt you were Sheriff of the Shire of *Inverneſs*, the largeſt County in *Scotland*, and one of the greateſt Conſequence, you ſuffered that Criminal, in the Year 1736, to eſcape out of your publick Priſon; harboured him afterwards in your own Houſe; then charged him with Meſſages, and Aſſurances of Fidelity, to the Pretender; and to procure for you a Commiſſion of Lieutenant-General, and a mock Title of Honour, from that Pretended Prince.

If any thing could ſurpaſs this Treachery, it is the Aſſociation, which your Lordſhip ſigned and ſealed, together with Six other Perſons, and ſent to *Rome* and *Paris*, by *Drummond* of *Bochaldie*, in the Beginning of 1740. The Subſtance of this was, to aſſure the Pretender, whom you always called your lawful King, of your Readineſs to appear openly in Arms for his Service; and to ſollicit an Invaſion from *France* againſt your Native Country, to ſupport this deſperate Deſign.

It ſhould ſeem, by the Evidence, that the Foreign Enemies of *Britain* were leſs forward in this Meaſure to diſturb her, than her degenerate, Unnatural Sons. Whether that Reluctance proceeded from a Diſtruſt of ſo falſe a Sett of Men, or from a Conviction, that the Body of this Great People was not to be ſhaken in their Loyalty to a King, who poſſeſſes the Throne by the moſt Rightful Title, and governs them in Juſtice and Mercy, according to their Laws and Conſtitution; in either Caſe they

they were in the Right. What Dependence could the Court of *France* have on a few abandoned Traitors? What Hopes could they entertain, that a general Infatuation would, on the ſudden, ſeize and delude a Brave, a Free, and a Happy People, to ſeek their own Slavery and Ruin?

From this Time till the Year 1743, the Conſpiracy lingered in its Progreſs, though great Efforts appear to have been made to render it more extenſive, and more formidable. Then it happened, as it always has happened, that when *France* ſaw ſuch an Enterprize, whether ſucceſsful or not, might be made a convenient Engine of her own Politicks, that Court ſet about an Invaſion in earneſt. Great Preparations were made, and ready at *Dunkirk*; but the Providence of God diſappointed them. To be capable of proving Tranſactions of this Kind by ſtrict Evidence in the Forms of Law, is not common, nor, in the Nature of the Thing, ordinarily to be expected. But this the Vigilance of the Commons has effectually done, to the Conviction of all well-intentioned Perſons, and to the Shame and Confuſion of thoſe, who, though they believed, and perhaps knew it themſelves, were induſtrious to propagate a pernicious Incredulity in others.

Thus the Commons have traced and brought down the Series of the Conſpiracy to the remarkable Æra of *July*, 1745, when the Eldeſt Son of the Pretender landed in *Moidart*, unſupported by any Foreign Troops, unattended, and almoſt alone.

The appearing Raſhneſs of this Attempt gave Riſe to ſome Apprehenſions, ſome Miſgivings, in the Breaſts of your Lordſhip, and your Fellow-Conſpirators, proceeding from a Concern, not for the King, or for your Country, but for your own private Intereſt and Safety. A *French* Invaſion had been long ſollicited; a *French* Force was depended on, to ſecure you againſt the juſt Vengeance of your Native Country; and the Failure of that damped your Hopes, and produced your Expreſſions of Diſappointment. However, ſuch was your Zeal, that, in this raſh Enterprize, your Lordſhip joined; not indeed perſonally (this you often excuſed, complaining of your Infirmities), but by Sending, or rather Forcing out your Clan; and committing every other Species of the blackeſt Treaſon, which the Articles of Impeachment have charged upon you.

Permit me to ſtop here a little, and lament the Condition of Part of this United Kingdom; happily United in Intereſts both Civil and Religious; happily United under the ſame Gracious Monarch, and the ſame Publick Policy: And yet the common People, in ſome of the remote Northern Counties, are ſtill kept in ſuch a State of Bondage to certain of their Fellow-Subjects, who, contrary to all Law, and every true Principle of Government, have erected themſelves into Petty Tyrants over them, as to be liable to be compelled into Rebellion againſt their Lawful Sovereign, under the Peril of Fire and Sword. Aſtoniſhing it is, that ſuch a dangerous Error in Government, ſuch a Remain of Barbariſm, ſhould have ſubſiſted ſo long in any Quarter of this Civilized, Well-governed Iſland: But, ſince ſuch is the Misfortune, let it be accounted one good Fruit of this Inquiry, that it has appeared in this ſolemn Manner. The Knowledge of the Diſeaſe ſhews the Way to the Cure; and it calls aloud for a Remedy.

This uſurped Power was audaciouſly made uſe of over your Clan. It is true, your Lordſhip's Activity in exerting it roſe and fell, in Proportion to the Appearances of the good or bad Succeſs of the Pretender's Cauſe; But, after the Advantage gained by the Rebels at *Preſton-Pans*, which you vainly called "A Victory not to be paralleled in Hiſtory," you thought it Time to throw off the Maſk; and, with leſs Caution, to eſpouſe a Party, which, you then hoped, might be eſpouſed with Impunity.

I forbear to enumerate the many Overt Acts of your Treaſon. It would be tedious to this Aſſembly, who have heard them ſo much better from the Witneſſes, and from the Recapitulation of the Managers. It would be grievous to your Lordſhip, if your Heart is, by this Time, touched with any Remorſe for your Guilt. But one Thing I cannot help obſerving upon,---the Excuſe you expreſly made for this traitorous Conduct, even after you were taken Priſoner; to which you have this Day artfully endeavoured to give a different Turn. Being aſked, How you could act ſuch a Part againſt a Government, from which you had received many Favours? Your Lordſhip's Anſwer was, "That it was in "Revenge to the Miniſtry, for their ill Uſage of you, in taking away "your Commiſſion of Captain of an Independent Company of *High-*"*landers.*" An Excuſe almoſt as falſe as it was profligate. Falſe, becauſe ſome of your Treaſonable Practices were committed whilſt you were poſſeſſed of that very Commiſſion. Profligate it was, in the higheſt Degree. Is Allegiance no Duty? Are Oaths to His Majeſty, and His Government, no Obligation upon the Conſcience? Is Loyalty to our Lawful Sovereign, and the Love of our Country, to depend on the Enjoyment of extraordinary Favours and Emoluments, which no Man has a Right to; can, in the Nature of Things, be enjoyed but by a Few; and are in the Pleaſure of all Governments to confer or deny? A Perſon actuated by, and avowing, ſuch Principles as theſe, muſt be loſt to all Senſe of Virtue, and of Shame, and of every Natural, as well as Civil, Sanction of Society.

Sorry, very ſorry I am, to ſee this laſt Reflection ſo ſtrongly verified by the Proofs againſt your Lordſhip. It has appeared, that you uſed your Paternal Influence over your Eldeſt Son, a Youth not above the Age of Nineteen, to compel him to go into the Rebellion; and afterwards unnaturally endeavoured to caſt the Crime and Reproach of it upon him. If this be true, it is an Impiety which makes one tremble. It is the celebrated Saying of a wiſe Writer of Antiquity, and ſhews his perfect Knowledge of Human Nature, "That the Love of our Coun-"try includes all other Social Affections:" For we ſee, when that is gone, even the tendereſt of all Affections, the Parental, may be extinguiſhed with it.

I have ſaid theſe things, not with a View to aggravate your Lordſhip's Crimes, but, as becomes This Place, and This Occaſion, to rouſe your Mind, which, there is Reaſon to fear, may have been too much hardened, to a juſt and deep Senſe of your unhappy and dreadful Situation.

Were I to attempt this from Topicks of Religion, I ſhould be at a Loſs, whether to apply to you as a Proteſtant or a Papiſt. Your Open Profeſſion, your Solemn Oaths, and Publick Actions, ſpeak on one Side: But, if I am to believe the Evidence, your Private Diſcourſe and Declarations teſtify on the other. I will apply no Suppoſitions on this Head particularly to your Lordſhip; but from hence I would draw an inſtructive Leſſon, which well deſerves the ſerious Attention of this Whole Nation, of what important Conſequence it is, to preſerve not only the Name and outward Form of the Proteſtant Religion amongſt us, but the real Uniform Belief and Practice of it. Indifference to all Religion prepares Men for the External Profeſſion of any; and what may not That lead to? Give me Leave to affirm, before this Great Aſſembly, that, even abſtracted from Religious Conſiderations, the Proteſtant Religion ought to be held in the higheſt Reverence, as the ſureſt Barrier of our Civil Conſtitution. Eccleſiaſtical Uſurpation ſeldom fails to end in Civil Tyranny. The preſent Happy Settlement of the Crown is, in Truth, and not in Name only, THE PROTESTANT SUCCESSION. And the inviolable Preſervation of that Wiſe and Fundamental Law, made ſince the Revolution, whereby every Papiſt, or Perſon marrying a Papiſt, is abſolutely excluded from Inheriting to this Crown, will, in future Times, be a ſolid Security for our Poſterity, not only againſt the groundleſs and preſumptuous Claim of an Abjured Pretender, and his Deſcendants, but alſo to prevent this Kingdom from becoming a Province to ſome of the great Popiſh Powers, who have ſo long watched for the Deſtruction of our Liberties.

But, to return to your Lordſhip: Suffer me to exhort you, with great Earneſtneſs, and in great Charity, to deliberate ſeriouſly upon your own Caſe, and to deal impartially with your own Conſcience. If, according to the Evidence given at this Bar, you have led a Life of Craft, Diſſimulation, and Perfidy, conſider how that Scene has cloſed; what Deſolation you have thereby endeavoured to bring upon your Country; how fatally it has ended for yourſelf. Conſider, that the Sentence which I am obliged to pronounce, may ſoon ſend you to a Tribunal, where no Diſguiſe or Artifice can avail you.

The Sentence of the Law is, and this High Court doth adjudge;

"That you, *Simon* Lord *Lovat*, Return to the Priſon of the *Tower*,
"from whence you came; from thence you muſt be drawn to the
"Place of Execution; when you come there, you muſt be Hanged
"by the Neck, but not till you are Dead; for you muſt be cut
"down Alive; then your Bowels muſt be taken out, and burnt
"before your Face; then your Head moſt be ſevered from your
"Body, and your Body divided into Four Quarters; and theſe
"muſt be at the King's Diſpoſal."

And God Almighty be merciful to your Soul!

Lord *Lovat*. My Lords, I hope your Lordſhips will not take it amiſs, that I ſhould let you know, though it be in a very barbarous Language, both the Affection I had for his late Majeſty, and the Service I did for him and his Family. And I muſt ſay, I have for that the Teſtimony of one of the King's Evidence, that I declared my Affection to his preſent Majeſty: And I have Reaſon ſo to do; for when he was Regent of theſe Kingdoms, and his Father was in *Hanover*, he was ſo good as to give me a *Noli Proſiqui* for the great Laird of *Mac Intoſh* that was at the Battle of *Preſton:* And when I complained of the Hardſhips the Duke of *Roxburgh* put every Day upon me, in an Audience he was pleaſed to admit me to, in his Cloſet at *Kenſington*, he was ſo good as to ſay, that, if he was King, he would defend me againſt all my Enemies, not only the Duke of *Roxburgh*, but all my other Enemies. Now, my Lords, when a Man has but a very few Days, in Appearance, to live, what he ſays ſhould be relied upon, if there is not immediate Evidence to the contrary. I have ſhewn your Lordſhips my Eſteem for the illuſtrious Houſe of *Hanover*. I have ſhewn my Attachment for my dear Maſter the late King, and my Reſpect for his preſent Majeſty; and therefore all that I have further to ſay, is moſt humbly to implore your Lordſhips Interceſſion, and to recommend me to his Majeſty for Mercy.

Lord High Steward. Have you any thing further to offer?

Lord *Lovat*. Nothing, my Lords, but that I make the ſame Prayer to the Honourable the Members and Managers of the Houſe of Commons; and that, I hope, as they have been ſtout, they will be merciful.

Lord High Steward. Would you offer any thing further?

Lord *Lovat*. Nothing but to thank your Lordſhips for your Goodneſs to me. God bleſs you all, and I bid you an everlaſting Farewel. We ſhall not meet all in the ſame Place again, I am ſure of that.

Lord High Steward. Lieutenant of the *Tower*, Take the Priſoner from the Bar.

Which being done, Proclamation was made for Silence, as uſual.

Then the White Staff being delivered to the Lord High Steward by the Gentleman Uſher of the Black Rod, upon his Knee, his Grace ſtood up uncovered; and, holding the Staff in both his Hands, broke it in two, and declared that there was nothing farther to be done by virtue of the preſent Commiſſion, and pronounced the ſame to be diſſolved; and then leaving the Chair, came down to the Wool-Pack, and ſaid, Is it your Lordſhips Pleaſure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

Then the Houſe was adjourned to the Chamber of Parliament; and the Lords and others returned in the ſame Order as they come down.

And the Priſoner was carried back to the *Tower* of *London*.

XLIII. The Trial of ARCHIBALD STEWART, Esq; late Lord Provost of *Edinburgh*, before the High Court of Justiciary in *Scotland*, *June* 8, 1747. for Neglect of Duty and Misbehaviour in the Execution of his Office, as Lord Provost of *Edinburgh*, before and at the Time the Rebels got Possession of that City, in the Month of *September* 1745.

[Extracted, under the Hand of the Clerk of Justiciary, from the Books of Adjournal of that Court.]

Curia Justiciaria S. D. N. *Regis*, *tenta in nova Sessionis Domo Burgi de* Edinburgh, *vigesimo quarto Die Mensis* Martii 1747. *per honorabiles Viros Magistros* Alexandrum Fraser *de* Strichen, Patricium Grant *de* Elchies, & Carolum Areskine *de* Tinwald, *Commissionarios Justitiarii dict.* S. D. N. *Regis*.

Curia legitimè affirmata.

Lord *Strichen* Præses.

THE which Day compeared *Patrick Haldane* of *Bearcrofts*, Esq; his Majesty's Solicitor, and Advocate-Depute, and produced, in presence of the said Lords, a Writ of Recognizance, signed by his Grace the Duke of *Newcastle*, of Date the 23d Day of *January* last by-past, which was ordered to be read and recorded; and whereof the Tenor follows.

Middlesex and *Westminster*.

To wit; Be it remembered, That, upon the 23d of *January*, in the Twentieth Year of the Reign of our Sovereign Lord *George* II. King of *Great Britain*, &c. came before me, and acknowledged themselves to be severally indebted unto our said Sovereign Lord the King as follows, *viz.*

Archibald Stewart, of *Edinburgh*, Merchant, the Sum of £.	5000 0 0
David Scot, of *Scotstarvet*, in the Shire of *Fife*, Esq; the Sum of	2500 0 0
James Oswald, of *Dunnikier*, in the said Shire of *Fife*, Esq; the Sum of —— —— ——	2500 0 0
Alexander Campbel, of the Parish of *Allhallows-Staining*, *London*, Doctor of Physick, the Sum of ——	2500 0 0
James Baird, of *Downing-street*, in the Parish of *St. Margaret's* Westminster, Esq; the Sum of —— ——	2500 0 0

To be levied upon their several Goods and Chattels, Lands, Tenements and Hereditaments, by way of Recognizance, upon Condition, that if the said *Archibald Stewart* do personally appear before his Majesty's Court of Justiciary at *Edinburgh*, at the first Sitting of the said Court after the Twentieth Day of *March* next, then and there to answer to all such Matters as on his Majesty's Behalf shall be objected against him; and also appear from time to time when thereunto required, and not depart the said Court without Leave thereof; and, in the mean time, be of the good Behaviour, then this Recognizance to be void, or else to remain in full Force and Virtue. *Signed*

HOLLES NEWCASTLE.

Immediately after reading whereof, compeared the said *Archibald Stewart*, Merchant in *Edinburgh*, and judicially sisted himself in Court before the said Lords, in Terms of and agreeable to the said Writ of Recognizance, and humbly insisted, that thereby the Condition of the said Writ was fulfilled, and the same fell to be voided, and he dismissed, if there was no Person on his Majesty's Behalf ready to insist against him.

To which Mr. *Patrick Haldane*, his Majesty's Advocate-Depute, made Answer: That the Writ of Recognizance was not only for Mr. *Stewart*'s Appearance this Day, but thereafter, from Time to Time, when thereto required; that, having only had occasion lately to see the said Writ, he was not just now ready to insist in any Matters on his Majesty's Behalf against the said *Archibald Stewart*, as therein mentioned; and moved their Lordships would appoint a farther Time for his Appearance again.

Mr. *Stewart*, without making any Reply, submitted his Case to the Court.

'The Lords Commissioners of Justiciary, having considered the said 'Writ of Recognizance, and above Debate, they continue the Diet, 'for the said *Archibald Stewart*'s Compearance, to *Monday* the eighth 'Day of *June* next, and ordain him to sist himself personally in Court 'that Day, without Prejudice to the Lord Advocate to insist against and 'prosecute the said *Archibald Stewart* sooner, in Behalf of his Majesty, 'if he shall see Cause.'

Signed ALEX. FRASER. *I. P. D.*

Curia Justiciaria S. D. N. *Regis*, *tenta in nova Sessionis Domo Burgi de* Edinburgh, *octavo Die Mensis* Junii 1747. *per honorabiles Viros Magistros* Alexandrum Fraser *de* Strichen, Patricium Grant *de* Elchies, Carolum Areskine *de* Tinwald, & Hugonem Dalrymple *de* Drummore, *Commissionarios Justiciarii dict.* S. D. N. *Regis*.

Curia legitimè affirmata.

Lord *Strichen* Præses.

THE said Day, in obedience to the foregoing Order, compeared the said *Archibald Stewart*, and sisted himself in Court, when he and Messieurs *Lockhart*, *Ferguson*, *Home* and *Stewart*, Advocates, his Procurators, insisted, That, in obedience to the last Order of Court, in consequence of the Recognizance therein mentioned, he had appeared a second Time; that, as he pled first, so he now did, that the Condition of the said Writ of Recognizance was fulfilled; and that the same ought to be voided, and he dismissed, if there was no Person yet ready to insist against him on his Majesty's Behalf, which he had Reason to believe was the Case.

To which Mr. *Patrick Haldane*, his Majesty's Advocate-Depute, made Answer: That the Lord Advocate, who, at the last Diet, attended the Service of his Country in Parliament, was, contrary to Expectation, still detained, although he intended to have been in *Scotland* long before now, when he could and would have proceeded to bring Mr. *Stewart* to Trial in the ordinary Way: That, for his Part, as Advocate-Depute, he had no such Instructions as he could move in that Matter, either just now, or by a proper Process; and all he was instructed to ask of their Lordships, was a Delay of eight Days, which could be no Prejudice either to Mr. *Stewart* or his Cautioners, and against which Time he was pretty well assured his Majesty's Advocate would be present, and shew Cause why the Writ of Recognizance should continue, and satisfy Mr. *Stewart* how or when he would be brought to Trial.

It was replied for Mr. *Stewart*, that he expected, if there was any thing to be objected to him on behalf of his Majesty, considering the long Space of Time interveening betwixt this and his former Appearance, he would have been brought under some Prosecution for it ere now; that the Absence of my Lord Advocate, however necessary, and his Depute's not being properly instructed, was to Mr *Stewart* or his Cautioners nothing to the Purpose; that Mr. *Stewart*'s Appearance, now and before, and nothing objected to him, was, as to his Cautioners, a Liberation of their Bail, which was so very great as must appear to be a Hardship if it should last any longer; and therefore craved that he might be dismist, and the Bond voided.

It was duplied by Mr. *Haldane*, that the Delay sought was so small, as plainly shewed that there was no Intention of putting a Hardship on any Person; and, without farther Argument, he doubted not but the Court would continue Mr. *Stewart*'s farther Compearance, in Terms of, and agreeable to the Writ of Recognizance, 'till *Monday* next the 15th Instant.

'The Lords Commissioners of Justiciary, having considered the above 'Debate, they continue the Diet for the said *Archibald Stewart*'s farther 'Compearance to *Monday* the 15th Day of *June* Instant, and ordain 'him to sist himself personally in Court that Day, without Prejudice to 'the Lord Advocate to insist against and prosecute the said *Archibald Stewart* sooner, if he shall see Cause.'

Signed

ALEX. FRASER. *I. P. D.*

Curia Justiciaria S. D. N. *Regis*, *tenta in nova Sessionis Domo Burgi de* Edinburgh, *decimo quinto Die Mensis* Junii 1747. *per honorabiles Viros Magistros* Alexandrum Fraser *de* Strichen, Patricium Grant *de* Elchies, Carolum Areskine *de* Tinwald, & Hugonem Dalrymple *de* Drummore, *Commissionarios Justiciarii dict.* S. D. N. *Regis*.

Curia legitimè affirmata.

Lord *Strichen* Præses.

THE said Day compeared the said *Archibald Stewart*, in obedience to the last Order of Court, and sisted himself agreeable to his Writ of Recognizance, and craved the said Writ might be declared void; and he dismissed, in case the Lord Advocate was not yet ready to insist against him, as, if he was, he had at least got no Notice of it, nor so much as of any Time for his Trial.

The Lord Advocate thereupon appeared, and represented the former Delays were not owing to him, but, in some measure, to Mr. *Stewart*'s own Friends, who applied to him at *London* for a Delay, 'till he should come to *Scotland* and be present himself; which truly was the Reason of his not raising and executing a criminal Process against Mr. *Stewart* to the last Diet he appeared. That, to shew his Lordship had no Inclination to give Mr. *Stewart* any unnecessary Delay, he now was ready to insist, and for that End gave in, and presented to the Lords, a Bill signed by him, craving Warrant for criminal Letters against the said *Archibald Stewart*, for the Crimes and Misdemeanours therein mentioned, and fixing the Diet for his Trial to the third of *July* next.

Thereafter Mr. *Lockhart* moved, in Behalf of the Cautioners for Mr. *Stewart*, that the Writ of Recognizance should be voided; and for Mr. *Stewart*, in place thereof, that he was willing to find new Bail for any Sum the Lords should appoint and judge reasonable, as the Bail he was presently under was by far too extravagant.

To which the Lord Advocate made answer: That the Writ of Recognizance, on which Mr. *Stewart* was liberate, was still in force, and behoved to continue, as the Cautioners and Mr. *Stewart* not only became bound that he should appear such a Day, but from Time to Time thereafter, as the Lords should appoint, and not to depart, without Leave, out of the Court; that this Bail was taken by, and given to one of the highest Authority, and that it must necessarily continue, agreeable to the said Writ, 'till he be dismissed.

Whereupon Mr. *Stewart* himself, and Mr. *Elliot* his Procurator, waved the Motion made by Mr. *Lockhart* anent renewing the Bail, and agreed that the former stand good, and he had no Objection why the next Diet of Compearance might not be the third of *July* next.

'The Lords Commissioners of Justiciary, having considered the above 'Debate, they continue the Diet, for the said *Archibald Stewart*'s farther 'Compearance, 'till *Friday* the third Day of *July* next to come.' *Signed*

ALEX. FRASER. *I. P. D.*

Upon the third of *July* the Diet was continued to the Tirteenth of that Month.

Curia Justiciaria S. D. N. *Regis, tenta in nova Sessionis Domo Burgi de* Edinburgh, *decimo tertio Die Mensis* Julii 1747. *per honorabiles Viros Magistros* Alexandrum Fraser *de* Strichen, Patricium Grant *de* Elchies, Carolum Areskine *de* Tinwald, & Hugonem Dalrymple *de* Drummore, *Commissionarios Justiciarii dict.* S. D. N *Regis.*

Curia legitimè affirmata.

Lord *Strichen* Præses.

Intran.

Archibald Stewart of the City of *Edinburgh*, Merchant, and late Lord Provost of the said City, Pannel,

Indicted and accused at the Instance of *William Grant* of *Prestongrange*, Esq; his Majesty's Advocate for his Majesty's Interest, for the Crimes of Neglect of Duty, and Misbehaviour in Offices and Places of publick Trust, and the Violation of the Trust and Duty of such Offices, in manner at Length mentioned in the criminal Libel raised against him thereanent, making mention, That Whereas, by the Laws of this and all other well governed Realms, all Neglects of Duty, and Misbehaviours of Persons employed in Offices and Places of publick Trust; and all Violations of the Trust and Duty of such Offices, are Crimes of a high Nature, and severely punishable; and the public Justice of the Realm requireth a vigorous Prosecution of such Offenders, especially when such Neglects of Duty and Misbehaviours are incurred by the chief Magistrate of any great or considerable City, in a Time of publick Danger, and open Rebellion; and particularly by an Act made in the fourteenth Parliament of King *James* the Second of *Scotland*, Chapter seventy-sixth, intitled, The Punition of negligent Officiars, 'It is ordained and determined, That if any of the King's Officiars or Sheriffs, 'Mayors, Bailies, Crowners, Serjeants, Provost of Burghs, and their 'Ministers both to Land and to Burgh, be found faulty or negligent 'in the Execution of their Offices, and it may be lawfully proved on 'him, or notourly kend; if the said Office pertains to him in Fie and 'Heritage, he shall tyne his Office, and the Profit thereof, for an Year 'and a Day, and to be punished by the King in his Person and Goods 'after the Quantity of his Trespass; and if his Office pertains to him 'not in Fie and Heritage, he shall tyne his Office for all the Times 'he has it, and to be punished in his Person, after the Quantity of 'sik Trespass, at the King's Will.' Yet true it is and of Verity, That the said *Archibald Stewart* of the City of *Edinburgh*, Merchant, and late Provost of the said City, is guilty, Actor, or Art and Part of the said Crimes, or one or other of them, aggravated as aforesaid; In so far as he, being Lord Provost of the City of *Edinburgh*, in the Year One thousand seven hundred and forty-five, when a most bold, desperate, wicked, and unprovoked Rebellion was raised and carried on against his Majesty within this Realm, by a large Body of armed Traytors, headed by the eldest Son of the Pretender to his Crown, and assisted with Troops and Money from his Enemies abroad, and, at such a Juncture, it being his Duty, as the chief Magistrate of the said City, and the King's Lieutenant therein, having Authority to command the military Force of whatever Kind within the City, to have exerted himself with Fidelity, Vigilance and Zeal, for opposing the Progress of the Rebellion by all lawful Methods in his Power, and particularly for preserving the City intrusted to his Care from falling under the Power of the Rebels, or becoming a Prey to them, he, the said *Archibald Stewart*, was grosly faulty or negligent in the Execution of his said Office and Duty on so important an Occasion, in manifest Violation of the Trust and Duty of his Office: and particularly was thus guilty on the Fifteenth and Sixteenth Days of *September*, in the Year of our Lord One thousand seven hundred and forty-five, and upon several other Days and Times in the said Month of *September*, and the Month of *August* preceding, within the said City of *Edinburgh*, where he was resident for the Time. And moreover, the said *Archibald Stewart* was not only faulty or negligent in the Execution of his Office, and notoriously known to have been such, but was guilty of Malversations and counteracting the Duty of his Office, in such an Exigency, in many Instances, and particularly, amongst others, in these following: *First*, That whereas the Preservation of the City of *Edinburgh*, from falling into the Hands of the Rebels, was of great Importance to that City itself, and to the King and the Kingdom in general, and the Care of it especially incumbent on the Lord Provost for the Time being, and ought to have been looked after with the utmost Attention, Zeal and Vigour, in such an Exigency, as when the Rebels got to the Southward of the Body of the King's Troops under the Command of Sir *John Cope*, of which Advices came to *Edinburgh* in the latter End of *August* One thousand seven hundred and forty-five, from which there was Reason to fear that the Taking of that City would be attempted by the Rebels, and to hope that the King's Army might soon after come to its Relief: Yet, in these Circumstances, he, the said *Archibald Stewart*, then chief Magistrate, and sole military Governor of that City, did nothing of his own accord towards providing effectually for the Defence thereof; and, on the contrary, every Measure for that Purpose proposed, and pressed by the honest Zeal of the then Magistrates and Council, and of many of the Citizens and Inhabitants, instead of being heartily encouraged and promoted by him the Provost, were by him thwarted and retarded, or else absolutely refused or declined; and in this Manner it was that he received a Proposition made to him in the latter End of *August* One thousand seven hundred and forty-five, for raising a Regiment of one thousand Men, by voluntary Subscription, for Defence of the City; against which he formed Objections on account of the Expence, and affected Doubts concerning the Legality thereof. And, *Secondly*, He treated in like manner another Application made to him in the Beginning of *September* One thousand seven hundred and forty-five, by a Number of Gentlemen or Citizens, for Leave to associate themselves under his chief Command, as Volunteers, for the Defence of the City, and Service of the Government; and, after his Objections to the Legality of that Measure were over-ruled, he would not suffer it to be published or given out that he heartily approved, but barely that he acquiesced in that Measure; and yet his Reluctancy or Aversion to it, or Uneasiness under it, continued to discover itself on frequent Occasions, and particularly by the cold, if not the rude Manner in which he behaved towards those Volunteers, consisting of a Number of very respectable Gentlemen and Burgesses, when he went to a publick Meeting of them, in the New Church Isle of *Edinburgh*, to name their Captains. *Thirdly*, That, in like manner, through the Misbehaviour of the said *Archibald Stewart*, when certain Repairs of the City Walls, and other Works for making it defensible for some Time, against an Enemy who had no Artillery, and were very unskilful in making Sieges, had been proposed and advised, amongst others, by the now deceast and famous Mr. *Colin Mac Laurin*, Professor of Mathematicks in the College of *Edinburgh*, and were ordered by the Council of the City of *Edinburgh* to be made, the Execution whereof was chiefly incumbent on the Lord Provost for the Time being, yet the same was carried on very slowly and imperfectly, notwithstanding frequent Remonstrances and Complaints made by divers of the faithful and zealous Inhabitants; and, as late as *Sunday* the Fifteenth of *September* One thousand seven hundred and forty-five, when the Rebels were marching to, and were come within a few Miles of the City of *Edinburgh*, he the said *Archibald Stewart* refused to give Orders for loading the Cannon planted upon the City Walls, and, about the same Time, he refused to apply for some of the Sailors from on Board one of the King's Ships of War for managing of those Cannon, when he could not otherways be provided of fit Persons to act as Gunners. *Fourthly*, That, about the same Time, he the said *Archibald Stewart* refused to listen to, or to follow several salutary Propositions that were made and pressed by well-affected Inhabitants, for the greater Safety and better Defence of the City; such as, that the Trained Bands, consisting of a promiscuous Number of Burgesses, whereof many were known to be disaffected, should be laid aside, as had been practised during the Rebellion in the Year One thousand seven hundred and fifteen, and that Arms should only be trusted in the Hands of such as were known to be well-affected, and that a general Search for Arms should be made within the City, and that a Number of the ablest bodied Men of the Tradesmen's Servants should be employed and armed for assisting to defend the City when it should be attacked, upon the Encouragement of a Guinea to be given to each of them; towards defraying which Expence an Offer was made to the said *Archibald Stewart*, on the Part of the Volunteers, to have raised or advanced the sum of Five hundred Pounds Sterling. *Fifthly*, That the said *Archibald Stewart* misbehaved himself in like manner, in respect of the Succours that were brought at the Time aforesaid from the Country in the Neighbourhood of *Edinburgh*, consisting of Numbers of well-affected and zealous Subjects, under the Conduct of Gentlemen of known Loyalty and good Affection, who came and voluntarily offered their Service to assist in defending the City of *Edinburgh*, without any Fee or Reward, upon that dangerous and pressing Occasion, the Approach of the Rebels to that City; but these very seasonable and laudable Offers were by the said *Archibald Stewart* very coldly received and ill-treated: For Instance, he proposed to Sir *Robert Dickson* of *Inveresk*, who came to *Edinburgh* upon *Sunday* the fifteenth Day of *September* One thousand seven hundred and forty-five, from *Musselburgh*, with about One hundred and fifty Volunteers, to offer their Services for the Purposes aforesaid, that these Men should inlist themselves for three Months as Soldiers in the *Edinburgh* Regiment; a Proposition which, instead of being calculated sincerely to provide for the better Defence of the City, could be no otherways received by those Volunteers, than as an Insult and Discouragement to their Zeal, who, being Tradesmen or Husbandmen, did not mean to leave their Occupations, and inlist themselves as Soldiers for Hire, but had bravely offered to serve gratis in the then present Exigency, which could not last above a few Days, before the End of which the City of *Edinburgh* must either have been relieved or surrendered. *Sixthly*, That, on the Morning of *Monday* the Sixteenth of *September* One thousand seven hundred and forty-five, the said *Archibald Stewart* received a Message from the Camp of the Rebels, by *Andrew Alves*, Writer to the Signet, importing, that the City of *Edinburgh* would be ill treated by them, unless it should be readily or speedily surrendered; being a Message to the same Effect with that contained in a Letter from the Pretender's Son, bearing Date from his Camp that same Day, addressed, *For the Lord Provost, Magistrates and Town-Council of* Edinburgh, and which Letter was thereafter that same Day delivered; and yet he the said *Archibald Stewart* did not immediately commit the said *Andrew Alves* to Prison, for bringing or delivering to him such Message, neither did he give Notice to any other of the King's Officers, Civil or Military, that he had received such Message. *Seventhly*, That upon the same *Monday*, the Sixteenth of *September* One thousand seven hundred and forty-five, about three of the Clock in the Afternoon, he received a Petition from certain of the Inhabitants of the City who opposed the Defence thereof, and insisted to have a general Meeting called of all the principal Inhabitants, to consult what was proper to be done, and he accordingly held and presided in a Meeting in the New Church Isle in the Afternoon of that same Day, upon the ringing of the Fire-Bell, which was the appointed Signal for the Volunteers to repair to their Alarm-Post; the Consequence of which was, that few or none of those Volunteers, who consisted of a Number of the most substantial and best affected Burgesses, were or could be present at that general Meeting: In which Meeting, as every one who had a mind got Access, there were Numbers of Persons present of known Disaffection to his Majesty's Government; and thus, by ill Design upon their Part, and by the Timidity of others who were thus assembled in a tumultuous Manner, and a very improper Council with which to take Measures in a Time of immediate and pressing Danger, the general Cry was given for surrendering the City, and giving up all Thoughts of making a Defence: And the said *Archibald Stewart* thus held and took the Sense of this Meeting, notwithstanding that before he went to it, it was very well known that the Rebels were ill armed, and that an Offer had been made to him, in Aid of the other Forces with which the City was provided, to send one hundred out of two Regiments of Dragoons in the King's Service, or as many of the Dragoons of those

thoſe Regiments as he ſhould deſire, to aſſiſt in defending the City; but he refuſed to give his Conſent or Authority for receiving any of theſe Dragoons, though he had requeſted ſuch Party of Dragoons, about an Hour or two before in that ſame Day, by a Writing under his Hand, addreſſed to Lieutenant General *Joſhua Gueſt*, then in the Caſtle of *Edinburgh*. And moreover, at this Meeting there was brought in and delivered to the ſaid *Archibald Stewart*, the Letter above-mentioned from the Pretender's Son; immediately, or ſoon after the receiving whereof, that Meeting was diſmiſſed, and he, with others of the Magiſtrates and Council, withdrew to the Council-Chamber, where (*which is the eighth Article* charged upon him the ſaid *Archibald Stewart*) he cauſed or ſuffered the ſaid Letter from the Pretender's Son to be publickly read, and moved or agreed that an Anſwer ſhould be given to it; which was accordingly ſent, firſt by one, and then by another Deputation from the Council: All which Intercourſe was in him the ſaid *Archibald Stewart*, then Lord Provoſt, the more criminal, that any Danger or Neceſſity that might be alledged, in order to avoid the ſame being puniſhable as High-Treaſon, was owing in great Meaſure to his own Backwardneſs to diſcharge his Duty, by taking all the proper Precautions againſt ſuch Danger, with that Fidelity and Vigour which he owed, by his Allegiance and his Station, to the City of *Edinburgh*, and to the King and Kingdom. *Ninthly*, That all this while he the ſaid *Archibald Stewart* refuſed or neglected, though frequently applied to for that Purpoſe, to give any Orders to the Volunteers of the City of *Edinburgh*, who had been long ſtanding upon the Street under Arms, how or in what Manner they ſhould diſpoſe of themſelves, and employ theſe Arms, or how they ſhould diſpoſe of the Arms, if they were not to be uſed or employed for the Defence of the City, for which they had been firſt taken up; and, upon ſuch his Refuſal or Neglect, the ſaid Volunteers took and executed the Reſolution to carry back their Arms to the Magazine in the Caſtle of *Edinburgh*, in order to prevent the ſame from falling into the Hands of the Rebels. *Tenthly*, That, on the Evening of the ſame *Monday* the ſixteenth of *September* One Thouſand ſeven Hundred and Forty-five, he the ſaid *Archibald Stewart* refuſed or declined to give his Licence or Authority for a Party ſent by the ſaid Lieutenant-General *Gueſt*, or by Lieutenant-General *George Preſton*, Governor of the Caſtle of *Edinburgh*, to remove or ſpike up the Cannon that were then planted upon the City-Walls; and, about the ſame Time, he the ſaid *Archibald Stewart* gave Orders to *Thomas Dalziel*, one of the Captains of the City-Guard of *Edinburgh*, whoſe Turn it was to be on Duty that Night, to keep Guard with the uſual Complement in peaceable Times, of One-third of the City-Guard, or Company, and no more; and, about the ſame Time, he the ſaid *Archibald Stewart* gave Orders to the Parties of the *Trained-Bands* of the City of *Edinburgh*, who had been upon Guard at the ſeveral Gates of the City, to quit their Poſts, and to diſpoſe of their Arms in the Parliament-Houſe, or ſome other Place or Places, where they muſt be expoſed to fall into the Hands of the Rebels, as ſoon as they ſhould enter or become Maſters of the City. And, *Eleventhly*, In the ſame Evening of the ſixteenth of *September*, One Thouſand ſeven Hundred and Forty-five, it was propoſed and urged in Council, where the ſaid *Archibald Stewart* was preſent, and preſided, That the whole City Arms, being in Number about twelve hundred Firelocks and Bayonets, ſhould be lodged and ſecured within the Caſtle of *Edinburgh*, in order to prevent their falling into the Hands of the Rebels; but he the ſaid *Archibald Stewart* refuſed or declined to give any Order for that Purpoſe, neither in Fact were the City-Arms ſo lodged and ſecured, but were ſeized by the Rebels upon their entering the City the Day following, who came to *Edinburgh* ſo imperfectly armed, that the Supply of Arms which they thus received, appears to have been one principal Cauſe of the Diſaſter that befel the King's Forces near *Preſton-Pans*, on the twenty-firſt Day of the ſame Month of *September*, One Thouſand ſeven Hundred and Forty-five. And, *loſtly*, By Occaſion or Means of the ſeveral Inſtances above-recited, and other Inſtances during the Time above-mentioned, upon one or other of the Days of the Months of *Auguſt* or *September*, One Thouſand ſeven Hundred and Forty-five, of the Miſbehaviour of the ſaid *Archibald Stewart* within the City of *Edinburgh*, of which he was then Lord Provoſt, it came to be very notoriouſly known, that he was highly faulty and negligent in the Execution of his Office, and to be farther violently ſuſpected and believed, amongſt the King's faithful Subjects in that City, that he the ſaid *Archibald Stewart* was ſecretly in the Intereſt of the Pretender, by reaſon of the Uniformity of his Behaviour from the Beginning to the End of theſe Tranſactions, diſcovering a conſtant Unwillingneſs or Backwardneſs to provide for, or heartily proſecute the Meaſures that were in a Manner forced upon him, in order to the Defence of that City, at a Time when, if he had obſerved a contrary Conduct, there was at leaſt a high Probability, that the City might have been preſerved from falling into the Hands of the Rebels: And in Fact the ſame did fall into their Hands, in a very ſtrange and ſuſpicious Manner, by a Party of the Rebels entering the City at the *Netherbow* Port, early in the Morning of *Tueſday* the ſeventeenth of *September*, One thouſand ſeven Hundred and Forty-five, when that Port was guarded with nothing more than a Serjeant's Command of the City-Guard, and was opened to ſuffer a Hackney-Coach to go out, which had juſt returned from bringing back the ſecond Deputation ſent by the ſaid *Archibald Stewart*, and other Magiſtrates and Councillors of *Edinburgh*, to the Pretender's Son: All which Misfortunes were, in great Meaſure, owing to the Miſconduct of the ſaid *Archibald Stewart*, and ſerved to bring a heavy Calamity on the City of *Edinburgh*, and the Kingdom in general; at leaſt, at the Time and Place aforeſaid, he, the ſaid *Archibald Stewart*, being Lord Provoſt of the City of *Edinburgh*, was highly faulty or negligent in the Execution of his Office, at a Time of publick Danger and open Rebellion againſt his Majeſty. And for proving that the ſaid *Archibald Stewart* was guilty as aforeſaid, there would be produced againſt him, by Way of Evidence, beſides very credible Witneſſes, certain Documents in Writing, which ſhould be lodged in the Hands of the Clerks to the Court of Juſticiary, that he might ſee the ſame, and whereof a Liſt ſhould be delivered to him, along with the Liſt of Witneſſes to be adduced againſt him. All which enormous Neglects of Duty, and Miſbehaviours, or Part thereof, or his being Art and Part of the ſame, being found proven againſt the ſaid *Archibald Stewart* by the Verdict of an Aſſize, before the Lords Juſtice-General, Juſtice-Clerk, and Commiſſioners of Juſticiary, he, the ſaid *Archibald Stewart*, ought to be puniſhed with the Pains of Law; to the Terror of others to be guilty of the like in Time coming.

Purſuers.

William Grant of *Preſtongrange*, Eſq. his Majeſty's Advocate,
Mr. *Patrick Haldane*, and Mr. *Alexander Home*, his Majeſty's Solicitors,
Mr. *Francis Garden*,
Mr. *John Grant*.

Procurators in Defence.

Mr. *James Ferguſon*,
Mr. *Henry Home*,
Mr. *Alexander Lockhart*,
Mr. *George Sinclair*,
Mr. *Charles Hamilton-Gordon*,
Mr. *John Stewart*,
Mr. *Gilbert Elliot*,
Mr. *David Dalrymple*,
Mr. *William Binning*.

The Pannel having, agreeable to a Clauſe contained in an Act paſt the laſt Seſſion of Parliament, intitled, *An Act for taking away and abliſhing the heritable Juriſdictions in that Part of* Great Britain *called* Scotland, *&c.* given in to the Clerk in Writing a ſigned Account of the Facts relating to the Matters charged upon him in the ſaid Libel, with the Heads of ſuch Objections or Defences ſubjoined, as he was adviſed to make at his Trial;

And the ſaid Libel being this Day openly read, and full Debate thereupon, and upon the ſaid ſigned Account of Matters of Fact, and Heads of Defences given in for the Pannel, in Preſence of the Pannel, Court and Jury,

'The Lords Commiſſioners of Juſticiary, in reſpect of the Importance 'and Difficulty that may occur in this Caſe, and by virtue of the Power 'reſerved to them in the ſaid Act of Parliament, ordain both Parties to 'give in Informations to their Lordſhips, and the Clerks of Court; the 'Purſuers to give in their Informations againſt *Monday* the twentieth inſtant, at ſix o'Clock at Night, and the Procurators for the Pannel to 'give in theirs againſt *Friday* thereafter, the twenty-fourth inſtant, at the 'ſame Hour; and, at the particular Deſire of both Parties, ordain the Clerks 'of Court to record the ſaid Informations in the Books of Adjournal, in 'place of the Minute directed to be made up and ingroſſed in the ſaid 'Books by the Act of Parliament; and continue the Diet in this Cauſe, 'and the ſaid *Archibald Stewart* his Compearance, upon his Bond of Re'cognizance formerly recorded, till *Friday* the thirty-firſt of *July* cur'rent, at Four of the Clock Afternoon, in this Place; and ordain Par'ties, Witneſſes and Aſſizes, then to attend, each under the Pains of 'Law.'

July 20, 1747.

INFORMATION *for his* MAJESTY'S ADVOCATE *for his Majeſty's Intereſt, Purſuer,*

AGAINST

ARCHIBALD STEWART *of the City of* Edinburgh, *Merchant, and late Lord Provoſt of the ſaid City, Pannel or Defender.*

THE Libel, at the Purſuer's Inſtance, againſt Mr. *Stewart*, late *Lord Provoſt* of the City of *Edinburgh*, charges him the Pannel with being guilty of very high Crimes and Miſdemeanours, in having many ways acted contrary to his Duty, when he was chief Magiſtrate of the City of *Edinburgh*, in the Months of *Auguſt* and *September* 1745, a Time of publick Danger and open Rebellion, headed by the eldeſt Son of the Pretender to his Majeſty's Crown, aſſiſted with Troops and Money from his Majeſty's Enemies abroad; at which Juncture the Pannel, by his Miſbehaviour, ſuffered the City of *Edinburgh*, with the Cannon and Arms therein, as well as other Supplies of various Sorts, to fall into the Hands of the Rebels, in manifeſt Violation of the Truſt and Duty of his Office. This is the general Charge againſt the Pannel, which is in the Libel more particularly ſpecified, by a Deduction of many particular Inſtances of Miſbehaviour alledged againſt him in Support of that general Charge, which Particulars it is unneceſſary here to repeat; but for them the Purſuer begs Leave to refer to the Libel itſelf.

The Pannel having been duly ſerved with a Copy of this Libel, did firſt of all, in purſuance of the late Act of Parliament for aboliſhing the heritable Juriſdictions in *Scotland*, &c. give in to the Clerk of Court, the Day before his Trial was to come on, ſigned by one of his Counſel, his Account of the Facts relating to the Matters charged upon him, together with the Heads of certain Objections and Defences which he makes to the Libel, and therein ſays, 'That he is not guilty of all or any of the Ne'glects or Miſbehaviours laid to his Charge, and that there is no Ground 'for ſuppoſing him diſaffected to the Government, but much to the con'trary; and, in particular, he avers, that his Conduct, upon Occaſion 'and at the Time of the late Rebellion, will, upon Proof, afford the 'ſtrongeſt Evidence of his real Attachment to the Government;' and farther ſays, upon the ſeveral Matters charged againſt him,

In the firſt Article, 'That he thwarted no Meaſures that were pro'poſed that ſeemed legal and expedient; that where any Doubts or Diffi'culties occurred, either as to the Legality or Expediency of any Parti'cular propoſed, ſome of which ſeemed rather to be intended as a Snare, 'he delivered his Opinion with a becoming Freedom, ſubmitted his Rea'ſons to the Council or Committee, and heartily went into whatever 'they reſolved, after taking Advice, in Points of greateſt Importance, 'with thoſe who bore the higheſt Offices, both Civil and Military, that 'were at the Time in this Town.'

As to the ſecond Article of the Indictment, Mr. *Stewart* ſays, 'That 'the Propoſal made for aſſociating a Body of Volunteers was a Point of 'ſo much Delicacy, as muſt juſtify him for deſiring Advice as to the Le'gality of what was thereby propoſed. That ſo ſoon as the Magiſtrates 'found they could ſafely go into the Propoſal, the Lord Provoſt readily 'acquieſced, and ſhewed a Willingneſs to have it carried into Execution; 'and that, upon every Occaſion, he behaved towards them with the ut'moſt Civility.'

As to the third Article, 'The Magiſtrates of *Edinburgh*, with the reſt 'of a Committee appointed by the Council to provide for the Defence of 'the Town, readily liſtened, and chearfully received every Propoſal that 'appeared calculated for the Defence of the Town, in which nothing 'was by them delayed; and the Execution of theſe Matters was com-

'mitted

'mitted to proper Perſons, choſen and appointed for that Purpoſe by the 'Council and Committee.' He does farther ſay, 'That the Guns were 'charged in the proper time, and all Endeavours uſed to ſupply the 'Town with proper Gunners.'

The Provoſt does in like manner ſay, 'That what is looſely charged 'in this Article of the Indictment, of his having refuſed the Propoſals 'of thoſe who were zealouſly affected, is not well underſtood: Every 'Converſation was freighted with a Propoſal, many of them contra-'dictory, and ſome of them from ſiniſter Motives; ſuch particularly was 'the Propoſal mentioned in this Article, which, if ſincerely meant, 'ought to have been propoſed in Council, which never was done.'

As to the fifth Article, 'The Provoſt thinks he behaved kindly to 'every Man who came, or pretended that he came, to the Aſſiſtance of 'the Town; and denies the Inſtance charged in the Libel, nor can he 'imagine that it was, or can be preſumed an Affront, although he had 'offered the putting Sir *Robert Dickſon*'s Volunteers in the Way of re-'ceiving Pay, ſuppoſing that to have been the Fact.'

As to the ſixth Article, 'Mr. *Stewart* apprehends there can be no 'Crime in it; for he did communicate the Meſſage by Mr. *Alves*, im-'mediately after he received it, to the Gentlemen of the Council, who 'were of Opinion, that the Meſſage delivered by Mr. *Alves* ought not 'to be divulged, for fear of intimidating the Inhabitants; and ſoon 'after he waited of the then Lord Advocate, to impart that Affair, and 'get his Advice what ought to be done, and, conform to the Advice 'then given, committed the ſaid *Andrew Alves*, ſo ſoon as he under-'ſtood that it was lawful and proper, and there was no criminal De-'lay in committing him.'

As to the ſeventh Article, 'Mr. *Stewart* ſays, That the Meeting in 'the *New Church Iſle* was not in conſequence of any Petition delivered 'him by the Inhabitants, which Petition was never once under Conſi-'deration of the Committee, nor did he order the Alarm-Bell to be rung 'to convocate the Inhabitants. Denies that he ever refuſed to admit 'any Dragoons into the Town; but, on the contrary, he expreſſed a 'Willingneſs to receive them, providing they were ſent.'

As to the eighth Article, 'Mr. *Stewart* refuſes that he received or 'gave Orders to read any Letters from the Pretender, or that he gave 'Orders in conſequence of any ſuch Letter; any Deputation that might 'have been ſent, was the Effect of the Fears of the Inhabitants, who 'had more of the Government of the Town at that time than the Ma-'giſtrates.'

As to the ninth Article, 'The Volunteers carried their Arms to the 'Caſtle without applying to Mr. *Stewart* for his Orders, and before he 'underſtood the Town to be in a defenceleſs State.'

As to the tenth Article, Mr. *Stewart* ſays, 'That it was the Senſe of 'the Committee the Provoſt ſhould give no Orders; and he believes it will 'appear, that the Meſſenger from Mr. *Gueſt* was told he was at Liberty 'to ſpike up the Cannon, if the General thought proper; nay, he far-'ther believes the Meſſenger was farther told, that he ſhould be ſhewn 'where the Cannon were. Mr. *Stewart* does not remember that Captain '*Dalziel* was ordered to have but a Third of his Guard on Duty, but 'believes that the whole Guard at that time were not in a Condition to 'do Duty, after the Fatigue they had previouſly undergone; the Inha-'bitants had before this time reſolved not to ſtand upon their Defence; 'the Provoſt remembers nothing of the Orders ſaid to have been given 'to the Trained-Bands, but believes the contrary will be proven.'

As to the eleventh Article, the Provoſt repeats the firſt Part of his Anſwer to the preceding Article, and ſays, 'That if any of the City-'Arms fell into the Hands of the Rebels, it muſt have proceeded from 'various unavoidable Cauſes, but cannot be imputed to any Fault of 'Mr. *Stewart*.'

As to the twelfth Article, 'Mr. *Stewart* is confident there muſt appear, 'upon his Part, a zealous Attachment to the Intereſt of the Govern-'ment, by the Uniformity of his Conduct from the Commencement of 'the Rebellion, until the Time that the Town fell unhappily into the 'Rebels Hands; for ſuch is and muſt be the natural Conſtruction of 'his unwearied Application to every Part of his Duty, and upon con-'ſidering the Propoſals made by him in Council, with the Directions 'given to thoſe that acted under him.'

From this Account of the Provoſt's Conduct, in relation to the Matters charged upon him, his Defences againſt the Libel are:

'1*mo*. That the Whole of the Charge is laid in a Manner too looſe 'and general to be paſt to the Knowledge of an Aſſize.'

'2*do*. That the Facts therein contained are either miſrepreſented, or 'in their Nature not criminal.'

'3*tio*. That no Error in point of Judgment, if any thing of that 'kind ſhall appear, ought to be made the Foundation of a criminal Pro-'ſecution, eſpecially that he was only one of a Committee, and acted 'by their Direction.'

Before the Purſuer proceed to recite the Arguments that were offered on behalf of the Pannel, in Support of theſe Defences, when the Trial came on in the Court of Juſticiary on *Monday* the 13th current, together with the Replies made on the Part of the Purſuer to theſe Defences, he ſhall here, for the better underſtanding of the true Merits of the Caſe, firſt of all briefly ſet forth, without any Argument, the principal Facts which occurred at and about the Time libelled, ſuch as he believes can be proved to be true, either by Authentick Writings, or by parole Evidence.

[23d *Auguſt* 1745. *Council Record.*] The Lord Provoſt produced in Council a Letter from one of his Majeſty's Principal Secretaries of State, by Direction of the Lords Juſtices, bearing Date 13th *Auguſt* 1745, giving him Notice, 'That they had received Intelligence that the Pre-'tender's Son was already landed, or intended to land in *Scotland*, and 'recommending it to him the Lord Provoſt to exert his Care and Vigi-'lance on this Occaſion, and make uſe of ſuch Precautions as he ſhould 'judge neceſſary for preſerving the publick Peace within the City of '*Edinburgh*.' And produced alſo a Copy of his Anſwer to that Letter, bearing Date 17th of *Auguſt*, promiſing, *inter alia*, 'not to ſit down in 'Security, but to keep a watchful Eye, in order to prevent, as far as 'poſſible, every thing that might diſturb the Peace of this City;' of which Anſwer the Council approved.

The ſame Day the Council reſolved to levy and raiſe the Number of thirty Centinels to be added to the City-Guard, and recommended to the Lord Provoſt and Magiſtrates to direct and ordain the Captains and Sub-alterns of the Trained-Bands to make up full Liſts of the Perſons be-longing to their ſeveral Companies, and to report the ſame to the Ma-giſtrates againſt *Wedneſday* then next.

At the ſame time another Order was made, for directing the Conſtables of the City, to make out Liſts of all the Inhabitants and Reſidenters within their ſeveral Bounds and Diſtricts, and that they be diligent in inquiring and finding out what Strangers may happen, from Time to Time, to come within this City, and lodge within their ſeveral Diſtricts; and that all Inn-keepers, Stablers, and others, who lodge and entertain Strangers, ſhould from Time to Time, and as oft as any Strangers ſhall lodge with them, give in to the Captain of the City-Guard, a Note of their Names and Deſignations at their Arrival, and of the Time of their Departure from thence, and order the Captain of the Guard to re-port to the Magiſtrates in Writing, every Morning, Liſts of the Parti-culars that ſhould be delivered in to them by the Inhabitants.

[*Tueſday*, 27th *Auguſt* 1745.] Theſe Reſolutions were reported by the Lord Provoſt, and the other Magiſtrates, with the Conveener of the Trades, to a Meeting of ſubſtantial and well-affected Burgeſſes, which it had been propoſed to ſummon to give Advice on the preſent Occaſion. This Propoſal was made to the Lord Provoſt on the *Saturday* preceding, being the 24th of that Month, by a Citizen of *Edinburgh*, who had been ſome time a Magiſtrate, and had been commiſſioned by other well-affect-ed Citizens to propoſe ſuch Meeting to the Provoſt, as had been for-merly practiſed on important Occaſions, and which he repreſented as what they judged neceſſary at this Time, in order to take Meaſures for putting the City in a Poſture of Defence. This Propoſition the Provoſt received at firſt with a Sneer or Laugh; but, upon the other's preſſing him, as being the Opinion and the Wiſh of many ſubſtantial Burgeſſes, and what had been formerly practiſed on the like Occaſion, the Provoſt at laſt conſented that there ſhould be ſuch Meeting, but ſaid it could not be that Day, being *Saturday*, as many of the Burghers would be out of Town; and accordingly it was not held till the *Tueſday* following.

At this Meeting, which was held in the *New Church Iſle* at Five o'Clock in the Afternoon, conſiſting of a great Number of the moſt re-ſpectful Burgeſſes, of undoubted Loyalty to his Majeſty, they unani-mouſly approved of the Steps already taken, and offered their Advice as to the farther Steps to be taken, and particularly 'That the City ſhould 'be forthwith put in a Poſture of Defence, and a Body of Men raiſed 'and armed for the Defence thereof and the Service of the Government.' The former of theſe could be of little Uſe without the latter; and to the latter the Provoſt objected, that the ſame would be treaſonable or illegal, without ſpecial Warrant from the Crown. They replied, That if a War-rant was neceſſary, That might be applied for and obtained. Then the Provoſt ſaid, That, ſuppoſing they ſhould get a Warrant, he doubted much if Money could be raiſed by Subſcription for paying them. To which laſt Objection it was anſwered by ſome Citizens of conſiderable Wealth and Credit there preſent, That they were ready to undertake and oblige them-ſelves to find Money to pay a Regiment for three Months. Upon this it was reſolved, that a Committee ſhould be named, out of the Council and of the other Burgeſſes, to conſult with and take the Advice of the Lord Juſtice-Clerk, and ſuch of the other Judges as could be found in Town, and his Majeſty's Advocate and Solicitor, with regard to what farther Steps the Magiſtrates and Council and Community could legally take for preſerving the Peace of the City, and contributing to defeat the Deſigns of the Rebels; and next Day the Council named their Com-mittee accordingly; the Reſult of which was, that Application was made to his Majeſty, in order to remove all Doubts, for his ſpecial War-rant and Licence to raiſe ſuch Regiment.

[*Saturday*, *Auguſt* 31*ſt*, 1745.] Advice was received at *Edinburgh*, that Sir *John Cope*, with the Troops under his Command, inſtead of march-ing directly to the Rebels, as he had propoſed, and was expected, had, upon his March at *Dalwinnie*, the Place where the *Fort-Auguſtus* and *In-verneſs* Roads meet, marched foreward towards *Inverneſs*, whereby the Rebels were now got to the ſouthward of the King's Army, when there was no Force left to oppoſe their marching ſouthward where they ſhould think fit, which gave no ſmall Alarm to the Cities of *Edinburgh* and *Glaſgow*, and all the Country to the ſouthward of the Rivers or Friths of *Forth* and *Clyde*.

[*Monday*, *September* 2.] The Council of *Edinburgh* ordered the Town-Guard to be augmented to the full Number of 126 Men, Officers, Ser-jeants, and Drums included.

[*Eodem die. The deceaſt Mr. Mac Laurin's Journal.*] 'The Accounts 'from the North becoming more and more unfavourable, above twenty 'Gentlemen of known good Affection to his Majeſty and the Govern-'ment, met at Mrs. *Clark*'s Tavern, and agreed to apply to the Lord 'Provoſt, that he would give Orders for putting the Town in as good a 'State of Defence as poſſible with all Expedition. It was complained 'of in this Meeting, that an Application which had been made the 'Week before to his Lordſhip had not met with due Encouragement, 'but that the Perſons who waited on his Lordſhip, and their Zeal, 'had been ridiculed, and made the Subject of inſipid Jokes. The 'Company (however) reſolved, that, whatever Diſcouragements they 'might meet with from thoſe whoſe Duty it was to have animated 'them, they ſhould meet frequently, and promote, to the utmoſt of 'their Power, whatever may tend to the Defence of the Town: 'In the mean time they appointed two of their Number, a 'Gentleman who had formerly been a Baily, and Mr. *Mac Laurin*, to 'wait on the Provoſt next Morning, with a general Inſtruction to beg 'he would ſee to the Defence of the Town, and offer their Aſſiſtance; 'and three particular Inſtructions, *firſt*, That he would order making 'Moulds for Bullets, it having been found on Trial that all in the Shops 'had been bought up of late by Cadies, (or Link Boys) who had been 'ſent for them. 2*dly*. That the Sluice of the *North Loch*, by which the 'Water iſſues from it, ſhould be ſhut and ſecured, that it might fill up. '3*dly*. That they ſhould propoſe to his Lordſhip the making a Diſtinction 'betwixt the Inhabitants of known good Affection, and ſuch as were 'ſuſpected, when he came to intruſt them with the Town's Arms,

and

'and take proper Measures that the City should not be in Danger from 'within, as (had been taken) in 1715.

'Lord Provost did give a satisfactory Answer to the two first of these, but 'as to the third, he did not give the Satisfaction desired; but, after a good 'deal of Reasoning, he said, That, if the Town came to be attacked, he 'would so far make a Distinction as to intrust the Town's Arms with 'the most substantial Burghers; he said, That, if a thousand Men had a 'mind to get into this Town, he could not see how he could hinder 'them. In answer to this, the Number of Trades-Lads in *Edinburgh*, of 'the Gentlemen who would associate to save the Town, the Unskilfulness 'the *Highlanders* had always shewn in attacking Stone-Walls, their 'Want of Artillery, and being ill-armed, with the Assistance that would 'be got from the Dragoons, in all Probability, were urged: It was insist-'ed, our doing something was requisite to save the Reputation of the 'Town, to divert the Enemy from coming this Way, and to raise a Spirit 'in the Country.'

'To this he answered, That, to pretend to do when we could do little, 'was to expose us to Ridicule. Other discouraging Expressions were 'used; but, at the End, he said he would be glad of Advice from sensible 'Burghers, and have regard to it.'

[*Thursday, Sept.* 5th.] 'Little material past till *September* the 5th, 'when the same Company, with some Addition of other Gentlemen, met 'at the same Place; and now the Danger appearing more imminent, 'they entered into an Association, as Volunteers, to serve for the Defence 'of the City at the Hazard of their Lives and Fortunes, under the Di-'rection of the Lord Provost. This was signed by all present, and by a 'hundred before Twelve the next Day. They appointed some of their 'Number to present this to the Lord Provost, to desire they might be al-'lowed to chuse their Officers, and that he would apply to General *Guest* 'for Arms to them: They were likewise ordered to intreat that the Pa-'rapet of the Town-Wall might be cleared, which, in many Places, had 'been stopt up with Stone and Lime to prevent smuggling; that Stairs 'should be made for getting up to it at proper Distances; that Cannon 'should be got from the Ships to be placed on the Flanks and Gates.'

This Spirit for putting the Town in a Posture of Defence was so generally prevalent amongst the well-affected, and even the least warlike Part of the Inhabitants, that, of this Date, a Representation to the Lord Provost, Magistrates and Council, was signed by the Principal and Professor of Divinity, and Twelve more of the Ministers of the City of *Edinburgh*, of whom the total Number is Sixteen, so that three only were absent or wanting; which Representation sets forth, that they have seen and considered a Petition to their Lordship and Honours, subscribed by a considerable Number of the Inhabitants of this City, well-affected to his Majesty's Person and Government, praying, that the City may be put in a proper Posture of Defence against the common Enemy; that they, the Ministers of *Edinburgh*, judged it their Duty to testify their hearty Approbation of such Design, and their firm Resolution to promote the same in their Sphere and Station, and thereby engage chearfully to contribute for defraying the necessary Expence with their Fellow-Citizens.

The Ministers were as good as their Word as to this Article; for, out of their moderate Stipends, they joined in subscribing for the Pay of one hundred Men out of the thousand proposed to be raised.

The Lord Provost, however, found also considerable Difficulties as to the Legality of this Measure, which was pressed upon him, of raising the *Volunteers*, and did not give way to it until he had first one signed Opinion of his Majesty's Advocate and Sollicitor, 'That it was lawful for the 'Magistrates to authorize the Subscribers, and other well-affected Inha-'bitants, to take up Arms in Defence of the City, and Support of the Go-'vernment.' And the Provost, it seems, not being fully satisfied with this Opinion, there was subjoined to it, and signed by the same Gentlemen, a farther Opinion, [*Eodem die, Sept.* 6th] 'That it was lawful, and 'not treasonable, for the Magistrates to comply with the Desire of the 'said Petition of the Volunteers.'

[Mr. *Mac Laurin's Journal.*] The Lord Provost declared now, and always afterwards, 'That he would insist on the Privileges of his Office, 'and did not leave the Nomination of the Officers to the Volunteers, but 'allowed them to make up a List of 30 or 40, or more, from which he 'would chuse them. He walked with some of the Magistrates and Vo-'lunteers about a Part of the Town-Wall; he then said, he could not 'see but if two thousand Men had a mind to get into the Town, they 'must succeed; after looking at a Part of the Wall, he desired Mr. '*Mac Laurin*, one of the Volunteers, to take the Trouble to make a Plan 'of it; which he promised to do.

'It was thought proper to draw up an Article of News concerning this 'Association, to encourage others to join, and rouze the lethargick Spirit 'of the Country: After it was written, it was thought decent and dutiful 'to shew it to the Provost; the Words, *That this Proposal was accepted by 'the Lord Provost*, were altered by him; he would have it, *that the Lord 'Provost acquiesced in this Proposal.* This Alteration was much regretted 'by those who were sincerely zealous in this Cause, being sensible, that, 'in so critical a Time, more than acquiescing was requisite in the Ma-'gistrates, to animate the Burghers, and foreseeing, as it happened, that 'the Trades would not be warm when the Magistrates were so cool. The 'Volunteers however soon rose to 400. The Expences of the Works 'proposed were much talked and complained of, at this Time and af-'terwards.'

[*Saturday, Sept.* 7th.] The Lord Provost moved in Council, that an Address should be drawn up and presented to his Majesty, which was unanimously agreed to; and accordingly a very dutiful Address was made out and signed; and that same Day it was resolved in Council to authorise the Magistrates and Conveener to employ Persons, with all possible Speed, to *put the City in a Posture of Defence*, and particularly *the Walls thereof.*

[*Eodem die, Sept.* 7th, Mr. *Mac Laurin's Journal.*] 'The Plan of the 'Wall was made ready, and presented to the Council at Six o'Clock; the 'weak Places were pointed out, and what was most necessary to be done 'proposed. The Lord Provost desired an Estimate might be made of the 'Expence; but it was answered, That it could not easily be done, and 'would require Time. It was proposed the Flanks should be first taken 'care of, as the Time which the Rebels would take to come to *Edin-'burgh* was uncertain; that the doing as much as we could did not hin-'der the capitulating, if necessary; that there was a double Chance for 'Relief, either from Sir *John Cope*, or the *Dutch*, so that holding out one 'Day or two might save the Town; but that Dispatch was necessary 'above all things, and all the Workmen that could be got ought to be 'employed.'

[*Sunday, Sept.* 8th. Mr. *Mac Laurin's Journal.*] 'The Workmen clear-'ed a Part of the Parapet; but the Number was very small for this Day, 'and indeed for the whole Week, till *September* 15th. Of this Complaints 'were made every Night, but to little or no Purpose; sometimes there 'were only two Dozen, when there ought to have been as many Hun-'dreds; for now the Rebels were at *Perth*. It was found that the Para-'pet, when cleared, was too narrow in several Places, and that it was ne-'cessary to add to it by Scaffolding. This was done in some Places, but 'so few Men were employed, that in others it was not executed.'

[*Monday, Sept.* 9th. *Council Record.*] The Lord Provost produced in Council a Sign-Manual from his Majesty, addressed to the Lord Provost, Magistrates, and Town-Council of *Edinburgh*, reciting: 'That it had 'been represented to his Majesty, that the Lord Provost, Magistrates, 'Town-Council, Burgesses, and others of the City of *Edinburgh*, from 'their great Loyalty and Affection to his Person and Govern-'ment, were at this Juncture willing and ready to raise and maintain, at 'their own proper Charge and Expence, by voluntary Subscription and 'Contribution, one thousand Foot for the Defence of the said City and 'the Support of his Government, and that they were desirous of obtaining 'his Royal Licence and Authority for the same: His Majesty does grant 'the same accordingly; and does farther ordain and command, that the 'said one thousand Men shall be under the Direction of the Lord Pro-'vost, Magistrates and Town-Council of *Edinburgh*.'

This Warrant having been read and considered by the Magistrates and Council, 'They appointed, as a Committee, the present and old Ma-'gistrates, Conveener, Deacons *Lauder* and *Porteous*, or any five of 'them, the Lord Provost being always one; and, in case of his Ab-'sence, any Nine of them to be a *Quorum*, to consider what is most pro-'per to be done upon this Occasion, for levying the said 1000 Foot, 'and particularly to take in the Subscriptions of such of the Inhabitants 'as are willing to contribute for levying and maintaining the said 1000 'Foot, with their proper Officers to be named, for the Purposes men-'tioned in the said Sign-Manual, for the Space of three Months after 'they shall be so inlisted; as also to consider what is proper to be done 'farther for the Safety of the City, and for Support of the Government; 'which Committee shall meet at the Goldsmiths Hall twice each Day, at 'the Hours of Eleven in the Forenoon, and Four in the Afternoon; and 'recommended to the said Committee to keep a Book, into which all their 'Proceedings and Actings shall be regularly ingrossed, to the end the same 'may be reported to the Council from Time to Time.

'And the Magistrates and Council nominate and appoint the Lord 'Provost to be Colonel and Commander of the said 1000 Foot, with 'Power to his Lordship to conduct and direct them, and the other Of-'ficers who shall be named to command under him, as the Council shall 'think proper, or as the Exigencies of Matters shall require.'

[*Eodem die, Sept.* 9th. Mr. *Mac Laurin's Journal.*] 'The Work went on 'but slowly; some of the Embrazures in the Flanks for the Cannon, and 'in the Curtain for the Musqueteers, were opened.'

[*Eodem die.*] 'A Letter was delivered to the Lord Provost, signed by 'three old Provosts, *Drummond*, *Mac Aulay*, *Osburn*; and three old Bailies, '*Nimmo*, *Blackwood*, *Wilson*; on Behalf of themselves and the other Vo-'lunteers, praying his Lordship to apply to the Commander in Chief for '200 Stand of Arms; and that he would appoint a Place where the 'Volunteers might be instructed in the Use of the Firelock and Bayonet.'

[*Sept.* 10th. *Council Record.*] 'The Council appointed *Allan Burns*, late 'of the Lord *Rothes's* Regiment, to be Adjutant to the 1000 Foot com-'manded by the Lord Provost, which were now levying, and recom-'mended to his Lordship to find out proper Persons to be Officers, to 'command each hundred Men under his Lordship.

[*Eodem die.* Mr. *Mac Laurin's Journal.*] 'A Scheme of what was most 'necessary to be done was drawn up by a Volunteer above-mentioned, 'and shewn to General *Guest*, and at his Desire to an old Officer of the 'Dragoons; being approved by him, it was presented to the Lord Provost. 'It was insisted, that a high House, which rakes a Part of the Wall near 'the *Potter-Row* Port, should be possessed by a Party, and a Communica-'tion made from the Wall to the House, to relieve or bring off the Men as 'Occasion might require; but this, so much insisted on, was not yielded 'till *September* 16th, when Captain *Murray* approved of it; and then, 'though it was begun, there was not Time to finish it.

'Unhappily at this Time the Elections of their Deacons so much em-'ployed the Trades, that few came to work on the Wall; and it never 'appeared, that, after repeated Complaints, proper Authority was em-'ployed to oblige them to work in this Time of the greatest Danger.'

The Lord Provost reported, That he had procured from General *Guest* an Order to *David Lyon*, Store-Keeper of the Castle, to deliver to his Lordship, or his Order, upon Receipt, two hundred Muskets, Bayonets, and Cartouch-Boxes, and the like Number of Flints, with one Barrel of Powder, and an equal Proportion of Ball, which are to be distributed among the Gentlemen Volunteers.

The Council also authorized the Bailies of *Potter-Row* and *Portsburgh* to give Receipts for sixty Stand of Arms, to be by them distributed amongst the Inhabitants on proper Receipts.

The Council appointed the respective Deacons to make Choice of six Persons out of each of their Incorporations, to be given in to the Council on *Friday* next, that, out of the same Lists of six, three may be chosen by the Council, to the Effect the Corporations may elect their several Deacons for the Year ensuing.

[*Eodem Die. Sept.* 11*th.*] The Committee above-mentioned, appointed by the Council on the 9th, met for the firſt Time, the Lord Provoſt preſent, when they gave their Opinion concerning ſome Things to be done for the Reparation of the Walls, that the ſame ſhould be forthwith executed ſo far as hitherto undone.

[*Eodem Die. Mr. Mac Laurin's Journal*] 'Some Cannon were got 'from Ships; and it having been earneſtly recommended to the Lord 'Provoſt, that ſome Hand Granadoes ſhould be got, and the City-Guard 'and Volunteers taught to uſe them, a Meſſage was ſent to the General, 'and by him to the Caſtle; but it was anſwered, That they had not 'above two hundred, and could not ſpare them. Afterwards, however, 'one of the Volunteers, ſurpriſed that there ſhould be ſo few in ſuch a 'Garriſon, ſo well provided with Stores, made a Viſit to the Caſtle, 'and was told by the Store-Keeper, that he had five times that Num-'ber, and was deſired to tell the Provoſt, that he had a hundred at his 'Service, if he had a mind for them. The Meſſage was delivered, but 'the Granadoes never appeared. We found twenty-three that had lien 'in a Cheſt ſince 1715, in the Town's Armoury, but they were never 'examined.

'A Ditch that had been ordered at *Wallace*'s Tower, had been carried 'on right for ſome time, but was afterwards, by ſome Miſtake, or bad 'Advice, caſt on the wrong Side of the Dyke. This Day this was ſtopt, 'and a Remedy propoſed, but not executed for want of Time.

'[*September* 12. *A. M.*] The Committee above named, came to ſome 'farther Reſolutions about fortifying the City-Walls, and, *inter alia*, 'recommended to Mr. *Mac Laurin* to go along with the Tradeſmen to 'explain the tenth Article of his Memorial, in relation to the putting 'the Wall at *Leith-Wynd* in a better Poſture of Defence.'

[*Committee's Record.*] In purſuance of the Lord Provoſt's Recommendation, the Committee reſolved, That it be recommended to ſome of the City-Guard, *Edinburgh* Regiment, and Gentlemen Volunteers, that they do learn the Exerciſe of throwing the Hand-Granadoes.

'[*Eodem Die. P. M.*] The Committee reſolve, That the Council 'ſhould invite thoſe who have any Quantities of Grain at *Leith*, or other 'Parts near to the Town, to bring the ſame into this City, to be lodged 'in the City's Granaries, to be kept therein from the Enemy, Rent-free.'

'[*September* 13. *Council Record.*] The Provoſt reported, That, on the '12th current, he had given Receipt to the Store-Keeper of the Caſtle 'for a hundred Muſkets, Bayonets, and Cartouch-Boxes, with half a 'Barrel of Powder, and Ball in proportion, for the Uſe of the Volunteers 'of this City; and alſo that he had given Receipt for two hundred 'Stand of more Arms to the Uſe of the City's Regiment.

'The Proceedings of the Committee for levying the City-Regiment, 'and forwarding the neceſſary Steps to be taken for the Safety and De-'fence of the Place, named the 9th current, were read over, and una-'nimouſly approved by the Council, which recommended to the Com-'mittee to continue in their Diligence.'

The Council then proceeded to make the ſhort Leets for the Election of new Deacons; after which there is nothing entered in the Council Record, 'till the 18th of *September*, the Day after the Rebels got Poſſeſſion of the Town, when there were ſome Proceedings relating to the annual Election, which did not take effect.

[*Eodem Die. Minutes of the Committee.*] 'The Lord Provoſt, and other 'Members of the Committee preſent, recommended to Bailie *Robert* '*Baillie*, and his Committee upon the publick Works, and ſuch of this 'Committee as pleaſed to attend, or any three of them, Bailie *Baillie* 'being always one, to ſee the whole Particulars contained in the former 'Minutes fully executed, without Loſs of Time, and to take the Advice 'and Direction of ſuch proper Perſons without Doors, as they ſhall 'judge neceſſary for executing the whole Particulars: with Power to 'the ſaid Committee to preſs ſuch Workmen as ſhall be judged pro-'per for compleating the whole Works before ſpecified.

'[*September* 13. *Mr. Mac Laurin's Journal.*] The Day of the Election 'of the Deacons there was very little done on the Wall; the Deacons could 'not be got; ſome Houſes in St. *Mary's Wynd*, that had large Windows 'into the Town, were ſhewn to ſome Magiſtrates, and afterwards to the 'Provoſt: but no Orders were given about them. This Day the Car-'riages of the Cannon were examined, and any neceſſary Reparation 'ordered.

'[*Saturday, September* 14*th, Committee Record.*] The Lord Provoſt in 'the Committee reported, That he had this Day ſigned an Order for 'Payment of 1000 *l. Sterling* to the Receiver General, to Account of the 'Ceſs due by the City.

'The Committee reſolve, That the Ceſs Books, and thoſe by which 'the Annuity and Poor's Money is collected, ſhall be tranſported from 'the ſeveral Collectors Offices to the Caſtle of *Edinburgh* for Preſerva-'tion; and the Provoſt wrote a Letter to General *Preſton*, the Governor 'of the Caſtle, praying him to receive the ſaid Books, and keep them for 'the Uſe of the City.'

This is the laſt Entry made in the Regiſter of the Proceedings of this Committee, which does not appear to have met again after this *Saturday* the 14th.

'[*Eodem Die. Mr. Mac Laurin's Journal.*] Little Work on the Walls 'and Scaffoldings, the Cannon were all proved and the Shot got ready.

'[*Sept.* 15. *dit. Journal.*] The Lord Provoſt brought Captain *Murray* 'to Town to give his Advice, and, not 'till this Day, he ordered ſome 'Works within the Gates, which were begun immediately. There were 'more Men employed this Day than ever before; and every body ſeemed 'to exert themſelves: But the Lord Provoſt having never named the 'Field-Officers to the Volunteers, they were now nine independent Com-'panies; and, upon a Motion to go out with Colonel *Gardner*, they 'unhappily divided in Opinion, which produced ſome Heat amongſt 'them. A moſt unlucky Signal was pitched on to call them to their 'Arms, the ringing of the Fire-Bell, which never fails to raiſe a Pan-'nick in *Edinburgh*. This happened in time of divine Service; the 'Churches diſmiſſed in Confuſion and Terror: And this was the firſt 'Appearance of Fear in the Place: This Signal ought not to have been 'propoſed or allowed by the Magiſtrates at ſuch a Time, the Rebels not 'being far from us.

'This Day moſt of the Cannon were carried to the Flanks, and in 'this as much Regard as poſſible was had to the weakeſt Places; ſo that 'there were three on *St. Mary's Wynd*, which raked it. About Six, one 'of the Volunteers, with the Chief of the Bombardiers, came to the 'Provoſt, to have an Order to load them; he kept them waiting till 'Eight, and then deſired another to ſign the Order for him. They 'begun, though in the Night; but, after they came to the *Briſto* Port, 'they were obliged to wait from Half an Hour after Ten, till near One, 'for want of a Centinel to place on the loaded Gun, though they ſent 'Meſſages for Centinels to the Guard and Council. This put a Stop 'to their Progreſs that Night; the Guns were all loaded with ſmall 'Shot, and, as they flanked the Curtains and Gates, it was the more 'dangerous to leave them without Centinels during all that Time, while 'the reſt of the Wall was guarded, and, *All is well*, was heard go round 'regularly; there were no Centinels from *Briſto* Port to the *Weſt* Port, 'but one or two below.'

On the Evening of this 15th of *September*, when the Rebels were within a few Miles of the City, and it was apprehended that they might have come up to it during that Night, it was reſolved at a Meeting with the Lord Provoſt, and others of the Council, with the Captains of the Volunteers, That 700 Men ſhould be upon Duty all Night, to guard the Walls all round the Town, who were to conſiſt of 400 Trained Band-, 40 of the new Regiment, 100 Volunteers, 90 Seceders, 40 *Dalkeith* Volunteers, 30 Exciſe-Officers.

[*Monday, September* 16. *Mr. Mac Laurin's Journal.*] 'The Works 'went on chearfully till Four or Five at Night; a Work was thrown 'up to defend the Paſs to *Mountreſay*, ſome Gates were ſhut up, 'ſome more Cannon were got, and carried to the Baſtions and Gates; 'we were told that only five Gunners were got at One o'Clock, but 'were promiſed that Pains ſhould be taken to get more.

'Betwixt Two and Three o'Clock, ſome Burghers were ſaid to be 'carrying about for Subſcriptions a Petition to the Magiſtrates, praying 'the Town ſhould capitulate. The Alarm being great at the *Weſt* Port, 'the Guns there were loaded, and the other Works preſſed on, ſo that 'they were almoſt finiſhed, when an Account came, that a Meeting in 'the *New Church* had agreed to capitulate. One of the Volunteers 'called for the Provoſt, to know what was to be done to the Cannon; but 'was told, that his Lordſhip had not Time to ſpeak to him. The Call 'of, *All is well*, did not go round the Wall this Night as the former, 'and the Town ſeemed to be quite off its Defence; the Volunteers 'delivered their Arms into the Caſtle.'

Here Mr. *Mac Laurin*'s Journal ends, which is all in his own Hand-Writing; and, as he was himſelf a Volunteer, and ſerved the Town as a chief Engineer, to deviſe and direct the Methods of fortifying the ſame; as he was a Perſon of great and eminent Abilities, of excellent Judgment as well as great Learning, and of perfect Probity and Veracity; as he had Opportunity to know all the Facts which he relates, and which he ſet down in Writing recently after they happened, with great Diſtinctneſs and Preciſion; and as the Purſuer has reaſon to believe that his Relation will be confirmed by the Teſtimony of living Witneſſes, he has choſen, in this Deduction of the Facts, in order to make the Charge and the Defence better underſtood, to make uſe of the very Words of Profeſſor *Mac Laurin*, as the moſt accurate and genuine Relation of the Facts that could be made, ſo far as he goes.

The Events of *Monday* the 16th, when, after ſo much Preparation for a Defence, the City of *Edinburgh* was in effect ſurrendered, and opened its Gates to the Rebels, were various, and deſerve to be more minutely recited. In the Morning of that Day Provoſt *Stewart* received a Meſſage from the Camp of the Rebels, which was delivered to him by *Andrew Alves*, Writer to the Signet, importing, That the City of *Edinburgh* would be ill-treated by them, unleſs it ſhould be readily or ſpeedily ſurrendered. Upon receiving which, the Provoſt did not commit the ſaid *Andrew Alves* to Priſon, neither did he give Notice of this Incident to any other of the King's Officers, Civil or Military, nor did he ſo much as adviſe or charge Mr. *Alves* to forbear repeating or relating that Meſſage of his in the Town, who went directly from the Provoſt to the Street, and repeated his Story to a Circle of People who came round him, amongſt whom one Gentleman adviſed Mr. *Alves* to go and tell what he had been relating to his Majeſty's Advocate; upon his doing which, the Advocate adviſed the Lord Provoſt to commit Mr. *Alves* to Priſon, which was now done too late to prevent the diſcloſing or ſpreading the threatening Meſſage which he had brought.

About Two o'Clock in the Afternoon of that Day, a Petition was ſet on foot, which was put into the Lord Provoſt's Hands about Three, addreſſed to the Lord Provoſt, Magiſtrates and Council, and intitled, *Repreſentation of the under-ſubſcribing Inhabitants of the City of* Edinburgh, and it is ſigned by 48 Perſons, ſetting forth, 'That being deeply affected 'with a Senſe of the great Danger to which the City is preſently ex-'poſed, by a rebellious Army marching up thereto in order to attack it, 'and being, at the ſame time, ſenſible of our Inability to make ſuch a 'Defence as with any Probability may defeat their Deſign of entering 'the ſame, without endangering the Lives and Properties of the Inha-'bitants, and expoſing the City to Rapine and Plunder, in the Event 'of our being obliged to ſurrender, and that there is but ſmall, if any 'Proſpect of Aſſiſtance from the Military; therefore praying them, who 'are the Governors of the City, that, before they came to any Reſolu-'tion, either of defending or giving up the Town, they will call a 'Meeting of all the principal Inhabitants and Heritors at preſent in the 'Place, to conſult with them what is proper to be done in an Affair of 'ſo great Importance.'

About the very time that this Petition was going forward, a Letter was ſigned by the Lord Provoſt, together with his Majeſty's Advocate and Sollicitor, addreſſed to the honourable Lieutenant-General *Gueſt*, in the Words following. '*Edinburgh*, 16th *September* 1745. Sir, We are of 'Opinion, that it would be for his Majeſty's Service, that one hundred 'of the Dragoons ſhould be ordered in to the Town of *Edinburgh*, to aſ-'ſiſt in defending this Town.'

A little after this, and betwixt the Hours of Three and Four of the Afternoon of this Day, Mr. *Walter Groſet* was ſent by the Lord Juſtice-Clerk to the Lord Provoſt of *Edinburgh*, to know whether he the Provoſt intended to defend the Town or not, to preſs the Defence thereof, and

to

to assure him, that, if he resolved to defend it, not only the 100 Dragoons he had applied for, but as many more as he pleased to desire, should forthwith be ordered in to his Assistance. Mr. *Groset*, in his Way to *Edinburgh*, met the Lord Advocate coming from the Town, and having acquainted him with the Message Lord Justice-Clerk had sent by him *Groset* to the Provost, he the Advocate approved thereof, and desired Mr. *Groset* to make all possible Haste in delivering the same, and getting the Provost's Answer.

Mr. *Groset* found the Lord Provost in the Goldsmiths-Hall, delivered to him the above Message, and insisted for a direct Answer, and that, to prevent Mistakes, the same might be put in Writing; which, after some Conversation on the Subject, the Provost gave him in Writing, directed to the Lord Advocate and the Lord Justice-Clerk, in the following Words: 'You know the Councils I was Witness to: Was I to desire 'his Majesty's Troops to come into the Town now, I might be upbraided, after that, for having laid a Snare for his Majesty's Forces; should 'I refuse them, I may afterwards be accused for tamely delivering up the 'Town of *Edinburgh*: I desire your Lordships to be explicit, and tell me 'whether it is your Opinion or not they should come in; and send your 'Orders in Writing.'

Upon Mr. *Groset*'s receiving this Answer, he told the Lord Provost, that he had already assured him, that it was the Lord Justice-Clerk's Opinion, that the Town should be defended, and that therefore he must answer for the Consequences of this unnecessary Delay; and as for the Lord Advocate's Opinion, That had already been given in Writing an Hour or two before, when he, along with the Lord Provost himself, had signed a Letter to General *Guest*, requesting 100 Dragoons to assist in defending the City.

About Four o'Clock in the Afternoon, that is, about an Hour after the Petition above-recited was presented to the Lord Provost, praying for a general Meeting of the Inhabitants, to consult or deliberate with the Magistrates and Council, whether to defend or give up the Town; such Meeting was accordingly held in the *New Church Isle*, the Lord Provost being in the Chair, and presiding.

At this Meeting there happened to be present some of the Reverend Ministers of the City of *Edinburgh*, and some other Persons of known good Affection to his Majesty and his Government, according to whose Observation, the far greater Part of the Persons there assembled were reputed of a quite contrary Character; and indeed it was impracticable, at this Meeting, to gather the true Sense of the Citizens in general, supposing it had been now seasonable or fit to deliberate in a popular Assembly, whether to give up or pursue the Defence of the City, for which hitherto so many Preparations had been making, because the greater Part of the most substantial and well-affected Burgesses, who were in Arms as Volunteers, had no Notice of this Meeting, or the Intent of it, and could not possibly attend it, being at that very Time under Arms with their respective Officers, waiting for Orders from the Lord Provost or Colonel, in what Manner they should be disposed of, or act for the Defence of the City.

At the Meeting thus assembled, and thus composed, the general Cry was for giving up the City without making any Defence; and the Reverend Mr. *Logan* Minister, and others, who attempted to speak in Opposition to this Measure, were borne down with Clamour and Noise.

During this Meeting Mr. *Lindsay*, Deputy Secretary of War, came with a Message from General *Guest* to the Lord Provost, upon the General's hearing the Rumour that there was a Meeting of the Inhabitants to deliberate about giving up the Town to the Rebels, to ask the Provost if he continued to be of Opinion that the Dragoons should come into the Town. To which the Provost answered, That he would neither bid nor forbid them, but that the General might do what he thought proper. Upon which Mr. *Lindsay* very naturally asked him, how he came to scruple about giving Directions concerning the Dragoons, when he had an Hour or two before sent a written Request to the General to obtain them. To which the Provost answered, That he had only signed that Request at the Desire of the Lord Advocate.

Towards the Close of this general Meeting, there was brought into it, in a Manner that appeared somewhat mysterious, being handed in from the Door, from one Person to another, in the Crowd, a Letter addressed, For the Lord Provost, Magistrates, and Town-Council of *Edinburgh*, signed *Charles* P. R. bearing Date, *From our Camp this 16th* September, 1745, and in the following Words:

'Being now in a Condition to make our Way into the Capital of his 'Majesty's ancient Kingdom of *Scotland*, we hereby summon you to receive us, as you are in Duty bound to do; and, in order to it, we 'hereby require you, upon Receipt of this, to summon the Town-council, 'and take proper Measures in it for securing the Peace and Quiet of the 'City, which we are very desirous to protect: But if you suffer any of 'the Usurper's Troops to enter the Town, or any of the Cannon, Arms, 'or Ammunition now in it, whether belonging to the Publick, or to 'private Persons, to be carried off, we shall take it as a Breach of your 'Duty, and a heinous Offence against the King and us, and shall resent 'it accordingly. We promise to preserve all the Rights and Liberties of 'the City, and the particular Property of every one of his Majesty's Subjects: But if any Opposition be made to us, we cannot answer for the 'Consequences, being firmly resolved at any Rate to enter the City; and, 'in that Case, if any of the Inhabitants are found in Arms against us, 'they must not expect to be treated as Prisoners of War.'

This Letter was not read out in the general Meeting in the Church; for, as soon as the Subscription to the same was read, the Meeting broke up, and the Lord Provost, with the Members of Council there present, returned to their Council-Chamber, where this Letter was again produced and read; after which it was moved, or agreed to by the Provost, that an Answer should be sent to it, which was accordingly sent, first by one, and then by another Deputation from the Council, who went out to the Camp of the Pretender's Son, who was then about two Miles to the South-West of the City, upon the Water of *Leith*, in the Parish of *Collington*. The Return, brought in Writing, to the first of these Deputations, was in the Words following: 'His R. H. the Prince Regent thinks his '*Manifesto*, and the King his Father's Declaration already published, are 'a sufficient Capitulation for all his Majesty's Subjects to accept of with 'Joy. His present Demands are, to be received into the City as the Son 'and Representative of the King his Father, and obeyed as such when 'he is there. His R. H. supposes, that since the Receipt of his Letter 'to the Provost, no Arms or Ammunition have been suffered to be carried off or concealed, and will expect a particular Account of all Things 'of that Nature. *Lastly*, He expects a positive Answer to this before 'Two o'Clock in the Morning, otherwise he will think himself obliged 'to take Measures conform. At *Gray's-Mill*, 16th *September*, 1745. 'By his Highness's Command,

'(Signed) J. MURRAY.'

It is proper here to observe, that after the first Deputation was sent out to the Camp of the Pretender's Son, Notice was brought to the Lord Provost, and the others assembled with him in the Council-Chamber, that Sir *John Cope*, with the Troops under his Command, was arrived off *Dunbar*. This News was brought by Mr. *Walter Groset*, who brought the original Letters from *Dunbar*, giving Notice of this Event, together with a Letter from the Lord Advocate, who was then at *Musselburgh*, certifying, that these were the original Letters. All these Mr. *Groset* delivered to the Lord Provost in the Council-Chamber; upon perusing which the Provost said, This News had come too late, for they had come to a Resolution to capitulate, and had sent a Deputation to the Camp of the Rebels for that Purpose, and shewed to Mr. *Groset* the Letter above-recited from the Pretender's Son, as the Occasion of that Resolution. Mr. *Groset* then proposed to send after the Deputies to bring them back; and for that Purpose another Member of the Council was accordingly sent, but he did not overtake them.

About this Time Mr. *Drummond* and Mr. *Mac Aulay*, Captains of the Volunteers, and who had been both formerly Provosts of *Edinburgh*, (as the former now is) upon hearing of Sir *John Cope*'s Arrival, came to the Council-House, and insisted that the Defence of the Town should be now resumed, as there was so near a Prospect of their obtaining Relief, and proposed the ringing of the Alarm-Bell, as a Signal to bring every Body back to their Posts.

To this the Provost answered, That he must be careful of the Blood of the Inhabitants; and that, as certain of their Number had been sent out as Deputies to treat, should they be in the Hands of the Rebels whilst the Alarm-Bell was rung, they, the Deputies, might be ill used by the Rebels; and also urged the former Objections, of the Difficulty and Danger of defending the Town. To this Mr. *Groset* replied, That he knew the Situation of the Town so well, and the Condition of those who were to come against it, who had no Cannon and few Arms, that he would undertake to be one of Fifty that should defend the weakest Place of it, 'till the Troops should come to their Relief. To which one of the Council assenting, the Lord Provost seemed to give Way to the Resolution of defending the Town, provided General *Guest* would agree to let them have from the Castle what Arms should be wanted. This Mr. *Groset* undertook to procure, and went directly, accompanied by Provost *Coutts*, one of the Council, to General *Guest* in the Castle; who told him for Answer, That he was glad the Provost had come to a Resolution to defend the Town, who might depend upon the utmost Assistance that he the General could give them; and that as soon as the City Arms should be put into proper Hands for that Purpose, what farther Arms were wanting should be ready to be delivered to them from the Castle.

Upon their Return to the Provost, and reporting the General's Answer, Mr. *Groset* was told, 'That as the Person who had been sent to bring 'back the Deputies had not overtaken them, the Provost and Council, 'as they had entered upon a Treaty, had come to a Resolution not to 'defend the Town.'

It was then proposed and insisted on, that the Cannon and Arms should be delivered into the Castle. For Answer to which the Provost referred to the Letter from the Pretender's Son, and observed the Danger which the Town would incur, if they should remove their Arms. To which Provost *Drummond* replied, That if they, by giving up the Town, assisted the Rebels with Arms to fight against the King's Troops, would not they, upon retaking the Town, be apt to look upon the Inhabitants as Enemies, and use them accordingly?

After Receipt of the above Answer to the first Deputation, the Council agreed to send out a second Deputation, in order, if possible, to gain some more Time. The Answer to which second was also brought in Writing, though not signed, as the former was, and in the following Words: 'His Royal Highness has already given all the Assurances he can, that 'he intends to exact nothing of the City in general, nor of any in particular, but what his Character of Regent entitles him to: This he repeats, and renews his Summons to the Magistrates to receive him as 'such.'

This second Deputation returned to *Edinburgh* early in the Morning of *Tuesday* the 17th of *September*, in a Hackney-Coach, which entered the City at the *West* Port, and set down the Deputies at Mrs. *Clark*'s Tavern, where the Lord Provost and others of the Council were waiting for them, to receive their Report, and then the Coach drove down the Street towards the *Cannongate*; and at the *Netherbow* Port, which was then kept by a Serjeant's Command of the City-Guard, the Gate was opened to let out the Hackney-Coach, and a Body of Rebels, who were waiting without the Gate, headed by *Sullivan* and *Lochiel*, rushed in at the Gate, and became at once Masters of this Capital.

The Rebels, immediately after their becoming Masters of the City, seized all the Cannon, Arms, and Ammunition belonging to it; and the Day following, being *Wednesday* the 18th, they issued a Proclamation, requiring all Persons in the Shire of *Edinburgh*, forthwith to deliver up, at the Palace of *Holy-Rood-House*, all the Arms and Ammunition they had in their Custody, on Pain of being treated as Rebels. And on *Thursday* the 19th, they sent a Message in Writing to the City of *Edinburgh*, requiring, on Pain of military Execution, that one thousand Tents, two thousand Targets, six thousand Pairs of Shoes, and a proportional Number of Water Cantines, should be furnished to their Army against the 23d, and promising Payment as soon as the present Troubles should be over. All which were accordingly furnished; and for that Purpose a Tax laid upon the Inhabitants of 2*s.* 6*d.* upon each Pound of their real Rent, within the City, *Cannongate*, and *Leith*.

Thus was the City of *Edinburgh*, which had, in their Address to the King of the 7th of this very Month, said with great Truth, 'That this City 'hath

'hath always diſtinguiſhed itſelf by a firm and ſteddy Attachment to 'Revolution and Whig Principles, and a hearty Abhorrence of all 'Popiſh and arbitrary Government: and particularly, that, during the 'Rebellion in the Year 1715, their Zeal for his late Majeſty was 'equalled by few, and ſurpaſſed by none; and, at the ſame Time, 'aſſured his preſent Majeſty, that, at this Time, they would ſtand by 'him with their Lives and Fortunes, and employ every Power they were 'poſſeſſed of, and all the Means his Majeſty ſhould put in their Hands, 'to diſappoint the Attempts of *France* and the Pretender.' This City, which had given ſo many Reaſons to expect better Things of it, was, after mighty Preparations for a vigorous Defence, thus poorly delivered up, without ſtriking one Blow, to an half-armed Rabble, at a Time when the King's Army was within a Day's March of the City, to the great Diſcredit and Reproach of the City itſelf, in the Eyes of the World, who were ignorant of the particular Circumſtances and Cauſes of ſo ſtrange an Appearance, to the hearty Grief and Sorrow of all its well-affected Inhabitants, who are by far the greater Part of them, to the Triumph of the Pretender's Son and his Adherents, to the Ruin of many unfortunate Perſons, who, by this Appearance of Succeſs, were encouraged to engage in the Rebellion, to the real and high Detriment, not of the City itſelf only, but of the Publick; the Rebels, by this Capture, having been there furniſhed with Arms, Tents, and Proviſions of all Kinds, which contributed chiefly to their obtaining the Victory at *Preſton Pans* a few Days after; and that again, to the Continuance and farther Progreſs of the Rebellion, to the immenſe Addition to the Expence of the Publick, the great Interruption of Commerce and Credit, the Progreſs of his Majeſty's Enemies abroad, and the Interruption of the internal Tranquillity of this Kingdom, until that was happily reſtored by the Conduct and Succeſs of his Royal Highneſs the Duke.

It was natural for all the World, at firſt Sight, to lay the Blame of an Event, which has brought on and contributed to ſo many and great Miſchiefs, principally on the Lord Provoſt of *Edinburgh* for the Time, being the chief Magiſtrate and Governor of the City; and the Queſtion now brought to Trial is, Whether he was, or was not guilty or culpable in his Deportment in that high Office, during the Tranſactions libelled, and above more particularly recited? The Libel charges, That he was guilty of groſs Neglect of Duty, and Miſbehaviour in his Office on that Occaſion; and whether he was or not, muſt depend upon a due Compariſon of the Duty of his Office, with his actual Behaviour, to ſee how far the one comes up to the other, and wherein he was alledged to be deficient; and to have counteracted his Duty, the Libel fairly and particularly ſets forth, and thereby gives him the better Opportunity to clear himſelf, if he be able.

Upon the Libel being read in Court on the 13th current, and the Pannel being aſked by the Court, as uſual, what he had to ſay for himſelf, he ſaid, in effect, that he was not guilty, and that his Conduct, upon the Occaſion libelled, had been agreeable to his Duty; and then left it to his Counſel to offer and make good his Defence at large; of whom five were accordingly heard at great Length, and the Subſtance of their Arguments, as far as the Purſuer could obſerve and recollect them, was as follows.

They took Notice that the Pannel had already ſuffered very great Hardſhips by his long Confinement, for the Space of fourteen Months, without being brought to Trial, which, to a Man engaged, as he is, in conſiderable Trade and Buſineſs, they ſaid was a Puniſhment greater than he merited, ſuppoſing all that is alledged in this Libel were true. They ſaid, that the Source of this hard Uſage was the Malice of certain Enemies of the Pannel in the City of *Edinburgh*, who, in order to ruin his Credit and Intereſt in this City, had ſet themſelves to find Fault with his Conduct during the Rebellion, had induſtriouſly miſrepreſented that Conduct, and raiſed a popular Clamour againſt him, which, having reached the Seat of Government, had produced the Severities he has already met with.

That he was however now glad of an Opportunity of having his Conduct brought to Trial by the certain Teſt of judicial Evidence, hoping that he would now be declared innocent upon Examination, who, by popular Clamour, had been pronounced guilty without Examination.

At the ſame Time it was alſo urged, though not very conſiſtently with this laſt Declaration, that the Pannel could not competently be brought to Trial at all in this Court upon this Libel; that the particular Statute of King *James* the Second, upon which it is laid, was almoſt three hundred Years old, and was gone into Diſuetude; that, whilſt it was in force, it was never meant to concern any more than the Behaviour of Magiſtrates in their judicial Capacity, or ordinary Adminiſtration on ſuch Occaſions as commonly or yearly occur, but never to concern the extraordinary Office of Magiſtrates in Time of War or open Rebellion, when it may be very incident to them to err or commit Miſtakes, as many an honeſt Burgeſs may be very well qualified to diſcharge the Duty of Provoſt, or other Magiſtrate of his Burgh, in quiet and peaceable Times, from whom it cannot be expected, that, in ſuch an Exigency as an open Rebellion, he ſhould be able to act the Part of an expert military Commander or Governor of a Town, and that the Deportment of the Provoſt on ſuch Occaſion, could not be tried at all at common Law; that it was an improper Queſtion to be tried by a Jury, who might very properly try a ſingle Iſſue, as whether a Man was guilty of Murder, Robbery, or the like, but very unfit to give Judgment upon a Series of Facts relating to the Deportment of a Provoſt, whether it was or was not agreeable to his Duty; and therefore it was ſaid, that the only competent Method, by the Conſtitution of this Kingdom, for trying and puniſhing Treſpaſſes ſuch as thoſe alledged in this Libel, was by the Authority of the Legiſlature itſelf, in ſuch Manner as had been practiſed in the Caſe of *Alexander Wilſon*, who had been Lord Provoſt of *Edinburgh* at the Time of the Murder of Captain *John Porteous*.

It was farther ſaid, by way of more particular Anſwer to the Matters charged in this Libel, that the ſame contained nothing criminal; that, as to the firſt Article, concerning the raiſing of the *Edinburgh* Regiment, it was no Crime in the Provoſt to entertain a Doubt concerning the Legality thereof, and to heſitate to commit what he apprehended might have been treaſonable, and that he was juſtified in his Doubt by the ableſt Advice given for applying for his Majeſty's ſpecial Warrant, which was accordingly obtained.

That, as to the ſecond, concerning the Volunteers, he had the ſame Reaſon to doubt concerning the Legality of that Meaſure, and it was no Crime in him that he could not perceive any Difference betwixt authorizing a Body of armed Men who were to ſerve without Pay, and another Body who were to receive Pay; or that the one might be authorized without his Majeſty's ſpecial Warrant, which had been adviſed to be neceſſary or proper in reſpect of the other; that, more particularly, as to this Article, the Provoſt had Reaſon to take Offence, that the Meaſure was ſo far concerted and carried on by the Volunteers, as that they brought him a Petition, ſigned by ninety or a hundred Perſons, without his Privity, or previouſly conſulting with him: This he had Reaſon to conſider as a deſigned Neglect and Inſult upon him; and yet, as ſoon as he was adviſed that the Thing might be lawfully done, he gave way to it; and it was a very ſlender Circumſtance to be charged as a Crime, that he choſe to have it ſaid that he acquieſced in that Meaſure, rather than that he heartily approved it, or that he ſhould be charged with a Defect of Civility or good Manners towards theſe Volunteers.

As to the Third, concerning the Repairs of the City Walls, it was obſerved in general, That the Provoſt was not the ſole Perſon anſwerable for any Slowneſs or Defect of Care and Diligence in this reſpect, though he had been ſingled out, and made the ſole Object of this Proſecution. He was but one of many, who behoved to act by the Authority of his Council, and of the Committee appointed to take the ſpecial Direction of what concerned the Defence of the City; and that all his Conduct was agreeable to the Senſe of theſe two Bodies, and approved by them, and without them he could do nothing; for that the King's Warrant concerning the Regiment, being addreſſed to the Lord Provoſt, Magiſtrates and Council, and having ordered that the Regiment ſhould be under the Direction of them all, and the Council having appointed a Committee for that Purpoſe, and to conſider what farther ſhould be done for the Safety of the City, the Provoſt was thus limited in the legal Exerciſe of the known Duty of his Office; that, however, the Committee, whereof he was one, had given the neceſſary Orders for the Repairs, and Warrants for impreſſing Workmen for that Purpoſe; that the Cannon upon the Walls were actually loaded on *Sunday* the 15th, and Applications were made to procure Gunners for managing them.

To the fourth Article it was ſaid, That no Propoſition could be accepted or rejected by the Provoſt alone, but by the whole Council; that as to the Propoſition in the Article mentioned concerning the Trained Bands, of the purging that Body of diſaffected or ſuſpected Perſons, it was true that the Provoſt was averſe to it, and choſe rather to undergo any Hazard, than take upon him to fix ſuch Mark of Infamy upon a Number of his Fellow-Citizens, without any certain Ground of Charge againſt them.

To the fifth Article, That here again the Pannel was charged with Defect of Civility or good Manners (a very unuſual Point of Dittay); and that ſuppoſing the Fact true, of the Converſation with Sir *Robert Dickſon*, it was not unreaſonable, nor could juſtly give Offence, for the Provoſt to propoſe ſuch Method for finding Subſiſtence to the ordinary Men, as inliſting them in the *Edinburgh* Regiment, which would alſo be a Means to inſure their Attendance and Service for a limited Time, ſo as they might not be at Liberty to withdraw at Pleaſure, and this perhaps when the City ſhould be under the moſt preſſing Exigency.

To the ſixth, That the only Thing here imputed to the Pannel as an Offence, was his not immediately committing *Andrew Alves* to Priſon, the doing which might have been of bad Conſequence, to deter others from bringing Intelligence to the Provoſt concerning the Rebels or their Deſigns; and that at beſt it was not a very clear Caſe, that it was at all lawful or competent to commit Mr. *Alves* for only repeating to the Provoſt what the Rebels had ſaid to him, when they ſeized him and made him their Priſoner; that his receiving the Meſſage, or hearing what Mr. *Alves* ſaid, could be no Crime; and, as ſoon as he heard it, he repaired to the Council-Chamber, then held in the Goldſmiths Hall, where he imparted this Piece of Intelligence to ſome others of the Council, who agreed that it ſhould be concealed, leſt it ſhould intimidate the Inhabitants that, however, ſoon after, the Lord Provoſt ſaw the Lord Advocate, and, in purſuance of his Advice, actually committed Mr. *Alves*.

To the ſeventh and eighth Articles it was ſaid, That *Monday* the 16th of *September* 1745. was a Day of univerſal Diſtraction in the City of *Edinburgh*; that the two Regiments of Dragoons of *Hamilton* and *Gardner*, who, with the whole City-Guard, had been poſted at the *Colt-bridge*, a Mile Weſt from *Edinburgh*, about three Afternoon, retreated, and paſt by the North Side of the Town, Eaſtward, which greatly heightened the Pannick of the Citizens, being thus abandoned by the only military Force they had in their Neighbourhood, and no News of Sir *John Cope* or his Army was now come, and at the ſame Time the chief civil Officers of the Crown had left the City; and yet, in this Situation, the Lord Provoſt, in the Goldſmiths Hall, where many of the Council and other Inhabitants were aſſembled, declared himſelf ready to act his Part for the Defence of the Town; but that he was now ſeconded by few: But at this Juncture, one Mr. *Groſet* arrived, and delivered a Meſſage to the Provoſt, that he ſhould ſend for, or conſent to receive a Party of Dragoons; at which he, the Provoſt, was ſurpriſed, having been preſent the Night before at a Council of War, where it was reſolved to be improper to bring any of the Dragoons into the City; upon which he gave his Anſwer in Writing to that Meſſage, which is above recited: That the Inhabitants, anxious to know the Reſolutions of the Council, preſſed into the Room in a Crowd; and then Somebody elſe, not the Provoſt, propoſed to adjourn to the New-Church Iſle; that, on the Way thither, a Gentleman on Horſeback told loudly, that the Rebels were near eight thouſand ſtrong, which ſtill heightened the Pannick; that yet, in the New-Church Iſle, the Lord Provoſt ſpoke as he had in the Council-Room, declaring himſelf ready, if the Citizens were ſo diſpoſed, to do his Part for Defence of the City; that at this Meeting, the Letter from the Pretender's Son was brought in, to the Reading of which he, the Provoſt, objected, and thereupon returned with his Council to the Goldſmiths Hall.

That the Inhabitants had now the Direction of Affairs in their Hands, and they were governed by their Fears and Terrors; that the higher Civil

Officers

Officers of the Crown being gone, the Magiſtrates ſent to their own Aſſeſſors for Advice; but they alſo were all gone, excepting one, who declined giving any explicit Opinion on ſuch high Matters; upon which the Letter was read, and found to be to the ſame Purpoſe with *Alves*'s Meſſage, and then they thought themſelves under an unavoidable Neceſſity to ſend out a Deputation, in order to procure a Delay, and gain ſome Time for the expected Relief to come.

To the *ninth* and *tenth* it was ſaid, That the Defence of the Town was now given up as impracticable; and that upon ſerious Deliberation it was the unanimous Opinion of the Council, that no direct Order ſhould be given by the Lord Provoſt concerning the Arms of the Volunteers, or the Cannon upon the City-Walls, for fear of incenſing the lawleſs Multitude of Rebels to put their Threats in Execution.

The ſame Anſwer was given to the *eleventh* Article relating to the City-Arms, to which there was now added, and not till now, a Matter of Fact never formerly alledged by the Pannel; neither in his Examination before the Committee of the Privy-Council, on the 7th *December* 1745, nor in the ſigned Anſwers returned by him to his Libel, and it muſt appear very ſtrange, if it was true, that the moſt plauſible Anſwer he had to make to this very heavy Article ſhould never have been once mentioned till now, being, that he the Provoſt could prove that he ſent a Meſſage to General *Gueſt*, propoſing that he ſhould ſend a Party of Soldiers to take away the City-Arms and carry them up to the Caſtle.

Upon the *twelfth* Article it was ſaid, That the Opinion of the Citizens of *Edinburgh*, or any Number of them, concerning the Pannel, could afford no Evidence that he was actually guilty; and that, upon the whole, the Surrender of the City was owing to a Train of unavoidable Accidents, for which he the Provoſt was not blameable.

Notice was alſo taken more than once, by the Pannel's Counſel, that he himſelf had a very large Property, conſiſting of a Stock of Wines, lying in his Cellars at *Leith*, which would be expoſed to the Diſcretion of the Rebels in caſe of their coming to *Edinburgh*; but the Concluſion drawn from this Fact was not, to the Purſuer's Obſervation, diſtinctly ſpoke out or explained by his Counſel; ſo that the Purſuer is ſtill at a Loſs to know what Uſe was meant to be made of that Obſervation, whether by way of Argument to evince the Sincerity of Mr. *Stewart*, in deſiring to keep the Rebels at a Diſtance, that his own moveable Eſtate, of ſo great Value, might not come under their Power; or if it was meant to be offered by way of Excuſe for him, that he was afraid of giving offence to the Rebels, by oppoſing them with Vigour and Zeal, becauſe they might have it in their Power to hurt him deeply in his private Fortune or Effects; and therefore the Purſuer muſt leave it to them to explain their own Meaning or Intent, in alledging and inſiſting on this Matter of Fact.

It was farther obſerved for the Pannel, though not very conſiſtently with the Allegation, that there was nothing material relevant or criminal charged upon him in theſe Articles; that the Charge therein contained, if it amounted to any Crime at all, was no leſs than that of High-Treaſon; for that ſuch, no doubt, it was, if he purſued Meaſures that had no other Tendency than to betray the City, whereof he was chief Magiſtrate, into the Hands of the Rebels: It would have been this Crime in caſe the Provoſt had acted with that ill Intention, which is the eſſential Requiſite to render the Actions of Men at all criminal or puniſhable; and if the Provoſt had no ſuch Intention, then, ſuppoſing he had committed ſeveral Errors in his Conduct, theſe were no more than Errors in Judgment, and ſuch Miſtakes in Matters prudential, in difficult and dangerous Times, when a Magiſtrate muſt act one Way or other, ought never to be imputed to him as a Crime; for though the Part he chuſes do not prove ſucceſsful, the oppoſite Conduct might have been no more ſo, and, in that Caſe, that very oppoſite Conduct might, with the ſame Facility, have been laid hold of as the Ground of a Proſecution: For Example, if he had brought in the Dragoons into the City, and theſe afterwards had fallen into the Hands of the Rebels; or, ſuppoſe he had found Means to ſuppreſs the threatening Letter from the Pretender's Son, and the Inhabitants had ſtood to their Defence, and yet the Town had been ſtormed, and the Rebels had then cut the Throats of the Inhabitants, ſuppoſing he had eſcaped the Maſſacre, it is eaſy to imagine what a heavy Charge might have been formed againſt him, as having been the Author or Cauſe of ſuch Calamities: And therefore, ſince his Conduct is not alledged to have been directly treaſonable, it proceeded at worſt from Miſtake, or Errors in Judgment, which is no Crime at all that is puniſhable by the Law in a free Country, ſuch as this is.

It was farther obſerved, that the Pannel was not ſo much as charged in the Libel with Diſaffection to his Majeſty's Government; and that however the Facts libelled might be apt to make ſome Impreſſion, in maintaining a Charge of that Sort, they could not be combined or laid together to an End or Purpoſe that was not directly libelled; that the Facts alledged in the Libel might indeed amount to a Proof of this Propoſition, that the Provoſt was in his Judgment averſe to the Meaſure of defending the City of *Edinburgh*, as a thing that was impracticable, and therefore not eligible or prudent to be attempted; and it was contended, that this was not even an Error in Judgment, for that he was in the right in being of that Opinion, for that the City of *Edinburgh* is no ſtrong or fortified Place; and though it is ſurrounded by an old Wall, and a Lake upon one Side, and that the Rebels had no Artillery, it had been very practicable for them to have made their Way into the Town; they might have blown up the Gates, or a Part of the Wall, with Gun-Powder, or have ſet Fire to the Houſes on the Weſt-Side of St. *Mary's Wynd*, that enter from without, and yet are a Part of, and adjoining to the Town.

All this was, ſo far as the Purſuer could obſerve or recollect, the Subſtance of what was urged by the ſeveral Counſel for the Pannel in his Defence; and in reply to theſe Things, it was, and is now, on behalf of his Majeſty, and for the publick Intereſt, obſerved as follows:

It is admitted for the Purſuer, that the Counſel for the Pannel have rightly obſerved, that the Facts charged upon him, if it had been charged that they were done *doloſe & malo animo*, of *ſet Purpoſe* or *Deſign*, to have put the City of *Edinburgh* into the Hands of the Rebels, would have amounted to High-Treaſon; for the Lord *Hale* ſays, in his *Pleas. of the Crown*, Vol. I. p. 168. 'If a Captain, or other Officer that hath the Cuſtody of any of the King's Caſtles or Garriſons, ſhall treacherouſly, by 'Combination with the King's Enemies, or by Bribery, or for Reward, 'deliver them up, this is Adherence to the King's Enemies.'

And again, p. 169. he ſays, 'The Truth is, if it were delivered up by 'Bribery or Treachery, it might be Treaſon: But if delivered up upon 'Cowardice or Imprudence, without any Treachery, though it were an 'Offence againſt the Laws of War, and the Party ſubject to a Sentence 'of Death by Martial Law; yet it is not Treaſon by the Common Law, 'unleſs it was done by Treachery.'

And if the Pannel, without being engaged in the Intereſt of the Pretender, or without receiving any direct Bribe from him or his Adherents, did even ſuffer himſelf to be moved by the Fear of their hurting his private Property in his Wine-Cellars at *Leith*, to neglect or counteract any Part of his Duty as Lord Provoſt of *Edinburgh*, this was at leaſt bordering extremely near upon High-Treaſon.

The Atrocity and the Nature of High-Treaſon is excellently deſcribed in the Digeſts of the Civil Law, in the Title *Ad legem Juliam majeſtatis*, *l.* 1. in theſe Words: *Proximum ſacrilegio crimen eſt, quod majeſtatis dicitur,* § 1. *majeſtatis autem crimen illud eſt, quod adverſus populum Romanum, vel adverſus ſecuritatem ejus committitur, quo tenetur is, cujus operâ, dolo malo, concilium initum erat,—quo armati homines cum telis lapidibuſve in urbe ſint, conveniantve advexſus rempublicam; locave occupentur, vel templa; quove cœtus conventuſve fiat, hominеſve ad ſeditionem convocentur:——Quove quis contra rempublicam arma ferat: quique hoſtibus populi Romani nuncium literaſve miſerit, ſignumve dederit, feceritve dolo malo, quo hoſtes populi Romani concilio juventur adverſus Rempublicam.*

It is true, that, in this Deſcription, the *dolus malus*, or the ill Deſign, is an eſſential Ingredient; and it is in general true concerning all Crimes, as it is well expreſſed in the Reſcript of the Emperor *Hadrian*, *l.* 14. *ad legem Corneliam de ſicariis,—in maleficiis voluntas ſpectatur, non exitus:* But the *voluntas*, or the *dolus malus*, is to be gathered from the Facts by the Judgment of the Court or the Jury, by whom the Party is tried, againſt whom the Facts are charged, which may very poſſibly have proceeded from a treaſonable Deſign againſt the Crown or the Publick.

The King, however, may, if he be ſo graciouſly pleaſed, wave the inſiſting againſt a Criminal for the higheſt Crime with which he may be poſſibly chargeable; ſo the Lord *Hale*, p. 374. 'All Treaſon is Miſpriſion of 'Treaſon and more; and therefore, he that is aſſiſting to a Treaſon, may 'be indicted of Miſpriſion of Treaſon, if the King pleaſe.' *Stanf. P. C.* 37. 6. *Co. P. C.* 36. 2 *R.* III. 10. 6.

'The Judgment in Caſe of Miſpriſion of Treaſon, is Loſs of the Pro'fits of his Lands during his Life, Forfeiture of Goods, and Impriſon'ment during Life.'

And the ſame Lord *Hale*, p. 143. reports 'a Caſe, where there was a 'Conſultation of the Judges, where he was preſent, in the Year 1675. 'relating to the Weavers in and about *London*, being offended at the En'gine-Looms for making of Ribbons, who roſe in great Numbers to de'ſtroy thoſe Engines in different Counties, and did Damage to the Value 'of ſeveral Thouſand Pounds.

'Five of the Judges ſeemed to be of Opinion, that this was Treaſon 'within the Act 25th *Edward* III. upon the Clauſe of levying War 'againſt the King; or at leaſt upon the Clauſe of the Statute of the 13th '*Charles* II. *Chap.* 1.

'The other five Judges were not ſatisfied that this was Treaſon with'in either of theſe Statutes.

'Many of them therefore concluded, that if Mr. Attorney ſhould think 'fit to proceed as for a Treaſon, the Matter might be ſpecially found, and 'ſo left to farther Advice——

'Upon the Concluſion of this Debate,—Mr. Attorney, upon Conſider'ation of the whole Matter, it ſeems, thought fit to proceed for a Riot, 'and cauſed many of them to be indicted for Riots, for which they were 'convicted, and had great Fines ſet upon them, and were committed in 'Execution, and adjudged to ſtand upon the Pillory.'

In the preſent Caſe, the Doubt is not concerning the Tendency of the Facts charged upon this Pannel, namely, That it was to give up the City of *Edinburgh*, the Capital of *North-Britain*, not to the King's Enemies only, but to a Pretender to his Crown; and the Doubt is only, *quo animo* this was done, whether with a treaſonable Intent, or through Cowardice, or Negligence, or Imprudence; and this might have been left to the Jury to judge, in caſe he had been charged with High-Treaſon. It is therefore one ſignal Inſtance of the Mildneſs and Benignity of his Majeſty's Government, that the Purſuer has been ordered to proſecute this Pannel, 'not for High-Treaſon, but for a High Miſdemeanour, in having many Ways acted contrary to his Duty, and thereby ſuffered the 'City of *Edinburgh*, with the Cannon, Arms, Ammunition, and Proviſions, to fall into the Hands of the Rebels;' and when the Pannel's own Counſel are ſenſible that the Facts charged upon him are ſuch, as, at leaſt, border ſo near upon High-Treaſon, and might have been charged as ſuch, they cannot be permitted at the ſame Time to plead, or, at leaſt, they ought not to be liſtened to when they plead, that the Facts here charged have no Relevancy in them, or do not amount to any Crime or Offence whatſoever.

The other Obſervations above recited were extremely groundleſs, That this Libel does not charge the Pannel with Diſaffection to the Government, and that the Opinion of the well-affected Citizens, mentioned in the 12th Article, That he was ſecretly in the Intereſt of the Pretender, cannot infer his being actually guilty of any Crime whatever, for Diſaffection is not the Name of a Crime known in the Law; no Man can be tried for that Diſpoſition of his Mind, but for the Effects which it produces; and, if the Facts here charged had been alledged to have been done by the Pannel through Diſaffection to his Majeſty and his Government, that would have been in Reality, or in Effect, a Charge of High-Treaſon, which was not the Thing intended in the preſent Caſe.

And as for the other Remark, it was far from the Meaning of the Purſuer to alledge, that any Man can be puniſhed merely for the Opinion of others concerning him: But that Fact is mentioned in the Libel for this Reaſon, That, when the main Queſtion, moved by this Trial, is, Whether the

the Pannel was, or was not culpable or negligent in the Execution of his Office as Lord Provoſt of *Edinburgh*, during the Rebellion, it is a Fact or Circumſtance ſtrongly tending to evince that he was ſo guilty, if it be true that the whole Tenor of his Behaviour was ſuch, as to induce a general Suſpicion or Belief amongſt the well-affected Inhabitants, that their Provoſt was ſecretly in the Intereſt of the Pretender; for, whether they were or were not in the right in that Suſpicion or Belief, they, being ſo immediately and ſo deeply intereſted, could not fail to be conſtantly attentive to the Conduct of their Provoſt; and, if that was ſuch as produced in them ſuch Apprehenſion or Belief, that very Thing is one Demonſtration, ſuppoſing that they carried their Concluſion too far, that his Conduct was not ſuch as became a faithful, vigilant, and zealous Magiſtrate upon that Occaſion.

The Nature of the Office of Lord Provoſt of the City of *Edinburgh* is well known to this Court. It is partly the ſame that belongs to the chief Magiſtrate of every Royal Burgh in the Kingdom, and partly ariſes from the particular Grants to the City of *Edinburgh*; they are Sheriffs within themſelves; the Lord Provoſt is the High Sheriff, and, of late Years, as well as formerly, has acted as ſuch, and tried Cauſes even capital, and the Bailies are, *ex officio*, his Deputy Sheriffs.

The Lord Provoſt is the King's Lieutenant within the City, he is Colonel of the City-Guard by the Act of Parliament authoriſing that, and he is chief Commander of the City Trained-Bands or Militia; and this very Provoſt claimed, and was allowed to be the Colonel of the Volunteers, and was by the Council declared to be Colonel of the *Edinburgh* Regiment of 1000 Men, that was to be raiſed and paid by the voluntary Subſcriptions of the Inhabitants: In ſhort, the whole military Power within the City was in him, and the chief executive Power, in all Reſpects.

Neither is it true, that the Order in the King's Sign-Manual for the Regiment, that the ſame ſhould be under the Direction of the Lord Provoſt, Magiſtrates, and Council of *Edinburgh*, was either intended, or had the Effect to derogate in the leaſt from the legal Powers and Privileges of the Lord Provoſt; that Warrant was granted on the Application of the whole Council of *Edinburgh*, the Regiment was to be maintained by them and their Fellow-Citizens, the End propoſed by it was the Defence of his Majeſty's Government, but more eſpecially the Preſervation of the City of *Edinburgh* againſt the Rebels; it was therefore very properly and graciouſly declared, that this Regiment ſhould be under the Direction of the Magiſtrates and Council of *Edinburgh*; that is, it ſhould not be withdrawn from the immediate Service of that City, or ſent elſewhere, like the reſt of his Majeſty's Troops, at the Diſcretion of his Generals, where it might be of Uſe for his Service, without the Conſent of the Magiſtrates and Council of *Edinburgh*. But this did not hinder the Lord Provoſt from being, according to the Conſtitution of the City, the Colonel or chief Commander of that Regiment, as well as of all the other Military Force within the City. It cannot be ſuppoſed to have been the Senſe of his Majeſty's Order, that the whole Town-Council, conſiſting of thirty-three Perſons, ſhould act the Part of a Colonel, or have the immediate Command of a Regiment; the utmoſt Effect that Order could have, was, that the whole Council ſhould have Power to give general Orders as to the Manner of employing the Regiment, ſuch as every Prince or State are daily known to give to the Generals or Commanders of their Armies, who are not the leſs veſted with the Powers of Commanders, that they are ſubject to ſuch Direction or Controul.

Neither is it true, that the Appointment of a Committee, in the Terms above-recited, was an Obſtruction or Hindrance to the Provoſt's acting in the Manner that the Libel requires of him, unleſs he can ſay, which he has not done, nor can do by any Thing that appears on Record, that either the Council or the Committee reſiſted his Will, or that they oppoſed or over-ruled him, by Majority of Voices, in any one Thing that he propoſed to be done towards the Preſervation of the City.

His Station, therefore, gave him Power ſufficient, and rendered it his Duty to be the chief Perſon to deviſe, order, and execute every Thing that was proper for preſerving his own City from the Rebels; and, if the Facts be true that are in this Libel charged, it is left to the Judgment of this Court, whether his Conduct was agreeable to his Duty; or if he was not, on the contrary, faulty or negligent in the Execution of his Office, and guilty of manifold Miſbehaviours in it on the Occaſion libelled.

That Occaſion called for the moſt earneſt, vigilant, and active Diſcharge of the Duty of chief Magiſtrate, veſted with ſuch Powers as he had; and, to illuſtrate this, the Purſuer begs Leave to quote a Paſſage from a learned Author, *Ærodii rerum ab omni antiquitate judicatarum pandectæ*, in the Title, *De officio præfecti vigilum*, whereof the Rubrick is in theſe Words: *Negligentiam, in iis qui ad ſummum reipublicæ pertinent, eſſe capitalem, cap.* 1. *M. Militius, Cn. Lolius, L. Sextilius, triumviri nocturni, cùm incendii arcendi cauſâ, quod Romæ in ſacra via exortum eſſet, cum hamis & dolabris, omnique familiâ publicâ evocati, tardius adveniſſent: à tribuno plebis die dictâ ad populum, damnati ſunt: leves ob cauſas, inquit Valerius: ſed diſciplina neceſſaria.*

Idem ferè apud nos, ſenatûs judicio, cùm adhuc illic eſſemus advocati, Gabaſtoni, præfecto vigilum, accidit: qui vocatus ad ſedandam ſcholarium de ſuo prato ſeditionem, non veniſſet. Nam indignum eſſe, qui, ut excubet reipublicæ, ab omnibus aliis muneribus excuſatur, & præſens vice eſt abſentis: is in tanta neceſſitati, ubi minima mora ſummi momenti eſt, ſegnem, tardum ac negligentem ſe præbeat, aut (quòd minus quoque eſt ferendum) contumacem.——Et quando omnibus viribus opus eſt, nulla cauſa, nulla excuſatio proficit.

Cap. 2. *P. Bilius quoque triumvir nocturnus, à P. Aquilio, tribuno plebis accuſatus, quòd vigilias negligentiùs circumiſſet, populi judicio concidit. Nam quod levius ſit in aliis cauſis: in his, ut in re militari, capitale eſſe. Quia puncto ſæpe temporis, maximarum rerum occaſiones amittuntur: neque in hujuſmodi his errare fas eſt, aut dicere, Non putabam.*

It was upon the ſame Principles that are here ſet forth, and followed in Practice in the *Roman* Republick, as well as the *French* Monarchy, that our old Statute 1457, in the Libel recited, was made, *for the Punition of negligent Officiars*, and namely, 'Provoſts of Burghs, and others, 'who ſhould be found faulty and negligent in the Execution of their Offices, and it may be lawfully proved on them, or notoriouſly known;' but with this Difference indeed, that every Offence of this Kind is not made capital, as *mitiores pœnæ nobis ſemper placuere*, 'but only that they be 'puniſhed, in their Perſons and Goods, after the Quantity of their 'Treſpaſs, at the King's Will.' This is ſuch a Statute as hardly enacts any thing poſitive, or other than what is included in the Common Law of this and all other civilized Nations, and therefore never can go into Diſuetude. And it ſeems unneceſſary to offer any Anſwer to the groundleſs Diſtinction advanced by the Pannel's Counſel, betwixt the Duty of a Provoſt, or other Magiſtrate, upon common or ordinary, and extraordinary Occaſions, there is neither Law nor Reaſon for that Diſtinction. No Man ſhould undertake the Office of a Pilot, who can only hold the Helm in his Hand in ſerene Weather, and is incapable to do his Duty when a Storm riſes. And the Allegation of this Diſtinction ill becomes the Pannel, who is a Gentleman by Birth and Education, and, as ſuch, ſuperior to the ordinary Rank of Burgeſſes, who may be, and often are raiſed to the Office of chief Magiſtrates.

Such, for Inſtance, was the Character of Provoſt *Wilſon*, a Brewer in *Edinburgh*, who was Lord Provoſt of that City when Captain *Porteous* was murdered, who, upon the ſame Principles that are above-mentioned, was puniſhed by an Act of the 10th of his Majeſty, merely for being faulty or negligent in the Execution of his Office; for the Act recites the Murder of Captain *Porteous*, 'And that, for ſome Time before the committing the 'ſaid Murder and Riot, it was commonly reported in the ſaid City of '*Edinburgh*, that ſome ſuch atrocious Fact would be attempted, which, by 'proper Care in the Magiſtrates, Citizens and Inhabitants of the ſaid City, 'might have been prevented; notwithſtanding which, *Alexander Wilſon*, Pro'voſt of the ſaid City, and then actually reſident therein, and fully appriſed 'of the ſaid wicked Deſign, did not take any Precautions to prevent the 'ſaid Murder and Riot, nor uſe the proper or neceſſary Means to ſup'preſs the ſame, or to preſerve the Peace of the ſaid City, or, after the 'Perpetration of the ſaid Fact, to diſcover, apprehend, or ſecure the 'Authors, Actors or Abettors thereof, in manifeſt Violation of the Truſt 'and Duty of his Office of Chief Magiſtrate of the ſaid City.——And 'to the End that the ſaid enormous Miſbehaviours and Neglects of Duty 'may not go unpuniſhed, and that other Perſons may not preſume, 'through Hopes of Impunity, to be guilty of the like for the future, it 'is enacted, that the ſaid *Alexander Wilſon* be diſabled from holding any 'Office of Magiſtracy, *&c.*'

Here the Conviction by the Parliament itſelf proceeds altogether upon Negatives, or Neglects of Duty in the Provoſt or chief Magiſtrate, upon a very ſingular and extraordinary Occaſion; and ſo far it is a Precedent in point to the preſent Caſe, which in other reſpects appears to be vaſtly more atrocious than what Provoſt *Wilſon* was guilty of, who, it ſeems, did not give Credit to the Reports that were current before that extraordinary Attempt was made, and ſuffered himſelf to be ſurpriſed and diſconcerted, when the Mob was ſuddenly raiſed which committed that Murder; inſtead of which, here was long Warning, and many Precautions ſeemingly taken by the Provoſt, heartily intended by many of the Citizens, to avert Evil of a much higher Nature, tending to overthrow the Conſtitution and Eſtabliſhment of this united Kingdom.

It appears quite unneceſſary to anſwer the Allegation offered for the Pannel from this Precedent, which has ſurely not the leaſt Tendency to prove, that the Offence, which was here puniſhed by the Legiſlature itſelf, was no ways puniſhable by the Common Law, or the general Statutes of this Realm.

And as little can it avail the Pannel to enter now into an Argument upon the Expediency of the Reſolution in general, of putting the City of *Edinburgh* in a Poſture of Defence againſt the Rebels; for though it be true, that before any Reſolution was taken upon this Queſtion, it was very lawful and competent for the Lord Provoſt to declare his Opinion, if it was ſuch, for the Negative; yet, after it was a Reſolution formed by the Council of the City, with the Conſent and Approbation of the moſt conſiderable Citizens of all Ranks, many of whom had previouſly ſollicited that ſuch Meaſures ſhould be taken; and after he, the Lord Provoſt, had ſeemingly concurred, and given way to the general Senſe of the Citizens, as well as of the Council, it ſurely then became his Duty as the firſt Magiſtrate, who had the chief executive Power in his Hands, to exert himſelf, *bona fide*, for the Execution of the general Meaſure that had been thus reſolved; for better indeed had it been never to attempt ſuch Defence, than not to go through with it until actually overpowered by ſuperior Force; or that, to the great Expence and Diſcredit of the City, after many Preparations to provide a Force for its Defence, and Application to the Crown, which was readily granted, for a Warrant to authorize the Regiment, and to the Inhabitants for a Subſcription to pay it, which was filled up with great Alacrity, and many of the chief of them preſſed for Leave to venture their Perſons, as well as contribute their Money for the Cauſe which they had ſo much at Heart, when, to furniſh Arms, the King's Arſenal in the Caſtle was at their Command, and a conſiderable Force aſſembled, that the Provoſt ſhould ſo manage Matters, as that the Defence ſhould be thrown up juſt at the Time that it became needful to make uſe of all theſe Preparations.

This will require ſome better Excuſe, than that the Provoſt, in his private Opinion, was averſe to the Meaſure in general of defending the City, or that he was afraid of provoking the Rebels to rob his Wine-Cellars at *Leith*, (if that be meant by taking notice of his great Property there) for it is certain the Provoſt profeſſed to concur with the general Senſe of the City, to provide for and reſolve to make a Defence; and, even upon *Monday* the 16th of *September*, in the Afternoon, in the Council-Chamber, and at the general Meeting in the New-Church, it has been alledged, as a Part of his Defence, that he ſtill declared ſtoutly for adhering to that Reſolution; and in theſe Circumſtances, for his Counſel to ſay for him, by way of Apology for his Conduct in the Articles libelled, that the ſame proceeds from, or is to be accounted for, by his diſapproving in his Judgment of the general Meaſure of making any Defence, and offering Reaſons now in ſupport of the Juſtice of that Opinion, inſtead of excuſing him, is in reality to accuſe him very deeply of acting all along with a Duplicity, which muſt have been highly criminal, profeſſing to concur in the Execution of a Meaſure, which

which in his Heart he disliked, and, as the Execution of it chiefly belonged to him in virtue of his Office, managing that in such a Manner as to defeat the Design.

As to that Design itself, the most sanguine Promoters of it never pretended to maintain that the City of *Edinburgh* was capable of holding out a regular or a long Siege; the very Number of the Inhabitants, and the Mouths to be fed, must render this impracticable; but, as the Circumstance which exposed them to be at all visited by the Rebels, was the Misfortune of Sir *John Cope*'s getting to the Northward of the Rebel Army in the *Highlands*, and as he was known to be returning from *Inverness*, through the low Country, along the Eastern Coast, and as other Succours were daily expected from *Holland*, it was very reasonably concluded, that the Pressure upon the City of *Edinburgh* could be but of short Endurance, and that, very possibly, keeping out the Rebels a single Day might save the City altogether from falling into their Hands; and the Event in a great measure justified the Expectation; for, upon the Evening of *Monday* the 16th *September*, when the first Deputies were sent out by the Provost and others to the Rebels Camp, to treat about the Surrender demanded by the Letter from the Pretender's Son, those Deputies had not yet reached that Camp, when authentick Advice came, that Sir *John Cope*, with his Army, was arrived at *Dunbar*, which is but twenty Miles from *Edinburgh*: A very signal Instance of the Truth of what is said in the Passage above quoted from *Ærodius*, *Quòd puncto sæpe temporis maximarum rerum occasiones amittuntur.*

What then was the Occasion, or whence arose the Necessity that obliged the Pannel, on the Afternoon of *Monday* the 16th *September*, to abandon the Defence of the City, for which so many Preparations had been made and continued till this very Hour, and when, though the Enemy was at hand, there was all the Reason in the World to believe that Succour and Relief from the King's Troops was not far off, as the Event that very Evening accordingly proved, by the actual Arrival of Sir *John Cope* off *Dunbar*, and authentick Notice thereof being sent to *Edinburgh* at the Juncture of Time already mentioned.

The Answer to these Questions made for the Pannel, in the Debate upon his Libel, have been, 'That, on the Afternoon of this *Monday*, 'the 16th of *September* 1745. the City of *Edinburgh* was in great Consternation, occasioned by the Approach of the Rebels, and the threatening Messages sent from them, by the Retreat of the Dragoons from '*Coltbridge*, and the withdrawing of the Civil Officers of the Crown 'from the City; that, in these Circumstances, the general Cry of the 'Inhabitants, at a publick Meeting assembled, was for abandoning the 'Defence of the City; after which the Fears of the Inhabitants was the 'governing Principle, the Multitude had the Power in their Hands, and 'there was no longer any Regard paid to Magistrates or legal Authority.'

But to this it is replied, That the Retreat of the Dragoons the Pursuer does not take upon him to approve or justify; very possibly it was made sooner and farther than it was necessary, though it cannot be said that the two Regiments of Dragoons, with the City-Guard of *Edinburgh*, if the whole Rebel Army had come up to them, ill armed as it was, would have been a Match for such a Superiority of Numbers: But when the Resolution was taken to defend the City of *Edinburgh*, they did not, nor could reckon upon these two Regiments of Dragoons, as what they could rely upon, or promise themselves to be always attending for their Assistance; and when the Defence of the City was abandoned, they were no farther removed than *Musselburgh*, which is but four Miles off, and an Offer was made to the Lord Provost to bring them back, or any Number of them he should desire, to assist in the Defence of the City.

That the withdrawing of the Civil Officers could afford no just Cause for abandoning that Defence; the Lord Justice-Clerk had only gone from *Edinburgh* that Day about Noon, to dine at his own House about three Miles off, and was returning in the Afternoon to the City, when he got Notice by the Way, that the Rebels were by that Time at the *West* Port of the City, which was not true, but afforded a very just Reason for his returning to his own House; and though the Lord Advocate at this Time also withdrew from the City, and went as far East as *Musselburgh*, yet, before he left the Town, he had concurred with the Provost and the Sollicitor, in procuring an Order from General *Guest*, for one hundred Dragoons to march into the City, to encourage and support the loyal Inhabitants in Defence of the Town. And he renewed his Advice by Mr. *Grosset*, whom he met going into the City in the Afternoon, with a Message from the Lord Justice-Clerk relating to those Dragoons. And of what use could a single Civil Officer be in the Case of a Siege? Or, to what purpose should he shut himself up within the Walls, and expose himself, in case of the Town's being taken, to become a Prisoner in the Hands of the Rebels?

And as for the affrighted Multitude, who are said to have got the Government into their Hands, it was the Fault of the Lord Provost if he permitted this to be: None of the Forces under his Command were withdrawn, and he had still at least twelve hundred well-armed Men under his Command, the Walls of the City repaired and planted with Cannon, and the Castle and its Garrison ready to assist him: And, in this Situation, why did he suffer himself to be despoiled of his Authority, or to be governed by the real, or by the affected Terrors of the timorous, or of the disaffected Multitude? Why did he give way to a general Meeting, in the Church, of an Assembly so composed? Why did he not tell them that the City had already taken its Measures and its Resolution to stand upon its Defence, and order all who did not chuse to depart the City, or to act in its Defence, to repair to their respective Houses, and keep within Doors? He had still the legal Authority in him, and the Means in his Hands to make that to be respected, when he had so great a Body of Men in Arms under his Command.

In these Circumstances, the Methods he pursued demonstrated the End which he had in View, namely, to deliver up, instead of defending the City; for, in order to justify himself in abandoning that Defence, he ought to have gone another Way to work, than to assemble a promiscuous Multitude in the Church, exclusive of the Volunteers. If there was truly any Change of Circumstances occurred, that made it reasonable now to lay aside Thoughts of that Defence which had been so long provided for and pursued, he should have summoned a Council of the same, or the like Persons with those who had first contributed to the Resolutions of making any Defence at all, that is, his own Fellow-Magistrates and Councillors, with the Chief Officers of the Volunteers and Trained-Bands, and deliberated with them upon the supposed Change of Circumstances; and if, in such Council, it had been debated and resolved, by Plurality of Voices, to be now impracticable, or inexpedient to persist any longer in the Measure formerly concerted, of defending the City, that Resolution might have justified or acquitted him; but nothing of this Kind is alledged, and thereby he has taken the whole upon himself. He consulted with a disaffected Multitude, as some of the Persons present in it, of undoubted Credit, say it was: And there is no Record of any Resolution of the Town-Council, or of the Committee abovementioned, of *Monday* the 16th of *September*, when this Change of Measures was brought about, nor any Record of the Council after *Friday* the 13th, before the Rebels entered the City, nor of the Committee after *Saturday* the 14th.

As for the particular Facts or Articles charged upon the Pannel, the Pursuer has Reason to believe he can prove every one of them; but he now says, that neither the separate Relevancy, nor the Proof of every one of them, is essential to the Conclusion of this Libel, whereof the general Scope and Averment is, That the Pannel, at the Time and upon the Occasion libelled, was faulty and negligent, or guilty of Malversation in the Discharge of his Duty; and, for making out this, particular Articles are specified: And altho' every one of these shall not appear separately material, or shall not be proved, it is no Matter, if enough be proved to make out or support the general Charge.

The Case is of the same Nature as if a civil Action were brought, for Instance, for removing a suspected Tutor by the Kindred of the Infant, in order to which a Number of Articles of Misbehaviour were alledged in the Libel; in which Case, tho' some of these Articles should not be proved, or well accounted for by the Defender, yet, if any Number should be made good and accounted for, the general Allegation of the Libel would be proved, and the Pursuers behoved to prevail in the Conclusion of their Action.

At the same time, to touch briefly at the particular Articles, it is replied to the Answer to the first, That it is not the Pannel's Doubt concerning the Point of Law that is charged as a Crime, but his urging that Doubt, *inter alia*, demonstrates his Backwardness to pursue any Measures for Defence of the City, for the Doubt itself was extremely groundless. There are sundry old Laws against private Leagues or Bonds among the Subjects, which have nothing to do with the present Case; but the only Law, upon which the Pannel's Objection, that it would have been High-Treason to arm without Authority from the Crown, can be founded, is the 5th Act of the Restoration Parliament 1661, intitled, *Act asserting his Majesty's Royal Prerogative in the Militia, and in making Peace and War*, &c. which Act declares, 'That it is and shall be 'High-Treason to the Subjects of this Kingdom, or any Number of 'them more or less, upon any Ground or Pretext whatsoever, to rise 'or continue in Arms, to maintain any Forts, Strengths or Garrisons, to 'make Peace or War, or to make any Treaties or Leagues with foreign 'Princes or Estates, or among themselves, without his Majesty's special 'Authority and Approbation first interposed thereto.'

Now, in the first place, whilst this Act continued in force, it surely could never be meant to comprehend the Case of the King's Subjects being called out, by the Magistrates acting under his Authority, to take Arms for his Service; for Instance, if the Militia of any County should be called out by the High Sheriff, or Lord Lieutenant, to resist a foreign Enemy, or a domestick Rebel: And the chief Magistrate of a Burgh, within his District, has the like Power to the Sheriff, or Lord Lieutenant, to defend the Burgh over which he presides.

But, 2*dly*. This Act, upon which the Doubt is singly founded, is repealed by the Act of the 7th of Queen *Anne*, *Chap.* 21. which provides, That nothing shall thereafter be High-Treason in *Scotland*, but what is such in *England*. And farther provides concerning certain Crimes therein mentioned, *viz.* Theft in landed Men, Murder under Trust, Fire-raising and Assassination, which were declared to be Treason by particular Statutes in *Scotland*, shall hereafter be adjudged and deemed to be capital Offences. But concerning the Fact which is made Treason by this Act 1661, no such Provision is made.

The Pursuer's Replies concerning the other Articles are already in Substance made in the foregoing Argument, and he shall not prolong this Paper to go through them minutely, and shall only farther observe, That, as to the new Defence offered to the eleventh Article, concerning the *City-Arms*, that though it comes with a bad Grace to be now for the first Time proposed, the Pursuer does not oppose the Pannel's being allowed to prove this Allegation, and all other Facts and Circumstances that have been by him alledged for his Vindication or Defence against the Charge contained in this Libel.

In respect whereof, &c. WILL. GRANT.

July 28, 1747.

INFORMATION *for* ARCHIBALD STEWART, *of the City of* Edinburgh, *Merchant, and late Lord Provost of the said City, Pannel or Defendant*,

AGAINST

His MAJESTY'S ADVOCATE *for his Majesty's Interest, Pursuer.*

BEFORE entering upon the Objections to the Relevancy of this Libel, it may not be improper, first of all, to lay before the Court a genuine and succinct Account of every Fact and Circumstance which any way concerns the Conduct of the Pannel, or can give any Light to form a Judgment of it during the Period mentioned in the Libel.

Upon the 17th of *August* 1745, the Pannel, then Lord Provost of the City of *Edinburgh*, had the Honour to receive a Letter from the Marquis of *Tweeddale*, one of his Majesty's Principal Secretaries of State of the 13th current, acquainting him, 'That their Excellencies the Lords 'Justices, having received Intelligence, that the Pretender's Son was 'already landed, or intended to land in *Scotland*, had recommended it to him

'him to give Notice to the Provoſt thereof, that he might exert his Care 'and Vigilance on this Occaſion, and make uſe of ſuch Precautions as he 'ſhould judge neceſſary for preſerving the publick Peace within the 'Bounds of his Juriſdiction.

To this Letter the Lord Provoſt wrote an Anſwer on the 17th, as follows: 'It is with Pleaſure I aſſure your Lordſhip, that this Town 'was never better affected, nor more peaceable than at preſent. Nothing 'ſhall be neglected on my Part to preſerve People in their Duty to-'wards their King and their Country; and we truſt in God that no 'threatened Dangers ſhall ever reach us; at the ſame Time, we are not 'to ſit down in Security, but will keep a watchful Eye, in order to 'prevent, as far as it is in our Power, every thing that may diſturb the 'Peace of this Place.'

The above Letter was laid before the Magiſtrates when it came to Hand, and the Anſwer was approved of by the Town-Council, at a Meeting on the 23d of *Auguſt*, and, in purſuance of theſe Reſolutions taken by the Lord Provoſt and Council, the following Orders were forthwith iſſued.

Auguſt 23. Orders were given to levy and raiſe thirty Centinels to be added to the City-Guard, agreeable to the Powers given them by Act of Parliament, and to provide them with Clothing and all other Neceſſaries.

Recommended to the Lord Provoſt and Magiſtrates to direct the Captains and Officers of the Trained-Bands, forthwith to make up full Liſts of all the Perſons belonging to their ſeveral Companies, and to report the ſame to the Magiſtrates againſt *Saturday* next; and that the Captains warn and premoniſh them all to be ready, in caſe of any Diſturbance, to appear with their beſt Arms, upon an Hour's Warning, at the ordinary Places of Rendezvous.

Orders were given for directing the Conſtables of the City to make out full and ample Liſts of all the Inhabitants and Reſidenters within their Diſtricts, and report the ſame to the Magiſtrates; and to be diligent in inquiring and finding out what Strangers may happen from time to time to come within the City, and lodge within their ſeveral Diſtricts.

Orders for a Proclamation, requiring and ordaining all Inn-Keepers, Strangers, and others, who lodge and entertain Strangers, from time to time, and as oft as any Stranger ſhall lodge with them, to give in to the Captain of the City-Guard a Note of their Names and Deſignations at their Arrival; and of the Time of their Departure, under a Penalty for each Tranſgreſſion; and the Captains of the Guard ordered duly to report to the Magiſtrates, in Writing, every Morning, Liſts of the Particulars that ſhould be delivered in to them by the Inhabitants.

Theſe Orders, moſt of which proceeded upon Motions made by the Lord Provoſt, were all agreed to by the Magiſtrates and Council, and ſigned by him in their Preſence; and Care was taken of the due and punctual Execution of them all, without any Loſs of Time.

The next Day, being *Saturday*, *Auguſt* 24th, it was ſuggeſted to the Lord Provoſt that it might be fit to call a general Meeting of the Inhabitants, to conſider what was to be done on this Occaſion; to which he agreed, and communicated the Propoſal to the Council at their next Meeting on *Monday*, *Auguſt* 26. who alſo approved of it; and accordingly the Meeting was ordered, and the moſt ſubſtantial and well-affected Burgeſſes were invited to aſſiſt with their Counſel and Advice; and at the Meeting, which could not be convened ſooner than next Day, *Auguſt* 27. the above Reſolutions and Orders were reported to them by the Lord Provoſt; and the Meeting 'unanimouſly approved thereof, and gave his 'Lordſhip and the Council their hearty Thanks for the wiſe and pru-'dent Meaſures they had already taken; and, farther, offered it as their 'Advice to the Magiſtrates and Council, to name ſome of their own 'Number, and ſuch other of the Burgeſſes as they ſhould think fit, as 'a joint Committee to conſult with and take the Advice of the Lord 'Juſtice-Clerk, Lord Advocate, Mr. Sollicitor, and ſuch of the Lords 'of Seſſion as can be found in Town, with regard to what farther Steps 'the Magiſtrates, Council and Community can legally take for preſerv-'ing the Peace of the City, and contributing to defeat the dangerous 'and wicked Deſigns of the Enemies to his ſacred Majeſty, his Royal 'Family, and preſent happy Conſtitution.

Auguſt 28. The Committee were accordingly named by the Council next Day, and that very Evening met with the King's Counſel, and ſuch of the Judges as were in Town, at the Lord Juſtice-Clerk's Houſe, where it was propoſed, that a Regiment of a thouſand Men ſhould be levied for the Defence of the Town, and Service of the Government, to be ſubſiſted, for three Months, on the Charges of ſuch of the Inhabitants as were willing to ſign an Aſſociation for that Purpoſe. And as it had been, for ſome time, a general Subject of Converſation and Debate without Doors, how far it was legal to levy ſuch Regiment without a ſpecial Order from his Majeſty, the Opinion of the learned and honourable Perſons preſent was aſked upon this Point, and they all agreed, that it could not be legally done without his Majeſty's Warrant. Upon which it was reſolved that the Lord Advocate ſhould make Application for ſuch Warrant; and that, in the mean Time, Trial ſhould be made of the Inclinations of the Inhabitants to concur in this Meaſure, how ſoon the Warrant ſhould be obtained from his Majeſty.

Auguſt 30. The Lord Provoſt and Magiſtrates were employed in receiving Propoſals for putting the Town in a Poſture of Defence; and the Lord Provoſt wrote Letters to the Magiſtrates of Boroughs, and Miniſters, for about the Diſtance of fourteen Miles round the City, begging that they would ſend as early Intelligence as poſſible, by Expreſs on Horſeback, of any Bodies of armed Men they could diſcover marching towards this City.

Auguſt 31. About the ſame time many different Orders were given by the Lord Provoſt to proper Perſons, with a View to put the Town in a Poſture of Defence, which were afterwards executed, particularly for clearing the Town Wall, building Stairs to get up to the Wall, making Communications from one Place to another, raiſing a Work at *Wallace*'s Tower, to prevent the Communication by the Back of the Caſtle. This laſt Work had been directed at firſt in a very proper Manner by Bailie *Robert Baillie*, Overſeer of the publick Works for this Year; but Bailie *Gavin Hamilton* afterwards ſtopt it, and gave a different Direction, by which that Work was for ſome time retarded.

Monday, *September* 2. The Lord Provoſt ſigned an Order in Council for augmenting the Town-Guard to the Number of 126 Men.

September 3. Bailie *James Stewart* and Mr. *Colin Mac Laurin* applied to the Lord Provoſt, with a Meſſage from ſome Gentlemen who had met the Evening before, deſiring in general that he would ſee to the Defence of the Town; and particularly, *firſt*, That he would order Moulds to be made for caſting Bullets. *2dly*, That the Sluices of the *North-Loch* ſhould be filled up. And, *3dly*, That a Diſtinction ſhould be made betwixt the Inhabitants of known good Affection and others, before he came to intruſt them with the Town's Arms.

The Lord Provoſt agreed to the firſt two Propoſals, and ordered the immediate Execution of them; but as to the third, he demurred. He obſerved to them the Inconvenience of making Diſtinctions amongſt Inhabitants upon bare Suſpicions, eſpecially about the Time of an approaching Election, when Parties were forming, which would lead them to ſpread Calumnies againſt one another upon By-Views; that this might occaſion Heats and Diſſentions dangerous to the Peace of the Town, and even ſtrengthen the Diſaffected by combining them together; that, where any real Ground of Complaint could be condeſcended, he was ready, not only to exclude ſuch Perſons from ſerving in the Trained-Bands, but alſo to oblige them to find Security for their good Behaviour. After this Reaſoning the Gentlemen did not inſiſt farther upon that Part of their Propoſal, nor lay it before the Council, who were the proper Judges of the Expediency of ſuch Meaſures, had they thought it fit to be inſiſted on.

September 4. The Lord Provoſt met with the ſame two Gentlemen, and ſeveral other Burgeſſes, in a Tavern, and, after a good deal of Converſation upon the ſeveral Expedients propoſed for Defence of the Town, he deſired they would digeſt their Propoſals, and give them in, in Writing, which he would either immediately comply with, or give them an Anſwer in Writing. This they ſeemed chearfully to agree to, and promiſed to give him in their Propoſals, but never did it.

September 6. Some of the ſame Gentlemen preſented to the Provoſt a Petition ſigned by about 80 or 90 of the Inhabitants, offering to ſerve as Volunteers for Defence of the City againſt any Attack, and particularly in contributing to erect the neceſſary and proper Barricado's for defending the Ports and ſeveral Avenues to the City, and praying that the City-Wall might be inſtantly repaired, and Stairs put up, &c. to appoint proper Places of Rendezvous, furniſh them with neceſſary Arms, and allow them to name their Officers.

The Provoſt told the Gentlemen who had met with him two Days before, That, after what had paſt at that Meeting, he expected they would have communicated to him their Intentions, as they promiſed; but he never would mind any perſonal Neglect in a Matter where the publick Safety was concerned, and therefore ſhould take care to preſent their Petition to the Magiſtrates without Delay, and return their Anſwer.

September 7. He did accordingly order a Meeting of the Magiſtrates to be ſummoned againſt Eleven next Forenoon; and, that there might be no unneceſſary Delay from any Doubtfulneſs concerning the Legality of this Meaſure, the Provoſt adviſed with the Lord Advocate upon that Point in his Way to the Meeting; and, having got his and the Sollicitor's Opinion of the Lawfulneſs of it, he forthwith met with the Magiſtrates, and laid the Petition and Opinion before them; upon which they chearfully approved of the Propoſal, and applauded the Zeal of the Petitioners.

Immediately after the Provoſt went to the Volunteers, who were met in the *New Church Iſle*, and told them their Petition was to be complied with in every Particular, except the Nomination of their Officers: But, notwithſtanding that did of Right belong to him, yet, as he wiſhed of all Things they might have ſuch Officers as they inclined to obey, if they would give him a Liſt of 20 or 30 of their Number, he would confine his Nomination to that Liſt. They complied. He named ſix of the fitteſt Perſons in the Liſt for Captains, with whom they were highly pleaſed, and he left the Nomination of the Subalterns to themſelves, for which they returned him Thanks.

The ſame Day the Lord Provoſt moved in Council, that an Addreſs ſhould be drawn up and preſented to his Majeſty, which was unanimouſly agreed to; and a dutiful Addreſs was accordingly drawn out, approven and ſigned; after which it was reſolved, 'To authorize the Magiſtrates 'and Conveener to employ Perſons with all poſſible Speed to put the 'City in a Poſture of Defence, and particularly the Walls thereof.'

In conſequence of this, Workmen were immediately ſent for, and the Lord Provoſt ordered them forthwith to fall to work, under the Direction of Mr. *Mac Laurin*, and to work Night and Day, *Sundays* not excepted, till all was finiſhed, and gave Warrants for impreſſing Workmen.

September 8. The Provoſt, of his own Accord, ordered all the Powder that was in the Town's Magazine to be carried to the Caſtle; which was ſo punctually executed, that he behoved afterwards to take from the Caſtle what was neceſſary for the Service of the Town.

About the ſame Time he wrote an Order to *Robert Davidſon*, Tackſman of the Meal-Market, to clean out the Granaries, and provide Meal.

September 9. This Morning the Provoſt having occaſionally heard that his Majeſty's Sign-Manual, authorizing to levy the Regiment propoſed, had come the Day before to the Lord Advocate's Hand, he went and waited on his Lordſhip, and, upon receiving the Sign-Manual, he immediately called a Council, and produced the ſame, which was addreſſed to the Lord Provoſt, Magiſtrates and Town-Council of *Edinburgh*; and recites, 'That it had been repreſented to his Majeſty, that the Lord 'Provoſt, Magiſtrates, Town-Council, Burgeſſes, and others of his 'City of *Edinburgh*, from the great Loyalty and Affection to his Perſon and Government, were at this Juncture willing and ready to raiſe 'and maintain, at their own proper Charge and Expence, by voluntary Subſcription and Contribution, One thouſand Foot for the Defence of the ſaid City, and the Support of his Government; and they 'were deſirous of obtaining his Royal Licence and Authority for the 'ſame: His Majeſty therefore, repoſing intire Truſt and Confidence 'in the Lord Provoſt, Magiſtrates and Town-Council of his ſaid City, 'did thereby authorize and impower them to raiſe, form and diſcipline 'One thouſand Foot to be employed for the Purpoſes above mentioned; 'and his Majeſty did thereby farther order and command, that the ſaid 'One thouſand Men ſhall be under the Direction of the Lord Provoſt, 'Magiſtrates and Town-Council of *Edinburgh*: For the doing whereof 'this ſhall be a ſufficient Warrant.'

As by this Warrant the Direction of the Regiment was placed in the Magiſtrates and Town-Council, ſo, as ſoon as it was read, they took the Direction into their own Hands, 'and appointed, as a Committee, 'the preſent and old Magiſtrates, Conveener, Deacons *Lauder* and *Por-* 'teous, or any five of them, the Lord Provoſt being always one, and, in 'caſe of his Abſence, any Nine of them, to be a Quorum, to conſider 'what is moſt proper to be done upon this Occaſion for levying the ſaid 'Thouſand Foot; and particularly to take in the Subſcription of ſuch 'of the Inhabitants as are willing to contribute for levying and main-'taining the ſaid Thouſand Foot, with their proper Officers, to be named 'for the Purpoſes mentioned in the ſaid Sign-Manual, for the Space of three 'Months after they ſhall be ſo inliſted; as alſo to conſider what is proper 'farther to be done for the Safety of this City, and for Support of the 'Government; which Committee ſhall meet at the Goldſmiths-Hall, 'twice each Day, at the Hours of Eleven in the Forenoon, and Four in 'the Afternoon; and recommended to the ſaid Committee, to keep a 'Book, into which all their Proceedings and Actings ſhall be regularly 'ingroſſed, to the end the ſame may be reported to the Council from 'Time to Time.'

At the ſame Time, the Council 'ordered the Serjeants, Corporals and 'Drums of the City-Guard to beat up for Volunteers to compleat the 'Thouſand Foot; and they nominated the Lord Provoſt to be Colonel 'and Commander of the ſaid Thouſand Foot, with Power to him to 'conduct and direct them, and the other Officers who ſhall be named to 'command under him, as the Council ſhall think proper, or as the Exi-'gencies of Matters ſhall require.'

And the Lord Provoſt ſhewed his chearful Concurrence in this Meaſure, by a Subſcription far beyond any other that was made to this Regiment.

September 10 to 13. From this Day, to the 13th of *September*, there are daily Proceedings of the Council and Committee above named, who went on with all Diligence in raiſing the Men, taking in Subſcriptions, providing Arms, Grain, and other Neceſſaries, and doing every thing that was judged proper for putting the Town in a Poſture of Defence. It is unneceſſary to trouble the Lords with reciting minutely every Particular which appears to this Purpoſe from the Records of the Council, and the Minutes of the Committee, which regularly met for carrying on the Buſineſs intruſted to them; and the Lord Provoſt appears, by their Minutes, to have been preſent at every Sederunt.

The Pannel is deſirous to abridge the Trouble of the Court, in reading a long Story, as much as poſſible; and therefore ſhall but juſt mention a few of the many Inſtances of his Care and Concern in carrying on the general Meaſure now reſolved on, for the Defence of the Town, about this Period.

That whenever any Complaints were made of the Slowneſs of the Workmen, that they were not going on with that Diligence they ought, the Lord Provoſt ſeverely reprimanded them, and gave freſh Warrants to preſs Men and Carts, with ſtrict Orders to loſe no Time.

That Bailie *Robert Baillie*, who had the Inſpection of the publick Works, with his Committee, were ordered to ſee that every thing was done that was neceſſary for the Defence and Preſervation of the Town; and he had the Charge of impreſſing Workmen and Carts, and exerciſing all the Authority that was neceſſary for carrying on the publick Works with the utmoſt Diſpatch.

That the Provoſt, on the 10th of *September*, wrote a Letter to Captain *John Dalrymple*, and alſo applied to Captain *James Murray*, to take upon them the Command of the Volunteers: But they both refuſed to accept of a Command of Men who had not been accuſtomed to military Diſcipline.

That the Provoſt moved in the Committee, to recommend to ſome of the City-Guard, *Edinburgh* Regiment, and Gentlemen Volunteers, that they ſhould learn the Exerciſe of throwing the Hand-Granadoes.

That, in order to preſerve the publick Money from falling into the Hands of the Rebels, the Provoſt called a Council, and propoſed, that what was owing of the King's Ceſs ſhould be paid up to the Receiver-General, though it had not been paid by the Inhabitants to the Collector; and for that Purpoſe the Provoſt forthwith ſigned an Order on the Caſh Accompt for 1000 *l.* Sterling, payable to the Receiver-General, to Account of the Ceſs due by the City, which was delivered to the Receiver-General.

September 13. That the Proceedings of the Committee for levying the City's Regiment, and forewarding the neceſſary Steps to be taken for the Safety and Defence of the Place, were read over in Preſence of, and conſidered by the Council, and unanimouſly approven of, and the Council recommended to the Committee to continue in their Diligence.

September 14. Notice having come to Town this Morning, that the Rebels had paſſed the *Forth* ſome Miles above *Stirling*, and were directing their March towards *Edinburgh*, and Colonel *Gairdner*'s Dragoons were retiring before them, the Lord Juſtice-Clerk ſent a Meſſage to the Provoſt, deſiring he would meet with him, and ſome Lords and Gentlemen of the Army, and others, whom he was to bring from the Country, in order to concert what was to be done in this Exigence. The Provoſt immediately went to Lord Juſtice-Clerk's Houſe, and told his Lordſhip he was ſenſible how much he ſtood in need of ſuch Advice; that he would always be ready to follow it, and would be ſure to attend them whenever called for.

He went on ſtill in doing every thing that could be thought of as neceſſary to provide for the Defence of the Place. He ſigned a Warrant this Day, along with Lord *Somerville* as Juſtice of Peace, to preſs Men and Carts for carrying Sand and other Materials to the Ramparts and Works about the Walls, which was accordingly executed; and alſo to bring in Hay, Corn, and Proviſions into the Town, and *John Walker* and *William Mercer* were ſent to *Leith* for that Purpoſe.

This Day alſo the Provoſt ordered twenty-four Men to attend Captain *Bryden* in mounting the Cannon upon the Walls;

And granted Warrant to bring into the Town all the Ladders, Arms and Ammunition, which were in the *Cannongate*, *Potter-Row*, and other Suburbs adjacent to the Town, that they might not be ſeized by the Rebels.

Sunday, *September* 15. We are now come to *Sunday* the 15th of *September*; and as the Proceedings of this Day, and the next, are greatly miſrepreſented, as well as curtailed in the Purſuer's Information, it is neceſſary to be a little more particular in reciting them.

Upon *Sunday* Morning, when the Committee were met in the Goldſmiths-Hall, a Gentleman came with a Meſſage from General *Gueſt*, to acquaint them, that when it was propoſed, at a Meeting at his Houſe, to order *Hamilton*'s Regiment of Dragoons to join *Gairdner*'s, and make a Stand againſt the Rebels, the General made a Difficulty, in regard he had no Body of Foot to ſuſtain them. Upon which a Captain of the Volunteers undertook, that, at leaſt, two hundred and fifty of theſe Gentlemen would be ready to march upon any Service the General would order them; he believed more would, but he could anſwer for two hundred and fifty, providing the Provoſt would allow Fifty of the Town-Guard to go along with them; and the Gentleman deſired to know if the Provoſt would conſent.

On firſt hearing of this Propoſal, the Provoſt had ſome Difficulty to part with the Town-Guard, as being the Body of Men he could moſt depend upon, in caſe of any Occaſion, to defend the Town; on which Bailie *Robert Baillie* ſaid, he thought fifty of the Town-Guard could not be better employed than in ſupporting ſo many of the Volunteers, if they marched out; and inſtantly the Provoſt, upon Recollection, agreed, and anſwered, 'Mr. *Baillie*, you are in the right; in place of 'Fifty, they ſhall have the whole Town-Guard, and as many of the '*Edinburgh* Regiment as are capable of doing Service.'

The Provoſt immediately went down in a Coach, along with the Gentleman who had brought the Meſſage, and told the General the Reſolution of the Committee as to ſending out the Town-Guard and the *Edinburgh* Regiment; upon which the General ſent Orders to *Hamilton*'s Regiment to march through the Town and join Colonel *Gairdner*'s.

The Provoſt came up to Town from the General's in a Coach, along with Provoſt *Drummond*, the firſt Captain of the Volunteers, and by the Way met two of their Officers, who came into the Coach, and told them, they were ſure the Volunteers would not comply with the Meaſure propoſed, and that they were now ſeparated, and had gone home.

The Provoſt aſked Mr. *Drummond* what would be the beſt Signal to bring the Volunteers together? He ſaid they had only two, three Guns from the Caſtle, or ringing the Alarm-Bell. The firſt, ſays the Provoſt, is not in our Power, as the Caſtle is ſhut; and the other, in Time of divine Service, may alarm the Town. No help for it, ſays Mr. *Drummond*, the Bell muſt be rung.

The Bell was accordingly rung, which alarmed the People, and made them leave the Church. The Volunteers conveened in the *Lawn-Market*, and huzza'd *Hamilton*'s Dragoons as they paſt along. Their Officers applied to the Provoſt, and aſked if he had ordered them to go out and join the Dragoons? He told them, he had no Power to order them any where out of Town; but he had conſented, that as many as were inclined ſhould go out with the Town-Guard and *Edinburgh* Regiment, to ſuſtain the Dragoons in oppoſing the Rebels. The Meaſure was generally not liked by the Volunteers, and was imputed to the Provoſt as if he had been the firſt Propoſer, as one of their Officers told him with a good deal of Warmth.

After many Expoſtulations among themſelves, at laſt Mr. *Drummond* marched up on the Head of his Company, and ſome others followed. They went the Length of the *Weſt* Port and then returned.

Two of their Officers went foreward to ſtop the Town-Guard and *Edinburgh* Regiment, who had marched on to ſuſtain the Dragoons, and found them between the *Coltbridge* and *Brucehill*: But the Provoſt being informed of this, ſent Orders that the City Regiment and Town-Guard ſhould march foreward, and take their Orders from the commanding Officer. General *Gueſt*, when he heard of the Return of the Volunteers, was vexed at the Diſappointment, and ſaid, if he had expected it, he would not have ordered *Hamilton*'s Regiment to go out to join the other in Defence of the Town.

The Provoſt ſent up Mr. *Stewart*, chief Conſtable, to the Caſtle, with a ſigned Order for a Number of Matches for the Uſe of the Cannon mounted on the Town-Walls, which were accordingly delivered, and brought down to the Goldſmiths-Hall.

The Provoſt conveened the Trained-Bands under their proper Colours and Officers, and gave them Notice to hold themſelves *in* Readineſs upon a Minute's Warning, and three Companies of them were ordered to mount Guard.

He alſo ordered the Conſtables to ſearch Houſes, of which there was any Suſpicion, for Arms and treaſonable Papers.

This Afternoon Brigadier *Fowkes* came to Town, and the Provoſt was called in the Evening to Lord Juſtice-Clerk's, where Lord Advocate, General *Gueſt*, Brigadier *Fowkes*, and ſeveral other Gentlemen of the Army were preſent. A Propoſal was made, that the Dragoons might be brought into Town, with a View to give them ſome Reſt and Refreſhment, and have their Horſes fed on the Street: But after the Thing was debated among the Gentlemen of the Military, who conſidered that the Avenues of the Town might be taken Poſſeſſion of by the Rebels, the Streets barricadoed, and the Houſes lined, and that the Dragoons might very probably, by this Means, fall into the Hands of the Rebels, it was agreed to be a Thing not to be attempted.

From this the Provoſt went along with Major *Cochran*, Captain *Murray*, Provoſt *Drummond*, and others, to the Houſe of Mrs. *Clark* Vintner, where a Diſpoſition was made of the ſeveral Corps of armed Men into different Quarters of the Town, particular Guards aſſigned them, and Places for their Alarm-Poſt condeſcended on, where each of them ſhould appear on the proper Signals; Copies of which were given to the commanding Officers of the different Corps.

This Afternoon the Provoſt met with Sir *Robert Dickſon* upon the Street, who had come in with a conſiderable Number of Volunteers; he received him with great Civility, as both his perſonal Character and Errand deſerved; immediately gave Orders that his Men ſhould be lodged in the Kirk, and that a ſufficient Quantity of Bread and Ale ſhould be carried there for a Refreſhment to them without Delay.

About this Time Meſſages were ſent to the Caſtle and *Leith*, to procure Gunners for loading the Cannon. Mr. *Gueſt* could afford us none out of the Caſtle; Bailie *Set* made ſearch over all *Leith*, aſſiſted by *David Dryburgh*, *Charles* and *Alexander* Sheriffs, and ſent us up what could be found

[*Eodem Die. Sept.* 11*th.*] The Committee above-mentioned, appointed by the Council on the 9th, met for the first Time, the Lord Provoſt preſent, when they gave their Opinion concerning ſome Things to be done for the Reparation of the Walls, that the ſame ſhould be forthwith executed ſo far as hitherto undone.

[*Eodem Die. Mr. Mac Laurin's Journal*] 'Some Cannon were got 'from Ships; and it having been earneſtly recommended to the Lord 'Provoſt, that ſome Hand Granadoes ſhould be got, and the City-Guard 'and Volunteers taught to uſe them, a Meſſage was ſent to the General, 'and by him to the Caſtle; but it was anſwered, That they had not 'above two hundred, and could not ſpare them. Afterwards, however, 'one of the Volunteers, ſurpriſed that there ſhould be ſo few in ſuch a 'Garriſon, ſo well provided with Stores, made a Viſit to the Caſtle, 'and was told by the Store-Keeper, that he had five times that Num-'ber, and was deſired to tell the Provoſt, that he had a hundred at his 'Service, if he had a mind for them. The Meſſage was delivered, but 'the Granadoes never appeared. We found twenty-three that had lien 'in a Cheſt ſince 1715, in the Town's Armoury, but they were never 'examined.

'A Ditch that had been ordered at *Wallace*'s Tower, had been carried 'on right for ſome time, but was afterwards, by ſome Miſtake, or bad 'Advice, caſt on the wrong Side of the Dyke. This Day this was ſtopt, 'and a Remedy propoſed, but not executed for want of Time.

'[*September* 12. *A. M.*] The Committee above named, came to ſome 'farther Reſolutions about fortifying the City-Walls, and, *inter alia*, 'recommended to Mr. *Mac Laurin* to go along with the Tradeſmen to 'explain the tenth Article of his Memorial, in relation to the putting 'the Wall at *Leith-Wynd* in a better Poſture of Defence.'

[*Committee's Record.*] In purſuance of the Lord Provoſt's Recommendation, the Committee reſolved, That it be recommended to ſome of the City-Guard, *Edinburgh* Regiment, and Gentlemen Volunteers, that they do learn the Exerciſe of throwing the Hand-Granadoes.

'[*Eodem Die. P. M.*] The Committee reſolve, That the Council 'ſhould invite thoſe who have any Quantities of Grain at *Leith*, or other 'Parts near to the Town, to bring the ſame into this City, to be lodged 'in the City's Granaries, to be kept therein from the Enemy, Rent-free.'

'[*September* 13. *Council Record.*] The Provoſt reported, That, on the '12th current, he had given Receipt to the Store-Keeper of the Caſtle 'for a hundred Muſkets, Bayonets, and Cartouch-Boxes, with half a 'Barrel of Powder, and Ball in proportion, for the Uſe of the Volunteers 'of this City; and alſo that he had given Receipt for two hundred 'Stand of more Arms to the Uſe of the City's Regiment.

'The Proceedings of the Committee for levying the City-Regiment, 'and forwarding the neceſſary Steps to be taken for the Safety and De-'fence of the Place, named the 9th current, were read over, and una-'nimouſly approved by the Council, which recommended to the Com-'mittee to continue in their Diligence.'

The Council then proceeded to make the ſhort Leets for the Election of new Deacons; after which there is nothing entered in the Council Record, 'till the 18th of *September*, the Day after the Rebels got Poſſeſſion of the Town, when there were ſome Proceedings relating to the annual Election, which did not take effect.

[*Eodem Die. Minutes of the Committee.*] 'The Lord Provoſt, and other 'Members of the Committee preſent, recommended to Bailie *Robert* '*Baillie*, and his Committee upon the publick Works, and ſuch of this 'Committee as pleaſed to attend, or any three of them, Bailie *Baillie* 'being always one, to ſee the whole Particulars contained in the former 'Minutes fully executed, without Loſs of Time, and to take the Advice 'and Direction of ſuch proper Perſons without Doors, as they ſhall 'judge neceſſary for executing the whole Particulars: with Power to 'the ſaid Committee to preſs ſuch Workmen as ſhall be judged pro-'per for compleating the whole Works before ſpecified.

'[*September* 13. *Mr. Mac Laurin's Journal.*] The Day of the Election 'of the Deacons there was very little done on the Wall; the Deacons could 'not be got; ſome Houſes in St. *Mary's Wynd*, that had large Windows 'into the Town, were ſhewn to ſome Magiſtrates, and afterwards to the 'Provoſt: but no Orders were given about them. This Day the Car-'riages of the Cannon were examined, and any neceſſary Reparation 'ordered.

'[*Saturday, September* 14*th, Committee Record.*] The Lord Provoſt in 'the Committee reported, That he had this Day ſigned an Order for 'Payment of 1000 *l. Sterling* to the Receiver General, to Account of the 'Ceſs due by the City.

'The Committee reſolve, That the Ceſs Books, and thoſe by which 'the Annuity and Poor's Money is collected, ſhall be tranſported from 'the ſeveral Collectors Offices to the Caſtle of *Edinburgh* for Preſerva-'tion; and the Provoſt wrote a Letter to General *Preſton*, the Governor 'of the Caſtle, praying him to receive the ſaid Books, and keep them for 'the Uſe of the City.'

This is the laſt Entry made in the Regiſter of the Proceedings of this Committee, which does not appear to have met again after this *Saturday* the 14th.

'[*Eodem Die. Mr. Mac Laurin's Journal.*] Little Work on the Walls 'and Scaffoldings, the Cannon were all proved and the Shot got ready.

'[*Sept.* 15. *dit. Journal.*] The Lord Provoſt brought Captain *Murray* 'to Town to give his Advice, and, not 'till this Day, he ordered ſome 'Works within the Gates, which were begun immediately. There were 'more Men employed this Day than ever before; and every body ſeemed 'to exert themſelves: But the Lord Provoſt having never named the 'Field-Officers to the Volunteers, they were now nine independent Com-'panies; and, upon a Motion to go out with Colonel *Gardner*, they 'unhappily divided in Opinion, which produced ſome Heat amongſt 'them. A moſt unlucky Signal was pitched on to call them to their 'Arms, the ringing of the Fire-Bell, which never fails to raiſe a Pan-'nick in *Edinburgh*. This happened in time of divine Service; the 'Churches diſmiſſed in Confuſion and Terror: And this was the firſt 'Appearance of Fear in the Place: This Signal ought not to have been 'propoſed or allowed by the Magiſtrates at ſuch a Time, the Rebels not 'being far from us.

'This Day moſt of the Cannon were carried to the Flanks, and in 'this as much Regard as poſſible was had to the weakeſt Places; ſo that 'there were three on *St. Mary's Wynd*, which raked it. About Six, one 'of the Volunteers, with the Chief of the Bombardiers, came to the 'Provoſt, to have an Order to load them; he kept them waiting till 'Eight, and then deſired another to ſign the Order for him. They 'begun, though in the Night; but, after they came to the *Briſto* Port, 'they were obliged to wait from Half an Hour after Ten, till near One, 'for want of a Centinel to place on the loaded Gun, though they ſent 'Meſſages for Centinels to the Guard and Council. This put a Stop 'to their Progreſs that Night; the Guns were all loaded with ſmall 'Shot, and, as they flanked the Curtains and Gates, it was the more 'dangerous to leave them without Centinels during all that Time, while 'the reſt of the Wall was guarded, and, *All is well*, was heard go round 'regularly; there were no Centinels from *Briſto* Port to the *Weſt* Port, 'but one or two below.'

On the Evening of this 15th of *September*, when the Rebels were within a few Miles of the City, and it was apprehended that they might have come up to it during that Night, it was reſolved at a Meeting with the Lord Provoſt, and others of the Council, with the Captains of the Volunteers, That 700 Men ſhould be upon Duty all Night, to guard the Walls all round the Town, who were to conſiſt of 400 Trained Bands, 40 of the new Regiment, 100 Volunteers, 90 Seceders, 40 *Dalkeith* Volunteers, 30 Exciſe-Officers.

[*Monday, September* 16. *Mr. Mac Laurin's Journal.*] 'The Works 'went on chearfully till Four or Five at Night; a Work was thrown 'up to defend the Paſs to *Mountreſay*, ſome Gates were ſhut up, 'ſome more Cannon were got, and carried to the Baſtions and Gates; 'we were told that only five Gunners were got at One o'Clock, but 'were promiſed that Pains ſhould be taken to get more.

'Betwixt Two and Three o'Clock, ſome Burghers were ſaid to be 'carrying about for Subſcriptions a Petition to the Magiſtrates, praying 'the Town ſhould capitulate. The Alarm being great at the *Weſt* Port, 'the Guns there were loaded, and the other Works preſſed on, ſo that 'they were almoſt finiſhed, when an Account came, that a Meeting in 'the *New Church* had agreed to capitulate. One of the Volunteers 'called for the Provoſt, to know what was to be done to the Cannon; but 'was told, that his Lordſhip had not Time to ſpeak to him. The Call 'of, *All is well*, did not go round the Wall this Night as the former, 'and the Town ſeemed to be quite off its Defence; the Volunteers 'delivered their Arms into the Caſtle.'

Here Mr. *Mac Laurin*'s Journal ends, which is all in his own Hand-Writing; and, as he was himſelf a Volunteer, and ſerved the Town as a chief Engineer, to deviſe and direct the Methods of fortifying the ſame; as he was a Perſon of great and eminent Abilities, of excellent Judgment as well as great Learning, and of perfect Probity and Veracity; as he had Opportunity to know all the Facts which he relates, and which he ſet down in Writing recently after they happened, with great Diſtinctneſs and Preciſion; and as the Purſuer has reaſon to believe that his Relation will be confirmed by the Teſtimony of living Witneſſes, he has choſen, in this Deduction of the Facts, in order to make the Charge and the Defence better underſtood, to make uſe of the very Words of Profeſſor *Mac Laurin*, as the moſt accurate and genuine Relation of the Facts that could be made, ſo far as he goes.

The Events of *Monday* the 16th, when, after ſo much Preparation for a Defence, the City of *Edinburgh* was in effect ſurrendered, and opened its Gates to the Rebels, were various, and deſerve to be more minutely recited. In the Morning of that Day Provoſt *Stewart* received a Meſſage from the Camp of the Rebels, which was delivered to him by *Andrew Alves*, Writer to the Signet, importing, That the City of *Edinburgh* would be ill-treated by them, unleſs it ſhould be readily or ſpeedily ſurrendered. Upon receiving which, the Provoſt did not commit the ſaid *Andrew Alves* to Priſon, neither did he give Notice of this Incident to any other of the King's Officers, Civil or Military, nor did he ſo much as adviſe or charge Mr. *Alves* to forbear repeating or relating that Meſſage of his in the Town, who went directly from the Provoſt to the Street, and repeated his Story to a Circle of People who came round him, amongſt whom one Gentleman adviſed Mr. *Alves* to go and tell what he had been relating to his Majeſty's Advocate; upon his doing which, the Advocate adviſed the Lord Provoſt to commit Mr. *Alves* to Priſon, which was now done too late to prevent the diſcloſing or ſpreading the threatening Meſſage which he had brought.

About Two o'Clock in the Afternoon of that Day, a Petition was ſet on foot, which was put into the Lord Provoſt's Hands about Three, addreſſed to the Lord Provoſt, Magiſtrates and Council, and intitled, *Repreſentation of the under-ſubſcribing Inhabitants of the City of* Edinburgh, and it is ſigned by 48 Perſons, ſetting forth, 'That being deeply affected 'with a Senſe of the great Danger to which the City is preſently ex-'poſed, by a rebellious Army marching up thereto in order to attack it, 'and being, at the ſame time, ſenſible of our Inability to make ſuch a 'Defence as with any Probability may defeat their Deſign of entering 'the ſame, without endangering the Lives and Properties of the Inha-'bitants, and expoſing the City to Rapine and Plunder, in the Event 'of our being obliged to ſurrender, and that there is but ſmall, if any 'Proſpect of Aſſiſtance from the Military; therefore praying them, who 'are the Governors of the City, that, before they came to any Reſolu-'tion, either of defending or giving up the Town, they will call a 'Meeting of all the principal Inhabitants and Heritors at preſent in the 'Place, to conſult with them what is proper to be done in an Affair of 'ſo great Importance.'

About the very time that this Petition was going forward, a Letter was ſigned by the Lord Provoſt, together with his Majeſty's Advocate and Sollicitor, addreſſed to the honourable Lieutenant-General *Gueſt*, in the Words following. '*Edinburgh*, 16th *September* 1745. Sir, We are of 'Opinion, that it would be for his Majeſty's Service, that one hundred 'of the Dragoons ſhould be ordered in to the Town of *Edinburgh*, to aſ-'ſiſt in defending this Town.'

A little after this, and betwixt the Hours of Three and Four of the Afternoon of this Day, Mr. *Walter Graſet* was ſent by the Lord Juſtice-Clerk to the Lord Provoſt of *Edinburgh*, to know whether he the Provoſt intended to defend the Town or not, to preſs the Defence thereof, and

to

to assure him, that, if he resolved to defend it, not only the 100 Dragoons he had applied for, but as many more as he pleased to desire, should forthwith be ordered in to his Assistance. Mr. *Groset*, in his Way to *Edinburgh*, met the Lord Advocate coming from the Town, and having acquainted him with the Message Lord Justice-Clerk had sent by him *Groset* to the Provost, he the Advocate approved thereof, and desired Mr. *Groset* to make all possible Haste in delivering the same, and getting the Provost's Answer.

Mr. *Groset* found the Lord Provost in the Goldsmiths-Hall, delivered to him the above Message, and insisted for a direct Answer, and that, to prevent Mistakes, the same might be put in Writing; which, after some Conversation on the Subject, the Provost gave him in Writing, directed to the Lord Advocate and the Lord Justice-Clerk, in the following Words: 'You know the Councils I was Witness to: Was I to desire 'his Majesty's Troops to come into the Town now, I might be upbraid-'ed, after that, for having laid a Snare for his Majesty's Forces; should 'I refuse them, I may afterwards be accused for tamely delivering up the 'Town of *Edinburgh*: I desire your Lordships to be explicit, and tell me 'whether it is your Opinion or not they should come in; and send your 'Orders in Writing.'

Upon Mr. *Groset*'s receiving this Answer, he told the Lord Provost, that he had already assured him, that it was the Lord Justice-Clerk's Opinion, that the Town should be defended, and that therefore he must answer for the Consequences of this unnecessary Delay; and as for the Lord Advocate's Opinion, That had already been given in Writing an Hour or two before, when he, along with the Lord Provost himself, had signed a Letter to General *Guest*, requesting 100 Dragoons to assist in defending the City.

About Four o'Clock in the Afternoon, that is, about an Hour after the Petition above-recited was presented to the Lord Provost, praying for a general Meeting of the Inhabitants, to consult or deliberate with the Magistrates and Council, whether to defend or give up the Town; such Meeting was accordingly held in the *New Church Isle*, the Lord Provost being in the Chair, and presiding.

At this Meeting there happened to be present some of the Reverend Ministers of the City of *Edinburgh*, and some other Persons of known good Affection to his Majesty and his Government, according to whose Observation, the far greater Part of the Persons there assembled were reputed of a quite contrary Character; and indeed it was impracticable, at this Meeting, to gather the true Sense of the Citizens in general, supposing it had been now seasonable or fit to deliberate in a popular Assembly, whether to give up or pursue the Defence of the City, for which hitherto so many Preparations had been making, because the greater Part of the most substantial and well-affected Burgesses, who were in Arms as Volunteers, had no Notice of this Meeting, or the Intent of it, and could not possibly attend it, being at that very Time under Arms with their respective Officers, waiting for Orders from the Lord Provost or Colonel, in what Manner they should be disposed of, or act for the Defence of the City.

At the Meeting thus assembled, and thus composed, the general Cry was for giving up the City without making any Defence; and the Reverend Mr. *Logan* Minister, and others, who attempted to speak in Opposition to this Measure, were borne down with Clamour and Noise.

During this Meeting Mr. *Lindsay*, Deputy Secretary of War, came with a Message from General *Guest* to the Lord Provost, upon the General's hearing the Rumour that there was a Meeting of the Inhabitants to deliberate about giving up the Town to the Rebels, to ask the Provost if he continued to be of Opinion that the Dragoons should come into the Town. To which the Provost answered, That he would neither bid nor forbid them, but that the General might do what he thought proper. Upon which Mr. *Lindsay* very naturally asked him, how he came to scruple about giving Directions concerning the Dragoons, when he had an Hour or two before sent a written Request to the General to obtain them. To which the Provost answered, That he had only signed that Request at the Desire of the Lord Advocate.

Towards the Close of this general Meeting, there was brought into it, in a Manner that appeared somewhat mysterious, being handed in from the Door, from one Person to another, in the Crowd, a Letter addressed, For the Lord Provost, Magistrates, and Town-Council of *Edinburgh*, signed *Charles* P. R. bearing Date, *From our Camp this 16th* September, 1745, and in the following Words:

'Being now in a Condition to make our Way into the Capital of his 'Majesty's ancient Kingdom of *Scotland*, we hereby summon you to re-'ceive us, as you are in Duty bound to do; and, in order to it, we 'hereby require you, upon Receipt of this, to summon the Town-council, 'and take proper Measures in it for securing the Peace and Quiet of the 'City, which we are very desirous to protect: But if you suffer any of 'the Usurper's Troops to enter the Town, or any of the Cannon, Arms, 'or Ammunition now in it, whether belonging to the Publick, or to 'private Persons, to be carried off, we shall take it as a Breach of your 'Duty, and a heinous Offence against the King and us, and shall resent 'it accordingly. We promise to preserve all the Rights and Liberties of 'the City, and the particular Property of every one of his Majesty's Sub-'jects: But if any Opposition be made to us, we cannot answer for the 'Consequences, being firmly resolved at any Rate to enter the City; and, 'in that Case, if any of the Inhabitants are found in Arms against us, 'they must not expect to be treated as Prisoners of War.'

This Letter was not read out in the general Meeting in the Church; for, as soon as the Subscription to the same was read, the Meeting broke up, and the Lord Provost, with the Members of Council there present, returned to their Council-Chamber, where this Letter was again produced and read; after which it was moved, or agreed to by the Provost, that an Answer should be sent to it, which was accordingly sent, first by one, and then by another Deputation from the Council, who went out to the Camp of the Pretender's Son, who was then about two Miles to the South-West of the City, upon the Water of *Leith*, in the Parish of *Collington*. The Return, brought in Writing, to the first of these Deputations, was in the Words following: 'His R. H. the Prince Regent thinks his '*Manifesto*, and the King his Father's Declaration already published, are 'a sufficient Capitulation for all his Majesty's Subjects to accept of with 'Joy. His present Demands are, to be received into the City as the Son 'and Representative of the King his Father, and obeyed as such when 'he is there. His R. H. supposes, that since the Receipt of his Letter 'to the Provost, no Arms or Ammunition have been suffered to be car-'ried off or concealed, and will expect a particular Account of all Things 'of that Nature. *Lastly*, He expects a positive Answer to this before 'Two o'Clock in the Morning, otherwise he will think himself obliged 'to take Measures conform. At *Gray's-Mill*, 16th *September*, 1745. 'By his Highness's Command,

'(Signed) J. MURRAY.'

It is proper here to observe, that after the first Deputation was sent out to the Camp of the Pretender's Son, Notice was brought to the Lord Provost, and the others assembled with him in the Council-Chamber, that Sir *John Cope*, with the Troops under his Command, was arrived off *Dunbar*. This News was brought by Mr. *Walter Groset*, who brought the original Letters from *Dunbar*, giving Notice of this Event, together with a Letter from the Lord Advocate, who was then at *Musselburgh*, certifying, that these were the original Letters. All these Mr. *Groset* delivered to the Lord Provost in the Council-Chamber; upon perusing which the Provost said, This News had come too late, for they had come to a Resolution to capitulate, and had sent a Deputation to the Camp of the Rebels for that Purpose, and shewed to Mr. *Groset* the Letter above-recited from the Pretender's Son, as the Occasion of that Resolution. Mr. *Groset* then proposed to send after the Deputies to bring them back; and for that Purpose another Member of the Council was accordingly sent, but he did not overtake them.

About this Time Mr. *Drummond* and Mr. *Mac Aulay*, Captains of the Volunteers, and who had been both formerly Provosts of *Edinburgh*, (as the former now is) upon hearing of Sir *John Cope*'s Arrival, came to the Council-House, and insisted that the Defence of the Town should be now resumed, as there was so near a Prospect of their obtaining Relief, and proposed the ringing of the Alarm-Bell, as a Signal to bring every Body back to their Posts.

To this the Provost answered, That he must be careful of the Blood of the Inhabitants; and that, as certain of their Number had been sent out as Deputies to treat, should they be in the Hands of the Rebels whilst the Alarm-Bell was rung, they, the Deputies, might be ill used by the Rebels; and also urged the former Objections, of the Difficulty and Danger of defending the Town. To this Mr. *Groset* replied, That he knew the Situation of the Town so well, and the Condition of those who were to come against it, who had no Cannon and few Arms, that he would undertake to be one of Fifty that should defend the weakest Place of it, 'till the Troops should come to their Relief. To which one of the Council assenting, the Lord Provost seemed to give Way to the Resolution of defending the Town, provided General *Guest* would agree to let them have from the Castle what Arms should be wanted. This Mr. *Groset* undertook to procure, and went directly, accompanied by Provost *Coutts*, one of the Council, to General *Guest* in the Castle; who told him for Answer, That he was glad the Provost had come to a Resolution to defend the Town, who might depend upon the utmost Assistance that he the General could give them; and that as soon as the City Arms should be put into proper Hands for that Purpose, what farther Arms were wanting should be ready to be delivered to them from the Castle.

Upon their Return to the Provost, and reporting the General's Answer, Mr. *Groset* was told, 'That as the Person who had been sent to bring 'back the Deputies had not overtaken them, the Provost and Council, 'as they had entered upon a Treaty, had come to a Resolution not to 'defend the Town.'

It was then proposed and insisted on, that the Cannon and Arms should be delivered into the Castle. For Answer to which the Provost referred to the Letter from the Pretender's Son, and observed the Danger which the Town would incur, if they should remove their Arms. To which Provost *Drummond* replied, That if they, by giving up the Town, assisted the Rebels with Arms to fight against the King's Troops, would not they, upon retaking the Town, be apt to look upon the Inhabitants as Enemies, and use them accordingly?

After Receipt of the above Answer to the first Deputation, the Council agreed to send out a second Deputation, in order, if possible, to gain some more Time. The Answer to which second was also brought in Writing, though not signed, as the former was, and in the following Words: 'His Royal Highness has already given all the Assurances he can, that 'he intends to exact nothing of the City in general, nor of any in parti-'cular, but what his Character of Regent entitles him to: This he re-'peats, and renews his Summons to the Magistrates to receive him as 'such.'

This second Deputation returned to *Edinburgh* early in the Morning of *Tuesday* the 17th of *September*, in a Hackney-Coach, which entered the City at the *West* Port, and set down the Deputies at Mrs. *Clark*'s Tavern, where the Lord Provost and others of the Council were waiting for them, to receive their Report, and then the Coach drove down the Street towards the *Cannongate*; and at the *Netherbow* Port, which was then kept by a Serjeant's Command of the City-Guard, the Gate was opened to let out the Hackney-Coach, and a Body of Rebels, who were waiting without the Gate, headed by *Sullivan* and *Lochiel*, rushed in at the Gate, and became at once Masters of this Capital.

The Rebels, immediately after their becoming Masters of the City, seized all the Cannon, Arms, and Ammunition belonging to it; and the Day following, being *Wednesday* the 18th, they issued a Proclamation, requiring all Persons in the Shire of *Edinburgh*, forthwith to deliver up, at the Palace of *Holy-Rood-House*, all the Arms and Ammunition they had in their Custody, on Pain of being treated as Rebels. And on *Thursday* the 19th, they sent a Message in Writing to the City of *Edinburgh*, requiring, on Pain of military Execution, that one thousand Tents, two thousand Targets, six thousand Pairs of Shoes, and a proportional Number of Water Cantines, should be furnished to their Army against the 23d, and promising Payment as soon as the present Troubles should be over. All which were accordingly furnished; and for that Purpose a Tax laid upon the Inhabitants of 2*s.* 6*d.* upon each Pound of their real Rent, within the City, *Cannongate*, and *Leith*.

Thus was the City of *Edinburgh*, which had, in their Address to the King of the 7th of this very Month, said with great Truth, 'That this City 'hath

'hath always diſtinguiſhed itſelf by a firm and ſteddy Attachment to 'Revolution and Whig Principles, and a hearty Abhorrence of all 'Popiſh and arbitrary Government: and particularly, that, during the 'Rebellion in the Year 1715, their Zeal for his late Majeſty was 'equalled by few, and ſurpaſſed by none; and, at the ſame Time, 'aſſured his preſent Majeſty, that, at this Time, they would ſtand by 'him with their Lives and Fortunes, and employ every Power they were 'poſſeſſed of, and all the Means his Majeſty ſhould put in their Hands, 'to diſappoint the Attempts of *France* and the Pretender.' This City, which had given ſo many Reaſons to expect better Things of it, was, after mighty Preparations for a vigorous Defence, thus poorly delivered up, without ſtriking one Blow, to an half-armed Rabble, at a Time when the King's Army was within a Day's March of the City, to the great Diſcredit and Reproach of the City itſelf, in the Eyes of the World, who were ignorant of the particular Circumſtances and Cauſes of ſo ſtrange an Appearance, to the hearty Grief and Sorrow of all its well-affected Inhabitants, who are by far the greater Part of them, to the Triumph of the Pretender's Son and his Adherents, to the Ruin of many unfortunate Perſons, who, by this Appearance of Succeſs, were encouraged to engage in the Rebellion, to the real and high Detriment, not of the City itſelf only, but of the Publick; the Rebels, by this Capture, having been there furniſhed with Arms, Tents, and Proviſions of all Kinds, which contributed chiefly to their obtaining the Victory at *Preſton Pans* a few Days after; and that again, to the Continuance and farther Progreſs of the Rebellion, to the immenſe Addition to the Expence of the Publick, the great Interruption of Commerce and Credit, the Progreſs of his Majeſty's Enemies abroad, and the Interruption of the internal Tranquillity of this Kingdom, until that was happily reſtored by the Conduct and Succeſs of his Royal Highneſs the Duke.

It was natural for all the World, at firſt Sight, to lay the Blame of an Event, which has brought on and contributed to ſo many and great Miſchiefs, principally on the Lord Provoſt of *Edinburgh* for the Time, being the chief Magiſtrate and Governor of the City; and the Queſtion now brought to Trial is, Whether he was, or was not guilty or culpable in his Deportment in that high Office, during the Tranſactions libelled, and above more particularly recited? The Libel charges, That he was guilty of groſs Neglect of Duty, and Miſbehaviour in his Office on that Occaſion; and whether he was or not, muſt depend upon a due Compariſon of the Duty of his Office, with his actual Behaviour, to ſee how far the one comes up to the other, and wherein he was alledged to be deficient; and to have counteracted his Duty, the Libel fairly and particularly ſets forth, and thereby gives him the better Opportunity to clear himſelf, if he be able.

Upon the Libel being read in Court on the 13th current, and the Pannel being aſked by the Court, as uſual, what he had to ſay for himſelf, he ſaid, in effect, that he was not guilty, and that his Conduct, upon the Occaſion libelled, had been agreeable to his Duty; and then left it to his Counſel to offer and make good his Defence at large; of whom five were accordingly heard at great Length, and the Subſtance of their Arguments, as far as the Purſuer could obſerve and recollect them, was as follows.

They took Notice that the Pannel had already ſuffered very great Hardſhips by his long Confinement, for the Space of fourteen Months, without being brought to Trial, which, to a Man engaged, as he is, in conſiderable Trade and Buſineſs, they ſaid was a Puniſhment greater than he merited, ſuppoſing all that is alledged in this Libel were true. They ſaid, that the Source of this hard Uſage was the Malice of certain Enemies of the Pannel in the City of *Edinburgh*, who, in order to ruin his Credit and Intereſt in this City, had ſet themſelves to find Fault with his Conduct during the Rebellion, had induſtriouſly miſrepreſented that Conduct, and raiſed a popular Clamour againſt him, which, having reached the Seat of Government, had produced the Severities he has already met with.

That he was however now glad of an Opportunity of having his Conduct brought to Trial by the certain Teſt of judicial Evidence, hoping that he would now be declared innocent upon Examination, who, by popular Clamour, had been pronounced guilty without Examination.

At the ſame Time it was alſo urged, though not very conſiſtently with this laſt Declaration, that the Pannel could not competently be brought to Trial at all in this Court upon this Libel; that the particular Statute of King *James* the Second, upon which it is laid, was almoſt three hundred Years old, and was gone into Diſuetude; that, whilſt it was in force, it was never meant to concern any more than the Behaviour of Magiſtrates in their judicial Capacity, or ordinary Adminiſtration on ſuch Occaſions as commonly or yearly occur, but never to concern the extraordinary Office of Magiſtrates in Time of War or open Rebellion, when it may be very incident to them to err or commit Miſtakes, as many an honeſt Burgeſs may be very well qualified to diſcharge the Duty of Provoſt, or other Magiſtrate of his Burgh, in quiet and peaceable Times, from whom it cannot be expected, that, in ſuch an Exigency as an open Rebellion, he ſhould be able to act the Part of an expert military Commander or Governor of a Town, and that the Deportment of the Provoſt on ſuch Occaſion, could not be tried at all at common Law; that it was an improper Queſtion to be tried by a Jury, who might very properly try a ſingle Iſſue, as whether a Man was guilty of Murder, Robbery, or the like, but very unfit to give Judgment upon a Series of Facts relating to the Deportment of a Provoſt, whether it was or was not agreeable to his Duty; and therefore it was ſaid, that the only competent Method, by the Conſtitution of this Kingdom, for trying and puniſhing Treſpaſſes ſuch as thoſe alledged in this Libel, was by the Authority of the Legiſlature itſelf, in ſuch Manner as had been practiſed in the Caſe of *Alexander Wilſon*, who had been Lord Provoſt of *Edinburgh* at the Time of the Murder of Captain *John Porteous*.

It was farther ſaid, by way of more particular Anſwer to the Matters charged in this Libel, that the ſame contained nothing criminal; that, as to the firſt Article, concerning the raiſing of the *Edinburgh* Regiment, it was no Crime in the Provoſt to entertain a Doubt concerning the Legality thereof, and to heſitate to commit what he apprehended might have been treaſonable, and that he was juſtified in his Doubt by the ableſt Advice given for applying for his Majeſty's ſpecial Warrant, which was accordingly obtained.

That, as to the ſecond, concerning the Volunteers, he had the ſame Reaſon to doubt concerning the Legality of that Meaſure, and it was no Crime in him that he could not perceive any Difference betwixt authorizing a Body of armed Men who were to ſerve without Pay, and another Body who were to receive Pay; or that the one might be authorized without his Majeſty's ſpecial Warrant, which had been adviſed to be neceſſary or proper in reſpect of the other; that, more particularly, as to this Article, the Provoſt had Reaſon to take Offence, that the Meaſure was ſo far concerted and carried on by the Volunteers, as that they brought him a Petition, ſigned by ninety or a hundred Perſons, without his Privity, or previouſly conſulting with him: This he had Reaſon to conſider as a deſigned Neglect and Inſult upon him; and yet, as ſoon as he was adviſed that the Thing might be lawfully done, he gave way to it; and it was a very ſlender Circumſtance to be charged as a Crime, that he choſe to have it ſaid that he acquieſced in that Meaſure, rather than that he heartily approved it, or that he ſhould be charged with a Defect of Civility or good Manners towards theſe Volunteers.

As to the Third, concerning the Repairs of the City Walls, it was obſerved in general, That the Provoſt was not the ſole Perſon anſwerable for any Slowneſs or Defect of Care and Diligence in this reſpect, though he had been ſingled out, and made the ſole Object of this Proſecution. He was but one of many, who behoved to act by the Authority of his Council, and of the Committee appointed to take the ſpecial Direction of what concerned the Defence of the City; and that all his Conduct was agreeable to the Senſe of theſe two Bodies, and approved by them, and without them he could do nothing; for that the King's Warrant concerning the Regiment, being addreſſed to the Lord Provoſt, Magiſtrates and Council, and having ordered that the Regiment ſhould be under the Direction of them all, and the Council having appointed a Committee for that Purpoſe, and to conſider what farther ſhould be done for the Safety of the City, the Provoſt was thus limited in the legal Exerciſe of the known Duty of his Office; that, however, the Committee, whereof he was one, had given the neceſſary Orders for the Repairs, and Warrants for impreſſing Workmen for that Purpoſe; that the Cannon upon the Walls were actually loaded on *Sunday* the 15th, and Applications were made to procure Gunners for managing them.

To the fourth Article it was ſaid, That no Propoſition could be accepted or rejected by the Provoſt alone, but by the whole Council; that as to the Propoſition in the Article mentioned concerning the Trained Bands, of the purging that Body of diſaffected or ſuſpected Perſons, it was true that the Provoſt was averſe to it, and choſe rather to undergo any Hazard, than take upon him to fix ſuch Mark of Infamy upon a Number of his Fellow-Citizens, without any certain Ground of Charge againſt them.

To the fifth Article, That here again the Pannel was charged with Defect of Civility or good Manners (a very unuſual Point of Dittay); and that ſuppoſing the Fact true, of the Converſation with Sir *Robert Dickſon*, it was not unreaſonable, nor could juſtly give Offence, for the Provoſt to propoſe ſuch Method for finding Subſiſtence to the ordinary Men, as inliſting them in the *Edinburgh* Regiment, which would alſo be a Means to inſure their Attendance and Service for a limited Time, ſo as they might not be at Liberty to withdraw at Pleaſure, and this perhaps when the City ſhould be under the moſt preſſing Exigency.

To the ſixth, That the only Thing here imputed to the Pannel as an Offence, was his not immediately committing *Andrew Alves* to Priſon, the doing which might have been of bad Conſequence, to deter others from bringing Intelligence to the Provoſt concerning the Rebels or their Deſigns; and that at beſt it was not a very clear Caſe, that it was at all lawful or competent to commit Mr. *Alves* for only repeating to the Provoſt what the Rebels had ſaid to him, when they ſeized him and made him their Priſoner; that his receiving the Meſſage, or hearing what Mr. *Alves* ſaid, could be no Crime; and, as ſoon as he heard it, he repaired to the Council-Chamber, then held in the Goldſmiths Hall, where he imparted this Piece of Intelligence to ſome others of the Council, who agreed that it ſhould be concealed, leſt it ſhould intimidate the Inhabitants that, however, ſoon after, the Lord Provoſt ſaw the Lord Advocate, and, in purſuance of his Advice, actually committed Mr. *Alves*.

To the ſeventh and eighth Articles it was ſaid, That *Monday* the 16th of *September* 1745. was a Day of univerſal Diſtraction in the City of *Edinburgh*; that the two Regiments of Dragoons of *Hamilton* and *Gardner*, who, with the whole City-Guard, had been poſted at the *Coltbridge*, a Mile Weſt from *Edinburgh*, about three Afternoon, retreated, and paſt by the North Side of the Town, Eaſtward, which greatly heightened the Pannick of the Citizens, being thus abandoned by the only military Force they had in their Neighbourhood, and no News of Sir *John Cope* or his Army was now come, and at the ſame Time the chief civil Officers of the Crown had left the City; and yet, in this Situation, the Lord Provoſt, in the Goldſmiths Hall, where many of the Council and other Inhabitants were aſſembled, declared himſelf ready to act his Part for the Defence of the Town; but that he was now ſeconded by few: But at this Juncture, one Mr. *Groſet* arrived, and delivered a Meſſage to the Provoſt, that he ſhould ſend for, or conſent to receive a Party of Dragoons; at which he, the Provoſt, was ſurpriſed, having been preſent the Night before at a Council of War, where it was reſolved to be improper to bring any of the Dragoons into the City; upon which he gave his Anſwer in Writing to that Meſſage, which is above recited: That the Inhabitants, anxious to know the Reſolutions of the Council, preſſed into the Room in a Crowd; and then Somebody elſe, not the Provoſt, propoſed to adjourn to the New-Church Iſle; that, on the Way thither, a Gentleman on Horſeback told loudly, that the Rebels were near eight thouſand ſtrong, which ſtill heightened the Pannick; that yet, in the New-Church Iſle, the Lord Provoſt ſpoke as he had in the Council-Room, declaring himſelf ready, if the Citizens were ſo diſpoſed, to do his Part for Defence of the City; that at this Meeting, the Letter from the Pretender's Son was brought in, to the Reading of which he, the Provoſt, objected, and thereupon returned with his Council to the Goldſmiths Hall.

That the Inhabitants had now the Direction of Affairs in their Hands, and they were governed by their Fears and Terrors; that the higher Civil

Officers of the Crown being gone, the Magiſtrates ſent to their own Aſſeſſors for Advice; but they alſo were all gone, excepting one, who declined giving any explicit Opinion on ſuch high Matters; upon which the Letter was read, and found to be to the ſame Purpoſe with *Alves*'s Meſſage, and then they thought themſelves under an unavoidable Neceſſity to ſend out a Deputation, in order to procure a Delay, and gain ſome Time for the expected Relief to come.

To the *ninth* and *tenth* it was ſaid, That the Defence of the Town was now given up as impracticable; and that upon ſerious Deliberation it was the unanimous Opinion of the Council, that no direct Order ſhould be given by the Lord Provoſt concerning the Arms of the Volunteers, or the Cannon upon the City-Walls, for fear of incenſing the lawleſs Multitude of Rebels to put their Threats in Execution.

The ſame Anſwer was given to the *eleventh* Article relating to the City-Arms, to which there was now added, and not till now, a Matter of Fact never formerly alledged by the Pannel; neither in his Examination before the Committee of the Privy-Council, on the 7th *December* 1745, nor in the ſigned Anſwers returned by him to his Libel, and it muſt appear very ſtrange, if it was true, that the moſt plauſible Anſwer he had to make to this very heavy Article ſhould never have been once mentioned till now, being, that he the Provoſt could prove that he ſent a Meſſage to General *Gueſt*, propoſing that he ſhould ſend a Party of Soldiers to take away the City-Arms and carry them up to the Caſtle.

Upon the *twelfth* Article it was ſaid, That the Opinion of the Citizens of *Edinburgh*, or any Number of them, concerning the Pannel, could afford no Evidence that he was actually guilty; and that, upon the whole, the Surrender of the City was owing to a Train of unavoidable Accidents, for which he the Provoſt was not blameable.

Notice was alſo taken more than once, by the Pannel's Counſel, that he himſelf had a very large Property, conſiſting of a Stock of Wines, lying in his Cellars at *Leith*, which would be expoſed to the Diſcretion of the Rebels in caſe of their coming to *Edinburgh*; but the Concluſion drawn from this Fact was not, to the Purſuer's Obſervation, diſtinctly ſpoke out or explained by his Counſel; ſo that the Purſuer is ſtill at a Loſs to know what Uſe was meant to be made of that Obſervation, whether by way of Argument to evince the Sincerity of Mr. *Stewart*, in deſiring to keep the Rebels at a Diſtance, that his own moveable Eſtate, of ſo great Value, might not come under their Power; or if it was meant to be offered by way of Excuſe for him, that he was afraid of giving offence to the Rebels, by oppoſing them with Vigour and Zeal, becauſethey might have it in their Power to hurt him deeply in his private Fortune or Effects; and therefore the Purſuer muſt leave it to them to explain their own Meaning or Intent, in alledging and inſiſting on this Matter of Fact.

It was farther obſerved for the Pannel, though not very conſiſtently with the Allegation, that there was nothing material relevant or criminal charged upon him in theſe Articles; that the Charge therein contained, if it amounted to any Crime at all, was no leſs than that of High-Treaſon; for that ſuch, no doubt, it was, if he purſued Meaſures that had no other Tendency than to betray the City, whereof he was chief Magiſtrate, into the Hands of the Rebels: It would have been this Crime in caſe the Provoſt had acted with that ill Intention, which is the eſſential Requiſite to render the Actions of Men at all criminal or puniſhable; and if the Provoſt had no ſuch Intention, then, ſuppoſing he had committed ſeveral Errors in his Conduct, theſe were no more than Errors in Judgment, and ſuch Miſtakes in Matters prudential, in difficult and dangerous Times, when a Magiſtrate muſt act one Way or other, ought never to be imputed to him as a Crime; for though the Part he chuſes do not prove ſucceſsful, the oppoſite Conduct might have been no more ſo, and, in that Caſe, that very oppoſite Conduct might, with the ſame Facility, have been laid hold of as the Ground of a Proſecution: For Example, if he had brought in the Dragoons into the City, and theſe afterwards had fallen into the Hands of the Rebels; or, ſuppoſe he had found Means to ſuppreſs the threatening Letter from the Pretender's Son, and the Inhabitants had ſtood to their Defence, and yet the Town had been ſtormed, and the Rebels had then cut the Throats of the Inhabitants, ſuppoſing he had eſcaped the Maſſacre, it is eaſy to imagine what a heavy Charge might have been formed againſt him, as having been the Author or Cauſe of ſuch Calamities: And therefore, ſince his Conduct is not alledged to have been directly treaſonable, it proceeded at worſt from Miſtake, or Errors in Judgment, which is no Crime at all that is puniſhable by the Law in a free Country, ſuch as this is.

It was farther obſerved, that the Pannel was not ſo much as charged in the Libel with Diſaffection to his Majeſty's Government; and that however the Facts libelled might be apt to make ſome Impreſſion, in maintaining a Charge of that Sort, they could not be combined or laid together to an End or Purpoſe that was not directly libelled; that the Facts alledged in the Libel might indeed amount to a Proof of this Propoſition, that the Provoſt was in his Judgment averſe to the Meaſure of defending the City of *Edinburgh*, as a thing that was impracticable, and therefore not eligible or prudent to be attempted; and it was contended, that this was not even an Error in Judgment, for that he was in the right in being of that Opinion, for that the City of *Edinburgh* is no ſtrong or fortified Place; and though it is ſurrounded by an old Wall, and a Lake upon one Side, and that the Rebels had no Artillery, it had been very practicable for them to have made their Way into the Town; they might have blown up the Gates, or a Part of the Wall, with Gun-Powder, or have ſet Fire to the Houſes on the Weſt-Side of St. *Mary's Wynd*, that enter from without, and yet are a Part of, and adjoining to the Town.

All this was, ſo far as the Purſuer could obſerve or recollect, the Subſtance of what was urged by the ſeveral Counſel for the Pannel in his Defence; and in reply to theſe Things, it was, and is now, on behalf of his Majeſty, and for the publick Intereſt, obſerved as follows:

It is admitted for the Purſuer, that the Counſel for the Pannel have rightly obſerved, that the Facts charged upon him, if it had been charged that they were done *doloſe & malo animo*, of *ſet Purpoſe* or *Deſign*, to have put the City of *Edinburgh* into the Hands of the Rebels, would have amounted to High-Treaſon; for the Lord *Hale* ſays, in his *Pleas. of the Crown*, Vol. I. p. 168. 'If a Captain, or other Officer that hath the Cuſtody of any of the King's Caſtles or Garriſons, ſhall treacherouſly, by 'Combination with the King's Enemies, or by Bribery, or for Reward, 'deliver them up, this is Adherence to the King's Enemies.'

And again, p. 169. he ſays, 'The Truth is, if it were delivered up by 'Bribery or Treachery, it might be Treaſon: But if delivered up upon 'Cowardice or Imprudence, without any Treachery, though it were an 'Offence againſt the Laws of War, and the Party ſubject to a Sentence 'of Death by Martial Law; yet it is not Treaſon by the Common Law, 'unleſs it was done by Treachery.'

And if the Pannel, without being engaged in the Intereſt of the Pretender, or without receiving any direct Bribe from him or his Adherents, did even ſuffer himſelf to be moved by the Fear of their hurting his private Property in his Wine-Cellars at *Leith*, to neglect or counteract any Part of his Duty as Lord Provoſt of *Edinburgh*, this was at leaſt bordering extremely near upon High-Treaſon.

The Atrocity and the Nature of High-Treaſon is excellently deſcribed in the Digeſts of the Civil Law, in the Title *Ad legem Juliam majeſtatis*, *l.* 1. in theſe Words: *Proximum ſacrilegio crimen eſt, quod majeſtatis dicitur,* § 1. *majeſtatis autem crimen illud eſt, quod adverſus populum Romanum, vel adverſus ſecuritatem ejus committitur, quo tenetur is, cujus operâ, dolo malo, concilium initum erat,—quo armati homines cum telis lapidibuſve in urbe ſint, conveniantve adverſus rempublicam; locave occupentur, vel templa; quove cœtus conventuſve fiat, hominеſve ad ſeditionem convocentur:——Quove quis contra rempublicam arma ferat: quique hoſtibus populi Romani nuncium literaſve miſerit, ſignumve dederit, feceritve dolo malo, quo hoſtes populi Romani concilio juventur adverſus Rempublicam.*

It is true, that, in this Deſcription, the *dolus malus*, or the ill Deſign, is an eſſential Ingredient; and it is in general true concerning all Crimes, as it is well expreſſed in the Reſcript of the Emperor *Hadrian*, *l.* 14. *ad legem Corneliam de ſicariis,—in maleficiis voluntas ſpectatur, non exitus:* But the *voluntas*, or the *dolus malus*, is to be gathered from the Facts by the Judgment of the Court or the Jury, by whom the Party is tried, againſt whom the Facts are charged, which may very poſſibly have proceeded from a treaſonable Deſign againſt the Crown or the Publick.

The King, however, may, if he be ſo graciouſly pleaſed, wave the inſiſting againſt a Criminal for the higheſt Crime with which he may be poſſibly chargeable; ſo the Lord *Hale*, p. 374. 'All Treaſon is Miſpriſion of 'Treaſon and more; and therefore, he that is aſſiſting to a Treaſon, may 'be indicted of Miſpriſion of Treaſon, if the King pleaſe.' *Stanf. P. C.* 37. 6. *Co. P. C.* 36. 2 *R.* III. 10. 6.

'The Judgment in Caſe of Miſpriſion of Treaſon, is Loſs of the Pro'fits of his Lands during his Life, Forfeiture of Goods, and Impriſon'ment during Life.'

And the ſame Lord *Hale*, p. 143. reports 'a Caſe, where there was a 'Conſultation of the Judges, where he was preſent, in the Year 1675. 'relating to the Weavers in and about *London*, being offended at the En'gine-Looms for making of Ribbons, who roſe in great Numbers to de'ſtroy thoſe Engines in different Counties, and did Damage to the Value 'of ſeveral Thouſand Pounds.

'Five of the Judges ſeemed to be of Opinion, that this was Treaſon 'within the Act 25th *Edward* III. upon the Clauſe of levying War 'againſt the King; or at leaſt upon the Clauſe of the Statute of the 13th '*Charles* II. *Chap.* 1.

'The other five Judges were not ſatisfied that this was Treaſon with'in either of theſe Statutes.

'Many of them therefore concluded, that if Mr. Attorney ſhould think 'fit to proceed as for a Treaſon, the Matter might be ſpecially found, and 'ſo left to farther Advice——

'Upon the Concluſion of this Debate,—Mr. Attorney, upon Conſider'ation of the whole Matter, it ſeems, thought fit to proceed for a Riot, 'and cauſed many of them to be indicted for Riots, for which they were 'convicted, and had great Fines ſet upon them, and were committed in 'Execution, and adjudged to ſtand upon the Pillory.'

In the preſent Caſe, the Doubt is not concerning the Tendency of the Facts charged upon this Pannel, namely, That it was to give up the City of *Edinburgh*, the Capital of *North-Britain*, not to the King's Enemies only, but to a Pretender to his Crown; and the Doubt is only, *quo animo* this was done, whether with a treaſonable Intent, or through Cowardice, or Negligence, or Imprudence; and this might have been left to the Jury to judge, in caſe he had been charged with High-Treaſon. It is therefore one ſignal Inſtance of the Mildneſs and Benignity of his Majeſty's Government, that the Purſuer has been ordered to proſecute this Pannel, 'not for High-Treaſon, but for a High Miſdemeanour, in hav'ing many Ways acted contrary to his Duty, and thereby ſuffered the 'City of *Edinburgh*, with the Cannon, Arms, Ammunition, and Provi'ſions, to fall into the Hands of the Rebels;' and when the Pannel's own Counſel are ſenſible that the Facts charged upon him are ſuch, as, at leaſt, border ſo near upon High-Treaſon, and might have been charged as ſuch, they cannot be permitted at the ſame Time to plead, or, at leaſt, they ought not to be liſtened to when they plead, that the Facts here charged have no Relevancy in them, or do not amount to any Crime or Offence whatſoever.

The other Obſervations above recited were extremely groundleſs, That this Libel does not charge the Pannel with Diſaffection to the Government, and that the Opinion of the well-affected Citizens, mentioned in the 12th Article, That he was ſecretly in the Intereſt of the Pretender, cannot infer his being actually guilty of any Crime whatever, for Diſaffection is not the Name of a Crime known in the Law; no Man can be tried for that Diſpoſition of his Mind, but for the Effects which it produces; and, if the Facts here charged had been alledged to have been done by the Pannel through Diſaffection to his Majeſty and his Government, that would have been in Reality, or in Effect, a Charge of High-Treaſon, which was not the Thing intended in the preſent Caſe.

And as for the other Remark, it was far from the Meaning of the Purſuer to alledge, that any Man can be puniſhed merely for the Opinion of others concerning him: But that Fact is mentioned in the Libel for this Reaſon, That, when the main Queſtion, moved by this Trial, is, Whether the

the Pannel was, or was not culpable or negligent in the Execution of his Office as Lord Provoſt of *Edinburgh*, during the Rebellion, it is a Fact or Circumſtance ſtrongly tending to evince that he was ſo guilty, if it be true that the whole Tenor of his Behaviour was ſuch, as to induce a general Suſpicion or Belief amongſt the well-affected Inhabitants, that their Provoſt was ſecretly in the Intereſt of the Pretender; for, whether they were or were not in the right in that Suſpicion or Belief, they, being ſo immediately and ſo deeply intereſted, could not fail to be conſtantly attentive to the Conduct of their Provoſt; and, if that was ſuch as produced in them ſuch Apprehenſion or Belief, that very Thing is one Demonſtration, ſuppoſing that they carried their Concluſion too far, that his Conduct was not ſuch as became a faithful, vigilant, and zealous Magiſtrate upon that Occaſion.

The Nature of the Office of Lord Provoſt of the City of *Edinburgh* is well known to this Court. It is partly the ſame that belongs to the chief Magiſtrate of every Royal Burgh in the Kingdom, and partly ariſes from the particular Grants to the City of *Edinburgh*; they are Sheriffs within themſelves; the Lord Provoſt is the High Sheriff, and, of late Years, as well as formerly, has acted as ſuch, and tried Cauſes even capital, and the Bailies are, *ex officio*, his Deputy Sheriffs.

The Lord Provoſt is the King's Lieutenant within the City, he is Colonel of the City-Guard by the Act of Parliament authoriſing that, and he is chief Commander of the City Trained-Bands or Militia; and this very Provoſt claimed, and was allowed to be the Colonel of the Volunteers, and was by the Council declared to be Colonel of the *Edinburgh* Regiment of 1000 Men, that was to be raiſed and paid by the voluntary Subſcriptions of the Inhabitants: In ſhort, the whole military Power within the City was in him, and the chief executive Power, in all Reſpects.

Neither is it true, that the Order in the King's Sign-Manual for the Regiment, that the ſame ſhould be under the Direction of the Lord Provoſt, Magiſtrates, and Council of *Edinburgh*, was either intended, or had the Effect to derogate in the leaſt from the legal Powers and Privileges of the Lord Provoſt; that Warrant was granted on the Application of the whole Council of *Edinburgh*, the Regiment was to be maintained by them and their Fellow-Citizens, the End propoſed by it was the Defence of his Majeſty's Government, but more eſpecially the Preſervation of the City of *Edinburgh* againſt the Rebels; it was therefore very properly and graciouſly declared, that this Regiment ſhould be under the Direction of the Magiſtrates and Council of *Edinburgh*; that is, it ſhould not be withdrawn from the immediate Service of that City, or ſent elſewhere, like the reſt of his Majeſty's Troops, at the Diſcretion of his Generals, where it might be of Uſe for his Service, without the Conſent of the Magiſtrates and Council of *Edinburgh*. But this did not hinder the Lord Provoſt from being, according to the Conſtitution of the City, the Colonel or chief Commander of that Regiment, as well as of all the other Military Force within the City. It cannot be ſuppoſed to have been the Senſe of his Majeſty's Order, that the whole Town-Council, conſiſting of thirty-three Perſons, ſhould act the Part of a Colonel, or have the immediate Command of a Regiment; the utmoſt Effect that Order could have, was, that the whole Council ſhould have Power to give general Orders as to the Manner of employing the Regiment, ſuch as every Prince or State are daily known to give to the Generals or Commanders of their Armies, who are not the leſs veſted with the Powers of Commanders, that they are ſubject to ſuch Direction or Controul.

Neither is it true, that the Appointment of a Committee, in the Terms above-recited, was an Obſtruction or Hindrance to the Provoſt's acting in the Manner that the Libel requires of him, unleſs he can ſay, which he has not done, nor can do by any Thing that appears on Record, that either the Council or the Committee reſiſted his Will, or that they oppoſed or over-ruled him, by Majority of Voices, in any one Thing that he propoſed to be done towards the Preſervation of the City.

His Station, therefore, gave him Power ſufficient, and rendered it his Duty to be the chief Perſon to deviſe, order, and execute every Thing that was proper for preſerving his own City from the Rebels; and, if the Facts be true that are in this Libel charged, it is left to the Judgment of this Court, whether his Conduct was agreeable to his Duty; or if he was not, on the contrary, faulty or negligent in the Execution of his Office, and guilty of manifold Miſbehaviours in it on the Occaſion libelled.

That Occaſion called for the moſt earneſt, vigilant, and active Diſcharge of the Duty of chief Magiſtrate, veſted with ſuch Powers as he had; and, to illuſtrate this, the Purſuer begs Leave to quote a Paſſage from a learned Author, *Ærodii rerum ab omni antiquitate judicatarum pandectæ*, in the Title, *De officio præfecti vigilum*, whereof the Rubrick is in theſe Words: *Negligentiam, in iis qui ad ſummum reipublicæ pertinent, eſſe capitalem, cap.* 1. *M. Militius, Cn. Lolius, L. Sextilius, triumviri nocturni, cùm incendii arcendi cauſâ, quod Romæ in ſacra via exortum eſſet, cum hamis & dolabris, omnique familiâ publicâ evocati, tardius adveniſſent: à tribuno plebis die dictâ ad populum, damnati ſunt: leves ob cauſas, inquit Valerius: ſed diſciplina neceſſaria.*

Idem ferè apud nos, ſenatûs judicio, cùm adhuc illic eſſemus advocati, Gabaſtoni, præfecto vigilum, accidit: qui vocatus ad ſedandam ſcholarium de ſuo prato ſeditionem, non veniſſet. Nam indignum eſſe, qui, ut excubet reipublicæ, ab omnibus aliis muneribus excuſatur, & præſens vice eſt abſentis: is in tanta neceſſitati, ubi minima mora ſummi momenti eſt, ſegnem, tardum ac negligentem ſe præbeat, aut (quòd minus quoque eſt ferendum) contumacem.——Et quando omnibus viribus opus eſt, nulla cauſa, nulla excuſatio proficit.

Cap. 2. *P. Bilius quoque triumvir nocturnus, à P. Aquilio, tribuno plebis accuſatus, quòd vigilias negligentiùs circumiſſet, populi judicio concidit. Nam quod levius ſit in aliis cauſis: in his, ut in re militari, capitale eſſe. Quia puncto ſæpe temporis, maximarum rerum occaſiones amittuntur: neque in hujuſmodi his errare fas eſt, aut dicere, Non putabam.*

It was upon the ſame Principles that are here ſet forth, and followed in Practice in the *Roman* Republick, as well as the *French* Monarchy, that our old Statute 1457, in the Libel recited, was made, *for the Punition of negligent Officiars*, and namely, '*Provoſts of Burghs*, and others, 'who ſhould be found faulty and negligent in the Execution of their Offi-'ces, and it may be lawfully proved on them, or notoriouſly known;' but with this Difference indeed, that every Offence of this Kind is not made capital, as *mitiores pœnæ nobis ſemper placuere*, 'but only that they be 'puniſhed, in their Perſons and Goods, after the Quantity of their 'Treſpaſs, at the King's Will.' This is ſuch a Statute as hardly enacts any thing poſitive, or other than what is included in the Common Law of this and all other civilized Nations, and therefore never can go into Diſuetude. And it ſeems unneceſſary to offer any Anſwer to the groundleſs Diſtinction advanced by the Pannel's Counſel, betwixt the Duty of a Provoſt, or other Magiſtrate, upon common or ordinary, and extraordinary Occaſions, there is neither Law nor Reaſon for that Diſtinction. No Man ſhould undertake the Office of a Pilot, who can only hold the Helm in his Hand in ſerene Weather, and is incapable to do his Duty when a Storm riſes. And the Allegation of this Diſtinction ill becomes the Pannel, who is a Gentleman by Birth and Education, and, as ſuch, ſuperior to the ordinary Rank of Burgeſſes, who may be, and often are raiſed to the Office of chief Magiſtrates.

Such, for Inſtance, was the Character of Provoſt *Wilſon*, a Brewer in *Edinburgh*, who was Lord Provoſt of that City when Captain *Porteous* was murdered, who, upon the ſame Principles that are above-mentioned, was puniſhed by an Act of the 10th of his Majeſty, merely for being faulty or negligent in the Execution of his Office; for the Act recites the Murder of Captain *Porteous*, 'And that, for ſome Time before the committing the 'ſaid Murder and Riot, it was commonly reported in the ſaid City of '*Edinburgh*, that ſome ſuch atrocious Fact would be attempted, which, by 'proper Care in the Magiſtrates, Citizens and Inhabitants of the ſaid City, 'might have been prevented; notwithſtanding which, *Alexander Wilſon*, Pro-'voſt of the ſaid City, and then actually reſident therein, and fully appriſed 'of the ſaid wicked Deſign, did not take any Precautions to prevent the 'ſaid Murder and Riot, nor uſe the proper or neceſſary Means to ſup-'preſs the ſame, or to preſerve the Peace of the ſaid City, or, after the 'Perpetration of the ſaid Fact, to diſcover, apprehend, or ſecure the 'Authors, Actors or Abettors thereof, in manifeſt Violation of the Truſt 'and Duty of his Office of Chief Magiſtrate of the ſaid City.——And 'to the End that the ſaid enormous Miſbehaviours and Neglects of Duty 'may not go unpuniſhed, and that other Perſons may not preſume, 'through Hopes of Impunity, to be guilty of the like for the future, it 'is enacted, that the ſaid *Alexander Wilſon* be diſabled from holding any 'Office of Magiſtracy, *&c.*'

Here the Conviction by the Parliament itſelf proceeds altogether upon Negatives, or Neglects of Duty in the Provoſt or chief Magiſtrate, upon a very ſingular and extraordinary Occaſion; and ſo far it is a Precedent in point to the preſent Caſe, which in other reſpects appears to be vaſtly more atrocious than what Provoſt *Wilſon* was guilty of, who, it ſeems, did not give Credit to the Reports that were current before that extraordinary Attempt was made, and ſuffered himſelf to be ſurpriſed and diſconcerted, when the Mob was ſuddenly raiſed which committed that Murder; inſtead of which, here was long Warning, and many Precautions ſeemingly taken by the Provoſt, heartily intended by many of the Citizens, to avert Evil of a much higher Nature, tending to overthrow the Conſtitution and Eſtabliſhment of this united Kingdom.

It appears quite unneceſſary to anſwer the Allegation offered for the Pannel from this Precedent, which has ſurely not the leaſt Tendency to prove, that the Offence, which was here puniſhed by the Legiſlature itſelf, was no ways puniſhable by the Common Law, or the general Statutes of this Realm.

And as little can it avail the Pannel to enter now into an Argument upon the Expediency of the Reſolution in general, of putting the City of *Edinburgh* in a Poſture of Defence againſt the Rebels; for though it be true, that before any Reſolution was taken upon this Queſtion, it was very lawful and competent for the Lord Provoſt to declare his Opinion, if it was ſuch, for the Negative; yet, after it was a Reſolution formed by the Council of the City, with the Conſent and Approbation of the moſt conſiderable Citizens of all Ranks, many of whom had previouſly ſollicited that ſuch Meaſures ſhould be taken; and after he, the Lord Provoſt, had ſeemingly concurred, and given way to the general Senſe of the Citizens, as well as of the Council, it ſurely then became his Duty as the firſt Magiſtrate, who had the chief executive Power in his Hands, to exert himſelf, *bona fide*, for the Execution of the general Meaſure that had been thus reſolved; for better indeed had it been never to attempt ſuch Defence, than not to go through with it until actually overpowered by ſuperior Force; or that, to the great Expence and Diſcredit of the City, after many Preparations to provide a Force for its Defence, and Application to the Crown, which was readily granted, for a Warrant to authorize the Regiment, and to the Inhabitants for a Subſcription to pay it, which was filled up with great Alacrity, and many of the chief of them preſſed for Leave to venture their Perſons, as well as contribute their Money for the Cauſe which they had ſo much at Heart, when, to furniſh Arms, the King's Arſenal in the Caſtle was at their Command, and a conſiderable Force aſſembled, that the Provoſt ſhould ſo manage Matters, as that the Defence ſhould be thrown up juſt at the Time that it became needful to make uſe of all theſe Preparations.

This will require ſome better Excuſe, than that the Provoſt, in his private Opinion, was averſe to the Meaſure in general of defending the City, or that he was afraid of provoking the Rebels to rob his Wine-Cellars at *Leith*, (if that be meant by taking notice of his great Property there) for it is certain the Provoſt profeſſed to concur with the general Senſe of the City, to provide for and reſolve to make a Defence; and, even upon *Monday* the 16th of *September*, in the Afternoon, in the Council-Chamber, and at the general Meeting in the New-Church, it has been alledged, as a Part of his Defence, that he ſtill declared ſtoutly for adhering to that Reſolution; and in theſe Circumſtances, for his Counſel to ſay for him, by way of Apology for his Conduct in the Articles libelled, that the ſame proceeds from, or is to be accounted for, by his diſapproving in his Judgment of the general Meaſure of making any Defence, and offering Reaſons now in ſupport of the Juſtice of that Opinion, inſtead of excuſing him, is in reality to accuſe him very deeply of acting all along with a Duplicity, which muſt have been highly criminal, profeſſing to concur in the Execution of a Meaſure, which

which in his Heart he disliked, and, as the Execution of it chiefly belonged to him in virtue of his Office, managing that in such a Manner as to defeat the Design.

As to that Design itself, the most sanguine Promoters of it never pretended to maintain that the City of *Edinburgh* was capable of holding out a regular or a long Siege; the very Number of the Inhabitants, and the Mouths to be fed, must render this impracticable; but, as the Circumstance which exposed them to be at all visited by the Rebels, was the Misfortune of Sir *John Cope*'s getting to the Northward of the Rebel Army in the *Highlands*, and as he was known to be returning from *Inverness*, through the low Country, along the Eastern Coast, and as other Succours were daily expected from *Holland*, it was very reasonably concluded, that the Pressure upon the City of *Edinburgh* could be but of short Endurance, and that, very possibly, keeping out the Rebels a single Day might save the City altogether from falling into their Hands; and the Event in a great measure justified the Expectation; for, upon the Evening of *Monday* the 16th *September*, when the first Deputies were sent out by the Provost and others to the Rebels Camp, to treat about the Surrender demanded by the Letter from the Pretender's Son, those Deputies had not yet reached that Camp, when authentick Advice came, that Sir *John Cope*, with his Army, was arrived at *Dunbar*, which is but twenty Miles from *Edinburgh*: A very signal Instance of the Truth of what is said in the Passage above quoted from *Ærodius*, *Quòd puncto sæpe temporis maximarum rerum occasiones amittuntur.*

What then was the Occasion, or whence arose the Necessity that obliged the Pannel, on the Afternoon of *Monday* the 16th *September*, to abandon the Defence of the City, for which so many Preparations had been made and continued till this very Hour, and when, though the Enemy was at hand, there was all the Reason in the World to believe that Succour and Relief from the King's Troops was not far off, as the Event that very Evening accordingly proved, by the actual Arrival of Sir *John Cope* off *Dunbar*, and authentick Notice thereof being sent to *Edinburgh* at the Juncture of Time already mentioned.

The Answer to these Questions made for the Pannel, in the Debate upon his Libel, have been, 'That, on the Afternoon of this *Monday*, 'the 16th of *September* 1745. the City of *Edinburgh* was in great Consternation, occasioned by the Approach of the Rebels, and the threatening Messages sent from them, by the Retreat of the Dragoons from '*Coltbridge*, and the withdrawing of the Civil Officers of the Crown 'from the City; that, in these Circumstances, the general Cry of the 'Inhabitants, at a publick Meeting assembled, was for abandoning the 'Defence of the City; after which the Fears of the Inhabitants was the 'governing Principle, the Multitude had the Power in their Hands, and 'there was no longer any Regard paid to Magistrates or legal Authority.'

But to this it is replied, That the Retreat of the Dragoons the Pursuer does not take upon him to approve or justify; very possibly it was made sooner and farther than it was necessary, though it cannot be said that the two Regiments of Dragoons, with the City-Guard of *Edinburgh*, if the whole Rebel Army had come up to them, ill armed as it was, would have been a Match for such a Superiority of Numbers: But when the Resolution was taken to defend the City of *Edinburgh*, they did not, nor could reckon upon these two Regiments of Dragoons, as what they could rely upon, or promise themselves to be always attending for their Assistance; and when the Defence of the City was abandoned, they were no farther removed than *Musselburgh*, which is but four Miles off, and an Offer was made to the Lord Provost to bring them back, or any Number of them he should desire, to assist in the Defence of the City.

That the withdrawing of the Civil Officers could afford no just Cause for abandoning that Defence; the Lord Justice-Clerk had only gone from *Edinburgh* that Day about Noon, to dine at his own House about three Miles off, and was returning in the Afternoon to the City, when he got Notice by the Way, that the Rebels were by that Time at the *West* Port of the City, which was not true, but afforded a very just Reason for his returning to his own House; and though the Lord Advocate at this Time also withdrew from the City, and went as far East as *Musselburgh*, yet, before he left the Town, he had concurred with the Provost and the Sollicitor, in procuring an Order from General *Guest*, for one hundred Dragoons to march into the City, to encourage and support the loyal Inhabitants in Defence of the Town. And he renewed his Advice by Mr. *Grosset*, whom he met going into the City in the Afternoon, with a Message from the Lord Justice-Clerk relating to those Dragoons. And of what use could a single Civil Officer be in the Case of a Siege? Or, to what purpose should he shut himself up within the Walls, and expose himself, in case of the Town's being taken, to become a Prisoner in the Hands of the Rebels?

And as for the affrighted Multitude, who are said to have got the Government into their Hands, it was the Fault of the Lord Provost if he permitted this to be: None of the Forces under his Command were withdrawn, and he had still at least twelve hundred well-armed Men under his Command, the Walls of the City repaired and planted with Cannon, and the Castle and its Garrison ready to assist him: And, in this Situation, why did he suffer himself to be despoiled of his Authority, or to be governed by the real, or by the affected Terrors of the timorous, or of the disaffected Multitude? Why did he give way to a general Meeting, in the Church, of an Assembly so composed? Why did he not tell them that the City had already taken its Measures and its Resolution to stand upon its Defence, and order all who did not chuse to depart the City, or to act in its Defence, to repair to their respective Houses, and keep within Doors? He had still the legal Authority in him, and the Means in his Hands to make that to be respected, when he had so great a Body of Men in Arms under his Command.

In these Circumstances, the Methods he pursued demonstrated the End which he had in View, namely, to deliver up, instead of defending the City; for, in order to justify himself in abandoning that Defence, he ought to have gone another Way to work, than to assemble a promiscuous Multitude in the Church, exclusive of the Volunteers. If there was truly any Change of Circumstances occurred, that made it reasonable now to lay aside Thoughts of that Defence which had been so long provided for and pursued, he should have summoned a Council of the same, or the like Persons with those who had first contributed to the Resolutions of making any Defence at all, that is, his own Fellow-Magistrates and Councillors, with the Chief Officers of the Volunteers and Trained-Bands, and deliberated with them upon the supposed Change of Circumstances; and if, in such Council, it had been debated and resolved, by Plurality of Voices, to be now impracticable, or inexpedient to persist any longer in the Measure formerly concerted, of defending the City, that Resolution might have justified or acquitted him; but nothing of this Kind is alledged, and thereby he has taken the whole upon himself. He consulted with a disaffected Multitude, as some of the Persons present in it, of undoubted Credit, say it was: And there is no Record of any Resolution of the Town-Council, or of the Committee abovementioned, of *Monday* the 16th of *September*, when this Change of Measures was brought about, nor any Record of the Council after *Friday* the 13th, before the Rebels entered the City, nor of the Committee after *Saturday* the 14th.

As for the particular Facts or Articles charged upon the Pannel, the Pursuer has Reason to believe he can prove every one of them; but he now says, that neither the separate Relevancy, nor the Proof of every one of them, is essential to the Conclusion of this Libel, whereof the general Scope and Averment is, That the Pannel, at the Time and upon the Occasion libelled, was faulty and negligent, or guilty of Malversation in the Discharge of his Duty; and, for making out this, particular Articles are specified: And altho' every one of these shall not appear separately material, or shall not be proved, it is no Matter, if enough be proved to make out or support the general Charge.

The Case is of the same Nature as if a civil Action were brought, for Instance, for removing a suspected Tutor by the Kindred of the Infant, in order to which a Number of Articles of Misbehaviour were alledged in the Libel; in which Case, tho' some of these Articles should not be proved, or well accounted for by the Defender, yet, if any Number should be made good and accounted for, the general Allegation of the Libel would be proved, and the Pursuers behoved to prevail in the Conclusion of their Action.

At the same time, to touch briefly at the particular Articles, it is replied to the Answer to the first, That it is not the Pannel's Doubt concerning the Point of Law that is charged as a Crime, but his urging that Doubt, *inter alia*, demonstrates his Backwardness to pursue any Measures for Defence of the City, for the Doubt itself was extremely groundless. There are sundry old Laws against private Leagues or Bonds among the Subjects, which have nothing to do with the present Case; but the only Law, upon which the Pannel's Objection, that it would have been High-Treason to arm without Authority from the Crown, can be founded, is the 5th Act of the Restoration Parliament 1661, intitled, *Act asserting his Majesty's Royal Prerogative in the Militia, and in making Peace and War*, &c. which Act declares, 'That it is and shall be 'High-Treason to the Subjects of this Kingdom, or any Number of 'them more or less, upon any Ground or Pretext whatsoever, to rise 'or continue in Arms, to maintain any Forts, Strengths or Garrisons, to 'make Peace or War, or to make any Treaties or Leagues with foreign 'Princes or Estates, or among themselves, without his Majesty's special 'Authority and Approbation first interposed thereto.'

Now, in the first place, whilst this Act continued in force, it surely could never be meant to comprehend the Case of the King's Subjects being called out, by the Magistrates acting under his Authority, to take Arms for his Service; for Instance, if the Militia of any County should be called out by the High Sheriff, or Lord Lieutenant, to resist a foreign Enemy, or a domestick Rebel: And the chief Magistrate of a Burgh, within his District, has the like Power to the Sheriff, or Lord Lieutenant, to defend the Burgh over which he presides.

But, 2*dly*. This Act, upon which the Doubt is singly founded, is repealed by the Act of the 7th of Queen *Anne*, *Chap.* 21. which provides, That nothing shall thereafter be High-Treason in *Scotland*, but what is such in *England*. And farther provides concerning certain Crimes therein mentioned, *viz.* Theft in landed Men, Murder under Trust, Fire-raising and Assassination, which were declared to be Treason by particular Statutes in *Scotland*, shall hereafter be adjudged and deemed to be capital Offences. But concerning the Fact which is made Treason by this Act 1661, no such Provision is made.

The Pursuer's Replies concerning the other Articles are already in Substance made in the foregoing Argument, and he shall not prolong this Paper to go through them minutely, and shall only farther observe, That, as to the new Defence offered to the eleventh Article, concerning the *City-Arms*, that though it comes with a bad Grace to be now for the first Time proposed, the Pursuer does not oppose the Pannel's being allowed to prove this Allegation, and all other Facts and Circumstances that have been by him alledged for his Vindication or Defence against the Charge contained in this Libel.

In respect whereof, &c. WILL. GRANT.

July 28, 1747.

INFORMATION *for* ARCHIBALD STEWART, *of the City of* Edinburgh, *Merchant, and late Lord Provost of the said City, Pannel or Defendant,*

AGAINST

His MAJESTY'S ADVOCATE *for his Majesty's Interest, Pursuer.*

BEFORE entering upon the Objections to the Relevancy of this Libel, it may not be improper, first of all, to lay before the Court a genuine and succinct Account of every Fact and Circumstance which any way concerns the Conduct of the Pannel, or can give any Light to form a Judgment of it during the Period mentioned in the Libel.

Upon the 17th of *August* 1745, the Pannel, then Lord Provost of the City of *Edinburgh*, had the Honour to receive a Letter from the Marquis of *Tweeddale*, one of his Majesty's Principal Secretaries of State of the 13th current, acquainting him, 'That their Excellencies the Lords 'Justices, having received Intelligence, that the Pretender's Son was 'already landed, or intended to land in *Scotland*, had recommended it to him

'him to give Notice to the Provoſt thereof, that he might exert his Care 'and Vigilance on this Occaſion, and make uſe of ſuch Precautions as he 'ſhould judge neceſſary for preſerving the publick Peace within the 'Bounds of his Juriſdiction.

To this Letter the Lord Provoſt wrote an Anſwer on the 17th, as follows: 'It is with Pleaſure I aſſure your Lordſhip, that this Town 'was never better affected, nor more peaceable than at preſent. Nothing 'ſhall be neglected on my Part to preſerve People in their Duty to-'wards their King and their Country; and we truſt in God that no 'threatened Dangers ſhall ever reach us; at the ſame Time, we are not 'to ſit down in Security, but will keep a watchful Eye, in order to 'prevent, as far as it is in our Power, every thing that may diſturb the 'Peace of this Place.'

The above Letter was laid before the Magiſtrates when it came to Hand, and the Anſwer was approved of by the Town-Council, at a Meeting on the 23d of *Auguſt*, and, in purſuance of theſe Reſolutions taken by the Lord Provoſt and Council, the following Orders were forthwith iſſued.

Auguſt 23. Orders were given to levy and raiſe thirty Centinels to be added to the City-Guard, agreeable to the Powers given them by Act of Parliament, and to provide them with Clothing and all other Neceſſaries.

Recommended to the Lord Provoſt and Magiſtrates to direct the Captains and Officers of the Trained-Bands, forthwith to make up full Liſts of all the Perſons belonging to their ſeveral Companies, and to report the ſame to the Magiſtrates againſt *Saturday* next; and that the Captains warn and premoniſh them all to be ready, in caſe of any Diſturbance, to appear with their beſt Arms, upon an Hour's Warning, at the ordinary Places of Rendezvous.

Orders were given for directing the Conſtables of the City to make out full and ample Liſts of all the Inhabitants and Reſidenters within their Diſtricts, and report the ſame to the Magiſtrates; and to be diligent in inquiring and finding out what Strangers may happen from time to time to come within the City, and lodge within their ſeveral Diſtricts.

Orders for a Proclamation, requiring and ordaining all Inn-Keepers, Strangers, and others, who lodge and entertain Strangers, from time to time, and as oft as any Stranger ſhall lodge with them, to give in to the Captain of the City-Guard a Note of their Names and Deſignations at their Arrival; and of the Time of their Departure, under a Penalty for each Tranſgreſſion; and the Captains of the Guard ordered duly to report to the Magiſtrates, in Writing, every Morning, Liſts of the Particulars that ſhould be delivered in to them by the Inhabitants.

Theſe Orders, moſt of which proceeded upon Motions made by the Lord Provoſt, were all agreed to by the Magiſtrates and Council, and ſigned by him in their Preſence; and Care was taken of the due and punctual Execution of them all, without any Loſs of Time.

The next Day, being *Saturday*, *Auguſt* 24th, it was ſuggeſted to the Lord Provoſt that it might be fit to call a general Meeting of the Inhabitants, to conſider what was to be done on this Occaſion; to which he agreed, and communicated the Propoſal to the Council at their next Meeting on *Monday*, *Auguſt* 26. who alſo approved of it; and accordingly the Meeting was ordered, and the moſt ſubſtantial and well-affected Burgeſſes were invited to aſſiſt with their Counſel and Advice; and at the Meeting, which could not be convened ſooner than next Day, *Auguſt* 27. the above Reſolutions and Orders were reported to them by the Lord Provoſt; and the Meeting 'unanimouſly approved thereof, and gave his 'Lordſhip and the Council their hearty Thanks for the wiſe and pru-'dent Meaſures they had already taken; and, farther, offered it as their 'Advice to the Magiſtrates and Council, to name ſome of their own 'Number, and ſuch other of the Burgeſſes as they ſhould think fit, as 'a joint Committee to conſult with and take the Advice of the Lord 'Juſtice-Clerk, Lord Advocate, Mr. Sollicitor, and ſuch of the Lords 'of Seſſion as can be found in Town, with regard to what farther Steps 'the Magiſtrates, Council and Community can legally take for preſerv-'ing the Peace of the City, and contributing to defeat the dangerous 'and wicked Deſigns of the Enemies to his ſacred Majeſty, his Royal 'Family, and preſent happy Conſtitution.

Auguſt 28. The Committee were accordingly named by the Council next Day, and that very Evening met with the King's Counſel, and ſuch of the Judges as were in Town, at the Lord Juſtice-Clerk's Houſe, where it was propoſed, that a Regiment of a thouſand Men ſhould be levied for the Defence of the Town, and Service of the Government, to be ſubſiſted, for three Months, on the Charges of ſuch of the Inhabitants as were willing to ſign an Aſſociation for that Purpoſe. And as it had been, for ſome time, a general Subject of Converſation and Debate without Doors, how far it was legal to levy ſuch Regiment without a ſpecial Order from his Majeſty, the Opinion of the learned and honourable Perſons preſent was aſked upon this Point, and they all agreed, that it could not be legally done without his Majeſty's Warrant. Upon which it was reſolved that the Lord Advocate ſhould make Application for ſuch Warrant; and that, in the mean Time, Trial ſhould be made of the Inclinations of the Inhabitants to concur in this Meaſure, how ſoon the Warrant ſhould be obtained from his Majeſty.

Auguſt 30. The Lord Provoſt and Magiſtrates were employed in receiving Propoſals for putting the Town in a Poſture of Defence; and the Lord Provoſt wrote Letters to the Magiſtrates of Boroughs, and Miniſters, for about the Diſtance of fourteen Miles round the City, begging that they would ſend as early Intelligence as poſſible, by Expreſs on Horſeback, of any Bodies of armed Men they could diſcover marching towards this City.

Auguſt 31. About the ſame time many different Orders were given by the Lord Provoſt to proper Perſons, with a View to put the Town in a Poſture of Defence, which were afterwards executed, particularly for clearing the Town Wall, building Stairs to get up to the Wall, making Communications from one Place to another, raiſing a Work at *Wallace*'s Tower, to prevent the Communication by the Back of the Caſtle. This laſt Work had been directed at firſt in a very proper Manner by Bailie *Robert Baillie*, Overſeer of the publick Works for this Year; but Bailie *Gavin Hamilton* afterwards ſtopt it, and gave a different Direction, by which that Work was for ſome time retarded.

Monday, *September* 2. The Lord Provoſt ſigned an Order in Council for augmenting the Town-Guard to the Number of 126 Men.

September 3. Bailie *James Stewart* and Mr. *Colin Mac Laurin* applied to the Lord Provoſt, with a Meſſage from ſome Gentlemen who had met the Evening before, deſiring in general that he would ſee to the Defence of the Town; and particularly, *firſt*, That he would order Moulds to be made for caſting Bullets. *2dly*, That the Sluices of the *North-Loch* ſhould be filled up. And, *3dly*, That a Diſtinction ſhould be made betwixt the Inhabitants of known good Affection and others, before he came to intruſt them with the Town's Arms.

The Lord Provoſt agreed to the firſt two Propoſals, and ordered the immediate Execution of them; but as to the third, he demurred. He obſerved to them the Inconvenience of making Diſtinctions amongſt Inhabitants upon bare Suſpicions, eſpecially about the Time of an approaching Election, when Parties were forming, which would lead them to ſpread Calumnies againſt one another upon By-Views; that this might occaſion Heats and Diſſentions dangerous to the Peace of the Town, and even ſtrengthen the Diſaffected by combining them together; that, where any real Ground of Complaint could be condeſcended, he was ready, not only to exclude ſuch Perſons from ſerving in the Trained-Bands, but alſo to oblige them to find Security for their good Behaviour. After this Reaſoning the Gentlemen did not inſiſt farther upon that Part of their Propoſal, nor lay it before the Council, who were the proper Judges of the Expediency of ſuch Meaſures, had they thought it fit to be inſiſted on.

September 4. The Lord Provoſt met with the ſame two Gentlemen, and ſeveral other Burgeſſes, in a Tavern, and, after a good deal of Converſation upon the ſeveral Expedients propoſed for Defence of the Town, he deſired they would digeſt their Propoſals, and give them in, in Writing, which he would either immediately comply with, or give them an Anſwer in Writing. This they ſeemed chearfully to agree to, and promiſed to give him in their Propoſals, but never did it.

September 6. Some of the ſame Gentlemen preſented to the Provoſt a Petition ſigned by about 80 or 90 of the Inhabitants, offering to ſerve as Volunteers for Defence of the City againſt any Attack, and particularly in contributing to erect the neceſſary and proper Barricado's for defending the Ports and ſeveral Avenues to the City, and praying that the City-Wall might be inſtantly repaired, and Stairs put up, &c. to appoint proper Places of Rendezvous, furniſh them with neceſſary Arms, and allow them to name their Officers.

The Provoſt told the Gentlemen who had met with him two Days before, That, after what had paſt at that Meeting, he expected they would have communicated to him their Intentions, as they promiſed; but he never would mind any perſonal Neglect in a Matter where the publick Safety was concerned, and therefore ſhould take care to preſent their Petition to the Magiſtrates without Delay, and return their Anſwer.

September 7. He did accordingly order a Meeting of the Magiſtrates to be ſummoned againſt Eleven next Forenoon; and, that there might be no unneceſſary Delay from any Doubtfulneſs concerning the Legality of this Meaſure, the Provoſt adviſed with the Lord Advocate upon that Point in his Way to the Meeting; and, having got his and the Sollicitor's Opinion of the Lawfulneſs of it, he forthwith met with the Magiſtrates, and laid the Petition and Opinion before them; upon which they chearfully approved of the Propoſal, and applauded the Zeal of the Petitioners.

Immediately after the Provoſt went to the Volunteers, who were met in the *New Church Iſle*, and told them their Petition was to be complied with in every Particular, except the Nomination of their Officers: But, notwithſtanding that did of Right belong to him, yet, as he wiſhed of all Things they might have ſuch Officers as they inclined to obey, if they would give him a Liſt of 20 or 30 of their Number, he would confine his Nomination to that Liſt. They complied. He named ſix of the fitteſt Perſons in the Liſt for Captains, with whom they were highly pleaſed, and he left the Nomination of the Subalterns to themſelves, for which they returned him Thanks.

The ſame Day the Lord Provoſt moved in Council, that an Addreſs ſhould be drawn up and preſented to his Majeſty, which was unanimouſly agreed to; and a dutiful Addreſs was accordingly drawn out, approven and ſigned; after which it was reſolved, 'To authorize the Magiſtrates 'and Conveener to employ Perſons with all poſſible Speed to put the 'City in a Poſture of Defence, and particularly the Walls thereof.'

In conſequence of this, Workmen were immediately ſent for, and the Lord Provoſt ordered them forthwith to fall to work, under the Direction of Mr. *Mac Laurin*, and to work Night and Day, *Sundays* not excepted, till all was finiſhed, and gave Warrants for impreſſing Workmen.

September 8. The Provoſt, of his own Accord, ordered all the Powder that was in the Town's Magazine to be carried to the Caſtle; which was ſo punctually executed, that he behoved afterwards to take from the Caſtle what was neceſſary for the Service of the Town.

About the ſame Time he wrote an Order to *Robert Davidſon*, Tackſman of the Meal-Market, to clean out the Granaries, and provide Meal.

September 9. This Morning the Provoſt having occaſionally heard that his Majeſty's Sign-Manual, authorizing to levy the Regiment propoſed, had come the Day before to the Lord Advocate's Hand, he went and waited on his Lordſhip, and, upon receiving the Sign-Manual, he immediately called a Council, and produced the ſame, which was addreſſed to the Lord Provoſt, Magiſtrates and Town-Council of *Edinburgh*; and recites, 'That it had been repreſented to his Majeſty, that the Lord 'Provoſt, Magiſtrates, Town-Council, Burgeſſes, and others of his 'City of *Edinburgh*, from the great Loyalty and Affection to his Per-'ſon and Government, were at this Juncture willing and ready to raiſe 'and maintain, at their own proper Charge and Expence, by volun-'tary Subſcription and Contribution, One thouſand Foot for the De-'fence of the ſaid City, and the Support of his Government; and they 'were deſirous of obtaining his Royal Licence and Authority for the 'ſame: His Majeſty therefore, repoſing intire Truſt and Confidence 'in the Lord Provoſt, Magiſtrates and Town-Council of his ſaid City, 'did thereby authorize and impower them to raiſe, form and diſcipline 'One thouſand Foot to be employed for the Purpoſes above mentioned; 'and his Majeſty did thereby farther order and command, that the ſaid 'One thouſand Men ſhall be under the Direction of the Lord Provoſt, 'Magiſtrates and Town-Council of *Edinburgh*: For the doing whereof 'this ſhall be a ſufficient Warrant.'

As by this Warrant the Direction of the Regiment was placed in the Magiſtrates and Town-Council, ſo, as ſoon as it was read, they took the Direction into their own Hands, 'and appointed, as a Committee, 'the preſent and old Magiſtrates, Conveener, Deacons *Lauder* and *Por-* 'teous, or any five of them, the Lord Provoſt being always one, and, in 'caſe of his Abſence, any Nine of them, to be a Quorum, to conſider 'what is moſt proper to be done upon this Occaſion for levying the ſaid 'Thouſand Foot; and particularly to take in the Subſcription of ſuch 'of the Inhabitants as are willing to contribute for levying and main-'taining the ſaid Thouſand Foot, with their proper Officers, to be named 'for the Purpoſes mentioned in the ſaid Sign-Manual, for the Space of three 'Months after they ſhall be ſo inliſted; as alſo to conſider what is proper 'farther to be done for the Safety of this City, and for Support of the 'Government; which Committee ſhall meet at the Goldſmiths-Hall, 'twice each Day, at the Hours of Eleven in the Forenoon, and Four in 'the Afternoon; and recommended to the ſaid Committee, to keep a 'Book, into which all their Proceedings and Actings ſhall be regularly 'ingroſſed, to the end the ſame may be reported to the Council from 'Time to Time.'

At the ſame Time, the Council 'ordered the Serjeants, Corporals and 'Drums of the City-Guard to beat up for Volunteers to compleat the 'Thouſand Foot; and they nominated the Lord Provoſt to be Colonel 'and Commander of the ſaid Thouſand Foot, with Power to him to 'conduct and direct them, and the other Officers who ſhall be named to 'command under him, as the Council ſhall think proper, or as the Exi-'gencies of Matters ſhall require.'

And the Lord Provoſt ſhewed his chearful Concurrence in this Meaſure, by a Subſcription far beyond any other that was made to this Regiment.

September 10 to 13. From this Day, to the 13th of *September*, there are daily Proceedings of the Council and Committee above named, who went on with all Diligence in raiſing the Men, taking in Subſcriptions, providing Arms, Grain, and other Neceſſaries, and doing every thing that was judged proper for putting the Town in a Poſture of Defence. It is unneceſſary to trouble the Lords with reciting minutely every Particular which appears to this Purpoſe from the Records of the Council, and the Minutes of the Committee, which regularly met for carrying on the Buſineſs intruſted to them; and the Lord Provoſt appears, by their Minutes, to have been preſent at every Sederunt.

The Pannel is deſirous to abridge the Trouble of the Court, in reading a long Story, as much as poſſible; and therefore ſhall but juſt mention a few of the many Inſtances of his Care and Concern in carrying on the general Meaſure now reſolved on, for the Defence of the Town, about this Period.

That whenever any Complaints were made of the Slowneſs of the Workmen, that they were not going on with that Diligence they ought, the Lord Provoſt ſeverely reprimanded them, and gave freſh Warrants to preſs Men and Carts, with ſtrict Orders to loſe no Time.

That Bailie *Robert Baillie*, who had the Inſpection of the publick Works, with his Committee, were ordered to ſee that every thing was done that was neceſſary for the Defence and Preſervation of the Town; and he had the Charge of impreſſing Workmen and Carts, and exerciſing all the Authority that was neceſſary for carrying on the publick Works with the utmoſt Diſpatch.

That the Provoſt, on the 10th of *September*, wrote a Letter to Captain *John Dalrymple*, and alſo applied to Captain *James Murray*, to take upon them the Command of the Volunteers: But they both refuſed to accept of a Command of Men who had not been accuſtomed to military Diſcipline.

That the Provoſt moved in the Committee, to recommend to ſome of the City-Guard, *Edinburgh* Regiment, and Gentlemen Volunteers, that they ſhould learn the Exerciſe of throwing the Hand-Granadoes.

That, in order to preſerve the publick Money from falling into the Hands of the Rebels, the Provoſt called a Council, and propoſed, that what was owing of the King's Ceſs ſhould be paid up to the Receiver-General, though it had not been paid by the Inhabitants to the Collector; and for that Purpoſe the Provoſt forthwith ſigned an Order on the Caſh Accompt for 1000*l.* Sterling, payable to the Receiver-General, to Account of the Ceſs due by the City, which was delivered to the Receiver-General.

September 13. That the Proceedings of the Committee for levying the City's Regiment, and forewarding the neceſſary Steps to be taken for the Safety and Defence of the Place, were read over in Preſence of, and conſidered by the Council, and unanimouſly approven of, and the Council recommended to the Committee to continue in their Diligence.

September 14. Notice having come to Town this Morning, that the Rebels had paſſed the *Forth* ſome Miles above *Stirling*, and were directing their March towards *Edinburgh*, and Colonel *Gairdner*'s Dragoons were retiring before them, the Lord Juſtice-Clerk ſent a Meſſage to the Provoſt, deſiring he would meet with him, and ſome Lords and Gentlemen of the Army, and others, whom he was to bring from the Country, in order to concert what was to be done in this Exigence. The Provoſt immediately went to Lord Juſtice-Clerk's Houſe, and told his Lordſhip he was ſenſible how much he ſtood in need of ſuch Advice; that he would always be ready to follow it, and would be ſure to attend them whenever called for.

He went on ſtill in doing every thing that could be thought of as neceſſary to provide for the Defence of the Place. He ſigned a Warrant this Day, along with Lord *Somerville* as Juſtice of Peace, to preſs Men and Carts for carrying Sand and other Materials to the Ramparts and Works about the Walls, which was accordingly executed; and alſo to bring in Hay, Corn, and Proviſions into the Town, and *John Walker* and *William Mercer* were ſent to *Leith* for that Purpoſe.

This Day alſo the Provoſt ordered twenty-four Men to attend Captain *Bryden* in mounting the Cannon upon the Walls;

And granted Warrant to bring into the Town all the Ladders, Arms and Ammunition, which were in the *Cannongate*, *Potter-Row*, and other Suburbs adjacent to the Town, that they might not be ſeized by the Rebels.

Sunday, *September* 15. We are now come to *Sunday* the 15th of *September*; and as the Proceedings of this Day, and the next, are greatly miſrepreſented, as well as curtailed in the Purſuer's Information, it is neceſſary to be a little more particular in reciting them.

Upon *Sunday* Morning, when the Committee were met in the Goldſmiths-Hall, a Gentleman came with a Meſſage from General *Gueſt*, to acquaint them, that when it was propoſed, at a Meeting at his Houſe, to order *Hamilton*'s Regiment of Dragoons to join *Gairdner*'s, and make a Stand againſt the Rebels, the General made a Difficulty, in regard he had no Body of Foot to ſuſtain them. Upon which a Captain of the Volunteers undertook, that, at leaſt, two hundred and fifty of theſe Gentlemen would be ready to march upon any Service the General would order them; he believed more would, but he could anſwer for two hundred and fifty, providing the Provoſt would allow Fifty of the Town-Guard to go along with them; and the Gentleman deſired to know if the Provoſt would conſent.

On firſt hearing of this Propoſal, the Provoſt had ſome Difficulty to part with the Town-Guard, as being the Body of Men he could moſt depend upon, in caſe of any Occaſion, to defend the Town; on which Bailie *Robert Baillie* ſaid, he thought fifty of the Town-Guard could not be better employed than in ſupporting ſo many of the Volunteers, if they marched out; and inſtantly the Provoſt, upon Recollection, agreed, and anſwered, 'Mr. *Baillie*, you are in the right; in place of 'Fifty, they ſhall have the whole Town-Guard, and as many of the '*Edinburgh* Regiment as are capable of doing Service.'

The Provoſt immediately went down in a Coach, along with the Gentleman who had brought the Meſſage, and told the General the Reſolution of the Committee as to ſending out the Town-Guard and the *Edinburgh* Regiment; upon which the General ſent Orders to *Hamilton*'s Regiment to march through the Town and join Colonel *Gairdner*'s.

The Provoſt came up to Town from the General's in a Coach, along with Provoſt *Drummond*, the firſt Captain of the Volunteers, and by the Way met two of their Officers, who came into the Coach, and told them, they were ſure the Volunteers would not comply with the Meaſure propoſed, and that they were now ſeparated, and had gone home.

The Provoſt aſked Mr. *Drummond* what would be the beſt Signal to bring the Volunteers together? He ſaid they had only two, three Guns from the Caſtle, or ringing the Alarm-Bell. The firſt, ſays the Provoſt, is not in our Power, as the Caſtle is ſhut; and the other, in Time of divine Service, may alarm the Town. No help for it, ſays Mr. *Drummond*, the Bell muſt be rung.

The Bell was accordingly rung, which alarmed the People, and made them leave the Church. The Volunteers conveened in the *Lawn-Market*, and huzza'd *Hamilton*'s Dragoons as they paſt along. Their Officers applied to the Provoſt, and aſked if he had ordered them to go out and join the Dragoons? He told them, he had no Power to order them any where out of Town; but he had conſented, that as many as were inclined ſhould go out with the Town-Guard and *Edinburgh* Regiment, to ſuſtain the Dragoons in oppoſing the Rebels. The Meaſure was generally not liked by the Volunteers, and was imputed to the Provoſt as if he had been the firſt Propoſer, as one of their Officers told him with a good deal of Warmth.

After many Expoſtulations among themſelves, at laſt Mr. *Drummond* marched up on the Head of his Company, and ſome others followed. They went the Length of the *Weſt* Port and then returned.

Two of their Officers went foreward to ſtop the Town-Guard and *Edinburgh* Regiment, who had marched on to ſuſtain the Dragoons, and found them between the *Coltbridge* and *Brucehill*: But the Provoſt being informed of this, ſent Orders that the City Regiment and Town-Guard ſhould march foreward, and take their Orders from the commanding Officer. General *Gueſt*, when he heard of the Return of the Volunteers, was vexed at the Diſappointment, and ſaid, if he had expected it, he would not have ordered *Hamilton*'s Regiment to go out to join the other in Defence of the Town.

The Provoſt ſent up Mr. *Stewart*, chief Conſtable, to the Caſtle, with a ſigned Order for a Number of Matches for the Uſe of the Cannon mounted on the Town-Walls, which were accordingly delivered, and brought down to the Goldſmiths-Hall.

The Provoſt conveened the Trained-Bands under their proper Colours and Officers, and gave them Notice to hold themſelves in Readineſs upon a Minute's Warning, and three Companies of them were ordered to mount Guard.

He alſo ordered the Conſtables to ſearch Houſes, of which there was any Suſpicion, for Arms and treaſonable Papers.

This Afternoon Brigadier *Fowkes* came to Town, and the Provoſt was called in the Evening to Lord Juſtice-Clerk's, where Lord Advocate, General *Gueſt*, Brigadier *Fowkes*, and ſeveral other Gentlemen of the Army were preſent. A Propoſal was made, that the Dragoons might be brought into Town, with a View to give them ſome Reſt and Refreſhment, and have their Horſes fed on the Street: But after the Thing was debated among the Gentlemen of the Military, who conſidered that the Avenues of the Town might be taken Poſſeſſion of by the Rebels, the Streets barricadoed, and the Houſes lined, and that the Dragoons might very probably, by this Means, fall into the Hands of the Rebels, it was agreed to be a Thing not to be attempted.

From this the Provoſt went along with Major *Cochran*, Captain *Murray*, Provoſt *Drummond*, and others, to the Houſe of Mrs. *Clark* Vintner, where a Diſpoſition was made of the ſeveral Corps of armed Men into different Quarters of the Town, particular Guards aſſigned them, and Places for their Alarm-Poſt condeſcended on, where each of them ſhould appear on the proper Signals; Copies of which were given to the commanding Officers of the different Corps.

This Afternoon the Provoſt met with Sir *Robert Dickſon* upon the Street, who had come in with a conſiderable Number of Volunteers; he received him with great Civility, as both his perſonal Character and Errand deſerved; immediately gave Orders that his Men ſhould be lodged in the Kirk, and that a ſufficient Quantity of Bread and Ale ſhould be carried there for a Refreſhment to them without Delay.

About this Time Meſſages were ſent to the Caſtle and *Leith*, to procure Gunners for loading the Cannon. Mr. *Gueſt* could afford us none out of the Caſtle; Bailie *Set* made ſearch over all *Leith*, aſſiſted by *David Dryburgh*, *Charles* and *Alexander* Sheriffs, and ſent us up what could be found

found there; Application was alſo made to the *Urſilla* Man of War, and the Anſwer returned, That the Captain could ſend none.

By Orders from the Lord Provoſt, the great Guns upon the Walls were begun to be charged on *Sunday* Evening, and the Gunners employed continued to charge them till Two o'Clock next Morning.

The Provoſt this Evening ſent up an Officer of the Town-Guard to beg the General would order a Signal to be put up in the Caſtle, to diſcover the Road the Rebels ſhould take to *Edinburgh*, that Meaſures might be taken to turn the whole Force as much as poſſible to that Side; and an Anſwer was returned, That his Requeſt ſhould be complied with.

All this *Sunday* Evening, from Seven to Twelve, the Provoſt was conſtantly employed, either in the *Goldſmiths-Hall*, or at the different Guards of the Town, converſing with the Military Men about Orders, or with the Captains of the Trained-Bands. At Twelve at Night he began the grand Round, which laſted till about Four o'Clock in the Morning.

Monday, September 16. Having gone home for an Hour or two, he was upon the Streets again at Six in the Morning, reviewing the Barricadoes that were making at the Ports, and ſuperintending the other publick Works about the Town.

At Nine o'Clock, He ordered Bread and Ale to be carried out to the Dragoons; and upon Mr. *Fowkes's* applying to him for the Town-Guard and *Edinburgh* Regiment to be ſent out to join the Dragoons, he immediately ordered them to parade in the Parliament-Cloſe, and march out, which they did.

He next gave orders that Mutton, Beef, *&c.* ſhould be bought, and boiled in all the Taverns in Town, for the Uſe of the Dragoons; and went through ſeveral of the Taverns with Mr. *Baillie* and Mr. *Hamilton*, and gave Directions thereanent.

Being informed by Colonel *Clayton*, that the Proviſions firſt ſent out were not ſufficient, he expreſſed his Diſpleaſure that his firſt Orders had not been fully obeyed, ſent to the Bakers and Brewers, and cauſed preſt Carts to carry out Proviſions.

Betwixt Ten and Eleven o'Clock, When ſitting in a Cloſet in the Coffee-Houſe with Commiſſary *Leſlie*, *Andrew Alves* came in to them, and ſaid, That, in his Way to Town, he happened to ride near the Rebels; that the Duke of *Perth* knew him, and ordered him to come nearer; and upon hearing he was going to *Edinburgh*, ſaid, I underſtand the Provoſt and Magiſtrates are making great Preparations againſt us, but we are reſolved to pay them a Viſit; if they will keep their Arms in their Poſſeſſion, and allow us to come peaceably into Town, they ſhall be civilly dealt with; if not, they muſt lay their Account with Military Execution, or Words to that Purpoſe: And turning to a young Man he called the Prince, he aſked him, Whether or not that was his Pleaſure? Which the other ſeemed to aſſent to. The Provoſt ſaid, 'Mr. *Alves*, this is a very extraordinary Meſſage; but they will find we are not to be intimidated by 'Threats.'

The Provoſt went immediately over to the Goldſmiths-Hall, and acquainted two Gentlemen of the Committee of what Mr. *Alves* had ſaid, and conſulted with them what was proper to be done. They were of Opinion it was moſt proper to neglect it, and take no Step that might publiſh to the Inhabitants the Threatning they had received.

The Provoſt, after reviewing ſome of the Works about the Town, on his Return to the Street, was informed, that *Andrew Alves* had adventured to repeat to others what had paſſed betwixt him and the Rebels; upon which he went ſtraight to the Lord Advocate to aſk his Advice, where he found Mr. *Alves*; and, by the Advocate's Advice, he ſigned a Warrant for committing him.

Monday, September 16*th, Afternoon about Three o'Clock*, The Provoſt being then in Mrs. *Wilſon's*, was called out from the Company by Mr. *Baillie* and Mr. *Ferreſt*, who acquainted him, that a Petition to the Magiſtrates was handing about among the Inhabitants, deſiring they might be conſulted upon what was proper to be done upon this Juncture. At this the Provoſt was ſurpriſed, as well as vexed: However, as ſoon as he came out to go to the Goldſmiths-Hall, he was met by a great Crowd of Inhabitants, who delivered to him the Petition, which is produced in Proceſs, praying, 'That the Magiſtrates, before they came to any Reſolution, 'either of defending or giving up the Town, would call a Meeting of all 'the principal Inhabitants and Heritors, at preſent in the Place, to con'ſult with them what is proper to be done in an Affair of ſo great Im'portance.' Upon this the Provoſt immediately went to the Goldſmiths-Hall; they followed him, and endeavoured to crowd in: Upon which he was provoked, and aſked, If they meant to inforce their Petition by Numbers; begged they would be gone, and leave it to the Magiſtrates, who were to conſider what was moſt expedient to be done with reſpect to the Place; and immediately he cauſed the Drum to go about, and order the Inhabitants to retire from the Streets, who were all in an Uproar upon hearing that the Dragoons had retreated from the Rebels.

The Provoſt, in his Way to the Ports, met with the Lord Advocate and Sollicitor, who aſked him, If he did not think 100 Dragoons might be of Uſe to be brought into the Town; and he agreeing that they might, the Advocate aſked him to ſign a Letter in Conjunction with him and the Sollicitor, to General *Gueſt*, to ſend in 100 Dragoons; which the Provoſt immediately did, and then went on to ſee the Gates barricadoed.

After the Gates were barricadoed, he ordered Mr. *Stewart* the Conſtable to mount the Walls, and look out for the Dragoons; and ſo ſoon as he ſhould ſee them come near the Walls, to open the Gates and let them in: He had before provided a large Quantity of Hay for the Uſe of their Horſes.

As he was returning up the *Weſtbow*, a Citizen of very conſiderable Subſtance, and undoubted Loyalty, came to him, and ſaid, 'He applied to 'him in Name of himſelf, and many of the moſt conſiderable Citizens, 'to expoſtulate and beg, that the Defence of the Town might not be in'ſiſted on, which could only tend to expoſe the Lives of the Citizens.' To which the Provoſt anſwered, 'That his Requeſt could not be granted.'

In returning to the Goldſmiths-Hall, the Provoſt gave Captain *Hamilton* Orders with reſpect to the City-Guard, 20 of them to remain at the *Weſt* Port, 20 to go to *Briſto* Port, 20 to the *Netherbow*, and 40 of them to remain in the Guard, to move to any Place where they ſhould be moſt needed, which was allowed to be a very proper Diſpoſition.

During all the Way in his Return, the Cries of the People were heard on every Side, 'What, would he have them all murdered, by defending 'the Town after the Dragoons had run away?' And other Words to that Purpoſe.

As ſoon as he was returned to the Hall, where the Committee was met, he ſent Bailie *Hamilton*, *Robert Baillie*, and *John Ferreſt*, for the Lord Juſtice-Clerk, Lord Advocate, and the Sollicitor, to beg they would come and aſſiſt them with their Counſel, ſaying, He chuſed to be determined only by their Advice. They returned, and reported that they had all gone out of Town.

The Provoſt expreſſed great Concern when he found himſelf deſtitute of the Advice he moſt relied upon at ſo critical a Juncture, and then deſired that the Officers of the Army ſhould be ſent for, and the Officers of the Volunteers who were conveened at their Poſts by the ringing of the Alarm-Bell: Moſt of the Captains, and ſome other Officers of the Volunteers came; but no other Military Men were found in Town, except Captain *James Murray* and Major *Cochran*. The Lord Provoſt addreſſed himſelf to them, and ſaid, 'That, for his Part, he was willing to en'counter any Danger for the Defence of the Town: He hoped the In'habitants would do their Duty, and hoped the Enemy might be kept 'out until Aſſiſtance ſhould come to their Relief; and aſked Mr. *Murray* 'what was his Opinion?' Who ſaid, he pitied him, but was at a Loſs what Advice to give: And being farther preſſed by the Provoſt, he anſwered, That if the Volunteers, Trained-Bands, and other armed Men within the Town, were diſpoſed to do their utmoſt, he believed they might make a good Defence; but if they were not diſpoſed to fight, he would adviſe the ſending the Government's Arms to the Caſtle.

The Provoſt ſaid, 'He hoped thoſe Gentlemen who had undertaken 'the Defence of the Town, would not now abandon it when the Danger 'drew near, but remember what Expence the Town had been at, what 'Aſſurance they had given to his Majeſty, and what they had promiſed 'to perform, when the Danger was at a greater Diſtance.' He then aſked all the Captains and Officers of the Volunteers that were preſent, what he could expect from them? One ſaid, he did not find any Diſpoſition in his Men to fight: Another told, That there did not remain fifteen of the Company to which he belonged; but as he had promiſed to riſque his Life in Defence of the Town, he would ſtill do it; though he was ſure not five of the fifteen would follow him: And others of them declined to make any Anſwer at all.

About this Time *Walter Groſet* came into the Goldſmiths-Hall, and he ſaid he was ſent by the Lord Juſtice-Clerk and Lord Advocate, to deſire the Provoſt would ſend an Order to General *Fowkes* to bring the Dragoons into Town. To which he anſwered, That he was ſurpriſed at the Meſſage, after what had paſſed the Night before; that he would ſign no Order, as he had no Power over the Dragoons; but if they pleaſed to ſend them in, they ſhould be made very welcome, and we ſhould join them in Defence of the Town.

Mr. *Groſet* ſaid, That the Lord Advocate and Juſtice-Clerk thought it proper that the Provoſt ſhould ſign the Order. To which he anſwered, That he did not chuſe to make himſelf accountable for the Dragoons, after what he had heard in the Lord Juſtice-Clerk's laſt Night; but thought it more proper that they ſhould ſend their Orders, if they had altered their Way of Thinking about that Matter. Mr. *Groſet* deſired to have the Provoſt's Anſwer in Writing, with which he readily complied.

About this Time the Fears of the Inhabitants had brought a great Crowd into the Goldſmiths-Hall, and about the Door of it, who all cried out againſt the Madneſs of defending the Town, when all the Officers Civil and Military had left it, which ſhewed they underſtood it could not be defended. The Crowd ſtill increaſing, a Member of the Council propoſed they ſhould go to the *New Kirk Iſle*, as they were like to be ſmothered in that narrow Place: Upon which the Lord Provoſt left the Hall, and went out to the *Parliament-Cloſe*, where great Numbers came up to him, remonſtrating, in the ſtrongeſt Terms, againſt attempting any Defence, which could have no other Effect, but to expoſe them to Military Execution.

The Provoſt did all he could to reanimate the People; but when he was talking to them, Mr. *Cunningham* of *Gairdner's* Dragoons came up to him on Horſeback, with a Meſſage from Lieutenant-Colonel *Whitney*, deſiring he would order the Dragoons Baggage to be forthwith ſent out to them, becauſe they were going to *Haddington*; that they found they had been greatly deceived in the Number of the Rebels; for now they computed them to be near Eight Thouſand. This Account, which was given by Mr. *Cunningham* in the Hearing of the Crowd, did greatly contribute to increaſe the Terror of the Inhabitants, who were heard crying every where, *What a Madneſs it was to pretend to ſtand out againſt ſuch a Number.*

The Provoſt expoſtulated with them in the *New Kirk Iſle*, 'That he 'hoped they would not now abandon the Defence of the Town; that he 'was ready to concur in it to the utmoſt of his Power, and expected the 'Danger would not be ſo great as ſome Men's Fears made it.' But upon this ſuch a Noiſe was raiſed, that nothing could be heard but a general Cry for giving up the Town, not above two or three of the whole Multitude preſent appearing to be of a different Opinion.

About this Time a Letter was thrown in, directed to the Lord Provoſt and Magiſtrates, which was opened by *Walter Orrock*; and when he told it was ſigned by *Charles* P. R. the Provoſt ſtopt him, and ſaid, he would not witneſs the reading ſuch a Letter: Upon which many calling out to read, he ſaid he had been too long there, and with Difficulty got to the Door, and returned to the Goldſmiths-Hall, where the Magiſtrates alſo came, and a great Number of the Inhabitants, and immediately they ſent to conveen the Town's Aſſeſſors; but only one of the four was to be found: They aſked his Opinion what was to be done with reſpect to the Letter, and whether it ſhould be read? But he having declined to give any Opinion, and the Inhabitants expreſſing the utmoſt Uneaſineſs both within and without Doors, the Letter was read without any Authority from the Provoſt, and contained a Threatening of their higheſt Reſentment, in caſe any Oppoſition was made to their Entry, or that any of the Cannon or Arms were allowed to be carried off.

After

After this nothing was to be heard but loud Cries againſt a fruitleſs Oppoſition, and againſt Delivery up of the Town's Arms to the Caſtle, which, it was ſaid, would occaſion Deſtruction to the City; and many in the Hall inſiſted that a Deputation ſhould be ſent out, to beg that Hoſtilities might not be commenced againſt the City, until they had Time to deliberate what Anſwer they ſhould return; and, as it was believed the Enemy was at the Gates, the Deputation was immediately hurried away, *viz.* Bailies *Gavin Hamilton*, *John Yetts*, *David Inglis*, and Conveener *Norrie*.

The Volunteers in the mean time did, without applying to the Lord Provoſt for Orders or Directions, of their own Accord, take a Reſolution to give up their Arms to the Caſtle, which they forthwith executed, and thereby diſmiſt themſelves from the Service.

One of their principal Officers, whoſe Zeal or Bravery was never at any time called in queſtion, upon his Return from the Caſtle, was met on the Street by a Gentleman, who told him, the Rebels were not near ſo numerous or formidable as they had imagined, and that it would be a Shame to ſurrender the Town to them. But the Officer anſwered, It might be ſo, but it could not now be helped; that Information had come too late.

And, ſome Hours before, another Gentleman of the ſame Corps had ſent a Meſſage to his Wife, begging her not to be under any Fear about him, for the Town was to be given up.

At this Time a Meſſage came from the Caſtle, by *Robert Griffith* a Gunner, deſiring that the Cannon on the Town-Walls might be nailed up. It was the Opinion of the Committee, that the Provoſt ſhould give no Orders in theſe Matters, after what had paſt; but he told the Meſſenger, that Mr. *Gueſt* was at Liberty to do what he thought beſt for the Service of the Government, and nothing hindered him to ſpike up the Cannon, if he thought fit: And he was alſo told, that the Town-Officers would ſhew him where the Cannon were, for that Purpoſe.

About the ſame time the Adjutant of the City Regiment wanted to know what ſhould be done with the Arms under his Care; and was told, that it was not thought proper the Provoſt ſhould give Orders thereanent; that the Council was afraid the City might ſuffer from the Cruelty of the Rebels, and even that they themſelves might ſuffer from the Populace, if ſuch Orders were given; but, at the ſame time, that the Soldiers of the new-levied Regiment, poſſeſt of thoſe Arms, ſhould be privately acquainted to return them to the Caſtle; and by this means the whole Arms of the City-Regiment were returned, except thoſe of the Men upon Guard.

But it was not practicable to get the Arms of the Trained-Bands conveyed to the Caſtle in this Manner. Theſe Arms were in poſſeſſion of the ſubſtantial Burgeſſes and Houſholders of the Town, who conſidered them as their own Property, having been bought with their own Money when admitted Burgeſſes: And as moſt of them had not only their Wives and Children, but the greateſt Part of their Subſtance within the Town, they would not conſent to expoſe all that is dear to them to the Rage of an incenſed Enemy, for the ſake of keeping thoſe Arms out of their Hands, eſpecially as they were in themſelves of very little Value, being generally old Guns without Bayonets, bought at Half-a-Crown or three Shillings a-piece, more for Shew than Uſe, as they were never otherways employed than at a Birth-Day Parade.

But, of little Value as they were, the Provoſt was deſirous, if poſſible, they ſhould be ſaved out of the Hands of the Rebels; and as neither he nor the Council were able of themſelves to compel the Inhabitants to part with them, he thought of the only Expedient that could be taken in ſuch a Caſe, which was, to ſend a Meſſage to the Caſtle to inform Mr. *Gueſt* of the Situation of the Town, and the general Conſternation of the Inhabitants, and to beg that he would ſend a Party down to take up their Arms, as the Council was not at liberty to give Orders, for fear of the Conſequences with regard to the Town. This Meſſage was delivered to General *Gueſt*, but was not complied with.

From the Goldſmiths-Hall the Committee went to the Council-Houſe, and were alarmed with the Cry, that the Rebels had broke into the Town. This was owing to the Fright of a Party of Dragoons, who guarded their Baggage at the *Netherbow* Port, and when the Port was opened to let out the Baggage, a great Crowd burſt in, which the Dragoons imagined were the Rebels, and rode off as hard as they could, in great Terror, to the Caſtle.

Upon this Alarm the Commandant put the Provoſt in mind of the Threatning ſent to the Town, that every Man who was found in Arms ſhould be put to death; and aſked the Provoſt what the Trained-Bands ſhould do at the *Weigh-Houſe* and *Weſt* Port, when the Rebels had already burſt in at the other End of the Town? The only Anſwer any Man alive could give, in ſuch Circumſtances, was, they ſhould quit their Arms to avoid being maſſacred.

After this Alarm was over, Mr. *Groſet* arrived with Accounts that Sir *John Cope* had been ſeen off *Dunbar*, and, as the Wind was unfavourable for bringing them up the Frith, it was thought he would land that Night at *Dunbar*, and might ſoon come to their Relief. Upon which Bailie *James Mansfield* was immediately diſpatched to call back the Deputies, and a Town Officer was alſo ſent to run the ſhorteſt Way and ſtop them; but neither could overtake them.

It being now again reſolved, upon this Proſpect of Relief, to put the Town in a State of Defence, Mr. *Groſet*, and Mr. *Lindſay* Secretary at War, went up to the Caſtle along with Provoſt *Coutts*, and acquainted the General with the good News of Sir *John Cope*'s Arrival, and aſked if he would think it proper to order the Dragoons back for the Defence of the City, and whether he would deliver back the Arms that had been returned to the Caſtle. General *Gueſt*'s Anſwer was, That he did not think it for his Majeſty's Service to order the Dragoons back to *Edinburgh*, it being more fit they ſhould join Sir *John Cope*'s ſmall Army: That the Gentlemen of the Council might put the Burghers Arms into the beſt Hands; and if, thereafter, the Lord Provoſt ſhould find a Diſpoſition in the Inhabitants to defend the Town, he might let him know: And added, that he would ſend down a Meſſage to the Serjeant that was nailing up the Cannon on the Walls, to ſtop him.

After the Gentlemen had returned from the Caſtle, it was propoſed in Council, by a Captain of the Volunteers, that the Alarm-Bell ſhould be rung: But it was objected by ſome of the Members, that nothing of that Kind ought to be done till the Deputies were returned, leſt the Rebels, who were apprehended to be very near, ſhould thereby be enraged, and make them ſuffer for it. One of the Reverend Miniſters of the City, who had been moſt active and zealous in the Service of the Government, and ſome other well-affected Burgeſſes, agreed in this Opinion; and all of them were poſitive that nothing could be done for Defence of the City, unleſs the Dragoons were brought back: Upon which Mr. *Groſet* roſe up, and ſaid he would go and endeavour to bring them back; and Provoſt *Drummond* and he went off upon that Errand, but did not again return.

Mr. *Lindſay*, the Secretary at War, aſked the Lord Provoſt, if he would ſend an Order to General *Gueſt* to re-deliver the Arms which had been ſent up to the Caſtle. Had the Provoſt been capable of any Degree of the bad Intention the Purſuer would now ſuppoſe, it was eaſy to comply with this Requeſt, for one-tenth Part of thoſe Arms would have been of more Value to the Rebels, than the whole Arms that were in the Hands of the Burghers: But, as his conſtant Intention was to bring no Arms or Ammunition from the Caſtle, but as there was neceſſary Occaſion for them, leſt they ſhould fall into the Hands of the Rebels, ſo, agreeably to his Intention, he anſwered Mr. *Lindſay*, 'That, before he gave 'ſuch Orders, he behoved to ſee a better Diſpoſition in the Inhabitants 'to Defend the City.'

For, ſince the Alarm of the Rebels burſting into the Town, moſt of the Inhabitants, dreading the Execution of their Threats againſt ſuch as ſhould be found in Arms, had quitted their Arms and goſe home.

The Gentlemen who had gone to the Rebel Camp returned, and brought their Anſwer, requiring the City to receive their Prince as Prince Regent, and that no Arms or Ammunition ſhould be ſuffered to be carried off or concealed; and demanding an Anſwer againſt Two o'Clock in the Morning, their Camp being then at *Gray's Mill*, about two Miles diſtant from the City. After receiving this Anſwer, the Gentlemen of the Council, with ſome other Citizens, continued together deliberating what was to be done, till Two o'Clock in the Morning, many of them expecting Relief from the Dragoons, which Provoſt *Drummond* and Mr. *Groſet* had been ſent ſome time before to bring back, if poſſible, to their Aſſiſtance.

When the Clock ſtruck Two, and no Relief came, it was propoſed to ſend a ſecond Deputation, in order to gain a further Time, which was unanimouſly agreed to; and Bailie *Robert Baillie*, Provoſt *Coutts*, with two or three other Councillors, were ſent off to beg a Delay till nine or ten o'Clock, by reaſon the Burghers were all in Bed, and could not be conveened for ſeveral Hours: At the ſame time they were authorized by the Provoſt to ſay, 'That he would rather die than comply with the 'Condition of receiving their Prince as Regent of *Scotland*.'

Meſſages were at the ſame time ſent to the principal Inhabitants and Citizens, to come and meet with the Council, and concert what was proper to be done; but few of them had come, when the Deputies returned with an Anſwer much to the ſame Purpoſe with the former; and ſoon after Notice was brought, that a Part of the Rebel Army had ruſhed in at the *Netherbow* Port, and made themſelves Maſters of the City Guard, who had been ſo harraſſed with the extraordinary Duty all the preceding Week, and by being out under Arms for two Days before along with the Dragoons, that they were hardly fit to do any Duty, far leſs able to oppoſe an Army of Rebels, who were numerous and hardy enough to defeat a regular diſciplined Body of the King's Forces a few Days after.

From the above Narrative, which is in every Particular ſtrictly agreeable to the Fact as it happened, it appears in what manner this City had the Misfortune to fall into the Poſſeſſion of the Rebels, after all poſſible Care taken by the Provoſt, Magiſtrates and Council, to prevent it. Some of them indeed were of Opinion, as well as many other of the wiſeſt and beſt-affected Citizens in the Town, that the Scheme of defending the City, againſt an Attack, was in itſelf impracticable. The old Walls are hardly ſufficient to keep out ſmuggled Goods, but by no means able to endure any Siege or Attack: Beſides, there were ſo many other obvious Ways the Town might be forced to ſurrender, by throwing in Fire, burning the Houſes which adjoin to the Town in ſome Places where there is no Wall, cutting the Water-Pipes, which would ſtarve the Town in a Day, &c. that a great many well-affected Burgeſſes thought the beſt thing could be done for the Service of the Government, was to diſpoſe of any thing that could be of uſe to the Rebels, and leave the Gates of the City open.

But, though this was the Opinion of the Provoſt, as well as many of the Council and moſt ſubſtantial Citizens, yet, when the other Scheme was reſolved, the Provoſt exerted all the Vigilance he was capable of to make it effectual, as appears from the Circumſtances above related. He ſpent his whole Time in the publick Service, from Six o'Clock in the Morning to Twelve at Night, ſometimes till Four next Morning, going about viewing the publick Works, giving Orders, adviſing Expedients, taking and deſiring to have the beſt Advice: And, at laſt, when the Thing came to the Puſh, he was aſhamed to ſee many, who had appeared keen for the Scheme in the Beginning, unwilling to carry it to the laſt Execution; and that, in general, the Inhabitants were ſo terrified by the frightful Notion they had got of the Rebels, that he could find no Concurrence to make an Oppoſition, and keep out the City, not even from thoſe who had firſt taken Arms in its Defence. He expreſſed his Sentiments in as ſtrong a Manner in time of Danger, as the Proſecutors can now declaim at Eaſe, of the Reproach it would be to the City to be ſurrendered without Defence, after all the Preparations that had been made, and the Aſſurances they had given his Majeſty to that Purpoſe; and declared himſelf ready to mount the Walls with the ſmalleſt Number of Men that could ſupport him: But the Terror they were in from the Cruelty of the Rebels, and the little Proſpect they had of making an effectual Defence, without farther Aſſiſtance than they had within the Town, prevailed over his Expoſtulations, and rendered his Deſign abortive, which he was willing to have proſecuted at the Hazard of his Life.

At

At the same Time it is obvious, that the Prosecutors set this Event in a very false Light, when they suppose, 'That the King's Army was 'within a Day's March of the City when it was taken by the Rebels, 'and that it was possible to have kept out the Town 'till the Army had 'come up to its Relief:' For it is a certain undisputed Fact, that General *Cope*'s Army was still on Ship-board when the Rebels took Possession of the City, and very uncertain when they would disembark; and that, after all the Haste they could possibly make to approach the City, they could not get within Six Miles of it sooner than the *Friday* Evening, near four Days after the City was taken: Even the Pursuers do not maintain that the City could, by any Defence, have been kept out the Half of that Time. In fact, it is certain that it could not have been kept out many Hours. And therefore, take the Case in any View, it is highly unjust to lay the Blame of the bad Consequences, which afterwards followed, upon an Event which appears, in the Nature of Things, to have been unavoidable, as Circumstances then stood, and are admitted on all hands.

It is not properly the Pannel's Business to make an Answer to the Pursuer's Declamation upon the Consequences of this Event, which, were they founded, could not affect him, who did the utmost in his Power to prevent them. But the Exaggerations are too obvious to take with the most credulous. It will never go down with any body, that the Victory obtained by the Rebels at *Preston-Pans* was owing to the Tents or Furniture they got out of the City three Weeks after it was fought, or to the broken Guns that were dropt by the Burghers, when it is notorious that greater Numbers of the Rebels came armed to *Edinburgh* than were engaged in that Action. None of the Broad-swords, which were the Instruments of the Mischief done on that Day, were found in *Edinburgh*. Every one who considers the Matter coolly, will own that the Case must have been the same, had they met with Sir *John Cope*'s Army the Day before they came to *Edinburgh*, as three Days after it. All depended on the Conduct and Behaviour of the two Armies, and this City behoved in course to fall to the Victor.

Were Conjectures of this Nature to be indulged, it would be more just to impute the taking of this City to General *Cope*'s not having guarded the Passes on the *Forth*, or fought the Rebels when they were in the North in much smaller Numbers; by either of which their Progress would have been stopt from coming Southwards. But, to suppose that a Town, which, without any Siege, could be laid in Ashes by any Enemy from without in a few Hours, should be able to put a Stop to the Progress of a Rebellion, which was strong enough to stand a pitched Battle against the whole Forces in this Part of the united Kingdom, and defeat them, is a Stretch of Imagination too wild to be listened to even by the Vulgar, far less to be insisted on before any Court.

It was however the Misfortune of the Pannel, after all his Pains, Labour and Diligence, and the Hazards he was ready to undergo, to be attacked by Suspicions, as if he had failed in his Duty. To this several different Causes contributed, which frequently arise on such Occasions. In extraordinary Emergents of this Kind, Zeal in some, and Fear in others, never miss to set various Passions a-working. A third Source occurred, not so blameless as either of the other two. When the Accounts first came of a Rebellion stirring in the Northern Parts, the Approach of the annual Elections, and Steps thereto preparative, was what chiefly employed the Thoughts of the Inhabitants of this Town. The Danger then was distant, and it was hoped would approach no nearer: But it was a good Opportunity for such as looked with an envious Eye upon the present Magistracy, as having been too long in Possession of the good Opinion of the People, to undermine them, by working upon the Fears and Credulity of others. Surmises and Jealousies are easily spread when People are under Terror: And, by proposing contrary Schemes, they had a good Chance, either to bring the Magistrates into Disrepute with the People, if they opposed them; or to load them with the Blame, if, when they yielded, the Execution of them should, as in all Probability it would, in the Event, prove impracticable.

By such Attempts of the interested and designing, it can hardly fail that many of the honest and well-meaning will be led away, when their Fears and Jealousies are so strongly raised as to get the better of their Reason: And this was much increased by Reports artificially spread with the same View thro' the News-Papers in different Parts of the Kingdom, of Facts now notoriously known to be false, but which were easy to gain Belief at a Time when Men's Minds were in a Ferment, jealous of the Conduct of one another, and ready to catch at every remotest Suspicion.

Under these undeservedly unlucky Circumstances, the Pannel, conscious of his Innocence, set out for *London* to attend his Duty in Parliament; and, as soon as he came there, wrote to one of his Majesty's principal Secretaries of State to acquaint him of his Arrival, and that, as he understood many scandalous Reports had been spread to his Disadvantage, he was ready to wait on his Lordship, or any of his Majesty's Ministers, to give them Satisfaction with respect to his Conduct.

Two Days after, he was taken into Custody at his own House, and carried to a Messenger's House, where he remained for some Time: After that he underwent an Examination before the Cabinet Council, which lasted for several Hours, in which he gave full and particular Answers to every Question that was asked him, and strictly agreeable to the true State of the Fact as above set forth; but the malicious Reports of his Enemies had gained so much Ground, that he was after this sent to the *Tower*, and kept a close Prisoner for three Months. Thereafter, as the Credit of these Slanders, supported by no Evidence, began to abate, his Confinement was relaxed; but still continued 'till the 23d of *January* 1747, when he was admitted to Bail before one of his Majesty's Principal Secretaries of State, upon a Recognizance to the Extent of fifteen thousand Pounds Sterling, to appear before his Majesty's Court of Justiciary at *Edinburgh*, at the first Sitting of the said Court after the 20th Day of *March* then next.

During his long Confinement he made many Applications, expressing his Willingness to meet his Trial; and, as soon as he was liberated and came down to *Scotland*, he applied to the High Court of Justiciary at their first Meeting after the 20th of *March*; and now, at the Distance of above a Year and a Half from his first Confinement, he has been at last served with a Libel at the Instance of his Majesty's Advocate; and, upon the 13th instant, Counsel on both Sides were heard before the Court upon the Relevancy of the Libel, and the Court has been pleased to order Informations to be given in.

The Counsel for the Pannel, in Answer to this Libel, after setting forth the several Steps of the Pannel's Conduct, and his Care, Diligence and Activity in the Discharge of his Office, as above represented, did, in the first Place, observe, That although a Prosecution of this Kind against a Magistrate, not for any criminal Fact alledged to be committed, but for supposed Neglects, Mistakes, or Errors in the Execution of his Office, is pretty new and extraordinary, and, it is believed, will hardly meet with any Precedent before a Court of Justice; yet the Pannel would not decline the Jurisdiction of the Court in any Trial that can be brought; he is sure his Conduct will stand the strictest Test of Inquiry; and therefore was willing chearfully to submit the Case to the Judgment of the Court.

At the same Time it was observed, That, after all the Pains that had been taken to find Fault with the Pannel, and to lay upon him the Load of the Misfortunes which befel the City of *Edinburgh* during the late Rebellion; yet it is very remarkable, that now, when the Libel appears, drawn out with the greatest Art and Skill for that Purpose, it does not contain any one Fact that is in itself criminal: And even the Omissions, charged upon the Pannel, are such as are either merely trifling, or at least of a very ambiguous Nature, and such as his Conduct would have been equally liable to be misconstructed in, had he followed the opposite Course, or done the Reverse of what he is charged with in the Libel.

That, if such are supposed to be relevant Grounds of Accusation against a Magistrate, his Situation must be very singularly unhappy, especially when Times of Danger and Difficulty occur: The Office he cannot decline to accept of, he can as little decline to act; he cannot stop, but must determine himself one Way or other; and, after he has honestly determined, and acted to the best of his Judgment, if he is liable, upon the Event's turning out unsuccessful, to be tried as a Criminal why he did not take a different Course, it is impossible for any Man, who has the Misfortune to be placed in such Circumstances, let him take what Course he will, to avoid Punishment: And this is the more applicable to the present Case that,

2*do*, This Libel does not charge the Pannel with any Disaffection to his Majesty, or our present happy Establishment, far less does it offer to prove any Fact that can infer it; nor is it alledged that any of the Articles charged in the Libel happened *ex proposito*, or *ex malo animo*. The natural Presumption therefore lies for Innocence, when the Facts are such as can admit of that Construction. In this Case the Presumption is confirmed from the whole Tenor of the Pannel's Conduct in his past Life, as well as from his Situation in the World. As he is a Gentleman of a pretty considerable Property in this Country, and who deals in Trade to a very large Extent, it cannot be supposed he would wish to see Confusions arise in his Country, or the Laws to be put to Silence by lawless Force. That such Disorders must in every Event affect him deeply, by ruining his Debitors, and hurting his Interest in many different Respects; and therefore, unless he were supposed to be destitute of common Sense, there can lie no Probability that he would wilfully do any thing that should tend to increase such Disorders, highly mischievous to himself, as well as to his Country.

And, 3*tio*, It was in general observed, That, in the present Case, the Pannel had not the sole Direction of any one of the Articles referred to in the Libel: That, as Lord Provost of this City, he was only the Head of a numerous Body of Magistrates and Town-Council, and behoved to act by their Direction. That, by his Majesty's Sign-Manual, the Direction of the City-Regiment was also expressly given to the Lord Provost, Magistrates and Town-Council of *Edinburgh*; that accordingly the Town-Council did forthwith take the Direction into their Hands; and named a Committee, which was to meet twice a-Day, to consider and order what was proper to be done for the Safety of the City and Support of the Government; and though the Provost was named Colonel of the Regiment, yet, by his Nomination, he was limited to conduct and direct them in such Manner as the Council should think proper.

That the Pannel did accordingly act in every Particular by the Direction and Concurrence of the Council, and the Committee by them named; that no Instance can be given where he opposed their Resolutions and Orders, or followed his own Will or Judgment in Opposition to theirs; and in such Circumstances it seems impossible to assign a Reason why a Charge of Guilt should be fixed upon the Pannel, when the Council, by whose Direction he acted, are admitted to be innocent, and to have all along behaved dutifully to his Majesty and his Government.

And, more particularly, with respect to the several Articles of the Libel, it was insisted, That, neither separately nor jointly, can they amount to the Charge of a Crime against the Pannel.

The first Article begins with setting forth, 'That he did nothing of 'his own Accord towards providing for Defence of the City.' But it is evident this, if true, could be no Point of Dittay. Had the Pannel been of Opinion that it was not expedient for the Service of the Government to attempt a Defence of the City, which was the Opinion of many well-affected Councillors and Citizens; or if he had been of the contrary Opinion, but every thing he could suggest for its Defence should happen to be proposed by some other Member of the Council or Committee; in either of these Cases the Proposition here alledged might have been true, and yet the Pannel intirely blameless. At the same time, that nothing can be more contrary to Truth, evidently appears from Numbers of Instances in the above Narrative, where the Pannel, of his own Motion and Accord, suggested and executed many Expedients of great Importance, towards providing effectually for the Safety of the Town.

And as to the second Branch of this Article, 'That the Pannel stirred 'affected Doubts concerning the Legality of the Proposition for raising 'the City-Regiment,' which Doubts the Pursuer, in his Information, endeavours to remove, by observing, 'That the Act 1661, upon which 'they were founded, is repealed by the Act 7*mo Annæ*, which provides, 'That nothing thereafter shall be High Treason in *Scotland*, but what 'is such by the Law of *England*:'

It is answered, That the Doubt upon this Point is not singly founded upon the Statute 1661, but upon the Common Law, by which the Power of

of Arms is one of the King's undoubted Prerogatives, and the incroaching upon it has been declared highly criminal, by Statutes anterior to the 1661, particularly by the Act 75th, Parl. 1563, which forbids any Perſon of whatſoever Quality, Eſtate, Condition or Degree, to raiſe Men in Arms without ſpecial Licence, in Writ had from the Crown, under the Pain of Death. This Act has never been repealed by any ſubſequent Law, either expreſly or by Implication; and it makes no Exception of Magiſtrates of Burghs, but extends to all Subjects of whatever Condition or Degree, nor of raiſing Men upon Pretence of the King's Service. It is well known no ſuch Exception was intended to be implied, either in this Statute, or the after Laws made in the Reign of *Charles* II; for the Diſturbances which happened in thoſe Times, and which theſe Laws were intended to prevent, were frequently occaſioned by raiſing Men upon ſuch Pretences.

But it is unneceſſary for the Pannel to enlarge on this Argument. Were a Doubt, in any Caſe, to be conſtructed as a Crime, for which, it is believed, no Precedent can be alledged, the Pannel muſt be fully juſtified in this Caſe, by the Authority already mentioned, of the honourable Judges and his Majeſty's Counſel, learned in the Law, who agreed in Opinion, that the levying this Regiment without his Majeſty's expreſs Warrant would be illegal.

And it is ſtill as extraordinary, that it ſhould be made a Point of Dittay in the ſecond Article, That Objections were made to the Legality of the Aſſociation of the Volunteers: They were aſſociated in Arms for the preciſe ſame Purpoſes for which the Regiment was to be raiſed, *viz.* for the Defence of the City and Support of the Government: And the Counſel for the Pannel muſt confeſs, they cannot obſerve any ſolid Diſtinction that ſhould make the one legal when the other is illegal and blameable: And therefore it is ſomewhat ſurpriſing it ſhould be laid as a Crime againſt the Pannel, that he did not at firſt View diſcover ſuch Diſtinction, eſpecially as he acquieſced inſtantly in the Opinion he got upon that Point, and, without the Delay of a Moment, proceeded to authorize the Volunteers to go on in their Aſſociation.

This ſhews that the Pannel had no Reluctancy or Averſion to this Meaſure, as the Libel would ſuppoſe. He took the very firſt Opportunity to inform himſelf of the Legality of it, and chearfully followed the Information he got. Had he demurred a little more, upon a Diſtinction by no means obvious, he could not have been liable to Blame, far leſs to Puniſhment. And it is unneceſſary to enlarge upon the reſt of this Article, which the Purſuer, in his Information, does not inſiſt upon, as indeed it is apparently too trifling to enter into a criminal Libel.

As to the *third* Article, concerning the Repair of the City-Walls, it has already appeared, from the Record of the Council, that the Direction of theſe Repairs was intruſted to a Committee under Bailie *Robert Baillie*; that they were often enjoined, from Time to Time, to carry on the Works with the utmoſt Diſpatch; that the Provoſt frequently viſited the Works; and, whenever it appeared there was any Want of Workmen, he always granted new Warrants to impreſs them. The Ditch at *Wallace*'s Tower, which Mr. *Mac Laurin* complains, that, after being carried on right for ſome time, was, by Miſtake or bad Advice, caſt on the wrong Side of the Dyke, was owing to a Direction given by Bailie *Gavin Hamilton*, who altered the Orders given by Mr. *Baillie* the Overſeer, and, by Miſtake, cauſed caſt the Ditch upon the wrong Side of the Dyke: And the other Delay he complains, in not beginning the Communication he propoſed betwixt the Wall of the Town and the high Houſe without the *Potter-Row* Port, in due time, was owing to an Objection made to the Propoſal, that ſuch Communication might very probably afford an Opportunity to the Rebels to enter the Town; upon which Mr. *Mac Laurin* himſelf, at that time, agreed it was fit to drop it. And as to all the other Works, even by Mr. *Mac Laurin*'s Account, which the Purſuer refers to in his Information, it appears they were carried on in due Time; for he admits they were almoſt finiſhed on *Monday* Afternoon, when they were told of the Meeting of the Inhabitants in the New Church.

And as to the Complaint of the Neglect in providing Gunners, and giving Orders to load the Cannon, the Lords have already been informed of the Pannel's Diligence, in conveening Men to aſſiſt at mounting them on the Walls, and ſending every where to provide Gunners, and ordering Matches in due Time to light them. They were loaded when the Rebels were at ſix Miles Diſtance from the Town, which was rather too early, as it is well known that Cannon do not ſerve ſo well after they have been long loaded.

But then, what Relevancy is there in all this, ſuppoſing the Facts true as laid in the Libel? Is it poſſible to plead that the Provoſt ſhould be anſwerable for the Execution of Works, which, by the Council, appear to have been committed to another Committee under a proper Overſeer? Or will it be laid as a Charge againſt him, that he did not think the Sailors proper Perſons to be employed as Gunners, if other Gunners could be had elſewhere? Or that he did not give Orders to load the Cannon on *Sunday* Morning, when it is allowed they were loaded that Evening, and too ſoon for any Uſe that could poſſibly be made of them againſt the Rebels?

The ſalutary Propoſition which the *fourth* Article charges the Provoſt with rejecting, will appear to every one, who coolly conſiders it, a moſt pernicious one. To make Diſtinctions among the Inhabitants, from Surmiſes their Enemies might throw out againſt them without any Ground, when their Minds are heated and divided into Factions, might contribute to ſet them by the Ears together, but never to unite or ſtrengthen their Hands in the Defence of the City, or Service of the Government. The Purſuer's Information ſays, that the Anſwer given to this Propoſal was, that the Town's Arms ſhould be put into the Hands of the *moſt ſubſtantial Burghers*. This Anſwer, if given, was ſolid and judicious: Men of Subſtance and Property are the fitteſt to be intruſted with the Defence of the Laws, on which the Preſervation of their Properties depends: And it is truly ſurpriſing that the Libel, upon this Article, ſhould prefer to this a Scheme of arming a Number of Tradeſmen's Servants, who were to be allured to come into this Service by the Bait of a Guinea to be given to each of them; which is ſtated as another ſalutary Propoſal offered to the Provoſt at this Time. Such Propoſals could only proceed from wrong-headed or ſiniſter Views. Had the Provoſt intruſted the City-Arms to ſuch low People, whoſe Principles could not be known; and denied them to the moſt ſubſtantial Burghers, whoſe Intereſt was principally concerned in Defence of the Town, he might juſtly have been charged with the Blame of the Conſequences: And therefore it is hardly neceſſary to obſerve, that, were there any Colour of Relevancy in this Article, it could not affect the Pannel, as it is not pretended that the Propoſers ever laid it before the Council, who were the proper Judges; and their not doing ſo is real Evidence that they were ſatisfied of the Unfitneſs of the Scheme, from the Objections that obviouſly occurred againſt it.

The *fifth* Article charges the Pannel with a cold Reception given to Sir *Robert Dickſon*, and a Propoſal made to him, that his Volunteers ſhould inliſt in the *Edinburgh* Regiment. The firſt is a very extraordinary Article in a criminal Libel, and the Pannel believes will be found not to be true. The other ſhews, the great Anxiety of the Purſuer to find fault with the Pannel, let him hold what Conduct he will. Had he neglected theſe Volunteers, and refuſed them Meat or Pay, he might juſtly have been found liable to Blame; but that cannot be ſaid: He took care to provide them with Victuals as ſoon as they arrived; and the Handle taken to charge him is, that he alſo offered them Pay. It is not ſaid that he inſiſted any ſhould inliſt that did not incline, or that he refuſed to accept the Services of ſuch as were diſpoſed to aſſiſt the Town without Pay: But, that Pay ſhould at all be propoſed to theſe Volunteers, or inliſting in the City Regiment, though it was raiſed for the very ſame Purpoſe they profeſſed to come for, *viz.* the Defence of the City, and were to be diſmiſſed as ſoon as that End was attained; this is the Charge: And it is ſubmitted, whether there was the leaſt Colour to make this an Article in a criminal Accuſation.

The Fact as to *Andrew Alves*'s Meſſage has been already explained. The receiving it could be no Crime in the Pannel: He could not avoid it, unleſs he had ſhut his Ears before he knew what Mr. *Alves* was to tell him; and the Meaſure he took upon it was in conſequence of the Advice of Gentlemen of the Council, who thought it the moſt prudent Way to take no Notice of any thing that might diſpirit the Inhabitants at that Juncture. The Ground of the Accuſation is, That he did not immediately commit Mr. *Alves*: And if he had immediately committed him, which was the likelieſt Way to ſpread the Meſſage through the Town, he might with better Reaſon have been accuſed, that he had done it of purpoſe to intimidate the Inhabitants: So this Article, like moſt others in this Libel, turns ſtronger when it is inverted. If ſuch Accuſations are allowed againſt a Magiſtrate, he is in a bad Situation: For act he muſt; and whether he take the one Courſe or the other, he is ſure to be brought to the Bar as a Criminal.

The *ſeventh* and *eighth* Articles charge the Pannel with receiving a Petition from the Inhabitants, keeping a Meeting with them, and hearing a Letter read from the Pretender's Son. The receiving the Petition was unavoidable, unleſs he had ſhut himſelf up in a Cloſet, and then he might have been juſtly blamed for keeping out of the Way in Time of public Danger. As little could the calling of a Meeting of the Inhabitants, at ſuch a Juncture, have been faulty or blameable: But it has been already obſerved, he called no Meeting; but the Inhabitants, under Terror of the approaching Danger, preſſed in upon him wherever he went, and would have their Complaints and Remonſtrances heard, and the Pretender's Son's Letter read, after the Pannel had oppoſed it, and left their Company to avoid hearing it.

The Part the Provoſt acted at this Meeting, and the Pains he took to animate the Inhabitants to concur in Defence of the City, has been already ſtated, and, as it is notoriouſly known, muſt juſtify him in the Eyes of all Mankind againſt the Aſperſions now endeavoured to be thrown upon him: But then, taking the Articles as ſtated in the Libel, there is no ſort of Relevancy in them; neither the holding a Meeting of the Inhabitants, nor the ſuffering a Letter to be read from the Rebels, nor the ſending a Deputation to them, were they ſuppoſed the Acts of this Pannel, can be ſaid to be criminal in ſuch a Caſe. When Rebels are at the Gates, and have the Lives and Properties of the Inhabitants in their Power, the great Law of Neceſſity, which, in the Nature of Things, muſt make an Exception from every human Law, legitimates any Intercourſe that is neceſſary to ſave the Inhabitants from the threatened Deſtruction.

It is unneceſſary to enlarge upon this Argument; it is evident, not only from the Reaſon of the Thing, but the Hiſtories of all Countries in which Rebellions have ever been raiſed: It was never before pretended to be a Crime in the Subjects of any Country to treat with Rebels when their Lives were in their Power. The Laws forbidding Intercourſe with Rebels, can, from the Nature of the Thing, apply only to voluntary Intercourſe, and not to ſuch as is forced by invincible Neceſſity, when Subjects are deprived of the Protection of the Government, and not able to defend themſelves againſt a ſuperior lawleſs Force. Nay, in this very Rebellion, has it ever been conſidered as a Crime, in Gentlemen who were even in the immediate Service of his Majeſty, to treat with Rebels, or enter into Paroles or Engagements with them, when their Lives were in their Power? Has it been found criminal in Governors of Forts, which were built and intended for bearing Sieges, as the Town of *Edinburgh* never was, to enter into Capitulations with Rebels when they found it neceſſary? Was the Mayor of *Carliſle* tried as a Criminal for entering into an expreſs Capitulation with the Rebels, to ſurrender a City that is properly fortified, and might be preſumed to make a good Defence, or for making an expreſs Agreement to deliver up the Arms and Ammunition? Or was he tried for going, after the Surrender, as Mayor of the City, with the Sword and Mace before him, to attend the Proclamation of the Pretender? The Intercourſe this Mayor had with the Rebels was evidently of a much deeper Nature than any that is pretended to have been had by the Provoſt of *Edinburgh*: But yet ſo extenſive has been the Influence of the Miſrepreſentations of his Enemies, that he has for a Year and a Half ſuffered, and is now brought to Trial as a Criminal, while the other paſſes without Blame.

The other Circumſtance charged in this Article, with reſpect to the Pannel's refuſing to order the Dragoons to come into Town, has been fully explained

explained in ſtating the Fact, and it would be improper to trouble the Court with repeating it. He was deſirous of the Aſſiſtance of the Dragoons, had ſigned an Application for them alongſt with the Lord Advocate, had brought in Proviſions to Town for ſuſtaining their Horſes: He told the very Meſſenger referred to in this Article, that the Dragoons would be made extremely welcome, and that all the Force he had would be ready to join with them in Defence of the Town: He ordered the Conſtables to mount the Walls, to obſerve their Approach, that the Gates might be forthwith opened to admit them. And, after all this, will it be charged as a Crime upon him, that he ſcrupled to ſign an Order to Troops, over which he had no Power, ſingly by himſelf, which, after what had paſt, he could take in no other Light, but as intended to make him anſwerable for the Conſequences that might attend this Meaſure; and when he had been told the Night before, by Gentlemen of undoubted Skill and Loyalty to his Majeſty, that the Conſequence would probably be to ſhut up the Dragoons, and oblige them to ſurrender Priſoners to the Rebels?

Great Reaſon has the Pannel to be thankful that he did not fall into the Snare the Purſuer here complains of him for avoiding, which might have turned out much heavier than all the Articles muſtered together in this Libel, and ſix times as many more. Had the Dragoons been brought in upon his Order, and taken Priſoners, as the Gentlemen of the Military foretold, there would have been another Kind of Colour to argue, than from any Thing that has been yet ſuggeſted, that the Pannel had given Occaſion to the unlucky Defeat at *Preſton*, by ſhutting up the Dragoons, and depriving the other Troops of their Aſſiſtance, by which they might have been enabled to get the better of the Rebels.

Unhappy then muſt be the Situation of every Magiſtrate, if he is to be judged after this Meaſure. It is doubtful and difficult what Courſe ought to be taken. People of Skill are divided upon it. If the Magiſtrate take either one or the other Side, by this Way of proceeding his Fate muſt depend upon the Succeſs: Nay, if he ſhall be yet more cautious, and decline to determine either, but leave it to others of more Skill and Judgment in theſe Matters, as the Pannel did in the preſent Caſe, ready to acquieſce and concur in whatever they ſhould determine, yet it ſeems he cannot avoid to be held as a Criminal: He had before given his Conſent to the bringing in thoſe Dragoons, and was at all Times ready to admit them, if it was thought proper to bring them; and yet he muſt be accuſed, becauſe he did not ſign an Order, ſubjecting himſelf to the Conſequences of a Meaſure which was judged, by People of the beſt Skill, to be dangerous and improper.

The *ninth* Article of this criminal Libel, charging the Pannel with neglecting to give Orders to the Volunteers, when they had been long ſtanding under Arms, has been already explained in point of Fact: That, without applying for Orders, they thought fit to determine themſelves to give up their Arms, and throw up the Service; which is a full Evidence of their Judgment, that the Defence of the City was an impracticable Meaſure; and an Evidence of ſo much the greater Weight, as neither their Zeal in the Undertaking, nor their Courage in going through with it, had it been found practicable, can at all be called in queſtion.

But, next, as to the Relevancy, were the Fact ſuppoſed to be true, the Anſwer is too plain almoſt to be ſtated. The Volunteers, and not the Pannel, were to blame, in that they either took or executed ſuch Reſolution without Orders from the Council. If they had applied to the Pannel for Orders, as the Libel alledges, it was no Wonder, in the Situation Things then were, that they did not get an immediate Return. The Lords have obſerved in what Situation the Provoſt and Council were at that Time, ſurrounded by the Inhabitants, who were alarmed with terrible Accounts of the Rebels, and frightful Threatenings of which they dreaded the immediate Execution; the Provoſt endeavouring to animate and ſtir them up to the Defence of the Town, by all the Arguments he could uſe; the Inhabitants declining to hearken to any Defence; and new Accounts coming every Moment, which made it uncertain what Reſolution to take. In ſuch Circumſtances it ought to have been no Surprize to the Volunteers, if they had been kept waiting Orders for a conſiderable Time; it was their Duty to have continued at their Alarm-Poſts, till Orders were ſent. And it cannot be laid as a Load upon the Provoſt or Council, that the Volunteers thought fit to take a contrary Courſe, and give up their Arms, without waiting the Reſolutions of the Council.

The *tenth* Article conſiſts of three Branches. The *firſt* is, The Refuſal of Orders to ſpike up the Cannon. As to which the Fact has been already fully ſtated, and it is obvious there is no Relevancy in it, when it was equally eaſy for the General to cauſe nail them without any Orders from the Provoſt or Council. And it is not pretended that any Perſon he ſent was oppoſed in the Execution of it, but, on the contrary, the Town-Officers were ordered to ſhew them where the Cannon were, and the Serjeant had actually begun to nail them, until he was ſtopt by a Meſſage from the General, after he had got the Account of Sir *John Cope*'s Arrival, as has been already obſerved.

The *ſecond* is, 'The Orders alledged to have been given to Captain '*Dalziel* to keep Guard on the 16th *September*, with One-third of the 'City-Guard, the uſual Complement in peaceable Times.' But neither is there any Relevancy in this, when your Lordſhips conſider the Circumſtances at the Time, as confeſſed on both Sides. The Volunteers had given up their Arms to the Caſtle, ſo had the Men who had been levied in the City-Regiment. No Proſpect of Defence of the Town, unleſs ſome Aſſiſtance ſhould come from without. In ſuch Circumſtances, it is a very odd Complaint, why was not this whole Company of 126 Men kept on Foot to fight the Army of the Rebels, which conſiſted of ſome Thouſands? It is plain the whole or a third was all the ſame in ſuch a Situation: And therefore it is unneceſſary to add, that the Guard had been ſo fatigued with the ſevere Duty they had undergone for ſome Days before, that the whole of them could not have been able to do Duty that Night, whatever Orders they had received.

The laſt Branch of this Article is, 'That the Pannel gave Orders to 'the Trained-Bands, who had been upon Guard at the ſeveral Gates of 'the City, to quit their Poſts, and diſpoſe of their Arms in ſuch Places 'where they muſt be expoſed to fall into the Hands of the Rebels.' This Article is too ambiguouſly laid to be admitted in a criminal Libel: The Crime is to be inferred from the Places where the Arms were to be left, and yet thoſe Places are not condeſcended on. This is directly inconſiſtent with the Nature of all criminal Procedure, which requires that the Libel be laid clear and unambiguous, ſo as the Pannel may know every Circumſtance of the Fact he is called to anſwer, and be prepared either to exculpate himſelf, or elide it by a contrary Proof.

But, *2dly*, It is not conceivable what the Libel can mean, by ſpeaking of Places where Arms would be expoſed to fall into the Hands of the Rebels when they ſhould become Maſters of the City. It is evident, in that Caſe, in whatever Place of the City Arms were laid, they muſt be alike liable to fall into their Hands; an Order, under Pain of military Execution, would in a few Hours bring in all the Arms that were in any Town they became Maſters of, in whoſe-ever Poſſeſſion they were: And therefore the Libel, as to this Article, is not ſo conceived as to receive any diſtinct Meaning, or to admit of a proper Anſwer.

The *eleventh* Article ſets forth, 'That it was propoſed and urged in 'Council, that the whole City-Arms ſhould be lodged and ſecured with-'in the Caſtle of *Edinburgh*, in order to prevent their falling into the 'Hands of the Rebels; but the Pannel refuſed or declined to give any 'Order for that Purpoſe; neither in Fact were the City-Arms ſo lodged 'and ſecured, but were ſeized by the Rebels upon their entering the City 'the Day following.'

But this Propoſal, ſaid to have been made in Council with reſpect to the Arms, is intirely new; and it is ſomewhat ſtrange it ſhould be ſo, if truly made, as theſe Matters have been ſo much the Subject of Converſation for almoſt two Years paſt; nor can the Pannel recal any ſuch Propoſal to his Remembrance.

The true State of the Fact, with reſpect to the Burghers Arms, has been already laid before the Court: That the Provoſt did all that was in his Power to keep thoſe Arms, though of very little Value, out of the Hands of the Rebels: That he ſent a Meſſage to the Generals in the Caſtle, to ſend a Party to take them out of the Hands of the Inhabitants, as the Council could not, for the Reaſons already mentioned, compel them to deliver them up to the Caſtle: And it will alſo be proved, if any Proof is to be brought in this Caſe, that when the Provoſt was giving Directions to the Trained-Bands, he told them, that if the Rebels approached to the Place, he hoped they would do their Duty, and behave like Men in Defence of the City; and if the Rebels ſhould prevail, he expected that, at any Rate, they would take care to ſecrete their Arms, that they might not fall into their Hands.

But, abſtracting from theſe Facts, the Pannel is adviſed, that there is no Relevancy in this Article of the Libel: For, *firſt*, It is ſaid, That the Propoſal was made in the Town-Council, and it is not alledged, or pretended, that the Council approved of the Propoſal, or authorized the Pannel to grant the Order; and, if they did not, it was the Council, and not the Pannel, who declined to concur in this Meaſure; eſpecially as the Pannel had truly no Right to diſpoſe of the Arms, or to ſend them off without the Liberties of the Town, without Authority of the Council. It is a very new Ground of Accuſation againſt the Preſes of a Meeting, that, when a Propoſal was made to the Meeting, and either rejected, or not approved of by them, he was guilty of a Crime, becauſe he did not over-rule the Reſolutions of the Meeting, of which he was but one Member, and act beyond or contrary to the Directions they thought fit to give him in a Matter over which he had no Power to controul them: It is believed it will be difficult to find any Inſtance, where an Omiſſion of this Nature has been made the Foundation of a criminal Charge.

But, in the next place, when the Circumſtances of the Caſe are conſidered, which are notorious to all the World, and confirmed by the Production made by the Purſuer in this Caſe, every Mortal muſt ſee why the Council could not grant or authorize ſuch Orders as is here mentioned, had it at that Time been ſuggeſted or propoſed. Repeated Threatenings had been ſent from the Rebels to the Town, by Writings which the Purſuer has produced, and given out with the Libel; a like threatening verbal Meſſage was ſent by Mr. *Alves*, all tending to the ſame Import, That, if the Town ſhould ſend off the Arms or Ammunition in their Poſſeſſion, they ſhould be treated in the ſevereſt Manner, and ſuffer all kind of military Execution. The Inhabitants had no Means to defend themſelves from the Execution of theſe Threats: And was it to be expected, that, when the Rebels were at the Gates, and the Dagger in Effect at their Throats, they would expoſe themſelves to it for the ſake of preſerving Arms of whatever Conſequence, much leſs ſo inſignificant as theſe Burgher-Arms are known to have been in this Caſe?

It is eaſy for People at Eaſe and in Security to talk of ſuch Diſtreſſes without much Concern; but let them put themſelves in the Caſe of thoſe they are to judge of, and then ſay, whether it is agreeable to the Nature of Mankind, to expoſe themſelves, and all that is near and dear to them in the World, to ſuch Sufferings, upon any Conſideration whatſoever; whether it is to be expected of them, and whether they ought to be puniſhed for not having done it.

We are not now to judge of the Terror of the Rebels from what they afterwards did, but from the Impreſſions People were then under of the Diſtreſſes they might ſuffer from them: It is well known never Enemy was received with greater Dread, or painted out in ſtronger Colours of Cruelty and Barbarity: From the News-Papers, from the Pulpits, from all the beſt Accounts, nothing was to be expected from them but what was fierce, ſavage, and inhuman. Theſe Things had their good Effects, and perhaps were ſometimes a little exaggerated from well-meaning Motives: They tended to create in Men's Minds a great Abhorrence to the Rebels and their Cauſe; but then, at the ſame time, they raiſed an immenſe Terror, ſuch as ſtruck every City in the Nation, to which they approached, with the utmoſt Panick and Conſternation.

The black *Friday* is not yet out of Remembrance, and the Impreſſion the Approach of the Rebels then made, when they were removed from the greateſt City in the Iſland, at the Diſtance of

of more Days March than they were of Hours or Quarters from this Town, at the Period now in Queſtion. Let it be ſuppoſed, that the Rebel Army had been marching down from *Highgate-Hill*, or had been at *Weſt-Smithfield*, and had ſent in ſuch threatening Meſſages to the Lord Mayor; if he had no Army at Hand to defend the City, and had found no Diſpoſition in the Inhabitants to defend it, would he have adventured to deſpiſe the Threatening, or to ſend up the Citizens Arms to the *Tower*, by which their Lives and Properties muſt be expoſed to the lawleſs Fury and Barbarity of the Rebels? Or would he have been brought to the Bar as a Criminal, becauſe he had been careful of the Blood of the Inhabitants, (an Expreſſion that is laid againſt the Pannel in the preſent Caſe) and becauſe he had not expoſed their Subſtance to Plunder, and themſelves and their Families to Maſſacre?

The Diſproportion is indeed great betwixt the Inſtance put, and that which is the Subject of the preſent Queſtion; but both muſt be governed by the ſame Rules. Every Man's Life and his All is equally dear to him; and it does not depend upon the Greatneſs or Smallneſs of a City, whether it is lawful for the Governors to expoſe it to the Hazard of being deſtroyed, but upon the Circumſtances it is under at the Time, and the Proſpect of Relief from the impending Danger, of which there was none in the preſent Caſe.

And, with great Submiſſion, where is the Foundation of the Doctrine now pled for the Purſuer, in the Law, or in the Cuſtom of any known Country in the World? When was it heard of, that, upon a Town or a Fort being obliged to ſurrender, whether to Enemies or to Rebels, the Garriſon or the Inhabitants were bound to expoſe themſelves to the utmoſt Reſentment of the Enemy, for the ſake of keeping their Arms out of their Hands? Has it at any Time been brought as a Charge againſt the Governor of a Place, that he gave up the Arms to the Enemy, when he could not keep out the Place? Were not Arms and Ammunition given up at *Carliſle*, and at every other Fort that has been delivered up to the Rebels, either in this or any other Rebellion? And is there any Inſtance where that has before been made an Article of Accuſation?

It is no Anſwer, That, where there is no ſeparate Caſtle or Citadel, or where that is given up at the ſame Time with the Town, the Arms muſt fall in conſequence, as there is no Place in which they can be preſerved: For the Pannel is not charged here for the Loſs of the Arms, but for this, that they fell into the Hands of the Rebels. And it is well known it is in every Man's Power to break his Gun, and make it uſeleſs to the Enemy, whether he has a Caſtle to carry it to or not: And therefore, were there any Pretence for the Charge brought in this Caſe, it muſt equally affect the Commanders of *Carliſle*, and every Fort that has at any Time been given up to Rebels, why they did not at all Hazards deſtroy their Arms, that they might be of no Uſe to the Rebels. But, if ſuch an Objection was never heard of till this Libel appeared, it is a Demonſtration that the Libel in this Article is without Foundation.

And therefore it is the leſs neceſſary to obſerve, that, in the preſent Caſe, had it been the Duty of the Magiſtrates or Council, to order the Burghers Arms up to the Caſtle, let the Conſequence be what it would to the Inhabitants, it is obvious it was not in their Power to make their Orders effectual. What Force had they to compel the Inhabitants to a Scheme ſo deſtructive to themſelves? The Volunteers had already diſarmed themſelves, and ſo could be of no Uſe for that Purpoſe; the City Regiment had alſo given up their Arms to the Caſtle; the Trained-Bands were the Burgeſſes themſelves, who had their Wives, their Families, and moſt of them the Bulk of their Properties in Town, which they were quite averſe to expoſe to Deſtruction by ſuch a Meaſure: And the only Force the Magiſtrates had to compel them, was the Company of the Town-Guard, who, if they had been diſpoſed to obey at ſuch a Juncture, could very ſoon have been tied Neck and Heel by one hundredth Part of the Inhabitants.

And, *3dly*, It is proper to conſider, in this Caſe, the Uncertainty of the Situation to which the Magiſtrates and Council were reduced, during the laſt and moſt diſtreſſing Scene of this unlucky Affair; ſometimes terrified with the immediate Approach of the Rebels, at other Times encouraged with ſome Proſpect of Relief. Even towards the End of this Period, there were ſome Hopes of the Return of the Dragoons; Mr. *Drummond* and Mr. *Groſet* had gone in queſt of them: Nor was that Expectation quite over in the Meeting of the Council, until they heard the Rebels had entered the Town. Had the Dragoons returned to the City, and animated the People in its Defence, the Charge againſt the Pannel then would have been inverted, Why did he ſend up the Arms to the Caſtle? Why did he carry them out of the Way when they might be inſtantly wanted for Defence of the Town? And the near Approach of the Rebels made a Moment's Delay of great Conſequence; and the Citation might have been adduced, which is miſapplied in the preſent Caſe, *Quòd punctò ſæpe temporis maximarum rerum occaſiones amittuntur.*

Such was the unlucky Situation of the Governors of this City at that Time, that it would appear, by what has ſince happened, it was impoſſible they could eſcape Accuſation; the Event muſt make them criminal, however well-intentioned their Conduct might be: But their Anſwer is good, That no Law, no Cuſtom, requires the Inhabitants of any Place to expoſe their Lives, the Honour of their Wives and Daughters, and all that they have dear to them in the World, to the Fury of an incenſed Enemy, in order to keep Arms out of their Poſſeſſion. The Law of Humanity forbids it. That, in this Caſe, had the Magiſtrates been ſo minded, it was not in their Power to compel the Inhabitants to comply with it: Beſides, that the vacillant and uncertain State in which Matters then ſtood, made it very doubtful whether it was proper to have done it or not; and, in doubtful Caſes, it is againſt common Juſtice to accuſe or puniſh, becauſe of the after Event.

Theſe Anſwers would have been good to the Magiſtrates and Council, had they been brought to the Bar to anſwer for rejecting ſuch Propoſal as the Libel here ſuppoſes: They are all equally competent to the Provoſt, with this additional one, That he is only one Member of their Body, and cannot be accountable for omitting what the Council did not think proper to enjoin him, had they ever ſo much erred in their Judgment.

It would have ſounded very oddly in the Ears of the World, if the Generals in the Caſtle had been brought under Proſecution, becauſe they ſent to forbid the nailing of the Cannon, or becauſe they did not ſend a Party to ſeize the Burghers Arms upon the Meſſage already mentioned: It is believed the whole Nation would have been amazed at ſuch a Proſecution. And yet, with great Submiſſion, there is a Difference betwixt that and the preſent Caſe: The Generals run no Riſque by ſending Parties to execute any thing of that Nature within the Town, as little did their Parties, or the Garriſon under their Charge: But the Danger to the Inhabitants, who were committed to the Care of the Magiſtrates, was but too apparent, as well as too imminent, to be deſpiſed by any Sett of Men, who were as deſtitute of Defence and Relief as they were at that Time.

And the Pannel will be forgiven to ſay, that, if the whole Series of his Conduct, from the Beginning to the End of theſe Tranſactions, ſhall be conſidered, there will appear as little Reaſon to ſuſpect him of any bad Intention in this Caſe, as any other Subject within the Kingdom. The Court has already obſerved, that the Pannel, of his own Accord, ordered all the Ammunition that was in the Town's Magazine to be carried to the Caſtle ſome Days before the Rebels approached, and that he cauſed execute this Order ſo punctually, that it was neceſſary afterwards to ſend to the Caſtle for what was wanted for the Service of the Town. It has alſo appeared how averſe he was to bring Arms down from the Caſtle, when the Rebels were on their Approach to the City, unleſs he had the higheſt Probability that they were to be uſed in a proper Manner; and that accordingly he refuſed the Offer made by the Secretary at War, on the Part of the General, to ſend back the Arms which had been returned by the Volunteers and City Regiments, for this Reaſon, That he did not ſee a good Diſpoſition in the Inhabitants at the Time, to defend the City; and therefore was afraid the Arms, if ſent, might poſſibly fall into the Rebels Hands. How unjuſt then would it be, after ſuch Evidence of the Pannel's ſincere and upright Diſpoſition in this Matter, to ſuſpect him of a bad Intention, becauſe he did not enforce an Order upon his Fellow-Citizens, which, if obeyed, might have involved them in Miſery and Ruin, and which it was not in his Power to compel them to obey, and which is ſtated by his Accuſers as propoſed to the Council, to which he was ſubject, and is not alledged to have been by them approved or authorized?

The laſt Article of this Libel is full as extraordinary as any of the reſt, *viz.* 'That, by Occaſion of the ſeveral Inſtances of Miſbehaviour 'above recited, it came to be very notoriouſly known, that he was highly 'faulty and negligent in the Execution of his Office, and to be farther 'violently ſuſpected and believed, amongſt the faithful Subjects in that 'City, that he was ſecretly in the Intereſt of the Pretender, by reaſon of 'the Uniformity of his Behaviour, diſcovering a conſtant Unwillingneſs 'or Backwardneſs to provide for, or heartily proſecute the Meaſures that 'were in a Manner forced upon him, in order to the Defence of that 'City; at a Time when, if he had obſerved a contrary Conduct, there 'was at leaſt a high Probability that the City might have been preſerved 'from falling into the Hands of the Rebels.'

But it is hardly neceſſary to make any additional Anſwer to this Article, after what has been already obſerved. It is hoped it is apparent to the Court, that none of the Inſtances recited in this Libel, were they true, as moſt of them are not, could infer any Degree of Miſbehaviour againſt the Pannel: That his Conduct, from the Beginning to the End of theſe Tranſactions, has been uniform in the faithful Execution of his Duty: And that, from firſt to laſt, he never ſhewed any Unwillingneſs or Backwardneſs to concur in any Meaſure that could tend to the Service of the Government, but contributed more to foreward ſuch Meaſures, of his own free Motive and Accord, than can be pretended to have been done by any who may be pleaſed to entertain Suſpicions of him, or by all of them put together.

It cannot however eſcape Obſervation, that it is an unuſual Article in a criminal Libel, that a Pannel is violently ſuſpected by others to have been guilty. The Suſpicion of others can never infer Guilt, nor Evidence of Guilt, againſt any Man whatever, though the ſiniſter Views, which gave riſe to thoſe affected Suſpicions, had not been ſo apparent as they are in the preſent Caſe.

And, with Submiſſion, it is no good Anſwer that is made to this in the Purſuer's Information, That altho' they ſhould have carried their Suſpicion too far, in believing the Pannel to have been in the ſecret Intereſt of the Pretender; 'yet ſtill their entertaining ſuch Apprehenſion 'or Belief, is one Demonſtration, ſuppoſing that they had carried their 'Concluſion too far, that his Conduct was not ſuch as became a faith-'ful, vigilant, and zealous Magiſtrate on that Occaſion:' For an Apprehenſion founded upon Suſpicions, at firſt raiſed from indirect Views; and thereafter artfully propagated, and more eaſily ſpread thro' the Ferment of Men's Minds, during the Times of Diſtraction, can never be either Demonſtration or Evidence of any thing, other than the bad Origin from which they at firſt proceeded. Nor is it fair to lay any Streſs upon them at all, when it appears they have been carried the Length of falſe and injurious Concluſions; the ſame Diſpoſition which has been violent enough to carry them that Length, is to be preſumed at firſt to have given Riſe to them. The Pannel's Conduct ſpeaks for itſelf, and ſtands vouched by notorious Facts, which, independent of the Suſpicions either of the Wicked or of the Credulous, demonſtrate him to have acted a faithful Part in the Execution of his Office, vigilant and zealous for the Safety of the Town, and careful of the Welfare of its Inhabitants, of whom he had the Overſight in thoſe unlucky Times.

And it is truly ſurpriſing it ſhould be alledged, 'That if the Pannel had 'obſerved a contrary Conduct, there was high Probability that the City 'might have been preſerved from falling into the Hands of the Rebels, or 'that it fell into their Hands in a very ſtrange and ſuſpicious Manner, on 'the Morning of the 17th *September* 1745;' when it is as plain as Sunſhine, from the Facts already ſet forth, and which are notoriouſly known to be true, that, without the Interpoſition of a Miracle, it was impoſſible, as Circumſtances then ſtood, that this Town could miſs to fall into the Hands of the Rebels upon the 17th *September* 1745: It is notorious, that the Dragoons, and all the Military Force, had then left the Town; that the Volunteers, before that Time, had thought fit to give up their Arms to the Caſtle; that the *Edinburgh* Regiment, which was then hardly One-third full, and the Men only raiſed a few Days before, had alſo given up their Arms; that

that the Burghers, or Trained-Bands, declined to go up and expose their Lives in keeping out the Walls, when the Military had wholly deserted them; and they had understood, by repeated Threatenings from the Rebels, that any Man that appeared in Arms would be put to death. The Court has already heard the Pains which was taken by the Pannel to animate all these different Setts of Men in the Defence of the City, and the Success: And when such was the Case, where was there any Probability that the Town could stand out against an Army of Half the Number of the Rebels? or where is there any thing strange or suspicious in the Rebels becoming Masters of the Town, when it was thus deserted? Was the Pannel to go up, with as many of the Company of the Town Guard as were able to stand, after the Fatigues they had undergone for two Days before, and make head against this Body of Rebels? Or, if he had attempted it, would the Inhabitants have permitted the Town to have been stormed and sacked, which behoved, in such a Case, to happen in less than an Hour? It seems evident, that, in such a Concurrence of Circumstances, nothing could save the Town from being taken, unless it had pleased Providence to strike the Rebels with such Dismay and Terror, as many were then unluckily struck with, whose Duty it was to have opposed them.

The Pursuer is pleased to ask, 'Why did the Pannel advise with the 'Inhabitants? Why did he give way to a general Meeting in the Church? 'Why did he not order them to keep within Doors? Why did he not 'advise with his Fellow-Magistrates and Councillors, or with the chief 'Officers of the Volunteers, and deliberate with them upon the supposed 'Change of Circumstances? And if, in such Council, it had been de'bated and resolved, by Plurality of Voices, to be impracticable or inex'pedient to persist any longer in the Measure of defending the City, that 'Resolution might have justified or acquitted him; but that nothing of 'this Kind is alledged, and thereby he has taken the whole upon himself.'

But, with great Submission, it is a little surprising these Questions should be asked, after the Notoriety of the Facts already stated. It is certain Fact, nor is the contrary alledged in the Libel, that the Pannel acted in this whole Matter in Concurrence with his Fellow-Magistrates and Councillors. It cannot be said, that, from the Beginning to the End of this Affair, he ever opposed or over-ruled them in any one Article. The Officers of the Volunteers were also consulted with, and your Lordships have heard what Accounts they gave the Pannel of the Disposition of their Men with respect to the Defence of the Town; and that, in consequence of this Disposition, their Arms were all given up soon after. The Pannel ordered the Inhabitants to keep within Doors, and caused the Drum to go round for that Purpose: But what Force had he to compel them? Numbers of Instances are to be found in History, where considerable Garrisons have been forced by the Inhabitants to surrender a Town: And here it is made a Ground of Accusation against the Pannel, that he was not able to over-awe the Inhabitants of this populous City, when he had no other Assistance, either to defend the Town, or to keep them in awe, but such as had been taken a few Days before from among themselves, and who were all equally impressed with the same Terror of the Rebels, and Belief of the Impracticability of making an effectual Defence.

It is apparent the Pannel did all that any Man could do in the like Situation: He tried to animate the People, sent for the civil Officers of the Crown for Advice, and, when he found they had withdrawn, which, whatever Gloss the Pursuer may think fit to put upon it, is an Evidence of their Judgment that the Town could not be defended, he sent for the best Advice and Assistance he could get, and never parted with the Gentlemen of the Council, nor in any thing controuled their Advice, until the End of the Transactions now in question: And therefore, according even to the Doctrine laid down by the Pursuer, his Conduct falls to be justified; for it cannot be thought material, that there are no Minutes of the Town-Council or Committee remarked in the Record after the 13th or 14th of *September*. The two following Days were too much crowded with the many various and important Transactions above set forth, which succeeded one another every Moment, to take down Minutes regularly in Writing: But still it is sufficient for the Pannel to say, that it neither is nor can be pretended, that in any one Particular he controuled or overruled the Opinion of the Committee or the Council.

In order to give a greater Colour to the Charge against the Pannel in this Case, the Pursuer endeavours to represent the Office he was possessed of in this City, as superior and independent of the rest of the Magistrates and Town-Council: That he is the High-Sheriff, Colonel of the Trained-Bands, City Guard, &c. and, in a word, that the whole Government and Defence of the Town was solely devolved upon him. From which it is inferred, that he must be answerable for all Miscarriages, as if there had been no other Magistrate or Authority in the Town but what was lodged in himself.

But the Pannel is at a loss to discover upon what Authority the Pursuer builds this absolute Power he thinks fit to vest in the Lord Provost of this City; for it does not seem to have any Foundation, either in the ancient Laws, or in the late Regulations laid down by his present Majesty with respect to the Defence of the Town. By the Common Law, as well as the Statutes relative to these Matters, the whole Magistrates are considered to have an equal Concern in the Government of the Burgh. So says the Statute, *Ja.* IV. *Parl.* 6. *cap.* 87. and *Ja.* VI. *Parl.* 18. *cap.* 17. which 'forbids all Persons, of whatsoever Rank, to convocate or assemble 'themselves without due Intimation to the Provost or Bailies of the 'Burgh, and their License obtained thereto: and ordains the Inhabitants 'of the Boroughs to assist and concur with the Magistrates and Officiars 'for settling the said Tumults and Turbulencies, and punishing the 'Authors thereof.' And, as far as the Pannel knows, the other Magistrates have a joint Right to concur with the Provost in every thing relating to the Government of the Borough.

It is of no Moment to the present Question, that the Provost is in use to sit on Trials as High-Sheriff; for it is not alledged that he acted any thing in that Capacity in the Matters now called in question before the Court.

It is true, that, by the Act of Parliament establishing the Company of the City-Guard, the Provost is appointed Captain of it; and he is also the Commander of the City Trained-Bands, as being the first Magistrate in the Town: But still, in these Commands, he has no absolute Power, but is subject to the Directions of the Council.

And so it was also regulated by the Sign-Manual granted by his Majesty, in *September* 1745, authorizing to levy this Regiment for the Defence of the City. It is appointed to be under the Direction of the Lord Provost, Magistrates and Town-Council of *Edinburgh*; and the Magistrates and Council did accordingly take the Direction of it into their Hands; and though they paid the Compliment to the Provost, to name him Colonel of the Regiment, yet it was in their Power to turn him out, and name another, when they thought fit; and the Nomination bears, That he was to conduct and direct the Regiment, and the Officers who should be named to command under him, as the Council should think proper; and therefore, in this military Capacity, he acted under the Direction of the Town-Council, from whom his Authority proceeded. It is humbly submitted to the Court, how far it is at all congruous to single him out in a Trial of this Kind, when it neither is nor can be alledged, that at any time he ever varied from or opposed that Direction.

In the Information on the other Side it is observed, 'That Notice was 'taken by the Pannel's Counsel, that he was possessed of a very large 'Property, consisting of a Stock of Wines, at *Leith*, but that it did not 'appear whether they intended to mention it as an Argument to evince 'the Pannel's Sincerity in desiring to keep the Rebels at a Distance, or as 'an Excuse for his not opposing them with Vigour and Zeal, lest he might 'be hurt in that Part of his Property.' And upon this some Insinuations are thrown out that might have been spared.

But it was not easy to misapprehend the Meaning of the Pannel's Counsel, in the Mention they made of the large Property he was possessed of in this Country, which was no ways particularly referred to the Wines at *Leith*, which makes but a very small Part of it, but principally to his personal Estate, and Debts due to him, to a great Extent, by many Gentlemen in the Country, which could not fail to suffer considerably by such a Convulsion as must happen when a Rebellion arises in a Country. This was overly mentioned by the Pannel's Counsel, as a Circumstance that made it improbable, that any Gentleman of Common Sense, in this Situation, would deserve the Censure thrown out in the Libel, of secretly abetting such Disorders; but the Pannel's Counsel gave no Handle for drawing the other Inference here insinuated, which is so injurious to the Pannel's Conduct, and so disagreeable to his Character. His Conduct stands in no need of such Excuses; it will stand the Test: He has not shewn, by any thing that has ever past in this Affair, that he put an Over-value either upon his Life or his Property, when his Duty came in Competition. The Wines were of little Moment in respect of the other Risques he behoved to undergo upon such general Distress of his Country; and it is unjust to insinuate any Suspicion of such low Motive, when it is apparent he has given no Occasion for it from any Part of his Conduct, however strictly and rigorously examined.

The Pursuer is pleased to argue, 'That the Facts here charged, if done '*dolose animo*, would have amounted to High-Treason; and therefore it 'is a great Lenity that the Pannel is only pursued for Misbehaviour; and 'Citations are brought from Sir *Matthew Hale*, to prove that the deliver'ing up the King's Castles to his Enemies, through Treachery, Bribery, '&c. is High-Treason; and from *Herodius*, to prove that Negligence in 'publick Officers may be severely punished.'

But the Pannel has little Occasion to trouble the Court with enlarging upon these Authorities, because he cannot discover they have the least Connection with the present Case: he has no Occasion to dispute, that the delivering up the King's Forts to Enemies or Rebels is High-Treason; or that wilful Faults and Neglects in publick Officers may be punished: But it is, nevertheless, equally true, that when a Fort is taken by a superior Force, which could not be resisted, there is no Crime at all in the Case: Nay, in the very Page quoted in the Pursuer's Information from Sir *Matthew Hale*, Vol. I. p. 168, it is laid down as a Rule, That if a Subject should swear Fealty to the King's Enemies, if it is done for fear of his Life, and he returns as soon as he can to his Allegiance, he is not punishable. It is incumbent on the Pursuer to reconcile with this Authority that Part of the Charge which is so much insisted on in this Case, and to shew how the same Law that excuses a direct Adherence to the King's Enemies, when compelled by fear of Death, can punish the leaving Arms to fall into their Hands, when compelled by the same Terror; or can punish an Omission to give an Order to abstract them in such Circumstances, which is the Charge laid in this Libel.

The Pannel shall not dispute, that it is a Lenity to prosecute for a lower Crime, when a higher is incurred; but he must be forgiven to think That does by no means apply to his Case, and that the Hardships he has suffered are of a pretty singular Nature: That, after having lived so long in the World with an irreproachable Character, and served his Country in Parliament with an intire Reputation, remote from every sinister View, and thereby deserved the Esteem of his Constituents, as a Mark of which they conferred on him the Office of chief Magistrate of this City: That, because he had the Misfortune to see his Country involved in publick Confusions before the End of his Administration, and the City irresistibly overpowered by lawless Force, after all the Precautions he had taken to prevent it, the Malice of his Enemies should have so far prevailed against him, as to bring him under a Suspicion of Guilt, and subject him to the heavy Sufferings he has already undergone: And now, when after the strictest Scrutiny and Inquisition into his Conduct for above twenty Months past, the Charge appears fully drawn out, the Bulk of it consists of supposed Omissions, or Errors in point of Conduct, which, if the contrary Steps had been taken, might have been equally found fault with, as the Event turned out; and the two Articles upon which the chief Stress is laid, when the Circumstances of the Case are considered, do truly resolve into no more but that he was not able to keep out the Town when all Assistance had deserted him, nor to prevail with the Inhabitants to secrete their Arms, when they were under the immediate Terror of their Lives. These Things he hopes will not be imputed to him as a Crime, but that he will be relieved from all farther Hardships by your Lordships Justice,

in dismissing the Libel as irrelevant, and assoilying him from this Prosecution.

In respect whereof, &c.
JAMES FERGUSON.

Upon the 31st *July* 1747, the Diet was adjourned till *Monday* the 3d *August* thereafter, and upon that Day the Diet was farther adjourned till *Thursday* the 6th of that Month.

Curia Justiciaria S. D.N. *Regis, tenta in nova Sessionis Domo Burgi de* Edinburgh, *sexto Die Mensis* Augusti 1747. *per nobilem & potentem Principem* Archibaldum *Ducem de* Argyll *Justiciarium Generalem, & honorabiles Viros Magistros* Alexandrum Fraser *de* Strichen, Patricium Grant *de* Elchies, Carolum Areskine *de* Tinwald, & Hugonem Dalrymple *de* Drummore, *Commissionarios Justiciarii dict.* S. D. N. *Regis.*

Curia legitimè affirmata.

Intran.

ARCHIBALD STEWART of the City of *Edinburgh*, Merchant, and late Lord Provost of the said City, Pannel,

Indicted and accused as in the former Sederunt.

The Lords, after arguing upon the Libel and Informations, pronounced the following Interlocutor: 'The Lords Justice-General, and Commissioners of Justiciary, having considered the criminal Libel pursued at the Instance of *William Grant* of *Prestongrange*, Esq. his Majesty's Advocate, for his Majesty's Interest, against *Archibald Stewart*, of the City of *Edinburgh*, Merchant, and late Lord Provost of the said City, Pannel, with the foregoing Debate thereupon, they find it relevant to infer the Pains of Law, that the Pannel, at the Time and Place libelled, being then Lord Provost of the City of *Edinburgh*, wilfully neglected to pursue, or wilfully opposed or obstructed, when proposed by others, such Measures as were proper or necessary for the Defence of the City against the Rebels, in the Instances libelled, or so much of them as do amount to such wilful Neglect; and find it relevant, as aforesaid, *separatim*, That the Firelocks and Bayonets belonging to the City, or the Cannon mounted on the City-Walls, fell into the Hands of the Rebels through the wilful Neglect of the said Pannel; or that he refused or declined to take proper Measures, when required or demanded, which were in his Power, for securing or rendering useless to the Rebels the said Arms: And find relevant, as aforesaid, all such Acts charged upon the Pannel by the Libel, which shall appear to have been unnecessarily done by him, and which did manifestly tend to the preventing or weakening the Defence of the City, or the facilitating the Rebels getting Possession thereof, or their seizing the Arms therein. But allow the Pannel to prove all Facts and Circumstances alledged in his Defence for eliding or alleviating the Crimes charged upon him as above found relevant: And remit the Pannel, with the Libel as found relevant, to the Knowledge of an Assize.' *Signed*,
ARGYLL, *I. P. D.*

Thereafter a Bill was presented to the said Lords for *William Grant* of *Prestongrange*, Esquire, his Majesty's Advocate, humbly shewing, That where he brought a criminal Libel, at his Instance, before their Lordships, against *Archibald Stewart*, Esq. late Lord Provost of *Edinburgh*, for the Crimes of Neglect of Duty and Misbehaviour in Office, as more fully enumerate and mentioned in the criminal Libel raised, and now depending at his Instance against him thereanent, that the first Diet for the Provost's Compearance being some time ago elapsed, and standing by Adjournment fixed from former Diets to this Day; and *Walter Grosset*, Collector of the Customs at *Alloa*, a material Witness in this Cause, and though given out in the List of Witnesses, along with others, to the said *Archibald Stewart*, being not then returned from *London* to *Scotland*, tho' daily expected, was not cited, and consequently no Execution given in against him to the Clerk of Court, whereby the Complainer would be prejudged for want of his Evidence, unless their Lordships provided a Remedy: That the Fact was, Mr. *Grosset* was out of the Kingdom, at least in *England*, and did not return to *Scotland* till the seventh of *July* last, when the Warrant in the criminal Letters for summoning Witnesses was useless, by the Elapse of the Day to which they were thereby directed to be cited, which was the third Day of the said Month of *July*; and as the said *Archibald Stewart* could qualify no Loss by allowing Mr. *Grosset* yet to be cited, and that, in the Prosecutor's Apprehension, it was no ways disagreeable, either to Law or Practice, to give a farther Warrant for citing the said *Walter Grosset* to any short Day they pleased to appoint: Therefore praying their Lordships for Letters of Diligence for summoning the said Mr. *Walter Grosset*, as a Witness in the said Cause, in common Form.

Which Bill being publicly read in Court, Mr. *Alexander Lockhart*, as Counsel for the Pannel, represented, That he had no Power from the Pannel himself to oppose this Bill, yet, as it was new and unprecedented, and might prove of dangerous Consequence in after Trials, if such a Practice was introduced in this Court, he therefore objected, that this Bill could not now pass, in regard that, by the constant and uniform Practice of this Court, all criminal Letters, with the Executions against the Party, Witnesses and Assizers, are lodged in the Hands of the Clerks of Court forty-eight Hours at least before the Trial, that the Pannel may have an Opportunity to see the same, and not only to object against the Formality thereof, but likewise to prepare himself to prove such Objections as he may have against the Witnesses that appear to be cited: That, if this Practice were allowed, it might be in the Power of a Prosecutor to protract a Process for ever; he might give a List of ten thousand Witnesses, and only return Executions against ten of these, and every now and then drop in a Bill, and tell the Lords such a Witness is a material Witness, and therefore must be cited; and, even in the midst of a Proof, supposing a relevant Objection sustained against a Witness, upon account of an Informality in the Execution, a Prosecutor has nothing to do, but to stop short, and tell the Lords this was a material Witness, and he must have a Diligence for citing him of new; and it was submitted to their Lordships, whether they would grant such an extraordinary Demand; and as little it was hoped they would comply with the present, which was altogether new and without Precedent, and might prove of such dangerous Consequence in general.

The Lord Advocate answered, That though the Diligence now sought was new, yet it was no ways unreasonable or unjust; if the Desire of it was granted, he was willing the Pannel be indulged with a convenient Time for preparing himself to prove, or bring any Objections he might have against this Witness; that of two Remedies the easiest was to be chosen: For, as Mr. *Groset* was a very material Witness, either he must be cited in this Way, or, if the Lords should not judge that proper, the Prosecutors would desert this Diet, and raise a new Prosecution, which would protract the Time; and therefore, as the Pannel could be no ways prejudged by this Demand, he hoped their Lordships would pass the Bill.

'The Lords Justice-General and Commissioners of Justiciary having 'heard this Bill, as also Parties and their Procurators *hinc inde* for and 'against granting the Desire thereof, as above, they refuse the Bill.'
Signed, ARGYLL, *I. P. D.*

His Majesty's Advocate, in respect the Lords have, of this Date, judged it not competent to give Warrant of new for citing *Walter Groset*, Collector of the Customs at *Alloa*, though he had been in the List given to the Pannel, Mr. *Stewart*, but omitted to be cited for the Reasons mentioned in the Bill given in for a new Diligence for that Effect, does not insist against the Pannel *Archibald Stewart*, *pro loco & tempore*, reserving Power afterwards to insist against him as accords.
Signed, WILLIAM GRANT.

'The Lords Justice-General and Commissioners of Justiciary, in respect his Majesty's Advocate does not insist against the said *Archibald Stewart*, they desert the Diet against him, and dismiss him from the Bar, reserving to his Majesty's Advocate to insist against him afterwards, as he shall see Cause.'
Signed, ARGYLL, *I. P. D.*

Thereafter Mr. *Gilbert Elliot*, Advocate, protested, that the said *Archibald Stewart* had fulfilled his Bond of Recognizance, by compearing from Time to Time at the several Diets of Court, and not departing this Court without Leave thereof, the Diet being now deserted, and he dismist from the Bar, that therefore the said Bond was voided; and thereupon took Instruments in the Hands of the Clerk of Court.

Proceedings in the Second Trial of *Archibald Stewart*, Esq.

Curia Justiciaria S. D. N. *Regis, tenta in nova Sessionis Domo Burgi de* Edinburgh, *vigesimo sexto Die Mensis* Octobris 1747. *per honorabiles Viros Magistros* Alexandrum Fraser *de* Strichen, Patricium Grant *de* Elchies, Carolum Areskine *de* Tinwald, & Hugonem Dalrymple *de* Drummore, *Commissionarios Justiciarii dict.* S. D. N. *Regis.*

Curia legitimè affirmata. Lord *Stricben* Præs.

Intran.

ARCHIBALD STEWART of the City of *Edinburgh*, Merchant, and late Lord Provost of the said City, Pannel,

Indicted and accused at the Instance of *William Grant* of *Prestongrange*, Esq. his Majesty's Advocate, for his Majesty's Interest, for the Crimes of Neglect of Duty, and Misbehaviour in Offices and Places of publick Trust, and the Violation of the Trust and Duty of such Offices, in Manner at length mentioned in the criminal Letters raised against him thereanent.

N. B. *The Libel here mentioned, is the same with the former Libel, p. 11. of the first Trial.*

The Libel being openly read, Mr. *Archibald Stewart*, Pannel, craved, That before he should be obliged to plead Guilty or Not Guilty to the Libel, he might be heard by his Counsel, whether or not he was obliged to answer to this second Libel at all?

Mr. *Lockhart* for the Pannel then insisted, That now, after a former Libel had been raised, the Cause debated, Informations given in, the Relevancy determined, and an Exculpatory Proof allowed to the Pannel, there could not, according to the Forms of the Court, any new Libel be raised: That any Processes of this kind, that have been deserted, and of new prosecuted, have been always considered as a Grievance upon the Subject: And by an Act of Parliament, *James* VI. *Parl.* 6. *cap.* 78. after repeating the many Grievances occasioned to the Subjects in the Execution of criminal Libels, and deserting of Diets when such Libels are executed, the Act directs, 'That, for the future, all Prosecutors shall find 'Caution to report their Letters duly execute, and insist in the Pursuit 'thereof, until the final End and Decision of the same, under the Penalty in the Act mentioned.' That however, in former Cases, the Crown-Lawyers have deserted Diets before pronouncing any Relevancy; yet there could not be an Instance shewn, where, after a Relevancy was determined, the Diet had been deserted; and if that were the Case, it might be in the Power of any King's Advocate, from a private Grudge, to raise a Process against a Subject, desert the Diet, raise a new Process, and so on *ad infinitum*; which would be equal to a Forfeiture upon the Party accused: That the Pannel did not of himself intend to make this Objection, but was advised to do so by his Lawyers; he being always unwilling to form any Objection that might in the least conduce to put off his Trial. At the same Time it was observed by his Lawyers, that it might prove of dangerous Consequence to the Lieges in general, were such a Precedent allowed of; and thereof, at the same Time that the Judgment of the Court was demanded upon this Question, represented, That he was willing to wave the Objection, provided the Pannel was reimbursed of his Expences in the former Trial, to shew their Lordships that the Pannel wanted nothing more than to have his Cause tried, and himself vindicate, by a full Trial.

The Lord Advocate answered, That the Counsel for the Pannel had mentioned no Law whereupon to found their Objection; that the Practice of the Court has been, Time out of Mind, to desert Diets, and allow of new Prosecutions; that there was no Difference of deserting a Diet before or after the Relevancy was determined. If indeed the Pannel had *tholed* * an Assize, then he might have had Ground to object against a Trial, and to complain that it was oppressive. That the deserting the Diet formerly, was owing to the Pannel himself, who took Hold of a trivial Objection, against citing a Witness when the first Diet of Compearance was elapsed. And both this Point, and the Costs acclaimed by the Pannel,

* An old *Scots* Law-term, signifying a Party's having stood Trial, till the Jurors did inclose, or return their Verdict.

were submitted to their Lordships. At the same time, he declined entering into any Contract with the Pannel upon that Head, but depended wholly upon their Lordships Determination.

'The Lords Commissioners of Justiciary having considered the foregoing Debate, find the Pannel, *Archibald Stewart*, must still answer, and plead Guilty or Not Guilty to the present Libel, notwithstanding of the Objection moved for him thereagainst, arising from what is alledged of the deserting the Diet in the former Libel, after pronouncing Interlocutor on the Relevancy thereof.' *Signed*

ALEX. FRASER, *I. P. D.*

Thereafter Mr. *Stewart* and the Lord Advocate both represented, That as the Defences, and Answers thereto, were fully pled, and contained in the Informations upon the former Libel, and were the same they had now to offer to the present, they agree to refer themselves to the said Informations, without giving the Court or themselves any further Trouble.

Then the Court pronounced the same Interlocutor on the Relevancy, as that pronounced the 6th *August* last on the first Libel; and thereafter continued the Diet till next Day at Eight o'Clock in the Morning; and ordained Parties, Witnesses, and Assizers, then to attend, each under the Pains of Law.

Curia Justiciaria S. D. N. *Regis, tenta in nova Sessionis Domo Burgi de* Edinburgh, *vigesimo septimo die mensis* Octobris, 1747, *per honorabiles Viros Magistros* Alexandrum Fraser *de* Strichen, Patricium Grant *de* Elchies, Carolum Areskine *de* Tinwald, & Hugonem Dalrymple *de* Drummore, *Commissionarios Justiciarii dict.* S. D. N. *Regis.*

Curia legitimè affirmata. Lord *Strichen* Præses.

Intran.

ARCHIBALD Stewart of the City of *Edinburgh*, Merchant, and late Lord Provost of the said City, Pannel, indicted and accused as in the former Sederunt.

Follows a List of the Persons Names and Designations who were cited to pass upon the Pannel's Assize.

Sir *Charles Gilmour*, of *Craigmillar.*
Sir *Alexander Nisbet*, of *Dean.*
William Baird, of *Newbyth.*
Sir *John Inglis*, of *Cramond.*
Sir *Robert Myreton*, of *Gogar.*
William Keir, Portioner of *Drumsheugh.*
John Watson, of *Muirhouse.*
John Nisbet, Portioner of Water of *Leith.*
John Cochran, of *Alderston.*
James Dewar, of *Vogrie.*
John Preston, of *Gorton.*
George Warrander, of *Bruntsfield.*
John Sivright, of *Meggatland.*
Archibald Brown, of *Blackford.*
James Falconer, of *Monkton.*
Thomas Wood, of *Warriston.*
James Davidson, of *Haltree.*
Patrick Crichton, of *Woodhouslie.*
Robert Fisher, of *Newhall.*
Thomas Trotter, Merchant in *Edinburgh.*
Thomas Dundas, Merchant, and late Bailie there.
John Paton, Bookseller there.
William Hogg, Merchant there.
William Ormston, Coppersmith there.
James Parquhar, Merchant there.
Alexander Grant, Merchant there.
John Brand, Merchant there.
Hugh Clerk, junior, Merchant there.
Alexander Peter, Wright there.
David Clerk, Wigmaker there.
John Osborn, Merchant, and late Provost of *Edinburgh.*
William Wright, Baxter there.
Alexander Campbell, Brewer there.
William Sands, Bookseller there.
John Home, Coachmaker there.
Neil Macvicar, Merchant there.
William Tod, senior, Merchant there.
James Mitchelson, Jeweller there.
Archibald Angus, Merchant in *Edinburgh.*
Robert Fleming, Printer there.
James Heriot, Wright there.
James Stirling, Merchant there.
Henry Antonius, Wright there.
James Hunter, Wright there.
Edward Lothian, Goldsmith there.

ARGYLL.
AND. FLETCHER.
P. GRANT.
CH. ARSEKINE.

'The Lords Commissioners of Justiciary fine and amerciate Sir *John Inglis* of *Cramond*, *William Keir* Portioner of *Drumsheugh*, *John Watson* of *Muirhouse*, *George Warrander* of *Bruntsfield*, *James Davidson* of *Haltree*, *Thomas Dundas*, Merchant and late Bailie of *Edinburgh*, *William Hogg*, Merchant in *Edinburgh*, *Alexander Grant*, Merchant there, and *William Tod*, *senior*, Merchant there, and each of them, in the Sum of One Hundred Merks *Scots*, for not appearing this Day and Place, to pass upon the Assize of the said *Archibald Stewart*, Pannel, as they who were lawfully cited for that Effect, and three several Times called from the Bar, and at the Door of the Court House, by a Macer of Court, as Use is.' *Signed*, ALEX. FRASER, *I. P. D.*

'Mr. *Archibald Stewart*, Pannel, judicially passed from any Objection competent to him on Account of there not being a Majority of landed Men named to pass upon his Jury.' *Signed*, ARCH. STEWART.

The Lords then named the following fifteen Persons to pass upon Mr. *Stewart*'s Assize, *viz.*

Sir *Alexander Nisbet*, of *Dean.*
John Nisbet, Portioner of Water of *Leith.*
James Dewar, of *Vogrie.*
John Sivright, of *Meggatland.*
James Falconer, of *Monkton.*
Thomas Wood, of *Warriston.*
Patrick Crichton, of *Woodhouslie.*
Thomas Trotter, Merchant in *Edinburgh.*
Hugh Clerk, junior, Merchant in *Edinburgh.*
William Wright, Baxter there.
Alexander Campbell, Brewer there.
Robert Fleming, Printer there.
James Stirling, Merchant there.
James Hunter, Wright there.
Edward Lothian, Jeweller there.

And no Objections being made to any of them, they were all lawfully sworn.

Follows a List of the Writings referred to in the Libel.

1. Letter from the Pretender's Son, bearing Date from his Camp, 16th *September*, 1745, addressed, *To the Lord Provost, Magistrates, and Council of Edinburgh.*

2. Answer from the Pretender's Son to the first Deputation sent by the Magistrates and Council to his Camp.

3. Answer from *ditto*, to the second Deputation from *ditto.*

4. Representation by the Ministers of *Edinburgh*, to the Lord Provost, Magistrates, and Council thereof, of Date 6th *September*, 1745, in favour of the Design of putting the City in a proper Posture of Defence.

5. Petition and Address to the Lord Provost and Magistrates of *Edinburgh*, of certain Burgesses and Inhabitants of the City, offering to serve as Volunteers in Defence of the City against the Rebels, with two Opinions of his Majesty's Advocate and Solicitor thereto annexed, of Date 7th *September*, 1745.

6. Application from the Lord Provost of *Edinburgh*, and his Majesty's Advocate and Solicitor to General *Guest*, on the 16th *September*, 1745, for a Party of Dragoons to assist in Defence of the City.

7. Representation of the Committee of Volunteers, to *Archibald Stewart* Lord Provost, without a Date, and unsigned, but found in the Custody of *Archibald Stewart* when he was apprehended.

8. Representation to the Lord Provost, Magistrates, and Council of *Edinburgh*, of certain Inhabitants of the City thereto subscribing, which bears no Date, but will be proved to have been presented to the Provost on the 16th *September*, 1745, and was found in his Pocket when he was apprehended.

9. Journal of what passed relating to the Defence of *Edinburgh*, from *Monday September* 2, till *Monday September* 16, in the Hand-writing of the now deceased Mr. *Colin Maclaurin*, Professor of Mathematicks in the College of *Edinburgh*, and found amongst his Papers after his Death.

10. Examination of *Archibald Stewart*, Esq. the 7th *December* 1745, before a Committee of the Lords of his Majesty's Most Honourable Privy Council.

His Majesty's Advocate, and Mr. *Alexander Lockhart* as Counsel for the Pannel, did admit and agree, that the several Matters and Facts contained in the Records of the Town-Council, and Minutes of the Committee, both produced in Process, do contain the Facts therein stated as they truly happened; and therefore agreed to hold the said Records and Minutes as probative of the Facts therein contained.

N. B. *The Matters and Facts referred to, and here admitted, are ingrossed in the two Informations.*

Mr. *Lockhart* did further admit, that the Articles No. 1, 2, 3, 5, & 6, in the List of Writings annexed to the Libel, as produced for proving the said Libel, are the Writings referred to in the Libel itself upon the several Articles, and are genuine; but did not thereby mean to admit any Facts stated in the Libel, or Information for the Prosecutor, with relation to these Writings.

N. B. *These Writings so admitted, are all ingrossed, and taken Notice of in the Informations.*

Follows a List of the Witnesses Names and Designations cited to bear Evidence against the Pannel.

N. B. *All those who were examined are marked thus* *.

**George Drummond*, Esq. present Lord Provost of *Edinburgh.*
**Archibald Macaulay*, Esq. late Lord Provost there.
**John Wilson*, Merchant, late one of the Bailies there.
**Gavin Hamilton*, Merchant, late one of the Bailies there.
**James Stewart*, Merchant, late one of the Bailies there.
Alexander Blackwood, Merchant, late one of the Bailies there.
**James Nimmo*, Esq. late one of the Bailies of *Edinburgh.*
**Hugh Hathorn*, late Dean of Guild there.
**Robert Baillie*, Merchant, late one of the Bailies there.
**James Grant*, Merchant, and present Town-Treasurer there.
*Sir *Robert Dickson*, Bart.
*Sir *George Preston*, of *Valleyfield.*
**James Millar*, late Servant to the deceased *Alexander Bruce*, of *Kennet.*
*The Honourable Mr. *James Leslie*, Advocate, one of the Commissaries of *Edinburgh.*
**Archibald Stevenson*, Writer in *Edinburgh.*
Andrew Bonar, Merchant there.
Andrew Currie, late Deacon of the Weavers there.
Nathan Porteous, late Deacon of the Skinners there.
**Patrick Lindsay*, Depute-Secretary to the Forces in *North-Britain.*
*Ensign *William Roberton*, of *Edinburgh* Castle.
**Robert Griffith*, one of the Gunners of the Castle of *Edinburgh.*
**Joseph Mead*, one of the Serjeants of the Castle of *Edinburgh.*
**John Hislop*, Storekeeper of the City of *Edinburgh.*
**Alexander Dryburgh*, Servant to the said *John Hislop.*
**John Dalgleish*, Watchmaker in *Edinburgh.*
George Cunningham, Surgeon there.
**Baillie Bryden*, Lieutenant of the Royal Regiment of Artillery.
*Mr. *Lewis Douglas*, Advocate.
*Mr. *John Tait*, Doctor of Medicine in *Dalkeith.*
**Richard Lindsay*, late Bailie of *Musselburgh.*
Andrew Alves, Writer to the Signet.
**Alexander Scott*, Merchant in *Edinburgh.*
**Thomas Dalyell*, one of the Captains of the City-Guard of *Edinburgh.*
**Alexander Cossar*, one of the Soldiers of the City-Guard there.
**James Tait*, Goldsmith in *Edinburgh.*

James Gilleſpy, Servant to the ſaid *James Tait*.
*Mr. *William Wiſhart*, Principal of the Univerſity of *Edinburgh*.
*Mr. *George Logan*,
*Mr. *John Glen*,
*Mr. *Alexander Webſter*, } all Miniſters of the Goſpel at *Edinburgh*.
Mr. *William Robertſon*, Miniſter of the Goſpel at *Gladſmuir*.
William Forbes, one of the principal Clerks of the City of *Edinburgh*.
**William Henderſon*, Writer there.
**James Murray*, Eſq; Receiver-General of the Cuſtoms of *Scotland*.
James Paterſon, Tide-Surveyor of the Cuſtoms at the Port of *Leith*.
*Mr. *Robert Craigie*, of *Glendoick*, Advocate.
*Mr. *Robert Dundas*, younger, of *Arniſton*, Advocate.
**Walter Groſet*, late Collector of the Cuſtoms at *Alloa*, now one of the General Inſpectors of the Cuſtoms of *Scotland*.
Alexander Macmillan, Writer to the Signet.
Anne Stewart, Relict of Mr. *Colin Maclaurin*, Profeſſor of Mathematicks in the College of *Edinburgh*.
**George Dunbar*, Merchant, late one of the Bailies of *Edinburgh*.
*Mr. *Joſeph Williamſon*, Advocate, one of the principal Town-Clerks of *Edinburgh*.
**Robert Tennent*, Merchant in *Edinburgh*.
James Rattray, Servant to *Robert Fleming*, Printer in *Edinburgh*.
John Paxton, Clerk to *Archibald Stewart*, Eſq; late Lord Provoſt of *Edinburgh*.
Robert Johnſton, one of the Soldiers of the City-guard there.
**David Lindſay* Writer in *Edinburgh*.
John Coutts, Eſq; late Lord Provoſt of *Edinburgh*.
*Mr. *Charles Erſkine*, of *Edinſhead*, Advocate.
Dougal Ged, Goldſmith in *Edinburgh*.
William Polſon, Vintner there.
**Charles Fraſer*, Merchant there.
**Donald Mackay*, Cadie there.
Walter Orrock, late Deacon of the Shoemakers there.
James Norrie, Painter there.
John Yetts, Merchant, and ſometime one of the Bailies there.
John Steven, Merchant there.
David Inglis, Merchant, and ſometime one of the Bailies there.
**Edward Inglis*, Druggiſt there.
Robert Boyd, Merchant there.
Alexander Crawford, Baxter there.
Archibald Eagle, Seed-merchant there.
Edward Caithneſs, Merchant there.
Francis Jaffray, Wigmaker there.
**Mark Sandilands*, Merchant, late one of the Bailies there.
**Alexander Hepburn*, Merchant there.
**Robert Brown*, Taylor there.
William Wightman, Shoremaſter at *Leith*.
Charles Leſlie, late Collector of the News-paper, intitled, *The Edinburgh Evening Courant*. [N. B. *This Witneſs was not cited.*]
William Smith, Merchant in *Edinburgh*.

Then the Lord Advocate adduced the following Witneſſes for proving the Libel againſt the Pannel.

I. *George Drummond*, Eſq; preſent Lord Provoſt of *Edinburgh*, ſolemnly ſworn, purged of Malice and partial Counſel*, examined and interrogate, depones, That, upon *Sunday* the 8th of *September* 1745, he was ſent by the then Lord Advocate to Provoſt *Stewart* the Pannel, to acquaint him, That his Majeſty's Sign-manual was come down for raiſing the *Edinburgh* Regiment of a thouſand Men; and, upon that Occaſion, he ſpoke to the Pannel about the Burghers aſſociating themſelves as Volunteers: but the Pannel doubted of the Legality of ſuch an Aſſociation, and deſired to have the Lord Advocate and Solicitor's Opinion thereupon; which was afterwards procured: But who procured it, or brought it to the Pannel, the Deponent knows not; but remembers, that he had a Converſation with the Pannel upon the Subject of that Opinion, after it came to his Hand: And at that Time the Pannel excepted to it, in regard the Opinion did not expreſsly mention, that it was not treaſonable; upon which an Addition to the former Opinion was obtained from the Advocate and Solicitor, bearing that the Aſſociation was not treaſonable: And which Opinion and Addition being ſhewn to the Deponent, depones, That they are the ſame which he has above deponed upon. Depones, That after it was reſolved to accept of the Volunteers, the Volunteers agreed among themſelves to have a Paragraph inſert in the News-papers; and which Paragraph was accordingly by them drawn up, and bore, That, upon the Receipt of his Majeſty's Sign-manual, authoriſing the Provoſt and Magiſtrates to raiſe a thouſand Men, and the inliſting the Volunteers, upon the King's Lawyers giving it as their Opinion, that this laſt might be warrantably done, the Provoſt chearfully ſet about it: And the Deponent was ſent from that Meeting, to ſhew this Paper to the Lord Provoſt; and he ordered the Deponent to ſtrike out the Words, *chearfully ſet about it*, and, in place thereof, inſert, *acquieſced in it:* And it was accordingly ſo put in the News-papers. Depones, That, the Night preceding the Meeting in the New Church Iſle, being the 9th *September*, the Pannel came to a Tavern where the Deponent and ſeveral other Volunteers were; and, after they had told him what they had been doing that Day, and what Succeſs they had in carrying forward the Subſcription, in order to aſſociate the Volunteers together, it was told the Pannel, that they had judged it proper to put on a Badge, or wear a Cockade, as a Mark of Diſtinction of their Loyalty to his Majeſty's Government: But this Propoſal the Pannel heard with a Sneer; and told them, he wiſhed they might not expoſe themſelves to the Ridicule of others: To which one of the Volunteers, who was the Deponent, made Anſwer, *When we put on that Badge, we'll take Care no Man ſhall dare to inſult us, be his Character what it will.* Depones, That upon *September* 10, at a Meeting of the Volunteers in the New Church Iſle, the Pannel came there, and a pretty large Liſt was given him by the Volunteers, out of whom they deſired to have their Officers named; and that, next Day, the Pannel delivered back the Liſt, he having named ſix Captains out of it; and deſired the Volunteers to name their own Subalterns: That, at the Meeting in the New Church Iſle, the Pannel, by ſeveral Expreſſions, ſignified his Approbation and Satisfaction with the Zeal which the Volunteers then ſhewed; but, at the ſame Time, and upon other Occaſions alſo, during that Week, ſeveral Things paſt, which denoted a Coldneſs in the Pannel as to the Meaſures which were then carrying forward. And, being interrogate by the Pannel, depones, He does not remember where it was, or who were in Company with the Pannel and him when that Converſation paſt betwixt them, concerning the Crown-Lawyers ſigned Opinion; but thinks it was on the Morning of *Sunday* the 8th. As to the third Article, depones, That the Deponent had ſeveral Converſations with the other Volunteers concerning the City-walls; which was occaſioned by Mr. *Maclaurin*'s Remonſtrances to them, that the Work was not carried on faſt enough, he being employed by the Town-Council in directing the putting theſe Walls in a Poſture of Defence: That the Deponent went ſeveral Times, and viewed the Works as they were carrying on; and, in his Opinion, they were carried on in a ſlovenly and careleſs Manner, there being few Hands employed: And he remembers, that Mr. *Joſeph Williamſon* Advocate, was ſent by the Volunteers to the Provoſt and Magiſtrates, as he thinks, with a Remonſtrance, and to deſire that ſome Things might be forwarded, as contained in a Note relative to theſe Works; whereof Mr. *Williamſon* reported that ſeverals were granted, and at the ſame Time told the Provoſt's Treatment of him was a little rough. Depones, That, upon *Sunday* Night, the 15th *September*, the Pannel, Capt. *James Murray*, General Receiver of the Cuſtoms, and the Deponent, being together in Mrs. *Clarke*'s, Vintner, Mr. *Maclaurin* came to get Orders from the Provoſt to load the Cannon, in order to try them: That Mr. *Maclaurin* waited ſome Time, the Pannel being then in a good deal of Hurry; but when he was going out, he told Mr. *Maclaurin*, That Mr. *Drummond* the Deponent would give him the proper Orders. As to Article fourth, depones, That it was ſeveral Times talked of to the Pannel in the Deponent's Hearing, to lay aſide the Trained-Bands; and for theſe two Reaſons; firſt, That ſeveral of the Trained-Bands were believed to be diſaffected; and, next, It was not convenient for the Volunteers to do double Duty, both in the Trained-Bands, and in their own Companies: That the Pannel diſapproved of this Propoſal, becauſe the Trained-Bands were the old Companies of the Town; and beſides, he thought it was imprudent to put a Mark of Diſtinction betwixt the different Inhabitants: That the Deponent remembers, that the Trained Bands of the City were laid aſide in the Year 1715, upon the Occaſion of the then Rebellion; and the Care of the City given to a Body of Volunteers, who had aſſociate themſelves much in the ſame Manner as thoſe did upon Occaſion of the laſt Rebellion. Depones, That he remembers a Propoſal made among the Volunteers, for employing a Number of able-bodied Lads, upon the Reward of a Guinea to be given to each of them, in order to fill up the *Edinburgh* Regiment; but knows not whether this Propoſal was made to the Provoſt or not. And, being interrogate for the Pannel, depones, That he knows not whether that Propoſal for laying aſide the Trained-Bands, was ever laid before the Council. As to Article fifth, depones, That he remembers, that, upon *Sunday* the 15th *September*, there was come to the Town of *Edinburgh*, of Volunteers, 42 from *Dalkeith*, 100 from *Muſſelburgh*, 180 Seceders, and 70 Exciſe-Officers; which, conjoined with above 400 Volunteers in the Town of *Edinburgh*, 200 of the *Edinburgh* Regiment, and 126 of the Town-Guard, made in all 1118 Men in the Town of *Edinburgh*, beſides the Trained-Bands. As to the ſeventh Article, depones, That, upon *Monday* the 16th of *September*, he heard from Lord *Home*, there was a Petition, ſuch as is mentioned in the ſaid Article, going forward; but he did not ſee it that Day: That, about Four o'Clock of that Afternoon, the Fire-bell rung, which was the Signal for the Volunteers to repair to their reſpective Poſts; and which the Deponent accordingly did, by repairing to his Poſt in the *Lawn-market*. As to Article Eighth, depones, That, previous to the ringing of the Fire-bell above-mentioned, the Deponent came into a Meeting of the Magiſtrates and Council in Goldſmiths-Hall, where Mr. *Groſet* was, who had come there to make offer of a Body of Dragoons being ſent into the Town, in caſe they were required: That, upon his coming in, he found the Council deliberating what was proper to be done upon that Occaſion: That the Pannel called to the Deponent, to give his Opinion concerning the giving up or defending the Town; the Deponent made anſwer, That there was no Occaſion to aſk his Opinion upon that Point, as he had given it formerly, and by his Actions teſtified his Inclination to defend the Town. That thereafter Provoſt *Coutts* came into the Meeting, and falling into Converſation with the Deponent, he frequently preſſed the Deponent to ſpeak: At laſt the Deponent carried him to a Corner, and ſaid to him, 'Why ſhould I ſpeak, conſidering the Lord *Home* told me, That he 'heard you ſay, on *Saturday* laſt, as you was coming up the New Bank 'Cloſe, and when he was looking out of the Lord Juſtice-Clerk's 'Dining-Room Window, That all the Buſtle and Work they were now 'making about defending the Town of *Edinburgh*, was idle, and Non-'ſenſe; for that the Provoſt had in his Pocket, three Days ago, the 'Terms ſettled in Writing upon which the Town was to be given up?' And Provoſt *Coutts* ſeemed concerned, and did not flatly deny it, but avoided owning it. Depones, That a little Time after he left this Meeting, he heard the Fire-bell ring; which made him go to his Poſt in the *Lawn-market*, as above deponed upon; and, after remaining with the Volunteers for about three Quarters of an Hour under Arms, and getting no Orders, the Officers amongſt themſelves thought proper to adviſe what was to be done; and at laſt came to this Reſolution, as they ſaw they could be of no Uſe to the Town, to return their Arms to the Government, from whom they had them; which was accordingly execute by the Volunteers, the Country Militia, the Seceders, and Exciſemen; who all marched up to the Caſtle, and delivered up their Arms, except two Companies of Volunteers, who remained upon Guard at the *Netherbow* Port; and when they returned from the Caſtle, it was about half an Hour after Sunſet. Depones, That, after coming from the Caſtle, he

* *Partial Counſel*, by the Law of *Scotland*, is, the inſtigating the Proſecution, or offering the Party to depone in his Favours; or being preſent with Lawyers at the Conſultation, where it might be ſhewn what was neceſſary to be proved.——And every Witneſs, by that Law, is obliged upon Oath to ſwear, that he did neither of theſe Particulars, which is called *purged of partial Counſel*.

he went to ſome Place in the Town, where he expected to get Horſes brought him; and, while he was there, Word came to him, That Mr. *Groſet* was come from the Country, with an Account, that Sir *John Cope* was landed at *Dunbar*; and that he was gone to inform the Magiſtrates of it: And upon this the Defendant went to the Council-Chamber, where he met with the Provoſt, and Council, and Mr. *Groſet*. That Mr. *Groſet*, upon his coming in, put into the Deponent's Hand Lord Advocate's Letter, with one directed to the Provoſt, as the Deponent thinks, and another from Mr. *Fall* in *Dunbar*, directed to Lord Advocate, telling of Sir *John Cope*'s Arrival off *Dunbar*. That, upon this, the Deponent told the Pannel, that he hoped he would now think of defending the Town, and ring the Fire-bell, to bring the People to their different Poſts: To which the Pannel made Anſwer, That we muſt be tender of the Blood of our Inhabitants; that they had ſent out ſome of their Magiſtrates to treat; and, ſhould the Rebels hear the Noiſe of the Fire-bell, they might hang them up. Then the Deponent propoſed, that a Drum ſhould be beat through the Town; but the Provoſt made Anſwer, That the Volunteers, and others, had delivered up their Arms, and the Military had left them; and they could not defend the Town by themſelves. The Deponent likewiſe told him, it was proper, ſince the Town could not be defended, that the Cannon which were mounted upon the Walls, and the Arms which the Inhabitants had, might be ſo ſecured, as that they ſhould not fall into the Hands of the Rebels. Upon this the Pannel handed over to the Deponent the Letter given in with the Libel, Number 1. and, upon reading it, the Deponent told the Pannel, That he did not know, but if they gave up the Town to the Rebels To-morrow, that the next Day the King's Troops might think they had a Right to uſe it as a Town taken from the Rebels. As to the eleventh Article, depones, beſides what is already ſaid, That the Number of Firelocks and Bayonets which were in the Town-magazine in the Years 1726 and 1727, when the Deponent was Provoſt, were about 1200; and that the Deponent believes the Trained-Bands uſed to be ſupplied out of that Magazine. And the Repreſentation given out with the Libel, Number Seven, being ſhewn to the Deponent; and he being interrogate, whether he knows any thing of the ſaid Repreſentation? depones, He remembers it to have been drawn up at one of the Meetings of the Volunteers where he was preſent; that it was read over to them, and afterwards ſent to the Pannel by Mr. *Williamſon*, one of their Number. And, being read to the Deponent, depones, That it is the Remonſtrance before-mentioned in his Oath. And being interrogate by the Pannel, whether or not the Deponent knows that Orders were given for all theſe Particulars by the Provoſt? depones, That the Repreſentation contains four Articles, *viz.* the firſt, concerning the Guards of the Town, of which the Deponent never heard afterwards any Complaint; the ſecond, concerning Ladders; and the third, concerning the inbringing of Meal; both which he believes were complied with, and immediately done; the fourth concerned the Wrights and Maſons being ſet to work; as to which, the Deponent knows, that Bailie *Robert Baillie* had the Town-Council's Orders, and their full Power veſted in him, to ſee to the Execution of theſe things relating to the City Walls: And the Deponent does not doubt but theſe Orders were given, though in fact very few more Workmen were employed, and ſet to Work. *Cauſa ſcientiæ patet.* And this is Truth, as he ſhall anſwer to God.

II. Mr *James Leſlie* Advocate, and one of the Commiſſaries of *Edinburgh*, depones, That, upon *Monday* the 16th of *September* 1745, about Ten o'Clock Forenoon, the Deponent having ſome Buſineſs with Mr. *Gordon* Merchant, and not meeting with him, and ſeeing the Pannel, he deſired the Pannel to go into *Loch*'s Coffee-houſe, and have it ended with him; and as they were going in, *Andrew Alves*, Writer to the Signet, followed them, and went in with them; who told them, That he had been out at *Linlithgow* the Day before, where he ſaw the Rebel or *Highland* Army, and ſeveral of his Acquaintances, particularly the Perſon then called Duke of *Perth*; who aſked him, What they were doing in the Town of *Edinburgh?* that they had need to be careful; for, if they ſtood to their Defence, he would not anſwer for the Conſequences: And, that Mr. *Alves* was afterwards carried up to the Pretender's Son, who told him much to the ſame Purpoſe: That, upon this, the Deponent ſaid, This was a very odd Meſſage; but does not remember, that the Pannel ſaid any thing.

III. Mr. *Robert Craigie* of *Glendoick*, Advocate, depones, That, in the laſt Week of *Auguſt* 1745, he was preſent at a Meeting of ſeveral of the Friends of the Government, and Inhabitants of *Edinburgh*, in the Lord Juſtice-Clerk's Houſe, where was preſent alſo Provoſt *Stewart*, now Pannel; where the Propoſal for levying a Regiment of a thouſand Men for Defence of the City of *Edinburgh* was talked of: That the Perſons preſent ſeverally gave their Opinions; as did likewiſe the Pannel; at leaſt ſpoke of the Subject; but the Deponent did not take notice of any thing as remarkable in what the Pannel ſaid: That the Deponent underſtood the Purpoſe of that Meeting was, in order to adviſe the Magiſtrates of *Edinburgh* concerning the Lawfulneſs of that Meaſure: That the Meeting generally agreed, that it was proper to apply for his Majeſty's Warrant for that Purpoſe; and the Deponent, being then his Majeſty's Advocate, undertook to write for it, which he did that very Night; and received his Majeſty's Sign-manual, by Expreſs, on *Sunday* the 8th *September*. Depones, That there were preſent at that Meeting, ſo far as the Deponent remembers, the Lord Juſtice-Clerk, Lord *Tinwald*, Provoſt *Macaulay*, *William Alexander*, Merchant, and ſeveral others. Depones, That Provoſt *Macaulay* and Mr *Alexander* followed the Deponent from that Meeting, who aſſured him, that no Scruple needed to be made for fear of Want of Money to ſupport that Regiment; for that they would undertake to find Subſcriptions enough to ſupport it: and the Deponent accordingly wrote to one of his Majeſty's Secretaries of State. Depones, That, upon *Friday* the 6th *September* 1745, a Gentleman who had been a Magiſtrate of *Edinburgh*, brought to the Deponent a Petition, propoſed to be ſigned by ſeveral of the Burgeſſes, to be preſented to the Provoſt and Magiſtrates, and deſired the Deponent's Opinion, whether the Petition contained any thing illegal or improper? and that the Deponent gave his Opinion that it did not: That next Day, the 7th *September*, one of the Magiſtrates came to the Deponent's Houſe, and told him, that the Provoſt, and ſome of the Magiſtrates, wanted to wait of him for his Opinion, and deſired to know his Time: That he ſaid, the Magiſtrates might come when they pleaſed; that accordingly, very ſoon after, the Provoſt, and three or four of the Magiſtrates, came, and laid before the Deponent the Petition now produced in Court; and which was a Copy of the ſame Petition he had ſeen the Day before: That Provoſt *Stewart*, the Pannel, ſuggeſted, that it was unlawful, and, as he was informed, treaſonable, to comply with the Petition: That the Deponent ſaid, That whatever might be the caſe in ſome Circumſtances, yet at preſent, when there was a Rebellion in the Country, it was not only lawful, but the Duty of every Subject to take Arms in ſupport of the Government. That the Magiſtrates deſired the Deponent, and Mr. *Robert Dundas*, then his Majeſty's Solicitor, their Opinion in Writing: That the Deponent thereupon ſent to Mr. *Dundas*, who immediately came; and, after talking with him, did, in his Preſence, dictate to his Clerk their Opinion, which he took down in Writing, That it was lawful, in the then preſent Juncture, for the Magiſtrates to authoriſe the Petitioners, and others, to take up Arms in Defence of the City, and of the Government; and that the Deponent and Mr. *Dundas* ſigned the Opinion, and ſent it with the Petition to the Magiſtrates That, ſoon after, one of the Magiſtrates brought back the Opinion to the Deponent's Houſe; and told him, that the Opinion did not ſatisfy the Provoſt, meaning the Pannel; and that he declined to proceed upon the Petition, unleſs the Deponent and the Solicitor would give their Opinion, That the taking up Arms was not treaſonable: That the Deponent teſtified ſome Surpriſe at the Scruple; however, in order to ſatisfy it, the Deponent and Mr. *Dundas* ſigned a ſecond Opinion, That it was not treaſonable for the Magiſtrates to grant the Deſire of the Petition. Depones, That, on *Monday* the 16th *September* 1745, Mr. *Dundas* came to the Deponent's Room, about Mid-day, and brought along with him *Andrew Alves*, Writer to the Signet, and told the Deponent, he found him delivering a Meſſage from the Pretender to the People in the Street; and that he had brought him to the Deponent to be examined. The Deponent does not remember whether Mr. *Dundas* brought any Guard along with him. That the Deponent accordingly examined Mr. *Alves*; who told the Deponent, that he had fallen in with the *Highland* Army on this Side of *Linlithgow* that Morning, and that he had been ſome time with them: That the Perſon called the Duke of *Perth* ſpoke to Mr. *Alves*, and deſired him to deliver a Meſſage to the Provoſt of *Edinburgh*, importing, That he expected to be received into the City without any Oppoſition or Reſiſtance; in which caſe the City might expect his Protection; but, if he met with any Oppoſition, the City might expect Treatment that neither he nor they would wiſh: That the Perſon whom they called the Prince, was near by when this Meſſage was delivered by the Duke of *Perth*, and aſſented to the Meſſage: That Mr. *Alves* came into *Edinburgh*, and, having met with the Provoſt, the Pannel, he delivered this Meſſage to the Provoſt; and that he had repeated the ſame thing to ſeveral People he met with on the Streets. That the Deponent remonſtrated to Mr. *Alves*, that it was treaſonable in him to carry ſuch a Meſſage from the Rebels; and the Deponent, as he thought it might be attended with bad Conſequences, to raiſe Sedition and Diſſention in the Town, by ſpreading this Meſſage, he reſolved to commit Mr. *Alves* to Priſon; and accordingly cauſed his Clerk to make out a Warrant for that Purpoſe. That, in the mean time, the Lord Juſtice-Clerk had come to the Deponent's Houſe, and was in the Room with General *Gueſt:* That the Deponent having come in to them, told them what had happened, and his Reſolution to commit Mr. *Alves:* That they approved; only, Lord Juſtice-Clerk ſuggeſted, That it would be proper to ſend to the Provoſt; and, if the Fact of delivering the Meſſage to the Provoſt, was ſuch as Mr. *Alves* repreſented, that it would be proper that the Commitment ſhould be by the Provoſt. That accordingly the Deponent ſent his Clerk with a Meſſage to the Provoſt, in the Name of the Lord Juſtice-Clerk, Mr. *Gueſt*, and his own, deſiring he would come to them: That the Provoſt came very ſoon after; and the Deponent underſtood it was in compliance with the Meſſage. That, upon the Provoſt's coming in, my Lord Juſtice-Clerk told him what Mr. *Alves* had ſaid with reſpect to his delivering the Meſſage to him. And the Provoſt acknowledged the Meſſage had been ſo delivered; that the Provoſt had repeated it to one of the Magiſtrates, the Deponent thinks he ſaid it was to Dean of Guild *Hathorn*; and that he aſked his Opinion, whether it was proper to mention it to any of the reſt of the Council? That the Dean of Guild ſaid, it was by no means proper. That the Lord Juſtice-Clerk aſked him, why he did not take Notice of Mr. *Alves?* why he did not commit him? that it was a treaſonable Practice. That the Provoſt made ſome Excuſe; that he did not know, or did not think it was Treaſon. That he was told by the Lord Juſtice-Clerk, that he ought ſtill to commit him; and in this Opinion the Deponent concurred with him. That the Provoſt deſired Directions in what Manner: That thereupon the Deponent gave him the Warrant that he had made out. That thereupon the Provoſt went away; and, ſoon after, one from the Provoſt brought to the Deponent a Warrant of Commitment; but the Deponent deſired the Meſſenger to get proper Officers to execute the Warrant; and ſoon after Mr. *Alves* was carried off Priſoner from the Deponent's Houſe; and the Deponent believes he was committed to Priſon. Depones, That, upon the ſaid *Monday*, the 16th *September*, while General *Gueſt* was in the Deponent's Houſe, it was ſuggeſted to the Deponent, that ſome Confuſion ſeemed to ariſe upon the Streets: That it occurred to the Deponent, and to General *Gueſt*, and others, who were coming and going to the Deponent's Houſe, that it might be of uſe to ſuppreſs diſorderly People, and to encourage thoſe who were in Arms for the Government in the City, that a hundred Dragoons ſhould be brought into the Town; and that this might, at the ſame time, be no Loſs to the Service of the Dragoons, if ſo many were choſen out of Colonel *Gardiner*'s Regiment, whoſe Horſes were rendered unſerviceable by their great Fatigues. That the Reſolution was accordingly taken; and Sir *John Inglis*, with the Aſſiſtance of ſome other Juſtices of Peace, provided a Quantity of Hay for the Subſiſtence of the Dragoons. That Colonel *Clayton*, who, as the Deponent underſtood, acted as Aid de Camp to Brigadier *Fowkes*, came ſeveral times that Forenoon to General *Gueſt* for Orders; and that, at one of theſe Times, General *Gueſt* gave Orders to ſend in the hundred Dragoons, by a verbal Meſſage to the Brigadier. That General *Gueſt* went to the Caſtle before Two o'Clock. That, before Three, Colonel *Clayton* came to the Deponent's Houſe, and told the Deponent, that Brigadier *Fowkes* declined to obey the verbal Meſſage touching the ſending in the Dragoons; and that

that he desired a written Order from Mr. *Gueſt*: That, upon this, Mr. *Dundas* the Solicitor, and the Deponent, went along with Colonel *Clayton* to the Caſtle, and ſtated the Caſe to Mr. *Gueſt*: That Mr. *Gueſt* agreed to give the written Order, but desired as a Condition, that the Provoſt of *Edinburgh*, Mr. *Dundas*, and the Deponent, ſhould give to him their Opinion in Writing, that it was for the Service of the Government that the Dragoons ſhould be ſent into the Town: That, as the Provoſt was not preſent, the Expedient propoſed and agreed to, was, that the General ſhould ſign the Order for the Dragoons, and ſhould put it in the Hands of Mr. *Lindſay*, the Secretary at War, who wrote the Order; that the Deponent ſhould procure the Provoſt's Subſcription to the Opinion, and his own and Mr. *Dundas*'s; and, upon delivering this Opinion to Mr. *Lindſay*, Mr. *Lindſay* ſhould deliver the Order to Colonel *Clayton*. That the General accordingly ſigned the Order, and delivered it to Mr. *Lindſay*; and the Opinion deſired was wrote out by Mr. *Lindſay*. That Colonel *Clayton*, Mr. *Dundas*, Mr. *Lindſay*, and the Deponent, came down from the Caſtle, and called for the Provoſt at his Houſe, and miſſed him; but met him in the *Lawn-market*, oppoſite to the Entry to *Fiſher*'s Land: That the Deponent told the Provoſt what had paſſed; and that it was proper he ſhould ſign the Opinion, in order to procure the Dragoons. That the Provoſt appeared in ſome Confuſion, and ſaid he was haſtening to the *Weſtport* to ſhut it; that the *Highlanders* would be there before him. That the Deponent ſuggeſted, that the Meaſure might be of uſe againſt the *Highlanders*; and that it would be no loſing of Time. The Provoſt agreed to ſtep up to the Deponent's Houſe; and the Provoſt, in the Deponent's Conſulting-room, ſigned the Opinion, and after him it was ſigned by the Deponent and Mr. *Dundas*; and the Deponent having delivered the ſigned Opinion to Mr. *Lindſay*, Mr. *Lindſay* delivered the Order by Mr. *Gueſt* to Colonel *Clayton*, in order to be carried to Brigadier *Fowkes*. Depones, That Colonel *Clayton*, upon his coming to the Deponent's Houſe, did inform the Deponent that the Rebels were on their March, and were come the Length of *Kirkliſton* Water. And when the Deponent was in the Caſtle, he obſerved the Dragoons marching Eaſtward by the long Dykes; and this determined the Deponent to follow them down to *Leith*, where he ſuppoſed they were marching to ſolicit the Execution of Mr. *Gueſt*'s Order. That he believes this might have been about Four o'Clock at Night. That he met Mr. *Walter Groſet*, then Collector at *Alloa*, between the *Watergate* and the *Abbay-hill*: That Mr. *Groſet* told the Deponent he was coming with a Meſſage from the Lord Juſtice-Clerk to the Provoſt, offering him the Aſſiſtance of the two Regiments of Dragoons, or ſuch a Number of them as the Provoſt ſhould deſire, in Defence of the Town: That the Deponent told Mr. *Groſet*, that the Provoſt had agreed to demand, and obtained an Order to bring in a hundred Dragoons; but he might proceed with his Meſſage. That Mr. *Groſet* did not ſay, nor did the Deponent underſtand, that he had any written Meſſage from the Lord Juſtice-Clerk. That the Deponent found the Dragoons had not gone to *Leith*, but were in their Road to *Fiſher-row*: And he underſtood from Colonel *Clayton*, that Mr. *Fowkes* did not incline to divide his Dragoons. However, before the Deponent had come up with Mr. *Fowkes*, Mr. *Stark*, Commander of the Cuſtom-houſe Sloop, delivered a Letter to the Deponent from the Provoſt of *Dunbar*, acquainting him, that the Fleet, on board of which Sir *John Cope*'s Troops were, was ſeen within the *May* about Two o'Clock; and that they would be at *Leith* with the next Tide, which would happen in the Night-time. That as the Deponent read his Letter aloud, it was ſoon known through the whole two Regiments, and to Mr. *Fowkes*. That Mr. *Fowkes* thereupon alighted, and went into Mr. *Forbes*'s Houſe; and, as the Deponent underſtood, he there wrote Letters to Sir *John Cope*, acquainting him of the Situation of Matters: and the Deponent found Mr. *Fowkes* not at all diſpoſed to divide his Regiments, or to comply with Mr. *Gueſt*'s Order. While the Deponent was in Mr. *Forbes*'s Houſe, and Mr. *Fowkes* was writing his Letters aforeſaid, Mr. *Groſet* returned from *Edinburgh*, and delivered to the Deponent a Letter from the Pannel, addreſſed to the Deponent and Lord Juſtice-Clerk, which he now produces, and is marked by him and the Lord Examinator; wherein he deſires a new Opinion from the Deponent and the Lord Juſtice-Clerk, before he would receive any Dragoons. That this was a Diſappointment to the Deponent, and made him not think it proper to preſs the ſending the Dragoons, as it perſuaded him that Matters were changed from the Time he had left *Edinburgh*. However, Mr. *Groſet* was ſent back to *Edinburgh*, with the Accounts of Sir *John Cope*'s Arrival; and the Deponent delivered him his Letter, with a Certificate that the Letter and Account were genuine. And depones, That he heard Mr. *Fowkes* mention what he had wrote to Sir *John Cope*; and that he had adviſed him rather to land his Troops at *Preſton-pans* or *North-Berwick* than at *Leith*, as he would be nearer the Aſſiſtance of the Dragoons, who were to be quartered that Night at *Preſton-pans*, or thereabouts; and being interrogate for the Pannel, What he thinks was intended by the Councils mentioned in the Provoſt's Letter above deponed upon? depones, That he apprehends the Councils therein mentioned is what paſt at a Meeting in the Lord Juſtice-Clerk's, in *Edinburgh*, on *Sunday* Evening the 15th, when General *Gueſt*, Brigadier *Fowkes*, Lord Juſtice-Clerk, the Pannel, the Deponent, and ſeveral others were preſent: that the Deponent underſtood, that it was then agreed upon, that the Dragoons ſhould incamp that Night on this Side the *Colt* Bridge; that ſome time after a Queſtion was ſtated, Whether the Town of *Edinburgh* might not be a proper Quarter for the Dragoons, to wait there the landing of Sir *John Cope*? and, whether they could not at Pleaſure join him, whatever Situation the Rebels might be in? That the Deponent remembers that Captain *Murray*, the Receiver of the Cuſtoms, anſwered, That he thought it would not be a proper Quarter; for that if the Rebels were poſſeſſed of the Suburbs, and ſhould ſet fire to the *Potter-Row* and *Briſtow* Ports, the Dragoons could not poſſibly march out. That this was all the Deliberation that the Deponent and the Provoſt together were Witneſſes to concerning the Dragoons coming into *Edinburgh*; and, to the beſt of his Memory, theſe were the very Expreſſions. Whether there was any other Concert upon that Subject the ſaid *Sunday* Evening, the Deponent cannot ſay; as the Deponent went to another Room to examine Priſoners, after the Reſolution was taken touching the Incampment that Night; and when the Deponent returned to the Company, he heard Captain *Murray*'s Opinion laſt deponed upon; and very ſoon thereafter the Company parted. And depones, That the Petition by the Burgeſſes to the Magiſtrates and Council, and the two Opinions thereon, now produced in Court, and ſigned by Mr. *Dundas* and the Deponent, are the Petition and Opinions referred to in the above Depoſition.

N. B. *The Letter referred to in this Oath, and produced by Mr.* Craigie, *is fully ingroſſed in the Information for the Proſecuter*, p. 53. *except a Poſtſcript, in theſe Words:* I am determined by your Orders.

IV. Mr. *Robert Dundas* younger of *Arniſton*, Advocate, depones, That the Deponent went for a few Days out of Town about the End of *Auguſt* 1745. That, on his Return, he underſtood, that there had been a Meeting concerning the raiſing a Regiment for the Defence of the City, and likewiſe concerning a Propoſal by ſome of the Burghers and Inhabitants, to ſerve as Volunteers in that Service: That ſome of thoſe concerned in the Propoſal came to the Deponent's Houſe, to aſk his Opinion concerning the Lawfulneſs of it; and told him, that ſome Difficulties were made about it, particularly by ſome Lawyers. That the Deponent ſaid, He had no Difficulty of its being lawful. In conſequence whereof a Meſſage was thereafter ſent by the Town-Council to get the Opinion of Mr. *Craigie*, then Lord Advocate, and the Deponent's; which they accordingly gave in Writing, and ſubſcribed. But, as the Deponent was going away out of Town, ſome Hours after that, he met *Robert Baillie*, then one of the Bailies of *Edinburgh*, and another Member of the Town-Council, whoſe Name the Deponent cannot recollect; who told him, That the Provoſt was not ſatisfied with the Opinion; that he excepted to the Manner in which it was expreſſed; becauſe, though they had ſaid it was lawful, they had not ſaid it was not Treaſon: And that thereupon Mr. *Craigie* had already ſubjoined an additional Opinion; but that ſtill Provoſt *Stewart* was not pleaſed, unleſs he got the Deponent's Subſcription. And the Deponent accordingly ſigned that additional Opinion alſo: And that the Opinion, and additional Opinion, in the Clerk's Hands, ſhewn to him, are the ſame that were ſigned by him. Depones, That upon *Monday* the 16th *September* 1745, the Deponent came down to the Street from Mr. *Craigie*'s Houſe about Eleven o'Clock in the Forenoon: That he met Sir *John Inglis of Cramond* at the End of the *Luckenbooths*; who told him that *Andrew Alves* Writer to the Signet was at the Croſs, telling to every body, That he had brought a Meſſage from the Rebels at *Linlithgow*, That, if the Town of *Edinburgh* was peaceably given up, there ſhould no Miſchief be done to the Inhabitants; but, if any Reſiſtance was made, the Conſequence might be fatal to them. That the Deponent went immediately in ſearch of Mr. *Alves*; and, having found him, aſked, What Tale he was thus ſpreading about; and how he came to carry a Meſſage from Rebels? That *Alves* repeated the Meſſage, as above; and excuſed himſelf for bringing it, ſaying, That he accidentally had been taken Priſoner by the Rebels. That the Deponent immediately carried Mr. *Alves* to Mr. *Craigie*'s Houſe, and there left him; and, returning ſome Time after, he found together the Lord Juſtice-Clerk, Mr. *Craigie*, and the Pannel, Mr. *Alves* being then in another Room: That he was then told, *Alves* had delivered the Meſſage to the Pannel about an Hour before; and, as the Deponent thinks, the Lord Juſtice-Clerk ſaid, that he and Mr. *Craigie* had ſent for the Pannel as the propereſt Perſon to ſign the Warrant for committing *Alves*: That, in a very little, the Pannel left the Room; and, ſoon thereafter, a Party of Volunteers came with the Pannel's Warrant, and carried off Mr. *Alves* to Priſon. Depones, That, about Four o'Clock of *Monday* the ſaid 16th *September*, Major *Clayton* brought the Account to Mr. *Craigie*'s, where the Deponent then was, that the Rebel-Army was advancing; and that it was thought proper for the Dragoons to retire to the plain Ground between *Leith* and *Edinburgh*. That thereupon Mr. *Craigie* and the Deponent went to Lieut. Gen. *Gueſt* in the Caſtle; who agreed to order a hundred Dragoons into the Town of *Edinburgh*, if the Demand was made in Writing: That Mr. *Craigie* and the Deponent, returning from the Caſtle, met with the Pannel at the *Bowhead* Well; whereupon the Deponent told the Pannel, That they were well met, for they were going juſt to ſend for him, to communicate to him ſomething of Importance: That the Pannel anſwered, That it was not now Time for Conſultation, but for Execution, when the Enemy was at their very Gates: To which the Deponent replied, That it was not for Conſultation, but Execution, that he was wanted; and then the Pannel went up to Mr. *Craigie*'s Houſe: And upon his being told that he might have a hundred Dragoons into the Town, if he thought proper; he anſwered, That it was certainly right, and that he was very deſirous of it. Upon which a Letter was wrote and ſent to Lt. Gen. *Gueſt*, ſigned by Mr. *Craigie*, the Deponent, and the Pannel, requeſting the aforeſaid Number of Dragoons to be ſent into the Town.

V. Mr. *George Logan*, one of the Miniſters of *Edinburgh*, depones, That, in the Afternoon of *Monday* the 16th *September*, the Deponent, and ſome others of his Brethren Miniſters, being told in the Coffee-houſe, that there was a Meeting of a great many of the Inhabitants in the New Church Iſle; and that it was the Opinion of the Meeting, that the Town could not be defended againſt the Rebels; the Deponent therefore went to the ſaid Meeting: That he found there the Pannel acting as Præſes of the Meeting: That the Meeting was very numerous: That he could not ſay, that they were compoſed of ſuch as he thought the beſt affected to his Majeſty's Government: That many of them he did not know; but of thoſe he knew, ſeverals were ſuch as he always thought diſaffected: That the Deponent does not remember to have ſeen any of the Volunteers there, except Mr. *Glen* the Miniſter; but where they were, he knows not: That as the Deponent, or at leaſt his Wife, had a conſiderable Intereſt in the Town, which he was very willing to riſk for the Service of the Government; he propoſed to the Pannel, then Præſes of the Meeting, that the Dragoons ſhould be brought into Town, for the Defence of it: But the Pannel anſwered, The Dragoons were gone too far to be brought back again.

VI. Dr. *William Wiſhart*, Principal of the College of *Edinburgh*, depones, That in the Month of *September* 1745, the Deponent was preſent at a Meeting of ſeveral of the Miniſters of *Edinburgh*, when it was concerted, that a Paper ſhould be drawn, and ſigned by them, approving of the Deſign of raiſing the *Edinburgh* Regiment for the Defence of the Town, and engaging to contribute towards defraying the Expence. That the Paper was accordingly drawn, and ſigned by the Deponent, and ſeveral other Miniſters in the Deponent's Preſence,

of the Date it bears, the 6th Day of the ſaid Month of *September*; and that the Writing ſigned by the Miniſters in the Clerk's Hands, being No. 4. of the Liſt of Writings ſubjoined to the Libel, is the ſame Paper that was ſigned by the Deponent. [Vide *Lord Advocate's Information*, p. 635.] Depones, That in the Afternoon of the 16th *September*, about Four Afternoon, the Deponent went to Goldſmiths-Hall, where he found the Pannel, then Lord Provoſt, ſeveral of the Magiſtrates and Councillors, and ſome others of the Inhabitants of the Town. That ſome of the Meeting, but, as the Deponent thinks, none of the Council, ſaid, That ſeveral of the Inhabitants were in Terror, both for their Houſes and Perſons, ſhould any Defence be made of the Town againſt the Rebels; and therefore were for delivering it up. That no Anſwer was made to this Suggeſtion: But, at that Time, *Walter Groſet*, Collector of the Cuſtoms at *Alloa*, came into the Meeting, with a Meſſage to the Pannel from the Lord Advocate and Lord Juſtice-Clerk, that there were a hundred Dragoons in Town, and the reſt might be brought in, if his Lordſhip deſired it. That the Pannel anſwered, That that was putting the Thorn in his Foot, but that he would return it; and appealed to Provoſt *Drummond*, then preſent, whether, at a Meeting that had been held the laſt or the other Night, he had not heard it ſaid, that, if he brought any of the King's Troops into *Edinburgh*, it was bringing them into a Poindfold to be catched by the Rebels? and upon that account he would give no Orders. That *Groſet* anſwered, That thoſe who ſent him were ready to give the Orders, if his Lordſhip deſired it. That thereupon he gave Mr. *Groſet* a verbal Anſwer to return to the Lords Advocate and Juſtice-Clerk, which Mr. *Groſet* ſeemed to underſtand as a Refuſal, and repeated it as ſuch: That the Pannel ſaid he had miſtaken him, and that he would give it him in Writing; and called for one *Henderſon* to write the Anſwer, which the Pannel began to dictate: But the Deponent thinks the Meeting broke up before it was finiſhed. That the Occaſion of the Meeting's breaking up, was, that more People came in preſſing to give up the Defence of the Town. Upon which the Pannel ſaid, We cannot ſtay here; let us ring the Bell, and go into the New Church Iſle. Upon which the Fire-bell was rung. And the Deponent, having gone firſt home, returned immediately to the New Church Iſle, where he found the Pannel ſeated in the Moderator's Chair, and a pretty numerous Meeting, moſt Part of them not known to the Deponent, not even by Sight: Such as he did know, ſeverals of them were ſuch who frequented Nonjuring Meeting-houſes; but others who attended the Eſtabliſhed Church. Depones, The firſt thing the Deponent obſerved at that Meeting was, the preceding Witneſs, Mr. *Logan*, ſtanding upon a Form, and ſaying, That the ſending out to treat with the Rebels, was inviting them to Town; and that he heard his Majeſty's Troops were nigh at hand to aſſiſt the Defence of the Town: But that this was generally houted in the Meeting, and a Cry raiſed, *They were gone, they were fled, they were gone to* Haddington. Depones, That the Deponent then ſpoke to the Pannel, and put him in mind of the Propoſition that had been about half an Hour before made to him by Mr. *Groſet*, as from Lord Advocate and Lord Juſtice-Clerk, and deſired to know what Anſwer had been made. That the Meeting raiſed the former Cry, *They were gone, they were fled.* But the Pannel very civilly interpoſed, and ſaid, The Deponent's Queſtion deſerved an Anſwer; and then repeated in Subſtance what he had before ſaid in Goldſmiths-Hall to Provoſt *Drummond*. To which the Deponent replied, That, by the Meſſage he had got, it would ſeem that the Troops could not yet be ſo far off as was alledged at that Meeting. Depones, That thereafter the Deponent, directing his Diſcourſe to the Præſes, ſaid, That he hoped no Gentleman in that Meeting would dare to propoſe the delivering up the Town to the Rebels, or Words to that Purpoſe. The Pannel anſwered, Yes, it is propoſed. Another Gentleman replied, No, Sir, it is not propoſed to deliver up the Town to the Rebels, but to ſend out to treat with them; and then they will go by the Town. Upon which the Deponent ſaid to the Præſes, That, before making a Propoſal of that Kind, or, which the Deponent thinks was his Words, before putting a Queſtion of that Kind to any Meeting, he ſhould have firſt purged the Town of the known Enemies to the Government that were in it. Againſt which a Hout was raiſed in the Meeting; and one of them ſaid to the Deponent, Then you ſhould be amongſt the firſt that ſhould be put out of it; which raiſed a great Laugh. That, at the ſame Meeting, Bailie *Hamilton* ſaid to the Pannel, That if it was propoſed to deliver up the Town to the Rebels, his Lordſhip ſhould firſt ſend Orders to the Volunteers to deliver up the Government's Arms, that they might not be ſurpriſed by the Rebels: But the Deponent heard no Anſwer made to it. Depones, That Sir *George Preſton* of *Valleyfield*, who had the Command of a Company of Volunteers then planted at the *Netherbow*, came into the Meeting, and deſired to know from the Pannel, What he was to do with his Company? or what Orders he was to give him? That the Pannel anſwered, I cannot anſwer that yet; by and bye. That Sir *George* ſaid, That, if they were propoſing to deliver up the Town to the Rebels, it was Time for him to know what he was to do, for he could not ſtay; and deſired an Anſwer. That no Anſwer was given him, ſo far as the Deponent heard. That then the Pannel put the Queſtion to the Meeting, Who are for defending or holding out the Town? If any, let them ſpeak. To which the Deponent ſaid, That he was, though he ſhould be alone there: That Sir *George Preſton* ſaid, And I; and that one or two more ſaid the ſame: But the Generality of the Meeting were of another Opinion. Depones, That the Pannel then put the Queſtion, Shall we ſend any to treat with them? Upon which the Deponent ſaid, That he hoped not to have lived ever to have heard ſuch a Queſtion put by a Lord Provoſt of *Edinburgh*. But no Reply was given. And then the Pannel put the Queſtion, Who ſhall we ſend to treat with them? Upon which the Deponent and Sir *George Preſton* left the Meeting: And, upon their coming out, the Deponent ſaw ſome of the Captains of the Volunteers leading up their Men to the Caſtle to deliver up their Arms. Depones, That, upon *Saturday* the 14th, the Deponent was told, that the Ringing of the Fire-bell was appointed as a Signal for the Volunteers conveening in the *Lawn-market*, there to receive their Orders from the Pannel: And the Fire-bell having been rung in Time of divine Worſhip on *Sunday* the 15th, in the Forenoon, the Deponent was told, it was to conveen the Volunteers as above; and that they met accordingly: and as the Deponent went from Church, he ſaw ſome of them in the *Lawn-market*, and ſome of them that had marched down to the *Graſs-market*. And being interrogate for the Pannel, What Anſwer Provoſt *Drummond* made to the Appeal that the Pannel made to him in Goldſmiths-Hall? depones, He does not remember he heard any Anſwer made. And further depones, That the New Church Iſle was pretty full at the above Meeting, though the Deponent has ſeen it more crowded: That they were all Men, and no Women; but the Deponent cannot give any Judgment what Number they might have been.

VII. Mr. *John Glen*, Miniſter of the Goſpel at *Edinburgh*, depones, That the Repreſentation of the Miniſters of *Edinburgh* to the Lord Provoſt and Magiſtrates, marked No. 4, in the Liſt of Writings produced againſt the Pannel, now ſhewn to him, was ſigned by him; and that he ſaw others, whoſe Names ſtand there, alſo ſign the ſame: Believes, that all of them did ſo whoſe Subſcriptions appear; but cannot be poſitive: but ſays, that whether this Repreſentation was given in to the Provoſt and Magiſtrates, does not conſiſt with his proper Knowledge; but that he advanced Money in conſequence of his Subſcription, as the ſame was demanded. Depones, That he was preſent at a Meeting of the Inhabitants in the New Church Iſle, in the Afternoon of *Monday* the 16th *September* 1745: That the Pannel was then in the Chair: That the Deponent ſtaid but a very little Time there. And being interrogate, Of what ſort of Perſons he judged the Meeting was compoſed? ſaith, That the Bulk of them appeared to him not of the beſt affected in the Place; and that the Reaſons of this his Opinion were, That he ſaw ſeverals of them who, he was informed, had concurred in a Petition to deliver up the Town to the Rebels; and ſeveral others who had not contributed Money towards defending the Town, as the other zealouſly well-affected Subjects had done. That as the Deponent ſtaid but a very little Time there, he cannot pretend to give any particular Account of the Tranſactions in that Meeting: Only, the Pannel, while he was there, from the Chair, told the Aſſembly, That he had called them together, to take their Opinion what was proper to be done in the preſent Situation of Affairs: But that the Deponent left the Meeting before any Reſolution was come to, by thoſe who were there aſſembled. That the Deponent obſerved very few of the Volunteers at that Meeting: That ſeveral of them were then in the *Lawn-market*, the Deponent having come down that way to the Church; and others of them at the *Netherbow* Port, whom the Deponent ſaw there when he went out at the Port, in order to go to the Country. Depones, That he was informed by the Officers of the Volunteers, or by his Fellow-Volunteers, he himſelf being one, that the Signal for them to meet at their Alarm-poſt in the *Lawn-market*, was, the tolling of the Fire-bell. And being interrogate for the Pannel, What the Reaſon was why he who was a Volunteer left his Corps, and went away, in time of Danger? ſaith, That he had waited ſo long upon the Street among the Volunteers, without any Orders or Directions, not knowing what was to be done, that he begun to believe the Town was to be delivered up, and the Volunteers, with their Arms, put into the hands of the Rebels; and therefore, though perhaps it was not very agreeable to military Diſcipline, he thought it the ſafeſt and beſt for him, to retire: And alſo ſaith, That when he came to a Reſolution to go away, he applied to one of the Officers of the Volunteers, to have Leave to put his Gun into the hands of a Caſtle-ſoldier who was there attending, and had been with him frequently before, in order to teach him ſomewhat of the military Diſcipline: which the Officer agreed to; and the Gun was accordingly put into the Soldier's Hands, with Sixpence for his Trouble in carrying it to the Caſtle.

VIII. *James Stewart*, Merchant, and one of the Bailies of *Edinburgh*, depones, That there was a Propoſition, in the End of *Auguſt*, or Beginning of *September* 1745, for raiſing a Regiment of a thouſand Men, by Subſcription, for Defence of the City againſt the Rebels; but that the Deponent can ſay nothing from his proper Knowledge, by whom ſuch Propoſal was made to the Pannel, or how it was received by him, not having been preſent; nor does he know of any Objections made by the Pannel againſt it, otherwiſe than by Hearſay from others. And further ſaith, That upon the 5th *September* 1745, which was a Day of publick Faſting in the City of *Edinburgh*, the Deponent, reflecting upon the preſent Danger that threatened the City and the Kingdom, began to think, that proper Meaſures were neglected, which ought to have been taken: And therefore he applied himſelf to ſet down in Writing what occurred to him as proper to be done on the Occaſion. And the Reſult of this was, a Memorandum he wrote, and carried with him to a Meeting of a great many of the Inhabitants, who commonly uſed to aſſemble themſelves in an Evening, to talk together of the preſent Poſture of Affairs, and to conſider what was proper to be offered for the Defence of the City, and for oppoſing the Progreſs of the Rebels. That, upon reading and conſidering the foreſaid Memorandum, they came to a Reſolution, to form a Petition and Addreſs to the Lord Provoſt and Magiſtrates, That ſome of the Burgeſſes and Inhabitants of the City, who offered to ſerve as Volunteers, in Defence of the City, againſt the Rebels, might be properly diſpoſed of, and commanded by Officers to be appointed. And, for this end, a Committee was appointed to draw up ſuch a Petition, and Addreſs; who accordingly did meet, and form the Petition and Addreſs now ſhewn to the Deponent, marked No. 5, in the Liſt of Writings produced for proving the Libel; which Petition and Addreſs were wrote that Night, and ſigned by the Deponent, and ſeveral others, and next Day by more Perſons; when a Deputation from the Meeting was ſent with the ſaid Petition to the Pannel, then Lord Provoſt of *Edinburgh*. That the Gentlemen who went to carry the Addreſs to the Pannel, returned again to the Company, where the Deponent remained; and the Pannel came along with them; who, when he entered into the Company, ſeemed to be out of Humour, and complained that any ſuch Paper ſhould have been concerted and drawn up without acquainting him; and addreſſed himſelf particularly to the Deponent, telling him, He was greatly ſurpriſed, that he ſhould have had any Concern in it, without giving him any Notice of it. That the Deponent anſwered, It was late upon the 5th of the Month before the Paper was concerted and drawn up, or ſigned by any body: That next Morning he was employed in getting Subſcriptions to it, that it might be preſented to the Pannel with greater Weight. To which the Pannel replied, That the Matter of this Addreſs was what he was to conſider, and not the Number of Perſons who

ſubſcribed

ſubſcribed it; and that, in his Judgment, it was treaſonable; and that he himſelf had taken the Oath of Abjuration, which obliged him to oppoſe every thing that was treaſonable: And further added, with a Sneer, That he knew of nothing to be Treaſon, but what the Law had made ſo. Upon which, ſome of the Company and the Pannel had ſome pretty high Words, arguing about the Nature of the Paper, and whether it was treaſonable or not. Thereupon the Deponent ſaid, He was afraid it would require ſome Time and Pains to convince the Pannel of the Reaſonableneſs of it; but that he now had a Paper put into his Hands, ſigned by a Number of Gentlemen of Character; and that the Deponent hoped, that he would not reject it, without taking Advice; which if he did, and conſidered it thoroughly, the Deponent hoped he would alter his Opinion. That the Deponent, upon this, left the Company, and went to Mr. Solicitor *Dundas*'s Houſe; where he found Bailie *Gavin Hamilton*, and ſome other Perſons, with Mr. *Dundas*; to whom he related what had paſſed in the Company, and what he has above ſaid; and added, That he was perſuaded Provoſt *Stewart* would not venture to reject the Propoſition made to him, without calling for the Advice of the Crown-Lawyers; and therefore he, the Deponent, hoped Mr. Solicitor would be ready to give the proper Anſwer, if the Queſtion was laid before him. Mr. Solicitor *Dundas* then ſaid, He ſhould early in the Morning wait on Mr. *Craigie*, then Lord Advocate, and concert with him what was fit to be done. Depones, That, at this Time, in Mr. *Dundas*'s, it was concerted between the Solicitor, Bailie *Gavin Hamilton*, and the Deponent, that in caſe the Provoſt ſhould reject the Petition, that Bailie *Gavin Hamilton*, being next Magiſtrate, ſhould call the Council together, and lay the Matter before them, and endeavour to get the Advice of the Crown-Lawyers. Depones, That, upon *Saturday* the 7th of *September*, the Gentlemen who uſually met together to conſider what they could do for the Defence of the Place, thought it fit to publiſh a Paragraph or an Advertiſement in the *Edinburgh* News-papers, in order to encourage People to aſſociate themſelves for the Defence of the Place. And ſuch a Paragraph having been drawn up, narrating, that an Addreſs having been made to the Magiſtrates, they had taken the Opinion of the Crown-Lawyers, who approved of it; and that it had likewiſe met with the Lord Provoſt's hearty Approbation and Concurrence, or Words to that Purpoſe; the Paragraph was ſent by two of their Number, Provoſt *Drummond*, as the Deponent thinks, and the Deponent himſelf. Upon ſhewing it to the Pannel, he cauſed daſh out that Part of it relating to his hearty Approbation and Concurrence; and inſert in place of it, *which he heartily acquieſced in*. That the Deponent, and the Perſon who went alongſt with him, repreſented, That the Reaſon of their uſing the Words which were altered by the Pannel, was, to encourage People to enter into the Aſſociation. However, the Pannel ſtill continued of the Opinion he had expreſſed. Depones, That, about the Middle of the Week which preceded the Rebels Entry to the City of *Edinburgh*, at a Meeting of the Inhabitants, who uſually came together in the Evening to conſider of what was proper to be done for the Defence of the City, the deceaſed Mr. *Maclaurin* and the Deponent were preſent; when it was ſuggeſted, that ſeveral Things were left undone that ought to be taken care of for the publick Safety; and that it was proper theſe Matters ſhould be laid before the Lord Provoſt. And it was propoſed, the Deponent ſhould go from the Meeting, and, in their Name, lay them before the Lord Provoſt. That the Deponent ſaid he was willing to follow their Directions in that Matter, but did not care to truſt to his Memory; and therefore called for Paper, Pen, and Ink, and took down in Writing ſuch Particulars as Mr. *Colin Maclaurin* dictated to him. And, when that was done, as the Deponent thinks, Mr. *Mark Sandilands* went along with him to find out the Provoſt, who was then in a Tavern; and, as the Deponent thinks, in *Walker*'s Houſe. That they went to another Room in the Houſe, where the Provoſt came to them; and they communicated to him what was contained in their Paper. Among other Things, that the Meeting they came from thought, it was proper there ſhould be a general Search in the Town for Arms, leſt there might be ſome concealed for the Uſe of the Rebels; as alſo, that the Lord Provoſt ſhould concert with the Lord Advocate, or any proper Perſon, that a Search ſhould be made in the Places adjacent to the Town, which were not within the Royalty. That to this the Pannel anſwered, That *Edinburgh*, and the adjacent Parts, could with very great Difficulty be ſearched ſo narrowly, as that concealed Arms ſhould be diſcovered; and that he did not ſee any good Purpoſe it could ſerve to make a Search; or Words to that Purpoſe: But, if they inſiſted upon it, Orders ſhould be directed for ſuch a Search. Depones, That the laſt of the Particulars taken down in the Paper was, a Demand that the Pannel by himſelf, or others of proper Authority, ſhould procure fifty, forty, or at leaſt thirty Sailors, out of his Majeſty's Ships, who were moſt expert in managing of Cannon, in order to be aſſiſting in the Defence of the City, by taking the Direction of the Artillery that were placed upon the Walls, or in the Town. Upon reading of which, the Pannel fell into ſome Heat of Temper, and ſaid, 'By God, Sir, while I 'am Provoſt of *Edinburgh*, Sailors ſhall not be admitted.' And the Deponent having repreſented to him, That there were none in Town that knew how to manage Cannon; and that Application had been made at the Caſtle, but no Gunners could be ſpared from thence; and aſked, What he would ſubſtitute in their Place? he made no Anſwer, but the former repeated, That, by God, while he was Provoſt of *Edinburgh*, no Sailor ſhould be admitted. And the Deponent being greatly ſurpriſed, as ſome time before, when he the Deponent had been inſiſting with him that Cannon ſhould be provided for the Defence of the Place; he objected againſt it, and ſaid, He could not ſee they could be of any Uſe, as we had Nobody that knew how to manage them: The Deponent therefore, raiſing his Voice, demanded to know the Reaſon of ſuch an extraordinary Piece of Conduct. To which the Pannel replied, with ſome Heat, 'My 'Reaſon, Sir, is plain. If they ſhould be admitted here, it would be, '*Damn your Blood, Jack; fire away, and be damn'd*; and ſo they would 'fire upon, and murder the Inhabitants: And it is my Duty to protect 'the Lives of the Inhabitants, as well as to defend the Town againſt the 'Rebels;' or Words to that Purpoſe. Whereupon the Deponent left him.

IX. *James Grant*, Merchant, and preſent Town-Treaſurer of *Edinburgh*, depones, That, in the Afternoon of *Monday* the 16th of *September* 1745, which was the Day that immediately preceded that upon which the Rebels entered the City, the Deponent was in the Goldſmiths-Hall, where the Pannel, and a good many other People, were met together; and heard two or three of thoſe who were preſent, whom the Pannel publickly deſired might give their Opinion, whether it was proper to defend the Town, or not, and who declined to explain themſelves upon that Matter, obſerve to him, that if the Town was to be delivered up, proper Meaſures ought to be taken for preſerving the Arms from falling into the Hands of the Rebels. And being interrogate for the Pannel, whether it related to the Government's Arms, or to the Arms of the City? depones, He does not remember any Diſtinction was made; or further, than that the Arms in general were mentioned. And further ſays, That this Obſervation was made by Major *Thomas Cochran* and Captain *James Murray*, and, as the Deponent thinks, by Dean of Guild *Hathern*. And depones, That he does not remember, whether any thing was ſaid further upon that Subject. Depones, That when ſeveral of the Perſons preſent had declined to give their Opinion as to defending the Town, the Provoſt declared, That it was his Opinion it ought to be defended; and that they might hope for better Terms, in caſe the Town were at laſt to be ſurrendered, with Arms in their Hands. That, betwixt Three and Four in the Afternoon, while the Deponent was at this Meeting, Mr. *Groſt* came in, ſent, as the Deponent believes, from the Lord Juſtice-Clerk, or ſome other Perſon; and made an Offer to the Pannel of a hundred Dragoons, to aſſiſt in defending the City, if he would ſend an Order for their entering the ſame. To which the Pannel anſwered, He would ſign no Order; but if they came in, they ſhould be made very welcome. And depones, That he left the Meeting, and went home. And being interrogate, Why he left the Meeting, when they were deliberating concerning the Defence of the Town? ſaith, That he went away in the Belief that the Town was to be ſurrendered; induced to think ſo from the Dragoons marching Eaſtward; and that he perceived the Well-affected in the Town had a Jealouſy of the Provoſt: And the Deponent likewiſe perceived, that the Removal of the Dragoons had made People's Spirits ſink. Depones, That, ſome few Days before the Rebels entered the Town, the Pannel ſpoke to the Deponent in the Parliament-cloſe, and told him, That, as the Volunteers had made the Propoſal of bearing the Charges of repairing the City-walls, he thought it was proper the Money ſhould be immediately advanced, becauſe he doubted, if that was not done, it would in the end fall upon the Town. To which the Deponent anſwered, That it could not be expected they could advance the Money at that time. Further ſays, That Mr. *Alexander Webſter* joined them at this Converſation; and the Pannel made the ſame Propoſition to Mr. *Webſter* that he had made to the Deponent; who made the ſame Return as the Deponent had done. And being interrogate for the Pannel, Whether this Converſation related to the Reparation of the Walls, as to which Orders had been given by the Council to repair the ſame, and the Reparation was going on; or as to ſome additional Fortification, which had been propoſed by the Volunteers? depones, That he knows Orders had been given by the Council for repairing the Walls before that Converſation happened; but that this Converſation related to the Expence of the Work: But whether it was the Expence of the Reparation of the Walls, or of ſome new projected Piece of Fortification, the Deponent cannot be poſitive.

X. Mr. *Joſeph Williamſon*, Advocate, one of the principal Clerks of the City of *Edinburgh*, depones, That he was preſent at a Meeting of ſeveral of the Burgeſſes of the City of *Edinburgh*, upon the 5th *September* 1745; when it was agreed, that a Petition ſhould be preſented to the Lord Provoſt, for Leave to ſuch of the Citizens as ſhould pleaſe to aſſociate themſelves as Volunteers for the Defence of the City. That accordingly ſuch a Petition was framed; and the Deponent aſſiſted in framing it. And the Paper marked Number 5, in the Liſt of Writings ſubjoined to the Libel, being ſhewn to him, depones, It is the ſame framed as above; which was ſigned by all the Company preſent that Night. That he did not ſee this Application offered to the Pannel the next Day; but had Occaſion to converſe with him on the Subject of it in the Evening of that Day; when he told the Deponent, that he looked upon the Paper as treaſonable; and aſked his Opinion thereanent. To which he anſwered, He did not think it treaſonable, to take up Arms in Defence of the King and the Country, though without Warrant, there being a ſubſiſting Rebellion in the Country. Depones, That, after the Petition was approved of, he was preſent at making a Draught of an Advertiſement to be inſerted in the News-papers; in which there were Words to this Purpoſe: That the Pannel heartily agreed or concurred with the Deſire of the ſaid Petition. That two of the Company, when the Draught was made, were ſent to wait upon the Pannel with it. That they went; and, when they returned, reported the Draught with an Amendment made by the Pannel's Order, by daſhing out the Words, *heartily agree or concur*; and putting in place thereof, *acquieſced in*: And that he heard the ſaid Report, and ſaw the ſaid Amendment. Depones, That he was preſent at a Meeting in the New Church Iſle, upon the 9th *September* foreſaid; to which the Pannel came, and named the ſix Captains; and, as the Deponent remembers, expreſſed his Satisfaction with the Zeal of the Petitioners; but in what Terms, he does not remember: Nor did he himſelf obſerve any contrary or diſreſpectful Behaviour of the Pannel's on that Occaſion, tho' he heard others talk differently of it. Depones, That, upon *Wedneſday* the 11th *September* foreſaid, the Deponent went round the City-wall, from the *Briſtow* Port to the *Weſt* Port; upon which he ſaw but four or five Men working. That, on *Friday* thereafter, the 13th, he was deſired by ſeveral of his Brethren Volunteers, to remonſtrate to the Provoſt and Council, that the Reparation of the City-walls was carried on ſlowly; and to lay before them ſome Propoſals that were thought neceſſary for that Purpoſe: Some of which the Council agreed to, and ſome were diſagreed to: But that he remembers only one Article diſagreed to, relating to a Houſe at the *Potter-row* Port, which was propoſed to be taken down, or ſo built up as not to infeſt the Walls at that Port. That the Deponent and the Pannel had ſome warm Words with reſpect to the Works going on ſlowly: And he propoſed to the Pannel, that Bailie *Hamilton* ſhould be authoriſed to overſee theſe Works; but the Pannel replied, That that Truſt was already committed to Bailie *Robert Baillie*. Depones, That he was not preſent when the Propoſal for putting Arms only in the Hands of ſuch of the Trained-bands as were well-

affected

affected to the Government, was first made: But some time after, he heard the same Proposal renewed to the Pannel; and his Answer was, He could not think of distinguishing or discriminating one Part of the Trained-Bands from another. That upon *Wednesday* the 11th of *September*, he and, he thinks, Bailie *Wilson* carried a Proposal to the Pannel, to search for Arms within and in the Neighbourhood of the City; and he believed a former Message had been carried to the Pannel for that Effect. That the Pannel answered, He was willing a Search should be made in the Neighbourhood; but he could not agree to make it within the City, because it would create a great deal of Confusion, as he said. Depones, That he was not at the general Meeting held in the New-Church Isle, upon the Afternoon of the 16th of *September*; because, just before it, the Fire-Bell was rung, which was the Signal to the Volunteers to repair to their several Posts; and which he accordingly did: And that neither before his repairing thither, nor while he staid there, was there any Orders sent by the Pannel, to the Volunteers how to dispose of themselves, so far as he knows: And that Provost *Drummond*, then a Captain of one of the Companies of Volunteers, having represented to the other Officers, that no Orders had come how they were to dispose of themselves, suggested, that he thought it was proper, since they got their Arms from the Government, and it seemed were not to use them, or were not at Liberty to use them, or Words to that Purpose, that therefore it would be proper for them to return them to the Castle. Upon which they immediately marched up to the Castle, and delivered up their Arms. And being interrogate, how long he thinks they might have been at the Alarm-post, before they marched up and delivered the Arms; and how the Volunteers came to take upon them, without Orders from the Pannel, their Colonel, or without knowing that they were to receive no Order, to deliver them up? depones, That he cannot precisely tell how long the Volunteers were upon the Alarm-post; but that he went to Captain (Provost) *Macaulay*'s House, whose Lieutenant he was, desiring him to go to the College-Yards to their Company; that after going there, and finding the Company was gone, they returned to the *Lawn-Market*; but by the Way, the Deponent stepped into the Goldsmiths-Hall, where he staid hardly so much as a Quarter of an Hour: That, when he came to the *Lawn-Market*, the Company was there: And that there were two Chests of Arms in the College-Yards, and the Carts, Carters and Horses, which had brought them, standing by, without so much as a Centry; which Mr. *Macaulay* and he insisted they should carry back again; but which the Carters refused at first to do: And an Officer, who came from the Castle, also declined to have it done; because his Orders were to leave them there: And what betwixt persuading the Officer to allow them to be carried back, and threatening the Carters to yoke their Horses to carry them, which at length was complied with, a good deal of Time was spent: And when the Arms were delivered into the Castle, it began to be duskish. And to the latter Part of the above Interrogatory, depones, That about the Time that, without Command, the Volunteers delivered up their Arms, it was whispered by severals among them, though he himself did not say so, that they were betrayed; and they would be cut in Pieces, without doing any good Service: But the publick Reason given as above was, That they had got no Orders, and had no Reason to expect any. Depones, That one Part of the Proposals made by the Deponent to the Pannel, was in relation to bringing in long Ladders in the Suburbs of the Town; to which the Pannel agreed, and said, He would issue Orders accordingly. He does not know if such Orders were given or not; but he, upon Application to the Bailie of *Potter-row*, and by his Warrant, seized, and brought into the Town, several long Ladders, about fourteen or sixteen, from the *Potter-row*, and thereabouts, upon the 16th *September*.

XI. Sir *Robert Dickson*, of *Carberry*, Baronet, depones, That in the Evening of *Sunday* the 15th *September* 1745, he came to the City of *Edinburgh* upon the Head of one hundred and fifty Volunteers from *Inveresk*, *Musselburgh*, and the Neighbourhood, according to the Report of *Daniel Matthison*, an old Serjeant, who had drawn them up to number them. That he acquainted the Pannel that Night about Ten o'Clock, that he had marched these Volunteers to assist in Defence of the City, under his Command, against the Rebels; and desired that the Pannel might furnish him and them with Arms for that Purpose. That the Deponent met with a so and so Reception; that is, not such as he expected: For that he did not thank him for bringing in the Men, but carried him into a Room in Mrs. *Clarke*'s House, where there were several of his Acquaintances. That the Pannel said, It was too late to give out Arms to them that Night, but that they should have them next Morning. That the Pannel ordered a Refreshment for the Men; and they were quartered in the New-Church Isle. That no Arms were delivered to them next Morning. That the Deponent applied to the Pannel on the *Monday* Morning for Arms; and he answered, They should have them by Nine o'Clock: But they were not then delivered; and the Men staid in the Town till about Mid-day, *Monday*; and he believes went then home. But that an Hour after the Deponent had been with the Pannel that Morning, he desired Bailie *Lindsay* of *Musselburgh* to go to the Pannel, and inquire for the Arms; for he the Deponent would not go near him again. That when the Deponent talked with the Pannel that Morning, he the Pannel proposed to the Deponent, that his Men he had brought to Town should inlist in the *Edinburgh* Regiment.

XII. *Gavin Hamilton*, Bookseller, and late one of the Bailies of *Edinburgh*, depones, That he was desired by some of the Meeting which had formed and presented the Petition to the Pannel and Council of *Edinburgh*, in relation to the Association of Volunteers, to meet with them, to talk on that Subject, on the Evening of the 6th of *September* 1745. That the Pannel declined going, upon account of his being tired going round the Walls of the City, with this Deponent, the deceased Mr. *Colin Maclaurin*, and several others. And the Deponent replied, That the Gentlemen of that Meeting positively expected him there. To which the Pannel made no Reply; but he understood the Pannel went to the Meeting, though he the Deponent was not there. Depones, That after the Council of *Edinburgh* had ordered the City-Walls to be repaired in *September* 1745; this Deponent upon the 6th of *September*, walked round the whole of them with the Pannel. That on the 7th of *September*, he again went to visit the said Work; and found but nine Men working at that Work, although he expected to have seen two or three hundred; and that meeting with Deacon *Mack*, who had the Charge of the Workmen, he asked the Deacon, How it came there were so few People employed in the said Reparation? And he thinks the Deacon answered him, That the Pannel had told him, that unless he had a more special Warrant for his Work, he might get it for his Payment. That that very Day, this being complained of in Council, that the Work was carried on very slowly, the Deacon obtained a more special Warrant for making Reparations of the Walls, and obtained Press-Warrants against Workmen. That the next Day, being the 8th of *September*, he again made the Round of the Walls, and found only fourteen Men at Work. That several Complaints were made of the Slowness of the Work to the Deponent, and several others of the Council: But the Deponent knows not whether any such Complaints were made to the Pannel. Depones, That when the Reparation of the Walls was first proposed, the Pannel objected to it, on account of the Expence, and the Lowness of the Town's Funds: But the Deponent recovered, from Bailie *Hope*, he thinks, the Account of the like Expence which was incurred in the Year 1715, amounting to but about two hundred Pound, or three hundred Pound: That this Objection was dropped, and the Work begun. That he knows nothing of the Proposal that was made to the Pannel, for getting Sailors expert in Gunnery to serve the City-Cannon; but some time after he heard of that Proposal, he saw upon the Council-Table a Letter lying from the Commander of the *Ursula*, one of his Majesty's Ships, addressed to the Pannel, acquainting him, that he had no Gunners to spare for the Service of the City: And the Deponent supposes that this was an Answer to a Letter wrote by the Pannel demanding Gunners. Depones, That he himself made a Proposal to the Pannel, for laying aside the Trained-Bands from the Service of the City, because he believed there were too many disaffected to the Government amongst them. That the Pannel rejected it; and said, he would stand for the Honour of the Trained-Bands. Depones, That some Volunteers came from the Neighbourhood of *Musselburgh*, *Dalkeith*, and other adjacent Places, on the 15th of *September*; and that the Deponent had Occasion to meet with Dr. *Tait*, just as he parted with the Pannel: That the Doctor complained, that the Pannel had used him roughly, and was in a Passion at him, for no other Reason, as he said, but for bringing in his Men. Depones, That at a Council-Meeting upon the 16th *September* 1745, in the Goldsmiths-Hall, he saw a Petition signed by several of the Inhabitants of *Edinburgh*, and particularly by some of his own Acquaintances, (whom he chided for having signed it) desiring a general Meeting to be called, to consider what was proper to be done. That he does not know how the said Petition came in; nor does he remember whether it was read or not; nor can he say, that it was presented, or put in the Hands of the Pannel, though he saw it in his Hand. And the Paper, marked Number 8. in the List subjoined to the criminal Letters, being exhibited to the Deponent, depones, It is the same which he saw on the Table, in the Goldsmiths-Hall, and in the Pannel's Hand. That the Meeting in the Goldsmiths-Hall soon broke up, and another was immediately held in the New-Church Isle; at both which the Pannel presided. That in this last Meeting, there was a great deal of Confusion; the Petition was again talked of; but he does not remember it was read: And it was under the Consideration of that Meeting, whether the Town should be defended, or delivered up to the Rebels? and the far greater Number of the Meeting were for the latter. It was also under Consideration, if some Dragoons should be brought into the Town for the Defence of the City, in consequence of Offers to that Purpose, severally made by Mr. *Groset*, and Mr. *Lindsay*, Secretary at War; but the Cry of the Generality was, *No Dragoons, No Dragoons:* and he heard the Pannel repeat these Words, *No Dragoons*; but whether as his own Opinion, or as the Sense of the Meeting, he cannot say: But the Meeting rested in that Opinion. That in the same Meeting, the Deponent proposed, that the Arms of the City should be secured in the Castle, since the Meeting had resolved not to defend it; and the same Proposal also comprehended the King's Arms then in it: Which Proposal the Pannel repeated to the Meeting, as coming from the Deponent; and was agreed to. But afterwards it being moved, and insisted on, that if the Arms were delivered into the Castle, they could expect no Capitulation or Terms, the Resolution of delivering them into the Castle was altered. After which, such of the Members of the Council as were in the Meeting, went to the Goldsmiths-Hall; where, and in the Council-Chamber, they remained all Night. Depones, That at the Meeting in the Goldsmiths-Hall, before that in the New-Church Isle, and at the said Meeting in the New-Church Isle, there was an Offer of Dragoons made to the Pannel twice, once by Mr. *Groset*, and another Time by Mr. *Lindsay*, Secretary at War; to one of which (he thinks it was to Mr. *Lindsay*, in the New-Church Isle, who pressed the Offer much upon the Pannel) he answered, If the commanding Officer would send in Dragoons, he might do it; but he, the Pannel, would give no Orders for that Purpose. The other Offer by Mr. *Groset*, which he also pressed much, and which the Deponent thinks was the first, being made in the Goldsmiths-Hall, the Pannel refused to accept of. Depones, That at the Meeting in the New-Church Isle, there was a Letter from the Pretender's Son brought in, in what Manner he knows not, further than it was said to be handed in from the Door: And the first Time he saw it, was in the Hands of Deacon *Orrock*; who broke it open, and looked at the Subscription, and was going to read it; but a Cry being made against reading it, the Members of the Council insisted it should not be read; and the Pannel forbid it to be read. And it was not read at that Time; but it was read in the Goldsmiths-Hall, to which, as said is, the Pannel and the Council retired. That, upon reading this Letter, it was proposed what kind of Answer should be made to it: And it was moved, That the Advice of the Assessors should be taken upon it. That they were accordingly sent for; but none of them were in Town, except Mr. *Patrick Haldane*; who came down to them a little, but declined to give any Advice. And, in Explication of what he has already said, depones, That the Motion for sending for the Assessors, arose upon a Proposal which had been made, That the City should capitulate or surrender upon Terms; and that the Pannel having asked at several of the Council, if they would go and capitulate? which they declined to do, it was then, or about that Time, that the Motion for taking the Advice of the Assessors was made. That Mr.

Haldane was sent for, and came; and then one of these two Things was proposed to Mr. *Haldane* to give his Advice upon, either what was proper to be done in the present Juncture in general, or what should be done in relation to answering the said Letter, he does not remember which; to which he thinks Mr. *Haldane* said, *These things are too difficult for me to give any Opinion of*; and thereupon rose from his Seat, and walked off; but does not remember if the Letter was read or shewn to Mr. *Haldane*. That afterwards the Pannel changed the Terms of his Proposals; and suggested, that it might be proper to send out some of their Number, to gain Time: And a Committee of the Council of four, was appointed to go, whereof the Deponent was one; and their Instructions were, to call only for such of the Gentlemen in the Rebel Army as they were acquainted with; and to propose to them, if they would send some of their Number into the City, to tell what they proposed to have done; and to assure, upon the Part of the Pannel, such as should be sent in, that they should be allowed to return safely. That the said Deputation accordingly went out; and the Paper, marked No 2. signed and sealed by *John Murray*, the Pretender's Son's Secretary, now exhibit and shewn to the Deponent, was given to him, as the Answer to the first Deputation; which he refers to as Part of his Deposition. That the Deponent having given in this Paper, as the Report of the said Deputation, it was objected to it, That it could not be agreed to by the Council; and *John Coutts*, then one of the Councillors, and late Provost of the City, said, That it was impossible to agree to it; and that they must send back again another Deputation, to see and get better Terms. Depones, That, when he returned, he was told by some Members of the Council, That Sir *John Cope*, with the Fleet in which the Troops under his Command were, were arrived at *Dunbar*. That then it was proposed, that a fresh Deputation might be sent to obtain better Terms; which was agreed to. The Deponent was proposed to be one of the Deputies; but refused it, and very soon thereafter left the Council: But he understood, that a Deputation of four did go, and was told so by one of the Deputies; and saw the Paper marked N° 3. mentioned in the List of Writings; which was the Result of that second Deputation. Depones, That of the City-arms there were between thirteen and fourteen hundred Firelocks and Bayonets; about a hundred of which Number were in bad Condition. Depones, That, after the Pannel, and the Deponent, with the other Members of Council, retired out of the New Church Isle, to Goldsmiths-Hall, or Laigh Council-House, he was deputed by the Pannel, and the other Councillors, to wait of the Lord Justice-Clerk, that he might give his Advice, either to the Council, or to as many of them as should wait upon him, what it was proper for them, at that Juncture, to do; and others at the same time were appointed to carry the same Message to the Lord Advocate and Solicitor for the Time. The Deponent went, in obedience to this Order; but, before he had gone a little Way from the Goldsmiths-Hall, he received certain Information, that the Lord Justice-Clerk had left the City; which he reported to the Pannel, and the Council, in the Goldsmiths-Hall. And depones, That the same Answer with respect to the then Lord Advocate and Solicitor, was returned in the Deponent's Hearing, That they had left the Town.

XIII. *John Wilson*, Merchant, and late one of the Bailies of *Edinburgh*, depones, That, upon a *Saturday* towards the End of *August*, the Deponent was pressed by several of the Burghers to go to the Provost, and complain, that nothing was a-doing for the Defence of the City, notwithstanding that it was then certain that the Pretender's Son was landed in the North, and on his March Southwards. That the Deponent accordingly went the same Day; and for the above Reasons, proposed, that the Provost should forthwith call a Meeting of the old and substantial Burgesses of the Town. That the Provost at first received the Proposal with a little Laugh; but, after Reflection, agreed to it. That the Deponent proposed that the Meeting should be called that same Night; but the Pannel said, the Burghers would be gone to their Diversions, and would not be got together. To which the Deponent answered, That no Time was to be lost; and, if the Meeting was not called that Night, it should be early *Monday* Morning. That the Deponent, at the same time, told the Pannel, that, during the Rebellion in the Year 1715, the Town of *Glasgow* had raised a Regiment of 500 Men, and he was sure that the City of *Edinburgh* could raise 1000; but the Pannel seemed to laugh at the Proposal, believing that Money could not be got to pay them; and said to the Deponent, You remember, *John*, that upon a certain Occasion, we could not raise a small Sum for a particular Purpose; and how do you imagine we should be able to maintain 1000 Men? He added further, That they could not raise such a Body of Men, without being guilty of Treason, unless they had the King's Sign-manual. To which the Deponent answered, That he knew that very well; but, if That were applied for, it might be got. Depones, That the Meeting of the Inhabitants was not called till the *Tuesday*; and then it was held in one of the Church Isles, where two or three hundred Burgesses were present, and the same Proposal was again made of raising a Regiment of 1000 Men; and several other Proposals were made for putting the City into a Posture of Defence. That the Pannel did not seem to oppose any of these Proposals. That it was agreed by the Meeting, to apply to the Crown-Lawyers to procure his Majesty's Sign-manual for raising the Regiment; and also, to take their Opinion concerning certain Volunteers who offered their Service. Depones, That, in that Meeting, the Pannel, who presided in it, directing his Discourse to the Deponent, said, in a jocular Way, *John*, this is your Meeting. To which the Deponent answered, My Lord, I am not ashamed of it. Depones, That, after the said Meeting, a Petition was drawn up, to be signed by such of the Inhabitants as were so disposed; praying the Magistrates and Council's Allowance to associate themselves as Volunteers in Defence of the City; and several different Copies of the same Petition were left in the New Church Isle to be signed, from time to time, by such of the Inhabitants as inclined: And the Petition in the Clerk's Hands, now shewn to the Deponent, being the 5th in the List of Writings subjoined to the Criminal Letters, is the Petition that was signed by this Deponent. That, when they had got about two hundred Subscriptions, a Committee of four or five of them were sent to the Pannel, to desire he would be pleased to name their Officers: That the Deponent and Bailie *Nimmo* were two of those who were sent: That they thought the Pannel was very dilatory in naming their Officers. That the Deponent himself applied two or three different Times to him for that Purpose; and several Days intervened betwixt the first Application, and his naming any of them; and, at last, he named the Captains, and allowed them to name their Subalterns: But it was then but about ten Days before the Rebels got Possession of the Town. And, being interrogate for the Pannel, depones, That they had several Meetings in the New Church Isle with the Pannel; and he doubts not but the Pannel may have named the Captains on *Saturday* the 7th of *September*, though the Deponent cannot be certain of the Day of the Week or Month; but is sure, that a List had been given to the Pannel, out of which he might name these Captains, five or six Days before he named them. And, being further interrogate for the Pannel, depones, That it was understood, that the Field-Officers were to be named, not from among the Volunteers themselves, but proper Persons to be found who were more skilled in military Affairs. Depones, That there were many Complaints, that the Reparation of the Town-Walls went on very slowly; and particularly remembers, that that Part of the Wall which seemed most dangerous, to wit, at the College Kirk, and from the New Port to *Leith* Wynd, was not repaired or barricaded till *Monday* the 16th of *September*, the very Day before the Rebels entered the Town: And the Deponent, on that *Monday*, went to the Council himself, and complained, and got proper Warrants to press Workmen; one whereof was signed by Bailie *Robert Baillie*, and another of the Volunteers got a Warrant, signed by Bailie *Mansfield*. That Bailie *Robert Baillie* was the Second Bailie that Year; and the Second Bailie is called *The Bailie of the Publick Works*; because, by his Office, he has the Over-sight of these Works. That the Deponent had several Times complained to the Pannel, and others of the Magistrates, that these Works went on very slowly: And particularly remembers, that he once complained to the Pannel himself on that Account; and the Pannel answered, That he had given Orders to Bailie *Baillie* about the Works, and Power to press Workmen. But depones, That, about that Time, the Election of the Deacons was going on, which happened upon a *Saturday*; and then the Work went much slower on than at other times; and the Trades-people were so taken up about their Elections, that the Deponent believes it was hardly in the Power of the Pannel or Magistrates to get the Tradesmen to work. And being further interrogate for the Pannel, Whether that Part of the Wall above deponed upon, at the College Kirk, and from the New Port to *Leith* Wynd, was not so far repaired before the 16th of *September*, that the Breaches were made up, and the Parapet built, so that nothing was wanting, but the barricading the Ports? depones, That it was another Person, and not the Deponent, who was employed to see that Part of the Repairs made on the 16th; and therefore the Deponent cannot with Certainty answer the Question: But knows, that these Ports had not been barricaded as some of the other Ports of the Town had been (which was all the Deponent meant in the former Part of his Oath on this Article); and knows that a great many Hands were got, and a great deal of Work done that Day; and the Tradesmen themselves said, That they had done more that Day than for some Days before. Depones, That the Deponent was present at a Meeting that several of the Burghers in Town had with the Pannel in the House of Mr. *Wilson*, Taverner in *Edinburgh*; and which Meeting was held in consequence of a Request made by some of these Burghers, that the Pannel should meet with them: And there were present at the Meeting a good Number, the Deponent cannot be positive how many; but there were, he thinks, twenty, or thirty, or forty of them: And that Meeting desired of the Pannel, that he would discriminate the Trained-Bands one from another, and put Arms only in the Hands of such as were known, by the old Burghers, to be well-affected to the Government: But the Pannel said, That that was too delicate a Point for him to meddle with. And being interrogate for the Pannel, depones, He knows nothing of that Proposal's being made to the Council. Depones, That he knows there came in several Volunteers from *Musselburgh* and *Inveresk*, along with Sir *Robert Dickson*; and another Body of Volunteers from *Dalkeith*, under the Command of Mr. *Lewis Douglas* Advocate, and Dr. *Tait*. That the Deponent knows nothing of their Reception by the Pannel, further than that the Body that came from *Dalkeith*, on *Saturday* the 14th, were lodged in the High School, and ordered to keep Guard at the High School Yards; but were not joined to any other Body of Troops till *Monday* at Two o'clock Afternoon, that the Deponent went to the Pannel's House, and proposed that they should be joined to some other Company: And the Pannel desired him to join them to any Corps that he thought proper; and the Deponent accordingly joined them to that Company of Volunteers where he himself served, and which was commanded by Sir *George Preston*. Depones, That, in the Afternoon of *Monday* the 16th of *September*, as the Deponent was keeping Guard at the *Netherbow* Port, he was informed, that there was to be a Meeting of the Inhabitants in the New Church Isle; and it was reported that the Town was to be delivered up: Upon which the Deponent asked Leave of his Captain, Sir *George Preston*, to go to see what was doing. That the Deponent came, and found the Pannel, and most of the Magistrates, with several of the Inhabitants, in Goldsmiths-Hall. That the Deponent said to the Pannel, What, are you a-going to give up the Town, when we have thirteen hundred Men in Arms, that are ready and willing to defend it to the utmost? To which it was answered, either by Mr. *Lauder* the Surgeon, or by Mr. *Orrock*, Your Champion Mr. *Williamson* has given up the Defence of the Town; and do you pretend to hold it out? The Deponent replied, That he would not believe that, unless he had it from Mr. *Williamson*'s own Mouth; for none but a Coward, or a Jacobite, would give it up. Upon which Mr. *Williamson* appeared; and said, He was willing to hold it out to the utmost, if his Men would stand by him; but that he had not above ten or twelve Men that appeared where they should have been. And the Deponent says, Mr. *Williamson* was Lieutenant to a Company of *Edinburgh* Volunteers. That he knows not what the Number of that Company was; but that he believes it was fifty, sixty, or seventy Men. That the Deponent then asked the Pannel, What he was resolved to do? And he said, That he would take the Advice of his Brother-Burgesses. That, about this Time, Mr. *Grosset* came into the Meeting with a Message from some of the Crown-Lawyers, offering the Dragoons for the Defence of the City, if the Provost would order them: And the Pannel answered,

That he would give no Orders; but that, if they were ſent in, he would receive them. Depones, That Mr. *Laurence Dundas*, being in the Meeting, inſiſted, that the Pannel, as Provoſt, ſhould give the Orders for bringing them in: That the Pannel repeated his former Anſwer; and Mr. *Dundas*, or ſome one of the Meeting, ſaid, That, if he refuſed, he behoved to anſwer for it, if the Town was given up. Depones, That the Deponent was ordered by the Pannel to his Poſt at the *Netherbow*; and that Inſtant, or in a very little Time, the Fire-bell rung; ſo that the Deponent was not preſent at the Meeting in the New Church Iſle. Depones, That, upon the Deponent's Return to the *Netherbow*, he acquainted Sir *George Preſton* of what had paſſed; who thereupon immediately left him, to go to the Meeting; and did not return for Half an Hour, or an Hour; during which Time the Deponent knew nothing of what was doing. That, upon Sir *George*'s Return, he ordered the Deponent, and the reſt of the Company, and another Company alſo upon Guard there, to march to the Alarm-poſt, which was in the *Lawn-market*. That, when they came to the Croſs, they got Notice, that the other Companies of Volunteers had gone to the Caſtle, and delivered up their Arms; and, when they came to the Alarm-poſt, finding none of the Volunteers there, they alſo marched up to the Caſtle, and delivered up their Arms; and thinks it was then about Sun-ſetting. Depones, That the thirteen hundred armed Men that he mentioned to the Provoſt, as above deponed, were compoſed of the City-Guard, the *Edinburgh* Regiment, the *Edinburgh* Volunteers, the Seceders, the *Inverеſk*, *Muſſelburgh*, and *Dalkeith* Volunteers. That the Deponent cannot, from his Memory, now ſpecify the particular Number of each Corps: But he is ſure, that, at that Time, he did count them, and they did amount to the foreſaid Number; and were all well armed with Guns, Swords, and Bayonets. Depones, That, by counting, the Deponent means no more than adding the Numbers of the ſeveral Corps as reported by their Officers.

XIV. *Walter Groſet*, late Collector of the Cuſtoms at *Alloa*, now one of the General Inſpectors of the Cuſtoms of *Scotland*, depones, That, upon *Monday* Afternoon the 16th of *September* 1745, as the Deponent was coming to Town in Company with Lord Juſtice-Clerk, they met ſeveral People coming full Speed out of Town; who informed them, that the Rebels were by that Time at the Weſt Port. That thereupon Lord Juſtice-Clerk ſent the Deponent with a Meſſage to the Pannel, then Lord Provoſt of the City, while at the ſame Time the Lord Juſtice-Clerk himſelf rode to meet the Dragoons, who were then a Mile North-eaſt of the City of *Edinburgh*: That the Meſſage to the Pannel was, to know whether he was reſolved to defend the City of *Edinburgh*; to preſs his defending it; and to aſſure him, if he was to defend it, he ſhould have a hundred Dragoons, or as many as he pleaſed to deſire; and to get the Pannel's Anſwer. That the Deponent, in his Way to the Town, met the then Lord Advocate, to whom he reported the Meſſage he was ſent with; who approved of it, and preſſed him to haſte to deliver it. That the Deponent found the Pannel in the Goldſmiths-Hall, with ſeverals of the Magiſtrates and Council, and other Perſons, it being then betwixt Three and Four Afternoon; and the Deponent delivered his Meſſage to the Pannel in the above Terms, as from both the Lord Juſtice-Clerk and Lord Advocate. That the Pannel ſhifted to give a direct Anſwer to the Meſſage: And, being preſſed to it by ſeverals of the Meeting, he at laſt made a Speech; in which he ſaid, He would do nothing unworthy of the Station which he was in: He urged the Uncertainty of Sir *John Cope*'s coming to their Relief, and the Danger of the Lives and Properties of the Inhabitants; and concluded, That he was againſt defending the Town; but ſaid he would be adviſed by his Council. And being interrogate for the Pannel, What were the Expreſſions that imported his being againſt the Defence of the Town? depones, That he cannot remember the particular Words; but the whole Purport of his Speech tended that Way. Depones, That, as there were ſeveral Altercations betwixt the Deponent, as well as other Perſons preſent, and the Pannel, the Deponent deſired an Anſwer in Writing: Which the Pannel declined to give, ſaying, That the Deponent was very capable to return a verbal Anſwer. That the Deponent ſtill inſiſted for an Anſwer in Writing; and the Pannel repeated the ſame Anſwer. Then the Deponent ſaid, He could make nothing elſe of the Pannel's Anſwer, but that he refuſed to defend the Town, and admit the Dragoons. And, upon that, the Pannel agreed to give him a written Anſwer; and believes might have ſaid, That the Deponent miſtook him. That the Pannel accordingly gave the Deponent an Anſwer in Writing, directed to the Lord Advocate and Lord Juſtice-Clerk. And being ſhewn the Letter in the Clerk's Hands, produced in this Trial by Mr. *Craigie*, a preceding Witneſs, depones, That that Letter is the Anſwer he then got from the Pannel. Depones, That, upon receiving that open Letter, and reading it, he ſaid to the Pannel, That he had already aſſured him from Lord Advocate and Lord Juſtice-Clerk, that it was their Opinion that he ſhould defend the Town; and that he ſhould have a hundred, or as many Dragoons as he ſhould deſire, to aſſiſt in the Defence of it; and that he muſt anſwer for the Conſequence of that unneceſſary Delay. Upon which the Pannel left the Meeting, and the Deponent came off with the written Anſwer. Depones, That, at the above Meeting, in anſwer to what the Pannel had ſaid of the Uncertainty of Sir *John Cope*'s coming in Time, the Deponent ſaid, That as they had certain Advice, that Sir *John Cope* and the Troops were at *Aberdeen*, and were to embark for *Leith*, they had Reaſon every Hour to look for their Landing. Depones, That, at the ſame Meeting, ſome of the Company, and, the Deponent thinks, Capt. *James Murray*, ſaid, That, if the Town was not to be defended, it was neceſſary that Care ſhould be taken of the Arms in it, ſo as they ſhould not fall into the Hands of the Rebels: And, as the Deponent underſtood it, that Speech was directed to the Pannel, as was every thing elſe ſpoke out in that Meeting, in which he preſided; but the Pannel made no Anſwer to it. Depones, That the Deponent returned from that Meeting to the Lord Juſtice-Clerk's at *Brunſtaine*, and ſhewed him the aforeſaid written Anſwer. That the Lord Juſtice-Clerk ſent him immediately with it to the Lord Advocate, and Brigadier *Fowkes*, then at *Muſſelburgh*. That the Deponent delivered the ſaid written Anſwer to Lord Advocate. That by that Time Lord Advocate had got Advice by two Letters from *Dunbar*, of the Arrival of Sir *John Cope* with the Tranſports, and Troops under his Command, off that Place; and Lord Advocate inſiſted, that the Deponent ſhould immediately return to *Edinburgh*, and ſhew the Pannel thoſe Advices he had got; and at the ſame time wrote a Letter, certifying, that theſe Letters carried by the Deponent were the original Letters carrying the Account of Sir *John Cope*'s Arrival. That the Deponent forthwith ſet out from *Muſſelburgh*, it beginning then to grow dark, and came with all the Speed he could make to *Edinburgh*; and found the Pannel, with his Council, in the Council-chamber, and put into his Hands the Lord Advocate's Letter, with the foreſaid Letters of Advice. That the Pannel, upon reading them, ſaid, They were come too late; for they had agreed to capitulate, and had ſent ſome of their Number to treat about the Terms; and at the ſame time reached to the Deponent a Letter, which, upon opening it, the Deponent found to be ſigned, *Charles*, *P. R.* and is the ſame Letter mentioned in the firſt Article of the Liſt of Writings ſubjoined to the criminal Letters; the ſame being now ſhewn to the Deponent. Depones, That the Deponent then propoſed, that as probably the People ſent out to the Rebel-Camp could not by that Time be got the Length of the Camp, a Meſſenger ſhould be immediately ſent to bring them back; which the Pannel agreed to; and it was done accordingly. That, about that Time, Provoſt *Drummond* came into the Council-houſe, and he and Provoſt *Macaulay* inſiſted, that they ſhould then reſume the Defence of the Town; that, for that End, the Fire-bell ſhould be rung, That being the Signal for convening the Inhabitants, or bringing them to their Poſts. That the Pannel anſwered, That they muſt be tender of the Blood of their Fellow-Burghers: That, ſhould they ring the Alarm-bell, the Rebels might hear it; and ſhould thoſe of their Number, who were ſent out to treat with them, be arrived at the Camp, they might hang them, or uſe them ill; or Words to that Purpoſe. That ſome others in the Meeting ſaid the ſame thing; particularly Dean of Guild *Hathorn*, as the Deponent thinks, but cannot be poſitive. Depones, That ſome of the Company, the Deponent thinks Provoſt *Drummond*, anſwered, That the City ought not to lay down their Arms till the Treaty was concluded; and the preparing for their Defence, was the beſt Way for obtaining good Terms: And, at the ſame time, propoſed, that, if they did not incline to ring the Fire-bell, a Bank might be ſent through the Town (by which the Deponent underſtood beating a Drum), or any other Method for bringing the Inhabitants together. To which the Pannel anſwered, That that was a Matter of too great Importance for him to take upon him by himſelf, for he would be determined by his Council. That Provoſt *Drummond* ſaid to the Pannel, That he was the Perſon that muſt give the Orders, and muſt anſwer for them; and the Council had nothing to do in it. Depones, That the Council, at leaſt ſeverals of them whom he knew, were preſent in the Meeting, but none of them ſpoke. That then the Pannel was going to leave the Chair; but ſome of the Council inſiſted that he ſhould keep it; which he did accordingly. Depones, That thereafter the Pannel, and ſome others of the Council, particularly, as the Deponent remembers, *Mark Sandilands*, urged, that the Town was not defenſible. To which the Deponent anſwered, That he well knew the Situation of the Town, and likewiſe knew the Condition of thoſe who were to come againſt it, who had no Cannon, and were very ill armed; and that he would undertake to be one of fifty to defend the weakeſt Part of the Town: And ſome of the Council joined the Deponent, particularly one Mr. *Currie*, who offered to make one of the fifty, and to find the reſt of them within the Town. That thereupon the Pannel ſeemed to come to a Reſolution to defend the Town, provided General *Gueſt* would give them what Arms were neceſſary. That the Deponent offered to go to General *Gueſt*; and that the Pannel might be ſatisfied, that he did not miſtake or miſrepreſent his Meſſage, deſired that one of the Council, who the Pannel could confide in, might be ſent alongſt with him; and accordingly Provoſt *Coutts* was ſent. That, upon delivering the Meſſage to General *Gueſt*, he expreſſed his Satisfaction with the Reſolution of defending the Town; aſſured them they ſhould want no Aſſiſtance that was in his Power to give them; and that how ſoon they ſhould diſtribute the Arms properly belonging to the City, they ſhould have what more Arms they had Uſe for: That he had already given Orders to ſpike up the Cannon on the City-walls, and beat off the Trunnions; but that now he would countermand theſe Orders. And being interrogate for the Pannel, depones, That no Part of the Meſſage, ſent by the Pannel to General *Gueſt* by his Hands, was touching the Dragoons; neither did the Deponent make any Propoſition to the General relating to them. Depones, That, upon Provoſt *Coutts* and the Deponent's Return from the Caſtle to the Council-chamber, the Pannel told the Deponent, That, as the Meſſenger they had ſent after their Deputies had not overtaken them, the Council were come to a Reſolution not to defend the Town: And the Council, at leaſt ſeverals of them known to the Deponent, were preſent at the Time. Depones, That thereupon it was propoſed, and, as the Deponent thinks, by Provoſt *Drummond*, That, if the Town was not to be defended, Care at leaſt ſhould be taken to ſecure the Arms, that they ſhould not fall into the Rebels Hands. Upon which the Pannel reached to Provoſt *Drummond* the before-mentioned Letter, ſigned *Charles*, *P. R.*; by which, he ſaid, Mr. *Drummond* would ſee, that if the Arms were put out of the Way, the *Highlanders* would plunder the Town. To which Provoſt *Drummond* anſwered, That if the Town ſhould furniſh the Rebels with Arms to fight againſt the King's Troops, had they not Reaſon to expect, that when the Town ſhould be retaken by the King's Troops, they would look upon the Town as Enemies, and uſe them as ſuch? That thereupon the Deponent inſiſted to have the Pannel's Anſwer in Writing to the Meſſage he had brought him from Lord Advocate. To which the Pannel anſwered, That he had already put too much in Writing that Day, and he would write no more upon the Subject. And thereupon Provoſt *Drummond* and the Deponent came away. And being interrogate, Whether at this Time, when he left the Pannel in Council, he did not ſay, he was going to bring in the Dragoons? depones, That he was ſo far from ſaying ſo, or intending it, that had he met the Dragoons coming in, he would have turned them back, in reſpect of what had paſſed in his laſt Converſation with the Pannel.

XV. Mr. *Lewis Douglas*, Advocate, depones, That betwixt Two and Three o'Clock Afternoon of *Sunday* the 15th *September* 1745, the Deponent, and one Mr. *Tait*, a Phyſician in *Dalkeith*, came with 47 Men, being,

ing, as the Deponent thinks, all Inhabitants of *Dalkeith*, to offer their Service to Provoſt *Stewart*, to aſſiſt in the Defence of the City of *Edinburgh*, againſt the Rebels. That, in their Way to *Edinburgh*, Mr. *Tait* left the Deponent with the Men, in order to find out the Pannel, to get Arms for them. But about Six o'Clock Mr. *Tait* returned to the Deponent, and told him, that the Pannel ſaid he had no Arms to give them; and that upon this Mr. *Tait* had applied to the then Lord Advocate; who told him, that it would be neceſſary for him to draw a Petition, addreſſed to him the Lord Advocate: Which Mr. *Tait* accordingly did; and the Lord Advocate ſubjoined a Recommendation on the Foot of the Petition, directed to General *Gueſt*. Which Petition and Recommendation being preſented by Mr. *Tait* to General *Gueſt*, General *Gueſt* granted a Warrant upon Mr. *Lyon* Storemaſter, to deliver to the Deponent, and the Men that came along with him, fifty Stand of Arms, a Barrel of Ball, and a Barrel of Powder: And that about Six or Seven o'Clock they were accordingly received. Depones, That Mr. *Tait* informed the Deponent, that when he Mr. *Tait* converſed at firſt with the Pannel, and was told, as above, by the Pannel, that he had no Arms to give the Men who were coming from *Dalkeith*; Mr. *Tait*, upon that, aſking, If the Men might notwithſtanding come into the Town of *Edinburgh*? the Pannel ſaid, They ſhould be very welcome. That, upon their Return from the Caſtle, the Deponent, with the Men that came along with him, went to the Parliament-Cloſe, where they remained until that Mr. *Tait*, who had gone in Search of the Pannel, ſhould receive Orders from him, both as to their Quarters, and the Place of the Town which they were to defend. That it was ſome time before Mr. *Tait* returned; and when he returned, he told the Deponent, that the Pannel declined for ſome time to give any Orders; but at laſt, by the Intereceſſion of Provoſt *Drummond*, the Quarters which were allotted for them was the High-School; and the Place of the Town they were to defend, was from the *Cowgate* Port to the Back of the Infirmary. That they remained there, and kept Guard all Night: But in the High-School, where their Quarters were allotted them, they had neither Meat, Coal, or Candle. Depones, That betwixt One and Two o'Clock, as the Deponent thinks, the Pannel made his grand Round: And that then the Deponent, with his Men, turned out their whole Guard to him. That he is poſitive the Pannel did not ſpeak to him; and, ſo far as he remembers, he did not ſpeak to any of the Men: And that Mr. *Tait*, with a Party of ſixteen Men, eſcorted him from their Guard to the next Guard. Depones, That a Meſſage coming to Mr. *Tait* about Twelve o'Clock on *Monday* the 16th of *September*, giving an Account that his Wife was dangerouſly ill, and who accordingly died that Day, Mr. *Tait* was obliged to leave the Town, and the Command of the Men wholly upon the Deponent: And the Deponent having gone to wait of the Pannel, to acquaint him of what had happened to Mr. *Tait*, and to deſire that the Pannel might appoint ſome proper Perſon to command the Men who came along with the Deponent in Conjunction with himſelf; the Pannel made Anſwer, That your Men were in ſo good Order laſt Night, that I do not think you ſtand in Need of any Aſſiſtance; but if you know of any proper Perſon, you may name him, and I will appoint him. Upon this Bailie *Wilſon* came in, and told he was very glad to ſee the Deponent with the Pannel; for it was upon the ſame Errand he was come to ſpeak to him, to know how theſe Men were to be quartered. The Provoſt's Anſwer was, That he had ſo many Things in his Head, and was ſo much hurried, that he deſired the Bailie might give Orders thereanent himſelf. Depones, That betwixt Ten and Eleven of the *Sunday* Night, Bailie *Wilſon*'s Wife ſent to the Deponent and Mr. *Tait*, deſiring that they might come and eat ſomething with her. They accordingly went; and, when in her Houſe, ſhe ſaid ſhe was ſorry they had been ſo little taken Notice of. That the Deponent and Mr. *Tait* were a good deal ſurpriſed, that none of the Magiſtracy, or thoſe who had the Direction of the Affairs of the Town of *Edinburgh*, came near them; conſidering the Place which they were ſent to guard, and which, in the Deponent's Apprehenſion, was of very great Importance to the Town of *Edinburgh*. This made the Deponent believe, and ſay to Mr. *Tait*, That the Defence of the Town was altogether a Joke; and that he would return next Morning back to *Dalkeith*. Mr. *Tait*, in Anſwer to this, ſaid, That he was wrong in thinking in that Manner; for ſuch a Piece of Conduct would appear fooliſh, if they ſhould come the one Day and return the other: And, beſides, if they acted a Part becoming themſelves, they were not anſwerable for the Conduct of others. And being interrogate for the Pannel, How they were provided in Meat, Drink, Coal, and Candle, the Time they remained in the Town of *Edinburgh*, and when it was they left it? depones, The whole Time they remained in *Edinburgh* they were obliged to provide for themſelves. And, upon hearing the Fire-bell ring upon *Monday* Afternoon, he immediately ſent up to know what was the Matter; and the Perſon he ſent, meeting with *James Carmichael*, Writer to the Signet, Mr. *Carmichael* ſent the Deponent Word, that it was his Buſineſs to march up his Men forthwith to the *Lawn-market*. And the Deponent upon this imagined, they were immediately going out to fight the Rebels; and therefore marched up his Men, without Loſs of Time, to the *Lawn-market*. And when he came there, he found the Volunteers all coming down from the Caſtle, after having delivered up their Arms. Upon which the Deponent marched up his Men to the Caſtle, and delivered in his Arms alſo. And, upon this, the Men got Ladders, ſcaled the Walls, and went to *Dalkeith* that Night; but he himſelf ſtaid in the Town all that Night.

XVI. Mr. *John Tait*, Doctor of Medicine in *Dalkeith*, depones conform to the preceding Witneſs, in ſo far as concerns the Facts which happened while the Deponent was in the Town of *Edinburgh*; with this Variation, That he does not remember that he uſed the Word *declined* to Mr. *Douglas*, when he was giving him an Account of the Orders he then received from the Pannel with reſpect to the Men's Quarters who came along with him, and the Place of the Town they were to guard; but he told Mr. *Douglas*, that the Pannel delayed giving Orders for ſome time. Neither does he remember, that he uſed that Expreſſion to Mr. *Douglas*, *That it was by the Intereceſſion of Provoſt* Drummond *that the Orders were then procured*; but told him theſe Orders were wrote by Provoſt *Drummond*, and ſigned by the Pannel. Nor does the Deponent remember the Expreſſion which Mrs. *Wilſon* had to Mr. *Douglas* and the Deponent upon their not being ſo much taken Notice of as they ought to be; but remembers there was then ſome ſuch Expreſſion by ſome of the Company.

XVII. *Archibald Macaulay*, Eſq. late Lord Provoſt of *Edinburgh*, depones, That he reſided in the Town of *Edinburgh* in the Months of *Auguſt* and *September* 1745, when Accounts were brought that the Pretender's Son was landed in the Weſtern Iſlands, and that he was marching with a Body of Rebels Southward. That the Deponent, being in the Town of *Edinburgh* in the Year 1715, obſerved then a Zeal and Warmneſs in the Inhabitants, which proceeded from that Diſpoſition appearing firſt in the Magiſtracy, and which ſoon ſpread itſelf among the other Ranks of People. That the Method taken at that Time for the Defence of the City, was by Pariſh-guards, there being four hundred Volunteers, who had aſſociated themſelves together beſides, and who were very well diſciplined before the Rebels came then near to the Town. That the Trained-Bands were laid aſide, as being a promiſcuous Sett of People, whereof many were diſaffected; and the Care of the Town was given, in place of them, to the Pariſh and City-Guards, in whoſe Hands Arms were put, as being known to be People well-affected to the Government. That, upon the late Rebellion, the Deponent did not obſerve in the Town of *Edinburgh*, ſuch a Keenneſs and Zeal for the Support of his Majeſty's Government; and at this Time nothing but Coldriſeneſs [*i. e.* Lukewarmneſs]. But hearing that the Rebels intended to come to the Town of *Edinburgh*, although at firſt it was reported they intended to paſs another Way, the Deponent met with ſome other well-affected People of the Town, and expreſſing his Concern for the Welfare of it, they propoſed the raiſing of a Regiment of 1000 Men, and to get ſome People to aſſociate themſelves into Companies of Volunteers, as was done in the Year 1715. The Pannel about this Time did call a Meeting of the principal Inhabitants of the Town of *Edinburgh*, to conſult what was proper to be done then: And at that Meeting it was agreed, That a Committee of the Town-Council, in Conjunction with ſome other of the Citizens, ſhould wait upon the Lord Advocate, Juſtice-Clerk, and other People about the Town of Diſtinction, and conſult with them, both as to the Legality and Expediency of raiſing the Regiment of one thouſand Men, and aſſociating ſome Companies of Volunteers. That, in this Meeting, there were ſeveral Difficulties ſtarted, and even among the Lawyers; but they all agreed in this, that they could not ſet about the levying of the Regiment of one thouſand Men, without procuring firſt from the Regents a Warrant for that Effect. Upon this ſeverals of the Meeting preſſed, that an Expreſs ſhould be immediately diſpatched, in order to procure it: But the then Lord Advocate ſuggeſted, they would appear ridiculous, if they ſhould obtain any ſuch Licence, when, at the ſame time, they were not aſcertained of the Money that was ſufficient to pay the Regiment. Upon this it was propoſed at that Meeting, that the Provoſt ſhould make a Trial how the Money ſhould be raiſed: And the Provoſt ſuggeſted, that the proper Method for doing this would be, by recommending it to the Miniſters and Kirk-Seſſions. Againſt which Propoſal no Objection then was made. That the Meeting upon this broke up. And the Magiſtrates and Council accordingly recommended it to the Miniſters and Kirk-Seſſions to make a Trial how the Money could be raiſed: But the Miniſters, upon receiving the Warrants for ſo doing, objected to the Warrants, as not being properly ſigned by the Town-Clerks. But the Deponent, and ſome others of the Inhabitants, hearing that the Miniſters made this Scruple, met together, and called for their Stent-Books, and made out a Liſt of ſuch People as they thought would willingly contribute for the Support and Maintenance of the Regiment: And, upon conſidering the ſaid Liſt, they were of Opinion, there would be no Difficulty of raiſing a Sum ſufficient for that Purpoſe. That next Day the Deponent coming to the Street, he met with the Pannel, who, it would appear, had by that time got Notice that the Deponent, and ſome others, had been making out the above Liſt; and told the Deponent, That he found ſome People were taking a good deal upon them; that, as he was Provoſt of *Edinburgh*, he would maintain it; and although he had a great Regard for the Conſtitution of his Country, he had alſo a Regard for the Honour of the Magiſtrates, and Liberties of the Town of *Edinburgh*; and that Nobody ſhould wreſt the Dignity of Provoſt out of his Hands. And this he ſeemed to ſay in a Paſſion. To this the Deponent made Anſwer, That there were three of his own Magiſtrates in Company; and they only propoſed to do that in a more expeditious Manner, which he himſelf wanted to have done. That the Forenoon of that Day, as the Deponent thinks, he met Mr. *William Alexander* Merchant; and talking of the Payment of the Regiment of the thouſand Men, how it was to be aſcertained, Mr. *Alexander* ſaid, 'Why 'ſhould there be any Occaſion of Delay on that Account? I am willing 'to give my Bond for three thouſand Pounds, if any body will join with 'me;' and the Deponent made Anſwer, That he was not a very rich Man, but he would join with him. Upon this they both agreed to go up to the then Lord Advocate, and tell him ſo much; which, after they had done, the Advocate told them, That he could only tranſact with the Magiſtrates; but he was very glad to hear of their Propoſal, and he would immediately write about it: As he was then juſt ſending off an Expreſs, and had wrote his Letter, he then added a Poſtſcript to it; which in Subſtance was, telling the Offer that had been made by two Citizens of the Town, which he thought were good for Three thouſand Pounds, and deſired therefore, that the Warrant or Order for levying the Regiment might be forthwith ſent down. Depones, That two or three Days before the Rebels came to the Town of *Edinburgh*, the Deponent remembers to have heard ſome Propoſals made to the Pannel, for ſearching the Inhabitants Houſes for Arms: And upon theſe Occaſions he heard the Provoſt always ſay, That there ought to be no Diſtinction made, but all Houſes ſearched without reſpect of Perſons; but the Deponent does not remember to have heard of ſuch an Order granted. Depones, That he happened to be with ſome others, in Mrs. *Clarke*'s Houſe, where the Provoſt and Mr. *Maclaurin* were preſent; and it was then propoſed, that the City-walls ſhould be put in ſome tolerable Poſture of Defence: And Mr. *Maclaurin*, at that Meeting, produced a Scheme of what was neceſſary for that Purpoſe. To which the Pannel agreed; but made ſome Difficulty with regard to the Expences that were neceſſary for doing ſuch a Work. The Deponent thinks, that the Provoſt might in this have acted a prudent Part for the Town of *Edinburgh*; but the Deponent thought this ought at that Time to have occaſioned no Delay; and Mr. *Maclaurin* ſaid ſo too.

too. Depones, That he heard the Reverend Mr. *Alexander Webster* once and again make a Propoſal to the Pannel in the Council-Houſe, where there were a good many of the Council preſent, and a great many other Inhabitants, of raiſing, upon his own Credit, five hundred Guineas, to be diſtributed to five hundred of the ableſt-bodied Journeymen of the ſeveral incorporated Trades in the Town; who, as they were very bold and hardy in the extinguiſhing of Fire, he believed would willingly undertake to mount the City-walls, and aſſiſt in the Defence of them, in caſe they ſhould be attacked by the Rebels, and judged them much more proper for that Purpoſe than the Volunteers were. That the Anſwer which the Deponent heard the Lord Provoſt make was, That, if Mr. *Webſter* would undertake to raiſe the Money, he would be Caution that Mr. *Webſter* would perform it. Depones, That he was preſent, both when Mr. *Lindſay* Depute Secretary at War, and Mr. *Groſet* Collector of the Cuſtoms at *Alloa*, made a Propoſal to the Pannel, for bringing into the Town a hundred Dragoons for the Town's Defence; and Mr. *Groſet* added, if he deſired, even the whole two Regiments, provided that the Provoſt would deſire it in Writing. The Pannel's Anſwer was to both theſe Gentlemen, That if the Dragoons would come into the Town, they ſhould be welcome; but he would ſign no ſuch Deſire. Depones, That he was preſent in the Council-Houſe on *Monday* Evening the 16th of *September*; when he heard it propoſed, that there was a Neceſſity for ſecuring the Town's Arms, Ammunition, and Cannon on the Walls, from falling into the Hands of the Rebels: But as there was very great Confuſion that Night, the Deponent does not remember any more of the Matter. Depones, That the Number of his Company, to the beſt of his Knowledge, conſiſted of Sixty or Seventy; and that Mr. *Joſeph Williamſon* was his Lieutenant.

XVIII. *James Nimmo*, Eſq. late one of the Bailies of *Edinburgh*, depones, That, upon *Monday* the 16th *September* 1745, as the Deponent was upon Guard at the *Netherbow* Port, with Sir *George Preſton* of *Valleyfield*, he received a Meſſage from the Pannel, he thinks between Four and Five at Night, to come and ſpeak with him, and ſome of the Town-Council, then in the Goldſmiths-Hall. That, when he came there, in obedience to the ſaid Meſſage, he underſtood, the Pannel, his Council, and ſome of the Inhabitants, were engaged in an Argument, what Anſwer ſhould be returned to a Letter which the Pannel had received from the Lord Juſtice-Clerk, or the then Lord Advocate; by which Meſſage an Offer of a hundred Dragoons was made to the Pannel, or more if he pleaſed, to aſſiſt in the Defence of the City. That, after ſome time ſpent in this Debate, the Pannel obſerved, that a Thorn had been put in his Foot; for that if he ſhould accept of that Offer, and the Town ſhould be taken, he might be charged with having enſnared ſo many of his Majeſty's Troops; and, on the other hand, if he ſhould refuſe to accept of the Offer, he might be blamed, if the Town was taken, for having loſt it by not receiving that Succour. That, in Anſwer to this, the Deponent obſerved, that it was an eaſy Matter for the Pannel to put the Thorn in their Foot, by making an Anſwer to this Offer, That if the Lord Juſtice-Clerk or Lord Advocate ſhould think it fit, and for the Service of the Government, to ſend a hundred Dragoons, or the whole of them for the Purpoſe aforeſaid, the Pannel ſhould be ready to receive them; which Expedient the Pannel, and ſeverals of the Gentlemen then preſent, ſeemed to approve of; and the Pannel ſet about writing an Anſwer, as the Deponent imagined, to that Purpoſe: But, when he heard the Anſwer read, he did think it did not fully come up to his Propoſal. Upon which he left the Meeting, and repaired to his Poſt; and, about Five o'Clock, the Alarm-bell rung, the Signal for calling the Volunteers to repair to the *Lawn-market:* But, before the Deponent left his Poſt, he ſent ſeveral Meſſages to the Pannel, to receive Orders what to do; and to the third Meſſage, he thinks, for the firſt Time, received an Anſwer, to repair to the Alarm-poſt; which accordingly he did: and that he was not preſent at the Meeting in the New Church Iſle, held much about this Time, judging it more his Duty to remain at his Poſt; beſides, he ſaw a great many People crowding into that Meeting, whom the Deponent did not look upon as proper Perſons to conſult with in a Juncture of that ſort, when the Rebels were reported to be at the Diſtance of only about two Miles from the City.

XIX. Mr. *Alexander Webſter*, one of the Miniſters of *Edinburgh*, depones, That the Week before the Rebels got Poſſeſſion of the City of *Edinburgh*, he was preſent at a Meeting in Mrs. *Clarke*'s with the Pannel, ſome Officers of the Army, and well-affected Inhabitants of the City. That in it the Deponent obſerved, that the Reparation of the City-walls was carried on by much too ſlowly; and that the Tradeſmen ſhould be called to give a Reaſon why they were ſo ſlow in executing the reſpective Parts of the Works to them aſſigned. That the Pannel obſerved, That, being about the Election-time, and pretty late, it was very probable the Tradeſmen might have got a Cup too much for Buſineſs that Night; and it would be better to defer that Inquiry 'till next Morning: And, at the ſame time, obſerved, That the Care of theſe Works had been appointed to a particular Committee named by the Council for that Effect. At the ſame time ſome of the ſaid Officers who were preſent complained, that what they called the Baſtions of the Town-wall were too weak; that is, the Scaffolding upon which the Cannon was placed, was not ſtrong enough; the Parapet round the Wall, in ſome Places, was too narrow; ſo that one Man could not paſs another; nor were the Parapets ſufficiently cleared. That the Deponent knows there was a Plan made by the deceaſed Mr. *Colin Maclaurin* of the City-walls, and Baſtions, and other Works neceſſary to be made for the Defence of the City; which was agreed to by the Council, as the Deponent was informed, and a Committee named for bringing it to Execution. That the Deponent obſerved, upon the 9th of *September*, as he thinks, that a Ditch near *Wallace*'s Tower, which had been projected by Mr. *Maclaurin* to be made on the North-ſide of a Wall there, was erroneouſly made on the South-ſide of the Wall; whereby it became rather a Security for, than a Defence againſt the Rebels; and which Miſtake, ſo far as the Deponent remembers, was never corrected, but rather carried on, as the Deponent obſerved, upon viſiting the ſame upon *Wedneſday* the 11th of *September:* But, as he did not mention this as any Article of Complaint in the foreſaid Meeting in Mrs. *Clarke*'s, he does not know, that any Part of this Miſtake could be charged againſt the Pannel. Depones, That, at the Meeting in Mrs. *Clarke*'s above mentioned, the Deponent remembers, that Bailie *Robert Baillie* came into the Room: Upon which the Deponent renewed this Complaint againſt the Workmen for carrying on the Works ſo ſlowly; which he did, becauſe he was informed, that Bailie *Baillie* was the chief of the Committee above mentioned. Upon which the Bailie ſent for one of the Tradeſmen; who made the following Excuſes: That they had made the Baſtions as ſufficient as the Timber they could find for that Purpoſe would admit of; and that they had carried on the Work as faſt as they could find Hands to do it. Depones, That ſome time of the ſaid Week, he caſually met with the Pannel in the Parliament-Cloſe, and again renewed his Complaint to him about the Slowneſs of carrying on the ſaid Works; which appeared to him ſhould have been carried on without Loſs of Time: And the Pannel mentioned ſomething about the Expence of the Work, and propoſed, that the Volunteers would advance the Expence thereof according to their Engagement. To which the Deponent replied, That he did not doubt but the Volunteers would fulfil their Engagements, though he ſuſpected it might be a Difficulty for them at preſent to advance the Money. Depones, That he was preſent at a Meeting in Mr. *Wilſon*'s Houſe, when a Petition, ſigned by a conſiderable Number of the well-affected Inhabitants of the City, was preſented to the Pannel, for aſſociating themſelves as Volunteers; which the Pannel objected to as High Treaſon; but added, that he ſhould conſult the Crown Lawyers about it: And that he expreſſed his Diſſatisfaction at the Manner of promoting that Petition, and in attaining ſo many Subſcriptions, without previouſly conſulting with him. Depones, That it was obſerved, that thoſe Parts of the Walls near *Potter-row* Port, and St. *Mary* and *Leith* Wynds, were commanded by the adjacent Houſes; and it was thought, that it was proper to build up the Doors and Windows of the ſaid Houſes, to make the Defence of thoſe Parts of the Walls practicable; or to poſſeſs thoſe Houſes with Parties of the Volunteers. It was alſo propoſed, to poſſeſs the Houſes at the *Potter-row* Port with a Party, and to make a Communication by a Bridge, by which they could retire to the Walls in caſe of being diſlodged. But nothing of this kind was executed; nor did the Deponent make the Non-execution of this any Part of his Complaint. Depones, That, ſome time in the Week before the Rebels entered *Edinburgh*, the Deponent had Occaſion to meet with the Pannel, and others, in the Exchequer-Chamber, and in Mrs. *Clarke*'s; when he propoſed to the Pannel to find Security, or, if it was thought neceſſary, even to advance 4 or 500 Guineas, to be diſtributed among the able-bodied Journeymen of the Brewers, Bakers, and other Tradeſmen of the City, to encourage them to join with the Volunteers in defence of the City that Night in which it ſhould happen to be attacked by the Rebels; which Propoſal the Pannel ſeemed to approve of; and ſaid, That the Deponent needed no Security for his Advance, for he the Pannel would become Caution for the Deponent's paying it. That the Deponent then propoſed, that the Maſters of thoſe Journeymen, and others, ſhould be ſent for, to concert a Plan for the Execution of that Propoſal: But the Pannel alledged, that it was too late for that then; and that ſome of them would readily be about their Bottle; but next Day he would do it. That, on *Sunday* the 15th, the Deponent aſked the Pannel, If he had met with the Maſters of the ſaid Journeymen? *&c.* He anſwered, That, in the Multiplicity of Affairs, it had eſcaped his Memory, but that he would do it; but does not know if it was done or not. Depones, That, in the Afternoon of the 16th of *September*, he heard, that there was to be a Meeting of the Inhabitants in the New Church Iſle, or that ſuch a Meeting was then met; and juſt about this Time the Alarm-bell rung, which was the Signal for the Volunteers to repair to their reſpective Poſts. That the Deponent, being one of them, went to the Poſt aſſigned to the Company in which he ſerved; ſo that he can give little Account of what paſt at that Meeting; But having ſtepped in to ſee what was going on, he thought it a very tumultuous Aſſembly. That the Deponent obſerved, very few of the well-affected Inhabitants that he knew were in it: That there were ſeverals of the Meeting, who, in his Opinion, were not well-affected to the Government; and that the Generality conſiſted of People, who, to the beſt of his Remembrance, he had never before ſeen. That the few who ſpoke for defending the City, were treated with very ſcurrilous and opprobrious Language; particularly the Reverend Mr. *George Logan*, who was ſpeaking to that Purpoſe, ſeemed to him to have been pulled down from the Form on which he was ſtanding, by Force. Upon which the Deponent left the Meeting, and repaired to his Poſt. Depones, That on *Monday* the 16th he went round the Walls of the City upon which the Cannon was planted; and obſerved there were two of them, one at the *Briſtow* Port, and another at the South-Eaſt Corner of the Wall near *Bedlam*, upon which no Centinels were then attending; and it was obſerved, theſe Cannon could not be fired, without drawing the Shot; becauſe they might be unloaded, or the Shot altered during the Time the Centinels were abſent: But that, after the Deponent ſtaid a conſiderable Time at the Cannon on the South-Eaſt Corner, as above, a Centinel at laſt appeared, who ſaid, He had been planted as Centinel upon the ſaid Cannon. Depones, That, upon the Evening of the ſaid 16th *September*, he went along with the other Volunteers, to deliver up his Arms to the Caſtle; and, in his Return, met with Enſign *Roberton* on the Head of a Party of Men, ſent by Gen. *Gueſt* or Gen. *Preſton*, with Orders, as the Enſign told him, to ſpike up the Cannon on the Walls of the City; but that he was ordered, before entering the City, to apply to the Pannel for his Authority to do ſo. That he had diſpatched *Robert Griffith*, a Gunner, to acquaint the Pannel thereof, and to aſk his Authority. That the Deponent ſaw the ſaid *Robert Griffith* return, who reported, that he had waited upon the Pannel, and that his Anſwer was, That he would give him no Authority; adding ſome Words which he at preſent cannot recollect; but the Impreſſion they made upon him at the Time, and which he ſtill retains, was, that they imported a Diſcouragement of the Execution of the Order; for that the Enſign immediately ſaid, being in Converſation with the Deponent, Should I force? or, I will force my Way into the Town; or Words to that Purpoſe. But the Deponent ſuggeſted to him, It would be more proper for him to make a Report of what had happened, to one of the Generals; which having been done by ſome one of the Party ſent for that Purpoſe, they were recalled, and marched into the Caſtle. And, being interrogate for the Pannel, depones, That he gave it as his Opinion, at Eleven o'Clock

at Night of *Monday* the 16th, in the Laigh Council-House, that the Town could not then be defended, without the Assistance of the Dragoons, in regard that the Volunteers had lodged their Arms in the Castle; and that a great many of them were either gone into the Castle, or had left the City, upon the Resolution of delivering up the Town; and that he thought it extremely odd, to propose now a Defence of the City in their present Circumstances, when, it seemed, it had been judged not tenable, even when the whole Volunteers were in Arms, and an Offer made for the Dragoons to come in to its Defence: And therefore, upon the whole, was of Opinion, that a Message should be sent to the Dragoons to return, and some proper Methods taken, in the mean Time, to gather together as many Volunteers as possible. Depones, That the Deponent either heard Mr. *Drummond* himself, or some other Person, say, That he Mr. *Drummond* was going out to bring back the Dragoons; and he did not return while the Deponent was there. And depones, That he did not think the Alarm-bell a proper Signal for collecting the Volunteers, while the Dragoons were at so great a Distance, and the Rebels so nigh. That this he considered as an Intimation to the Rebels to make the Attack on the City ere it was possible for the Dragoons to come to its Defence; and any Intimation to the Rebels, of a Design of defending the City, would probably prove a Hardship on the Deputies that had been commissioned by the Town-Council to capitulate with them about the Surrender of it, and who were at that Time at the Rebel Camp.

XX. *Alexander Scot*, Merchant in *Edinburgh*, depones, That, in *September* 1745, he served as an Officer of Volunteers, for Defence of the City of *Edinburgh*, in the Company commanded by the present Lord Provost of *Edinburgh*. That some Day of the second Week of *September*, and, as he thinks, about the Beginning of that Week, the Deponent was present in the New Church Isle; when he heard a Question put to the Pannel, Whether such of the Volunteers as belonged to the Trained-Bands ought not to be exeemed, during their Service as Volunteers, from doing any Duty with the Trained-Bands? To which the Pannel answered, That, when both a Company of Trained-Bands, and a Company of Volunteers, were upon Duty at the same Time, any Person belonging to both these Companies, might have his Choice which of them to serve in at that Time. And, upon a further Question put to the Pannel, he answered, That, when a Company of Trained-Bands, and a Company of Volunteers, to both which one and the same Person belonged, should happen to do Duty on different Days, such Volunteer should do Duty on both. That the Deponent does not remember to have heard any Objection made to these Answers, or any thing further said on the Subject in that Meeting: But the Deponent had Occasion to converse with some of the Volunteers, who thought it a Hardship; and doubts not, but it may have discouraged others from engaging as Volunteers. And, upon an Interrogatory put by the Pannel, depones, That he did converse with some of the Trained-Bands, to whom he proposed to enlist as Volunteers; who answered, That would bring upon them double Duty; that they were already bound to do Duty in the Trained-Bands; and, should they engage as Volunteers, they might be obliged to do Duty also in that Capacity, when the Trained-Bands were not upon Duty; but, were it not for that Hardship, they would have chosen rather to have served as Volunteers, than with the Trained-Bands. And being desired to condescend upon any Person who gave him such Answer, depones, That he cannot, at this Distance of Time, charge his Memory with the Persons Names; but thinks that he talked on that Subject once to a Friend of his, *William Scot*, Merchant, or in a Company where he was; and that either *William Scot*, or some other in that Company, gave the Deponent that Answer. Depones, That the Company to which the Deponent belonged were ordered to meet in the College-yards, in the Afternoon of *Monday* the 16th of *September*. That the Deponent, having been out of Bed all the preceding Night, and having gone only to Bed at Ten o'Clock that Day, it was about Two Afternoon before he came to the Place; and found some others of the Company there before him. That they had got no Orders what to do; and continued in the College-yards about an Hour after the Deponent came, and still received no Orders: And at last they consulted together, and marched to the *Lawn-market*; but the Deponent cannot charge his Memory, what were the Reasons that induced them to march thither, whether it was the ringing of the Fire-bell, because he does not remember, whether that Bell was rung before they marched, or if it was only rung after they marched; or if their Reason was, to be near the proper Place where they might receive Orders, for the Company was anxious or uneasy for Orders. That there were other Companies of Volunteers in the College-yards, who marched to the *Lawn-market* at the same Time, and the Deponent thinks for the same Reason. That, after coming to the *Lawn-market*, they waited there for a considerable Time without receiving Orders; till at last the Deponent, at the Desire of some other Officers of the Volunteers, went to the Goldsmiths-Hall, to desire the Pannel's Orders for those Companies of Volunteers. That the Deponent found a Crowd in the Goldsmiths-Hall, with some Difficulty got to the upper End of it, and told the Pannel, That he was sent by the Officers of the Volunteers, who were standing in the *Lawn-market*, to ask his Lordship what Orders he would please to give them: That the Pannel answered, That he was at a Loss to know what Orders to give them; and thinks he further added, That they were then deliberating about that Matter. That the Deponent waited some little Time, to see whether he would get Orders; but getting none, he left the Hall, and returned to his Company in the *Lawn-market*, and acquainted the other Officers of the Volunteers what had passed. That, not long after the Deponent's Return, he saw the Officers of the Volunteers that were in the upper End of the *Lawn-market* in a Knot together, and, as he supposed, consulting what Measure they should take; and the Deponent was soon thereafter told, That they had resolved to deliver up their Arms to the Castle: And, upon the Deponent's going up the *Lawn-market*, the Officers informed him of their said Resolution; and, agreeable thereto, the Deponent went up to his Company, which was the Westmost in the *Lawn-market*; and the whole of them marched up to the Castle. And the Reason given the Deponent for taking that Resolution, was, Because no Orders were given them, and they were apprehensive that their Arms might fall into the Rebels Hands.

XXI. *Archibald Stevenson*, Writer in *Edinburgh*, depones, That he was an Officer of the Volunteers, for Defence of the City, in *September* 1745. That he was present at a Meeting that the Pannel had with some of the Volunteers in Mrs. *Clarke*'s; where Mr. *Webster* the Minister was also present; and which, he thinks, was upon *Saturday* the 14th *September*. And depones, That he there heard Mr. *Webster* propose to the Pannel, that a Number of the Servants and Journeymen of the Brewers and Bakers in the Town should be hired to assist in the Defence of the City any Night it should be attacked, at the Premium of a Guinea each in hand; and a further Reward to be given them, according to their Behaviour, when the Matter was over. That Mr. *Webster* undertook to raise, by Subscription, a Sum of 500 *l.* to defray the Expence; and offered to give Security for Payment of the Money. That the Deponent did not hear what Answer the Pannel gave; but supposed that the Proposal had not been gone into, because he heard no Resolution taken upon it in that Meeting, nor did he afterwards hear any more of that Matter. Depones, That, in the Afternoon of *Monday* the 16th of *September*, and, as he thinks, about Four o'Clock, while the Volunteers were drawn up in the *Lawn-market*, he was sent by them with a Message to the Pannel, to ask what Orders he had to give to them? and likewise to ask, in case the Town was not to be defended, where they were to deposit the King's Arms? or Words to that Purpose. That he found the Lord Provost in Goldsmiths-Hall. That to the first Part of his Message he received no Answer, and got no Orders for the Volunteers, what they were to do: But to the second Part of the Message, the Pannel answered, That he would give Orders to receive the Arms at the Court of Guard. Depones, That the Deponent waited till the Pannel left Goldsmiths-Hall, and went to the New Church Isle; and, on the Way thither, in the Parliament-Close, the Deponent saw *Alexander Cunningham*, Surgeon, come up to the Pannel, and deliver the following Message: 'That the Dragoons found 'that the Number of the Rebels were so far superior to them, that they 'were obliged to retire;' but the Deponent does not remember the Place he named where the Dragoons had gone to; and said, That the Number of the Rebels, so far as they could judge by Appearance, could not be under eight thousand strong. Depones, That thereupon he heard the Pannel say, If the Troops were retired, then all was over. That he believes the Occasion of Mr. *Cunningham*'s being with the Dragoons was, that he expected there was to be an Action, and he attended them in the Way of his Business. And being further interrogate, depones, That he left the Provost as he was going into the New Church Isle, and returned to the *Lawn-market*, and reported to the Officers of the Volunteers the Answer he had got to the Message they had sent by him. That thereupon they consulted together; and some were for immediately delivering up their Arms into the Castle; but Provost *Drummond*, who was one of their Officers, insisted, that, before taking that Step, they should send a second Message. That a second Message was accordingly sent; but by whom, the Deponent does not remember; and the Messenger returned without any Answer: Whereupon the Volunteers marched up to the Castle, and delivered up their Arms.

XXII. Ensign *William Roberton*, of *Edinburgh* Castle, depones, That, in the Evening of the 16th *September* 1745, he being then an Officer in the Castle of *Edinburgh*, was sent by Gen. *Preston* about Six o'Clock at Night, after that the Volunteers delivered up their Arms in the Castle, with a Party, to bring up to the Castle the Cannon that were on the Walls of the City, or otherwise to render them useless, by spiking them up, and knocking off the Trunnions; and, for this Purpose, he had Carts and Horses along with him, and proper Instruments for spiking the Cannon, and beating off the Trunnions: But then, his Orders were restricted, not to do this without Licence and Order from the then Lord Provost of *Edinburgh*. Depones, That, with his Party, he marched down to the Reservoir; and then he first sent the Serjeant of his Party, and after that one *Griffith*, a Gunner in the Castle, with a Message to the Provost, to know whether he might enter the Town for the above Purpose; and the Answer which was returned to him from the Pannel, by both the Messengers, was, That he would give no Orders concerning the Cannon; but the Deponent might do as he thought proper. Upon this he sent to General *Guest*, to know how he should behave; and Orders were brought him to return to the Castle. Depones, That Mr. *Webster* was with him, procured him a Flambeau, some Smiths, Carts and Horses; and that, without going further, the Deponent returned to the Castle.

[29th *October*, betwixt One and Two o'Clock in the Morning.] It was now moved by some of the Jury, That they might have Leave to make a Motion in Court before any further Procedure in the Trial: Which being allowed of by the Lords, Sir *Alexander Nisbet* of *Dean*, *Patrick Crichton* of *Woodhouslie*, *John Nisbet* Portioner of *Water of Leith*, and *Edward Lothian* Jeweller in *Edinburgh*, four of the Gentlemen upon the Assize of the said *Archibald Stewart* Pannel, humbly represented and moved in Court, in their own, and in Name of the whole other Assizers, That the Court had now continued upon this Trial, without any Respite, since *Tuesday* Morning at Eight o'Clock, being upwards of forty Hours: That, by this Sederunt, several of the Assizers were already greatly fatigued, and one or two of them altogether unable to hold it out any longer, without some Relief: That the Assize could not imagine it to be the Intention, either of Prosecutor or Pannel, to kill or destroy them; which behoved to be the Consequence, should they insist upon finishing the Trial at one Sederunt: That their Lordships, as well as the Pannel, and other Members of Court who had attended this Trial, must be sensible, from what they had suffered themselves, of the Hardships undergone by the Assize, and consequently of the Reasonableness of their Demand: That, altho' other People's Situation and Strength might enable them to go on without Relaxation, the said four Gentlemen did, with great Candour and Ingenuity, assure the Judges, That they were no longer able to go on in their Duty upon this Trial: And therefore begged Leave to acquaint their Lordships thereof; at the same Time flattering themselves, that both the Pannel, and his Majesty's Advocate, would concur and agree, that the Trial might be put off, and continued for such a short Space of Time as the Lords should please to appoint, that in the mean time the Assize, and all concerned,

might have a little Reſt. And, with the greateſt Submiſſion, moved the Court, That they would pleaſe to take this their Requeſt into Conſideration, and grant the Deſire thereof accordingly.

'Upon hearing of which Motion, Mr. *Archibald Stewart* Pannel, and 'his Counſel, in reſpect of the Diſtreſs which the Length of this Trial 'has already brought upon ſeveral of the Aſſize, and that it ſeems impracticable to finiſh the Trial at one Sederunt, conſent to the granting the 'Deſire of the Motion made as above by the Aſſizers, in caſe the Lords 'ſhall think proper ſo to do.'

Signed ARCH. STEWART. JAMES FERGUSON.

'Mr. *William Grant*, his Majeſty's Advocate, does not oppoſe the 'granting the Deſire of the foreſaid Motion, agreed to by the Pannel and 'his Counſel; and hereby conſents that the Lords grant the ſame, in caſe 'they ſo think fit; and that in regard the Jury have already attended forty 'Hours; and that ſeveral of them are ſo valetudinary, that they are unable to ſtand out the Trial, without ſome Reſpite; and alſo that ſeveral of the Proſecutor's Witneſſes have given him Notice, that they are 'not able to attend longer without endangering their Healths.'

Signed WILL. GRANT.

'The Lords Commiſſioners of Juſticiary, having heard the Motion of 'the Aſſize, and the Conſent to granting the Deſire thereof, both of the 'Pannel and his Majeſty's Advocate, as above, and fully deliberated and 'argued thereon, they, in reſpect thereof, and of the Neceſſity of the 'Caſe, continue the Diet 'till Eleven o'Clock of the Forenoon of this 'Day; and ordain the Pannel and Witneſſes to attend then, each under 'the Pain of Law; as alſo the haill fifteen Aſſizers then alſo to attend, 'each of them under the Penalty of five hundred Pounds *Sterling*: And 'the ſaid Aſſizers, in Token of their Acquieſcence, hereby become bound 'and enacted, each for themſelves, their Heirs and Succeſſors, that they 'ſhall appear and give Attendance at the foreſaid Hour, in this Place, 'each under the foreſaid Penalty of five hundred Pounds.'

Signed ALEX. FRASER, *I. P. D.*

Alex Niſbet.	*Thomas Wood.*	*Alex. Campbell.*
Jo. Niſbet.	*Pat. Crichton.*	*R. Fleming.*
James Dewar.	*Tho. Trotter.*	*James Stirling.*
John Sivright.	*Hugh Clerk*, junior.	*James Hunter.*
James Falconer.	*Wm. Wight.*	*Edw. Lothian.*

Curia Juſticiaria S. D. N. *Regis, tenta in nova Seſſionis Domo Burgi de* Edinburgh, *vigeſimo nono Die Menſis* Octobris 1747, *per honorabiles Viros Magiſtros* Alexandrum Fraſer *de* Strichen, Patricium Grant *de* Elchies, Carolum Areſkine *de* Tinwald, *&* Hugonem Dalrymple *de* Drummore, *Commiſſionarios Juſticiarii dict.* S. D. N. *Regis.*

Curia legitimè affirmata. Lord *Strichen* Præſes.

Intran.

ARCHIBALD STEWART of the City of *Edinburgh*, Merchant, and late Provoſt of the ſaid City, Pannel, indicted and accuſed as in the former Sederunt.

The haill fifteen Aſſizers being called over, and anſwering to their Names, his Majeſty's Advocate proceeded to the remaining Part of his Proof, by adducing the following Witneſſes, *viz.*

XXIII. *Robert Griffith*, one of the Gunners of the Caſtle of *Edinburgh*, depones, That, about Five or Six of the Clock in the Afternoon of *Monday* the 16th of *September* 1745, after that the Volunteers had delivered their Arms in the Caſtle, it was thought proper, by the Commanding Officer of the Caſtle, to give Orders for bringing up the Cannon, and other Arms, ſuch as Patteraroes, that were on the City-walls, or otherwiſe to render them uſeleſs, that ſo they might not fall into the Hands of the Rebels. That a Party was ſent from the Caſtle for this Purpoſe, under the Command of Enſign *Roberton*; and the Deponent was ſent by General *Gueſt* to follow that Party, to inquire if the ſaid Mr. *Roberton* had Provoſt *Stewart*'s Liberty to go on with the ſaid Work: That Mr. *Roberton* declared he had no ſuch Concurrence; but had ſent his Serjeant to the Provoſt for that Effect. That the General ordered the Deponent alſo to go forward, and demand the Pannel's Licence or Concurrence to effectuate the ſame. Accordingly the Deponent waited on the Pannel, and demanded from him his Licence or Authority to go on, and bring to the Caſtle, or demoliſh, theſe Cannon, *&c.* which were then mounted on the Town-walls, leſt they ſhould fall into the Hands of the Enemy. That the Pannel's Anſwer was: He had no Authority to give, as the Dragoons were gone Eaſtward, and his Volunteers had laid down their Arms. That he had lately received a Letter from the Enemy, which he deſired the Deponent to read. That the Deponent told the Pannel, that his, the Deponent's Duty was not to expoſtulate, or loſe time with the Pannel, but in a poſitive Manner to have his Concurrence; which the Pannel poſitively refuſed; but added, 'That we might do as we would, without his Liberty.' That when the Deponent left the Pannel, he found Enſign *Roberton* and his Party ſtanding in the *Lawn-market* Street, with a Couple of Carts, and ſome Blackſmith-Boys, with Fore-hammers in their Hands, whom Mr. *Roberton* had impreſſed to facilitate his Work. That the Deponent went to General *Gueſt*, and acquainted him, that he could not procure the Provoſt's Licence to bring in, or demoliſh the foreſaid Cannon: That the General was then in Converſation with *George Lauder*, Surgeon in *Edinburgh*, whom the Pannel informed the Deponent, that he had ſent to the General. That the General ordered the Party to return to the Caſtle; and, at the ſame time, told the Deponent, that the proper Time was over for effectuating the foreſaid Work, it being then dark. Depones, That, when he entered the Door where the General and Mr. *Lauder* were in company, he heard the General ſay, 'I am ſorry the Provoſt has not granted my Requeſt.' And being interrogate for the Pannel, Whether he reported to General *Gueſt* the laſt Words of the Pannel's Anſwer to him, particularly that they might do as they would, without his the Pannel's Authority? depones, He did. And the Deponent further deſired of General *Gueſt* to give the Party his Authority to go on with the foreſaid Work, without the Pannel's Liberty. To which the General anſwered, The Provoſt had loſt the proper Opportunity; and, if the Party remained any longer in Town, they might fall into the Hands of ſome flying Party of the Enemy. And, being further interrogate for the Pannel, depones, That the Garriſon of the Caſtle of *Edinburgh* conſiſted then of the Caſtle-company, which ought to be a hundred Men; and two Companies of Colonel *Laſcelles*'s Regiment, which ought to be ſeventy Men each; but none of the above Companies were compleat. That the Party ſent for the Cannon, conſiſted of an Officer, two Gunners, a Serjeant, and twenty Men; and their falling into the Hands of the Rebels, would very much have weakened the Garriſon.

XXIV. *Joſeph Mead*, one of the Serjeants of the Caſtle of *Edinburgh*, depones, That, upon the Evening of the 16th of *September* 1745, he was deſired, by Enſign *Roberton*, to get ready a Party of twenty Men; which, after the Deponent did, Enſign *Roberton* ordered him and the Party to follow him; which accordingly they did; and, after they were come a little way down the *Caſtle-hill*, Enſign *Roberton* ordered the Deponent to go to the Pannel, and acquaint him, that the Enſign was come with a Party, in order to render uſeleſs the Cannon that were on the City-walls, and wanted the Pannel's Commands thereanent. The Deponent accordingly went to the Pannel, and delivered his Meſſage. To which the Pannel made Anſwer, That Enſign *Roberton* might do as he would. That, upon this, one Dr. *Lauder*, who was then in company with the Pannel, roſe up, and deſired Liberty to go and ſpeak to the General; and that the Pannel ſaid he might go. And accordingly Mr. *Lauder* and the Deponent left the Provoſt, who was then in the Council-Houſe; and, when they came to the Caſtle, they met Major *Roberton*, who deſired them to go to General *Gueſt*; which accordingly they did. And Mr. *Lauder*, addreſſing the General, told him, That there was a Party come down to deſtroy and render uſeleſs the Cannon that were upon the Walls. To which the General made Anſwer, Why not? The Provoſt has not done what he ought. To which Mr. *Lauder* replied, What could he do? or, What could we do, ſince the Forces have left us? And the Deponent telling the General the Meſſage he had been ſent with by Enſign *Roberton* to the Pannel, with the Pannel's Anſwer, the General ordered Enſign *Roberton*, with his Party, to return to the Caſtle; and which Meſſage to the Enſign was ſent by Mr. *Lauder*; and the Deponent believes Mr. *Lauder* delivered that Meſſage to the Enſign, becauſe the Deponent remained with the General 'till Mr. *Lauder* was gone, and then aſked the General, what Commands he had for his Officer, Enſign *Roberton*? To which the General made anſwer: You may go and tell him to withdraw his Party to the Caſtle: And the Deponent having gone, found that the Enſign and his Party were already returned.

XXV. *Patrick Lindeſay*, Depute-Secretary to the Forces in *North-Britain*, depones, That, about Two o'Clock of *Monday* the 16th of *September* 1745, he being in company with General *Gueſt*, the then Lord Advocate and Solicitor came into the Room, and told the General, That it was thought proper that a hundred Dragoons ſhould be brought into the City of *Edinburgh*, to aſſiſt in the Defence of it; and deſired that he might give a Warrant for bringing them into it. The General agreed to the Propoſal; but thought it was proper that a Petition ſhould be ſigned by the Pannel, the Lord Advocate, and Solicitor, requeſting the Thing from him; which Petition the Deponent wrote: And the Lord Advocate carried it down, as the Deponent thinks, to have it ſigned by the Pannel; and deſired that the Deponent might come in a Quarter of an Hour to his Houſe to get the Petition when ſigned. That, after this, the Lord Advocate and Solicitor left the General, and Colonel *Clayton* came into his Room, who was going that Day to Brigadier *Fowkes*. That the General told him what the Lord Advocate and Solicitor had been with him about; and, at the ſame time, gave him Orders, upon his ſeeing the foreſaid Petition ſigned and delivered to the Deponent, to acquaint Brigadier *Fowkes*, that it was his Orders that a hundred Dragoons ſhould be forthwith ſent into the Town of *Edinburgh*. The Deponent and Col. *Clayton* went from the Caſtle to Lord Advocate's Houſe in a very ſhort time after this; and calling for the above Petition, he received it, ſigned by the Pannel, Lord Advocate, and Solicitor, and ſhewed it to Colonel *Clayton*; who immediately left the Deponent, in order to go to Brigadier *Fowkes*. Depones, That, about an Hour after this, the Deponent, being with General *Gueſt*, and the General, hearing that there was ſome Deſign among the Inhabitants for delivering up the Town, ſent the Deponent to the Pannel, to know, whether he ſtill deſired that the hundred Dragoons ſhould come to Town in Terms of the above Petition or Requeſt; becauſe, if he did not, he would ſend contrary Orders to Brigadier *Fowkes*. The Deponent accordingly went, and delivered his Meſſage to the Provoſt, whom he then found in a very numerous Meeting of the Inhabitants in the New Church Iſle; but does not remember that he told the Pannel the General's Reaſon for ſending this Meſſage. That the Pannel demanded the Opinion of the Meeting, whether the Dragoons ſhould be brought in, or not? Whereupon a great Number cried out, *No Dragoons*. And the Pannel upon this told the Deponent, that he would neither bid nor forbid them, but that the General might do what he thought proper. The Deponent upon this, having the Petition or Requeſt in his Cuſtody, took it out of his Pocket, and wrote upon the Back of it, *The Generality of this Meeting are not for receiving the Dragoons*. This ſhort Note he preſented to the Pannel for him to ſign; but this he refuſed, and ſaid, Why will ye diſtreſs me about theſe Dragoons? or Words to that Purpoſe. And depones, That at that Time, or ſome time after, ſpeaking to the Pannel upon the Subject of admitting the Dragoons, the Deponent aſked him, ſince he had once ſigned a Requeſt for bringing in the Dragoons, why he would not either continue the ſame Requeſt, or counter-order it? And the Pannel's Anſwer was, That he ſigned the Requeſt at the Deſire of the Advocate or Solicitor. Depones, That, when he wrote the above Note, he did not tell the Pannel that the Paper upon which the Note was wrote, was the Requeſt, which he, the Advocate, and Solicitor, had formerly ſigned; nor did he ſhew him any more than the Back-ſide of the Paper. And being interrogate by the Pannel, What it is the Deponent means, by his ſaying, that he had a Converſation with the Pannel, at that Meeting, or ſome time after, about admitting the Dragoons; whether he means that Day or ſome Day thereafter? depones,

depones, He cannot be positive as to the Day. And depones, That, upon delivering General *Guest*'s Message to the Pannel, he did it aloud; and is positive, that the Meeting delivered such an Opinion as he has already deponed upon; and thinks the Provost put the Question as he has already deponed; but as to this last Particular he is not positive.

XXVI. *Donald Mackay*, Cadie in *Edinburgh*, depones, That, on *Monday* Afternoon, the 16th of *September* 1745, *William Henderson* gave the Deponent a Letter to be carried to *Leith*, to one *William Ross* a Gunner; which the Deponent was told was to bring him up from *Leith* to the Pannel, then Lord Provost of *Edinburgh*. That, after the Deponent had delivered his Message, and returned, as he was walking about the *Luckenbooths*, a Man dressed in black Cloaths came to the Deponent, and asked him, If he knew him? The Deponent answered, 'I do not know you, Sir.' The Man replied, 'What, do you not know me?' And the Deponent said, 'I be-'lieve I may have seen you once or twice; but I do not know your Name.' Then the Man said, 'Here is a Letter to the Provost; you must find him 'out, and give it him; and here is Three-pence for your Pains, and next 'time I see you I will give you a Shilling.' That the Deponent went in quest of the Provost, and saw Mr. *Charles Erskine* Advocate, *Charles Fraser* Merchant, and the deceased Mr. *Robertson* Minister, standing together. That the Deponent came up to them, and asked them, if they knew where the Provost was; for here was a Letter he had to give him. Mr. *Charles Erskine* said, 'Give me the Letter, and I'll deliver it to him:' And the Deponent gave the Letter to Mr. *Erskine*. Then *Charles Fraser* said, 'I 'am lighter-footed than you; give me the Letter, and I'll carry it to 'him:' And Mr. *Erskine* gave him the Letter, and *Charles Fraser* went off with it. And depones, That the Deponent did not then know, nor does he yet know the Contents of the Letter, nor from what Person it was. And depones, That after the Rebels had got Possession of the City of *Edinburgh*, he saw the same Person who had given him the Letter as above, who was then an Officer in the Service of the Rebels, and craved him for his Shilling that he had promised him; but did not get it.

XXVII. Mr. *Charles Erskine* of *Edinshead*, Advocate, depones, That, upon the Evening of *Monday* the 16th of *September* 1745, as he believes, though he cannot be positive of the Day, the Deponent, *Charles Fraser* Merchant, and the now deceased Mr. *Robertson* Minister, were standing together opposite to the *Tolbooth*; when a Street-Cadie came running up in some Haste, and said, 'Who is there? Where is the Provost?' And the Deponent turning about his Face to the Cadie, said, 'Why, what do you 'want the Provost for?' The Cadie answered, 'Here is a Letter I have 'to give him.' The Deponent said, 'From whom is the Letter?' The Cadie answered, 'I do not know; a Man in black Cloaths gave it me to 'give him.' The Deponent replied, 'I believe the Provost is just now 'in the New-Church Isle:' And then *Charles Fraser* said, 'I believe the 'Provost is in the New-Church Isle; if you will give me the Letter, I 'will carry it to him.' And the Deponent having before taken the Letter out of the Cadie's Hand, he, at the Cadie's Desire, then gave it to *Charles Fraser*. That the Deponent looked at the Back of the Letter, and saw that it was addressed to the Lord Provost; but cannot say, that, in the Hurry they were then in, he observed what more was in the Address, nor did he look at the Seal. And being shewn the Letter in the Clerk's Hands, which is the first in the List of Writings subjoined to the criminal Libel, depones, That he cannot say, whether it is the same with the Letter above deponed upon, or not.

XXVIII. *Charles Fraser*, Merchant in *Edinburgh*, depones, That, between Five and Six o'Clock of the Evening of the Day before the Rebels came into the City of *Edinburgh*, the Deponent being standing on the Street, with Mr. *Erskine* the preceding Witness, a Cadie came up to them, asking, where was the Lord Provost? Mr. *Erskine* answered, 'What do you want with him?' The Cadie said, 'I have a Letter to give him.' Mr. *Erskine* said, 'Let me see it.' The Cadie gave him the Letter, and Mr. *Erskine* said, 'The Provost is in the New-Church Isle; I'll go in with 'it to him.' Then the Deponent said to Mr. *Erskine*, 'Sir, Don't 'trouble yourself; give it me, and I'll carry it to him.' And the Deponent got the Letter, and went with it to the New-Church Isle; when the Deponent found a great Crowd of People there, and some Difficulty to get at the Pannel; and therefore gave the Letter to Mr. *Polson*, a Vintner in Town, to hand it to the Pannel: And the Deponent saw it handed accordingly; and staid till it was broke open. That the Deponent cannot say, he saw it in the Pannel's Hands, nor knows he by whom it was opened. And the first Thing the Deponent noticed in the Reading, after they had read a Line or two of the Letter, was, that they said it was from *Charles P. R.* Upon which there arose in the Meeting a great Noise and Murmuring, some calling out, not to read it: And then the Pannel, and the rest of the Meeting, dismissed; and the Magistrates, as the Deponent thinks, went to the Goldsmiths-Hall. And being shewn the Letter, which is the first in the List of Writings subjoined to the criminal Libel, depones, He believes it may be the very same that he has deponed upon, though he did not then either observe the Seal, or that it was addressed to the Magistrates and Town-Council, as well as to the Lord Provost of *Edinburgh*.

XXIX. *William Henderson*, Writer in *Edinburgh*, depones, That, upon *Monday* the 16th of *September* 1745, the Deponent was in the New-Church Isle; where he saw the Pannel, and a Number of other Persons, met together; but remaining there for a very little Space, he did not know what was transacted amongst them. That he went from that Place towards the Castle-hill, and returned from thence to the Goldsmiths-Hall about Six o'clock at Night; where he found the Pannel, the other Magistrates, and most of the Council met. That he saw a Letter lying upon the Table; which, from Curiosity, he took up, and looked at: and the Letter marked Number 1. which is now shewn to him, he says, is the Letter he so looked at; and which Letter, he was told by some Person in the Hall (the Deponent does not call to mind who that Person was) had been brought in to the Meeting in the New-Church Isle. That, very soon after the Deponent came to this Place, the Pannel proposed, the Town's Assessors should be sent for, for their Advice; which was agreed to: And the Deponent went for the deceased Mr. *James Graham*, and Mr. *Robert Pringle*; but found none of them. That, after he returned, he reported, that Mr. *Graham* was not to be found, and that Mr. *Pringle* was out of Town; and thereafter Mr. Solicitor *Haldane*, one of the Town's Assessors, who had been called upon by the Provost and Magistrates, came in to the Meeting; and the Pannel then took the Chair; and the Deponent was ordered, he believes by the Provost, to read the Letter; and having read the Address, and the Subscription, which is *Charles P. R.* and begun to read a Line, Mr. *Haldane* withdrew, and said, That these were Matters too high for him. Upon this the Provost said, *Good God! I am deserted by my Arms, and by my Assessors.* That then there was a Pause; and the Pannel having demurred about reading the Letter, one of the Meeting said, He thought there could be no Harm in having it read. Whereupon the Deponent proceeded, and read the Letter. That then a Motion was made, to send a Deputation to the Rebels Camp, as the only Means to save the Town from the Menaces contained in the Letter. And being interrogate, who it was that made the Motion? says, That several of the Members of the Meeting seemed to be of that Opinion; but who it was that made the Motion, the Deponent cannot tell; but, as he remembers, there was a good deal of Confusion among them. However, this Motion was agreed to by the Meeting. And at this Time the Deponent was called upon by Dean of Guild *Allan*, and by him desired to go to the Parliament-Close, where the *Edinburgh* Regiment was, and tell the Officer, without Loss of Time, to march his Men up to the Castle, and to deliver in their Arms. That the Deponent accordingly went, and found one Mr. *Burns*, who was Adjutant to the Regiment, and acquainted him with the Message sent by Dean of Guild *Allan*. But he having asked of the Deponent, whether the Pannel had given Orders for that Purpose? and the Deponent having received no Commission, but from Dean of Guild *Allan*, Mr. *Burns* demurred to follow the Advice given. That the Deponent immediately returned, to acquaint the Dean of Guild of what Mr. *Burns* had said. Whereupon he immediately went down Stairs to speak to Mr. *Burns*; who they met coming up to the Goldsmiths-Hall. What passed between them the Deponent knows not; but, in a very little after, he saw the Regiment march to the Castle. Depones, That after he returned with his Answer to Dean of Guild *Allan*, he was informed in the Meeting that four Persons had been named as Deputies to go to the Rebels Camp, namely, Bailie *Gavin Hamilton*, Bailie *Yetts*, Conveener *Norrie*, and Deacon *Orrock*. Whether there were more named or not, the Deponent knows not; nor does he know further as to any Instructions given them, but that they were to find out upon what Terms or Conditions the Rebels were to enter the Town. That, in pursuance of this, the Deputies went out; and returned again betwixt Nine and Ten o'Clock at Night, with a written Answer, Number 2, in the List of Writings subjoined to the Libel: Which having been shewn to the Deponent, he says, it is the Answer the Deputies brought in. After this Answer was delivered by them to the Meeting, which by the Time the Deputies had returned, had gone from the Goldsmiths-Hall to the Laigh Council-House, it was observed, that it contained a Limitation of Time, namely, Two o'Clock in the next Morning, within which a precise Answer was to be given by the Magistrates and Council. And as, by this Time, the Magistrates had some Information, that Sir *John Cope*, and his Majesty's Forces, were off *Dunbar*, and that it was believed by that Time they would be landed, the Meeting came to a Resolution to send a second Deputation, in order to try if they could prevail to have the Time lengthened out 'till Nine or Ten o'Clock next Day. That the Deponent does not know precisely who these second Deputies were, nor did he see them set out or return; but that, a Day or two after, a Paper was put into his Hands by Provost *Coutts*, who was the only one of the second Deputation whom the Deponent knows of, or remembers, which, he said, was the Answer returned upon the second Deputation to the Magistrates and Town-Council: And the Writing marked Number 3, in the List subjoined to the Libel, now shewn to the Deponent, he says, is the Paper he received from Provost *Coutts*, as above. And being interrogate, whether the Pannel made the Motion, or acquiesced or concurred in the Deputations? says, He does not remember that he made the Motion; but that he took it for granted that he concurred or acquiesced in it, either explicitly or tacitly; not being able to call to mind any thing he uttered or said concerning them, excepting that, when the Instructions were given to the second Deputies, he urged them to insist, That it was then late, and he could not have the Sense of the Inhabitants; and therefore it was reasonable they should be indulged 'till Ten o'Clock, that they might have an Opportunity to see what the Sentiments of the Inhabitants were concerning that Matter. And depones, That he, as under the Town-Clerks, always attends the Magistrates when they meet together in the Council as Magistrates; but the Deponent knows of no Minute of Record that was made of the Transactions of that Day. And depones, That, about Four o'Clock, or a little after, he had Directions from the Pannel to go to the Cross, and to desire that such Inhabitants or Burgesses as he there met with, should repair to the New-Church Isle; which the Deponent accordingly did. And says, That the aforesaid Directions were given him by the Pannel as he was proceeding from the Goldsmiths-Hall to the New-Church Isle. And further says, That the Paper marked Number 8, in the List of Writings subjoined to the Libel, he verily believes, is the Paper which he saw in the Pannel's Hand about Three or Four o'Clock, which of the two the Deponent cannot be positive; but that it was that same Afternoon before the Meeting in the New-Church Isle above-mentioned.

XXX. Sir *George Preston*, of *Valleyfield*, depones, That, in *September* 1745, the Deponent was Captain of a Company of Volunteers for Defence of the City of *Edinburgh*; and, on *Monday* the 16th of that Month, his Station was to keep Guard with his Company at the *Nether bow* Port, along with another Company commanded by Mr. *James Nimmo*: And, when it was pretty far in the Afternoon, the Companies being drawn out upon the Streets, the Deponent went to the Pannel to receive his Orders what they were to do, and he found the Pannel in the New-Church Isle; who ordered the Deponent to march the Companies to their Alarm-post in the *Lawn-market*, and to remain there till further Orders. That the Deponent

Deponent immediately marched up the Companies to the *Lawn-Market*; and there he met with several Volunteers in their Return from the Castle of *Edinburgh*, who told the Deponent, That they had marched up their Companies to the Castle, and delivered up their Arms there; and it was high Time for him to do so likewise. And the Reason they gave the Deponent for having taken that Step, was, That they said, that now the Town was not to be defended; and that a Resolution had been taken in the New-Church Isle not to defend the Town. That the Deponent followed their Advice, marched up with the two Companies above-mentioned to the Castle, and there delivered up their Arms. Depones, That between three and four o'Clock of the same Afternoon, there came in at the *Netherbow* Port sixteen or eighteen Carts loaded with Spades and Shovels, which, it was said to the Deponent, were carrying to the Castle; and a Town-Officer came to the Deponent, with Orders, as from the Pannel, then Provost, to let them pass; which he did accordingly. That thereafter, when the Deponent went to the Castle, he asked Mr. *Lyon*, the Store-Keeper of the Castle, Whether these Spades and Shovels had been brought thither; who answered, That there came none there; for they had no Use for them; and they had great Abundance of their own.

XXXI. *James Miliar*, late Servant to the deceased *Alexander Bruce* of *Kennet*, depones, That upon the 16th of *September* 1745, the Deponent was standing at the Entry of the Tolbooth-Church, in the Afternoon, and saw several Carts, how many he cannot now say, loaded with Shovels, Spades, and Mattocks, brought towards the Entry to the Laigh Council-House, and taken into the Door which enters in to the North-gavel of the Parliament-House; but where they were carried afterwards, the Deponent knows not. And further says, That some Town-Officers told him, that these Carts were brought thither by the Order of the Lord Provost; at least one of the Town-Officers, whose Name he knows not, but he is an old Man, and he would know him if he saw him again, told him so. And upon an Interrogatory put to him, further says, That whether that Officer was waiting upon the Carts, or attending the Provost, who, he believes, was in the Goldsmiths-Hall, he does not know.

XXII. *Baillie Bryden*, Lieutenant of the Royal Regiment of Artillery, depones, That he was in a Tavern with the Pannel some little Time before the Rebels entered the Town, in the Year 1745, when a Gentleman was brought in to them, who said, He had carried along with him from *Dalkeith* about fifty Men to assist in defending the City against the Rebels. That the Deponent did not observe the Pannel say much to him; but he rose up from his Seat, and thanked him. That the Provost seemed to be at a loss where to quarter them; but at last the Provost gave Directions to carry them to the High-School, as the propereſt Place to quarter them. And further depones, That he was employed in placing the Cannon on the Walls of the City; and did not find any Occasion of Complaint to the Provost concerning any other Matter, than what related to his own Business; and it was chiefly concerning the making of the White-Iron Cases for the Grape-Shot; in which he thought the Tinman that was employed did not make such Haste as he ought to have done: As to the other Parts of the Works carrying on, he thought that the People he happened to see working, went on pretty well. And further says, That he waited on the Pannel, along with the deceased Mr. *Maclaurin*, who was in a Tavern (he thinks, but cannot be positive, that it was in the Evening before the Rebels entered the City); and desired Orders in Writing to load the Cannon on the Walls. That the Pannel did not give orders in Writing, but verbally ordered him to load them; and that Provost *Drummond* was then present, and said he would give Orders in Writing; which accordingly he did. And upon a further Interrogatory he recollects, that upon the *Saturday* a Number of Men were ordered by the Provost to assist him (as the Deponent heard, though he cannot tell to a Man, they were twenty-four) to mount the Cannon; which accordinglywas done, as far as the Deponent can recollect, from *Brisiow* Port to the *Netherbow*; and that it was upon the next Day, being *Sunday*, he waited upon the Pannel, with Mr. *Maclaurin*, and received the verbal Orders above-mentioned. In consequence whereof, and of a written Warrant from Provost *Drummond*, the Cannon were accordingly loaded; the Deponent cannot say all of the Cannon, because he came away about eleven o'Clock at Night, and left the Town's People at Work, at least he left them there upon the Cannon when he came away; the Gunners which he brought along with him having returned to the Castle before he left the Town's People. That a Sailor from *Leith*, who was said to the Deponent to have Skill in loading Artillery, was come to the Place where the Deponent was at Work; and it was said to the Deponent, the rest of the Cannon were to be loaded. And being interrogate, Why the Guns were not sooner loaded? depones, That the Materials for loading them were not sooner ready. And being interrogate for the Pannel, Whether or not the Scaffolding, upon which the Cannon were placed, was sufficient? depones, That he saw Boards upon which the Cannon were placed, to make them run upon; but no Scaffolding whereupon they were placed; the Swivels which were placed upon the *Netherbow* and *Brisiow* Ports, were to be fired by Men who were to stand upon the Scaffolds placed there for that Purpose. And further depones, That upon a Message delivered by Bailie *Baillie*, and some other Persons that came along, sent to Gen. *Guest*, he sent the Deponent, and some other Artillery-Men, to the Town, to follow such Directions as should be given them by the Pannel concerning the Cannon: That, as the Deponent thinks, there were two Messages delivered to Gen. *Guest* concerning Gunners to be sent down; but that he was sent down but once with the Orders above set down, before the *Saturday* the Transactions whereof are above set forth. That when they came down the first Time to clean the Guns, they had no Orders from Gen. *Guest* to attend upon the Walls, and to fire the Guns, but only to assist in planting them upon the Walls; nor does the Deponent know of any Gunners the Town had, excepting the Sailor above-named: But that he was present when Mr. *Maclaurin* applied to one *Jerment*, the Master of a Vessel at *Leith*, to assist in managing the Guns; but he declined it.

XXXIII. *Robert Brown*, Taylor in *Edinburgh*, depones, That upon the 16th of *September*, in the Year 1745, the Deponent served in the Trained-Bands of *Edinburgh*, and was under the Command of Capt. *Hepburn*, and was placed at the *West-Port*, and continued there till three o'Clock, or thereabouts, in the Morning after. That their Captain having gone up to wait upon the Provost and Magistrates, as the Deponent believes, to receive Instructions from them how his Company was to be disposed of; when he returned, he signified to those under his Command, that his Orders were, That every Man should repair to his own Home; and that thereupon they went off. And further says, That the Deponent having asked his Captain, what should be done with the Arms of his Company? he told them, his Orders were to leave them in that Place where they then were, which was a Sort of Guard-Room; and told him, that his Half-pike was to be left there also. Accordingly, when they dispersed as above, they left their Arms there.

XXXIV. *Edward Inglis*, Druggist in *Edinburgh*, depones, That upon the 16th of *September* 1745, he was a Soldier in the Trained-Bands, in the Company commanded by Capt. *Hepburn*, which was stationed at the *West-Port* about Eight of the Clock in the Morning of that Day, and remained there till about Half an Hour after Three next Morning; when their Captain told them, That he had Orders from their Colonel, that is, the Pannel, to disperse, and leave their Arms in the Place where they kept their Guard-Room. In pursuance whereof, they accordingly dispersed, and left their Arms in the foresaid Place. And depones, That about Five o'Clock *Monday* Evening before they dispersed, the Deponent having heard from Capt. *Dalzell*, one of the Officers of the City-Guard, that the Town was to be delivered up, he applied to Captain *Hepburn*, and said, That, since that was to be the Case, he thought the best Way for them was to go to the Castle, and deliver in their Arms, and every Man to go to his own Home; but the Captain answered, That they could not desert their Station, and behoved to wait Orders from their superior Officers.

XXXV. *Alexander Hepburn*, Merchant in *Edinburgh*, depones, That upon the 16th of *September*, in the Year 1745, he commanded a Company of the Trained-Bands in the City of *Edinburgh*. That he and his Company were planted as a Guard upon the *West-Port*, about Eight o'Clock of that Morning, and continued upon that Station till about Three next Morning; when they dispersed, and left their Arms in the Room where they kept Guard. And being interrogate, By whose Orders they dispersed, and left their Arms there? says, That he was sent for, to come to the Provost and Magistrates, who were then in Mrs. *Clarke*'s, he believes he received the Message by a Cadie. When he came to Mrs. *Clarke*'s, where the Magistrates were, Mr. *Tennent*, the Captain Commandant of the Trained-Bands, chid him for having lingered so long upon that Station where he was; for that he had sent for him, by *George Wemyss*, some time before that; that he and his Men should disperse, and leave their Arms in the Room where they kept Guard. That the Deponent answered, He had received no such Message; but that he came now in Obedience to a Message from the Council; and now he attended, and desired to know their Pleasure; and that the Commandant then, in the Presence of the Provost and Councillors, gave him Orders forthwith to disperse his Men, and to leave the Arms in that Room where they were keeping Guard; and that *John Hislop*, the Store-Keeper of the Town, was that Morning to come and take away the Arms. That all the while the Deponent staid in the Room, and while he was receiving the Orders from the Captain-Commandant, the Pannel's Head was lying on his Hand on the Table, and, to the Deponent's Apprehension, was asleep. That the Deponent immediately left the Council, and returned to his Station at the *West-Port*; intimated those Orders to his Men, and dispersed them; who left their Arms in the said Room where they had kept Guard. And being interrogate, Whether, when he communicated his Orders to the Company, he had told them, That it was by the Lord Provost's Order that he had dispersed them? says, That he cannot be positive; that it is possible he might have said his Orders were from the Provost, because the Council were all present when the Commandant gave the Deponent his Orders. And depones, That, as Captain of the Company stationed at the *West-Port*, he ordered the Gates to be opened to the two several Deputations that were sent by the Magistrates, and to the first Deputation when they were on their Return; but that the Guard was dismissed before the Return of the second Deputation. And further says, That he understood in general, that the Deputies were sent out to make some Treaty or Capitulation; but, as to Particulars, he learned nothing from them, or any body else. That he cannot charge his Memory at present, nor can he recollect, that the Deputies told him any thing of their Errand going out, or the Answer of the first Deputation; and is positive, that none of the Men under his Command did that Morning, or the Day before, at any time, tell him of any Surmise of the Surrender of the City, or propose carrying their Arms to the Castle.

XXXVI. *Robert Tennent*, Merchant in *Edinburgh*, depones, That, upon the foresaid 16th of *September*, he was Captain-Commandant of the Trained-Bands of *Edinburgh*; and that he knows Captain *Hepburn*'s Company was placed at the *West-Port*; and that they dispersed about Three o'Clock next Morning. And being interrogate, by whose Orders they dispersed, and left their Arms in the Guard-Room? says, That, upon an Alarm brought in from the Street into the Laigh Council-House, some time in the Evening of the 16th, he cannot be positive as to the Hour, that the Highlanders had entered the City at the *Netherbow*, and were chasing the Dragoons before them; it was thought dangerous that the Trained-Bands should be found by the Rebels with Arms in their Hands: And therefore he, the Deponent, moved to the Provost and Council, that Orders might be given to the Men under the Officers of the Trained-Bands, to lay down their Arms, and disperse; and that, upon this Motion, it was agreed by the Provost and Council, that such Message should be sent. In pursuance whereof, the Deponent sent Capt. *Wemyss* to the three several Companies; one whereof was posted at the Weigh-House, and two at the *West-Port*, to signify to them the Provost and Council their Pleasure to the foresaid Effect. That, as it appeared afterwards, Capt. *Wemyss* did not go to the Companies at the *West-Port*, but had gone only to the Company stationed at the Weigh-House; which, in consequence of the Order he transmitted to them, dispersed: But what they did with their Arms, the Deponent knows not. And the Council being informed by Bailie *Mansfield*, who had Occasion to be at the *West-Port* that Morning, that Capt. *Hepburn* and his Company were still there, they sent for the Captain, and upon his coming to Mrs. *Clarke*'s, where the Council then were, the Depo-

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nent asked him, in their Presence, Why he had not dispersed his Men sooner, upon the Notice sent him by Capt. *Wemyss?* he replied, He had never received any such Message. And, upon an Interrogatory, the Deponent further says, That the Message, as he understands it, sent to Capt. *Hepburn* by the Council was to dismiss his Men, and come up to them; and that he had actually dismissed his Company before the Deponent saw him, as he the Deponent supposes; and that he does not know what Orders were given to Capt. *Hepburn* anent the Disposal of the Arms. And further depones, That, when Capt. *Hepburn* came to the Magistrates, the Deponent does not remember, and cannot be positive, whether the Pannel was present among them or not; he having about that time been pressed to go to Bed, and take a little Rest: for he was fatigued, and faint. And, being further interrogate, Whether, when he the Deponent represented to the Council the Report that was heard at the Door, that the Highlanders had burst in at the *Netherbow* Port, and were chasing the Dragoons up the Street, any particular Orders were given as to the Disposal of the Arms? depones, That he cannot be positive, further than that they were to lay down their Arms; and he supposed they were to leave them in the Place they kept Guard. And also says, That, after it was found that the Alarm upon which the Orders were sent to the Companies to disperse was false, the Deponent did not think of sending a second Order, for he thought the first Order was executed: And as for the Arms, the Deponent does not know that any second Orders were sent concerning the Disposal of them. And depones, That there are in all sixteen Companies of Trained-Bands: And that before *Sunday* there were never so many as three Companies on Duty, as far as the Deponent can recollect; but that then the three Companies were ordered upon Duty; and that three Companies continued to do Duty, till they were dismissed, as above: And that the Deponent does not know, or remember, of any Orders given to *John Hislop* to gather up the Arms; nor that any Mention of *Hislop* was made in his Hearing when Capt. *Hepburn* attended the Council. And, upon a further Interrogatory, depones, That, after it was agreed upon in the Goldsmiths-Hall to have a Meeting in the New Church Isle, the Pannel recommended it to all who were present to attend; and to desire such Burgesses as they met with to come there also; as also, to such as were at the Head of any Corporation or Society, to take the Opinion of the Members of the same, whether it was proper to stand out and defend the Town? That thereupon the Deponent assembled the Officers under his Command in *John Ross*'s Tavern; and the Captains were in one Room, and the Subalterns in another. That he asked the Captains first, What their Opinion was concerning the defending of the Town? And they were all of Opinion, that, since the Dragoons had fled Eastward, and that some of the Volunteers had begun to separate, it was not practicable to defend the Town: And that, upon advising among the Subalterns concerning the same Proposition, they were unanimously of the same Opinion; as it was reported to the Deponent by Mr. *Auchinleck*, who was his Lieutenant, from the Lieutenants; and by Mr. *Hutton*, his Ensign, from the Ensigns: And that he and his Officers, at least a great many of them, attended the Meeting in the New Church Isle. And further says, That the Deponent had received the Key of the Wicket of the *Netherbow* Port; but that, upon *Monday* Night, in Presence of the Pannel and Council, the said Key was by him delivered to Capt. *Hamilton*, to whom, at the same time, the great Key of the Gate was also delivered, in order to let out the Dragoons Baggage; some of whom were left to take care of it, and made a very great Noise for it at the Time.

XXXVII. *John Dalgleish*, Watchmaker in *Edinburgh*, depones, That he was a Captain of the Trained-Bands, on Duty upon the Evening of *Monday* the 16th of *September* 1745; and, between Seven and Eight o'Clock at Night, he received a Message by one of the Town-Officers, containing Orders to him to cause his Company to lay down their Arms, and to dismiss them: Which he did not incline, on that Message, to do; but sent his Ensign, *William Sibbald*, Taylor, with Orders to find out the Provost wherever he was, and to acquaint him; and, if he could not be found, the Captain-Commandant; that he, the Deponent, had received the above Message as from the Pannel, or some of the Council; and to inquire at one, or either of them, if such a Message was sent; and what he should do in relation to the Subject thereof? That his Ensign accordingly went, and returned to him between Eight and Nine o'Clock, with Orders, as from the Pannel, to dismiss his Guard, and lay down their Arms: And the Deponent being then standing at the Door of the Weigh-house, which was his Post, and where he had planted two Centries, his Men rushed out upon him, leaving their Arms behind them. And depones, That he received no Direction from any Person in what Manner these Arms should be disposed of, or secured. Depones, That he first mounted Guard upon the Evening of the Fast-day, which was held two Weeks before the Rebels came to Town; and mounted Guard again, upon the 16th Day of *September*, about Seven o'Clock in the Morning; and, just before that, saw the Pannel in the Goldsmiths-Hall, who acquainted the Deponent, that he would get Powder and Ball, and Cartridge-boxes, from *John Hislop*, the City Store-keeper. That, about Nine o'Clock he sent to Mr. *Hislop*, desiring to have them; but he not being in the way, the said Ammunition was not brought till about Eleven o'Clock, when as much as was thought would be useful was delivered to him for his Company. Being interrogate for the Pannel, depones, That, betwixt Nine and Ten of the *Sunday* Morning the 15th, the Officers of the Trained-Bands were called by the Captain-Commandant, by the Pannel's Orders, to the Crown Tavern, where he, and the rest of the Captains, who were all in one Room together, received Orders from their Commandant, to be ready to draw out their Companies on a Minute's Warning, which each Captain communicated to his Subalterns; with Orders, to such of them as were there, not to leave that Tavern, without leaving Word where they might be found. That, about Three of the Clock of the Afternoon of this Day, the Captains got Orders to repair to their respective Bounds, and draw out their Companies; which they accordingly did: And then the Deponent's Company had Arms distributed among them; and, as far as he could observe, Arms were delivered to the other Companies: And that, before the Companies were dismissed, they received Orders to be ready to march at Tuck of Drum.

XXXVIII. *Mark Sandilands*, Merchant, and late one of the Bailies of *Edinburgh*, depones, That he was one of the associated Volunteers, who, on the 7th of *September*, proposed to publish a Paragraph in the *Edinburgh Courant*, on the *Monday* following, containing an Account of the Steps taken for Defence of the City of *Edinburgh* against the Rebels: That he shewed a Copy of the Paragraph, as concerted, to the Pannel, some others of the Volunteers being in Company, which contained Words to this Purpose, 'By the Advice of the Crown-Lawyers, he chearfully accepted of the Offer of their Service,' (which referred to the Volunteers;) and the Pannel said, He could not agree to that Draught, because it was not true: And it was amended by the Pannel's Direction; and after the Words, *Advice of the Crown-Lawyers*, it was made to run, *he acquiesced in, and accepted of their Service*; giving this for his Reason, That he differed in Opinion with the King's Lawyers; for, as the Law stood, he thought it was unlawful to take up Arms, without the special Warrant of his Majesty. Depones, That he was present when Bailie *James Stewart* proposed to send to the King's Ships in the Road, to desire to have some Sailors, accustomed to fire Cannon, for serving the Cannon mounted on the City-Walls; which the Pannel did not relish; because, he said, they would be rash, and they would fire on Friends, as well as Foes. And, being interrogate, If, when the Pannel did not approve of said Proposal, he mentioned any other? depones, He does not remember.

XXXIX. *George Dunbar*, Merchant, and late Bailie of *Edinburgh*, depones, That the Paper, No. 8, annexed to the Criminal Letters, was framed by the Deponent, and some other Citizens, betwixt One and Two Afternoon, of the 16th of *September* 1745; and that, while they were in the Course of signing it, Bailie *Gavin Hamilton*, and Bailie *Robert Baillie*, sent *George Lindsay* for the Deponent, to ask him, What sort of a Paper it was to which he was procuring Subscriptions? That the Deponent went, and explained the Substance of it; and said he would give them the Scroll of it; which he sent for, and delivered to them; and, after reading it, they were well pleased with it; saying, They believed it to have been a Paper of another Nature. That the Deponent went along with them to some more of the Council assembled in the Goldsmiths-Hall, where the said Scroll was delivered to Dean of Guild *Hathorn*. That, about Three o'Clock of this Day, he met the Pannel at the *Stinking Style*, and put the said Paper, then signed by a great many of the Inhabitants, in the Pannel's Hands; relating to him, at the same time, the Substance of it; and he promised to lay it before the Magistrates and Council. The Deponent attended him to the Goldsmiths-Hall; and, as they were entering the Door, a Crowd of the Subscribers rushed in behind them; at which the Pannel was vastly offended; and, turning about, said, What, Gentlemen, think you to compel me to grant the Desire of your Petition by Force? Upon which the Deponent endeavoured to stop, and pacify them, and went down Stairs, the Bulk of them following him to the Parliament-Close; where he remained for some little Time, and until he received a Message from Capt. *Hepburn*, who commanded the Company of the Trained-Bands in which the Deponent, who was a private Man, served, That his Company was mutinying, because the Volunteers were going to lay down their Arms; that this was before the Fire-bell rung. That when, in obedience to the Captain's Commands, he went to the *West-Port*, he found a Disorder among the Men of the said Company upon the Account foresaid; to whom the Deponent addressed himself much to this Purpose: Let the Volunteers do what they will; let us remain upon our Duty, till we shall receive the Lord Provost our Colonel's Commands; and I will stand by you as long as I can carry a Musket. That, about Four o'Clock, he saw that Part of the Town-Guard, which had gone out to support the Dragoons, standing in the *Grass-market*, some of them under Arms, and the Arms of others grounded; and this in his Way to Capt. *Hepburn*. Depones, That, betwixt Four and Five o'Clock at Night, the Pannel, with some other of the Magistrates, came to the *West-Port*, attended by Mr. *Maclaurin* and *John Scot*, Plumber, and gave Orders to shut the Ports; to let in any Soldiers or Dragoons that should come there, but no Stragglers or Strangers; to let in any Forage that should come for the Dragoons, or Persons having Messages to the Magistrates; and to prime and make ready the Cannon planted at the *West-Port*: All which things that required immediate doing, were done. That the Charge of the Cannon was given to the Captain of the Trained-Bands, and to the Captain of the Town-Guard; but he observed no Gunners there; and *Scot*, who, in Conjunction with Mr. *Maclaurin*, had primed the Cannon, staid by them for some time; he does not know how long. And, being interrogate for the Pannel, depones, That, by Capt. *Hepburn*'s Order, as from the Pannel, he the Deponent, and three more of the Guard, mounted the Town-Wall by a Ladder, to observe if they could see any of the Dragoons coming; where they remained two Hours; but none came in but one. That the Deponent staid on Guard till about Two o'Clock in the Morning; when he went up to Mrs. *Clarke*'s, where the Magistrates and Council were, to acquaint them, that they would do well to send some of the Soldiers of the City-Guard to take care of the Cannon, which were primed, and People with Flambeaux going near them; and he received for Answer from the Magistrates, That they would be taken care of. That the Pannel was not then in the same Room with the other Magistrates and Council, but in another Room, as he was told, sleeping. That he did not return to the Guard again, but remained a considerable Time with the Magistrates. That the Deponent, before he left the Guard, saw the Gentlemen of the first Deputation from the Magistrates and Town-Council to the Rebels go out, and return; and saw the Gentlemen of the second Deputation go out in a Hackney-Coach; but those of the first went out on Foot.

XL. *Richard Lindsay*, late one of the Bailies of *Musselburgh*, depones, That he did assist in getting together betwixt 140 and 150 Men in the Town and Neighbourhood of *Musselburgh*, to be employed in the Defence of the City of *Edinburgh*; and, upon *Sunday* the 15th *September*, marched them near to *Crystal*'s; where Sir *Robert Dickson*, a former Witness, received them, and marched them that Night into Town. The Deponent returned to *Musselburgh*, and next Morning came into *Edinburgh*; and, about Nine o'Clock in the Morning, waited on the Pannel, and acquainted him, then in the Goldsmiths-Hall, that the said Men, who were quartered in the New Church Isle the preceding Night, were turned very impatient to be

properly employed for the Defence of the City, for which End they had come; and that he wanted to have them delivered off his Hands. That the Pannel thanked him very much, and told him, he would send one to receive them immediately. That the Deponent returned to the New Church Isle to keep his Men together, where he remained about the Space of Half an Hour; and, at their Desire, he again waited upon the Pannel at the Goldsmiths-Hall, and acquainted him, that the Men had grown still more impatient, and desired they should be taken off his Hand: which the Pannel said should be done immediately; and sent for a Man that could not be found: Whereupon the Pannel desired him to return, and keep his Men together, and he would send one immediately to receive them. That he accordingly did return; and, after staying about a Quarter of an Hour with the Men, who begun to blame him for bringing them to Town, he waited a third Time upon the Pannel, representing, as above; and the Pannel seeming to be very much surprised that Nobody had come near him, desired the Deponent to return to his Men, and that what he insisted for should forthwith be done. That, soon thereafter, one of the Bailies, *Tetts*, he thinks, and a Serjeant of the City-Guard, came; that they cast some of the Men, and swore the rest to be faithful to his Majesty; which last were delivered over to the Care of the said Serjeant, and a good many of the former listed with the *Edinburgh* Regiment, as they themselves told him. That he knows nothing of their having received any Arms; and that the Bulk of them returned that Night home.

XLI. *Robert Baillie*, Merchant, and late one of the Bailies of *Edinburgh*, depones, That, upon the 16th of *September*, there was a Motion made in Council, where the Pannel was present, that the City-Arms should be secured, by sending them up to the Castle. That the Members of it were divided in their Opinion, and the Majority of them thought that no Orders should be made for that Purpose; and that the Pannel seemed to be of the Opinion of the Majority; and that it appeared to him, that there was an evident Majority for the foresaid Opinion, though no Vote was put; and it was from what the Pannel said, that the Deponent took him to be of the Opinion of the Majority: And that the Pannel, according to his usual Custom, asked the Opinion of severals before he spoke on the Subject himself: And that it is the common Practice of the Provost of *Edinburgh* in Council, when any Proposition is made, to ask the Opinion of five or six, or sometimes more, of the Council; who, if they give it all one Way, he usually declares it to be the Sense of the Council, unless a Vote is demanded. That, in the present Case, though there was a Difference in Opinion, yet no Vote was insisted for; and, as the Majority had given the Opinion above-mentioned, in consequence thereof he refused to give the Order.

XLII. *Hugh Hathorn*, late Dean of Guild of *Edinburgh*, depones, That he does not remember, that the Pannel told him the Message that was delivered him by *Andrew Alves* from the Rebel-Army; and thinks he did not hear of it 'till about the Time, or a little before *Andrew Alves* was committed Prisoner. And depones, That he was present in the Goldsmiths-Hall, both before the Meeting in the New-Church Isle, and afterwards in the Council-House; in both which Places, the Goldsmiths-Hall and Council-House, there was a great many of the Council present; that there was also a great many other People who did not belong to the Council; and in neither of these Meetings does the Deponent remember any Proposal to have been made for securing the City-Arms in the Castle of *Edinburgh*: But remembers to have heard a Message sent, as the Deponent thinks, from some of the Out-Guards about the Ports or the Walls, to know what they should do with their Arms? And the Reason why this Message was sent, the Deponent believes to have been, That it was publickly talked, that the Volunteers, before this time, had delivered up their Arms; and the Answer made to this Message was, That they should secure them the best Way they could; and the Deponent thinks this Answer fell to be made by the Pannel, as he was in the Chair. And, being interrogate for the Pannel, whether this Answer was given as being agreeable to the Mind of the Council? depones, He did not hear the Opinion of any of the Council asked, nor did hear any of the Council contradict it. And depones, That the Provost of *Edinburgh* cannot of himself, as he thinks, give out any of the Town's Arms to be used by the Inhabitants, without a previous Consent of Council; and he knows that the Fact is, when any of the Arms are given out, it is always done by an Order of Council.

XLIII. *James Murray*, Esq. Receiver-General of the Customs of *Scotland*, depones, That, upon *Saturday* the 14th of *September* 1745, he received a Letter from Mr. *Drummond*, now Lord Provost of *Edinburgh*, desiring him to come forthwith to the City of *Edinburgh*; and that at the Request of the Pannel: And the Deponent accordingly that Night came. That the Deponent met the Pannel in the Street, and asked his Commands. He desired the Deponent to go to the Lord Justice-Clerk's; where he instantly went, and was followed in two Minutes by the Pannel. That there the Deponent was told, whether by the Pannel, or the Lord Justice-Clerk, he cannot tell, being both present, that the Rebels were within two Days easy March of the Town; and, as it was proposed to defend it, they desired that the Deponent would give his Advice and Assistance. To which he answered, That it was his Duty and Inclination to do every thing in his Power for the King's Service. After this Provost *Stewart* and the Deponent went to the Street; and the Pannel told him, there were several Town's Gentlemen met in a Tavern, and desired he would go there. That accordingly they went together; and Mr. *Drummond*, now Lord Provost of *Edinburgh*, who was there, told the Deponent, they had sent to him for his Assistance in the Defence of the Town; and, as they were ignorant of military Matters, and convinced that the Deponent understood more of them than they did, hoped he would give them proper Directions how to dispose of the Men they had in Arms, in the best Manner for the Defence of the Town: Then they told the Deponent their Numbers, which, so far as he remembers, they said, might be about eleven or twelve Hundred; but cannot be positive. That the Deponent dictated to them the Method of disposing their Guards; and some Rules of Discipline they were in that Hurry to observe; Guards to be immediately placed, Alarm-posts assigned, and, besides, continual Patroles. There were several Rounds appointed for that Night; and the Pannel was to go the grand Round after Midnight. That Orders were instantly given for disposing every thing according to those Directions. That the next Morning the Deponent went with Mr. *Colin Maclaurin* to visit the Walls, and Stations of the Guards; and ordered Barricadoes at the Gates. That, about Mid-day, he, the Deponent, coming to the Streets, met the Pannel, who told him, he had gone the grand Round, and was sorry to tell the Deponent, that, notwithstanding the strict Orders given, he neither found the Guards nor Centries alert; but that they were huddled together, under the Shelter of the Wall. That the Barricadoes were immediately set about, and, by Night, pretty far advanced. That next Day, being *Monday*, the Dragoons, and City-Guard, marched out of Town Westward; but about Four, or a little before Four in the Afternoon, they returned in some Hurry, and the Dragoons retired towards *Leith*, and the City-Guard retired in good Order to the Town. That the Deponent observed this threw a Damp on the Spirits of the Inhabitants, who, 'till then, had shewn a good Countenance. That the Pannel, with many other Gentlemen, assembled in the Goldsmiths-Hall, sent for the Deponent. That the Deponent went immediately; and the Pannel made him some Compliments, and then asked him, if he thought the Town tenable? The Deponent told him, they had Hands enough; but that the Pannel, and the other Gentlemen present, were best Judges of their Hearts: But that, if they entertained any Thoughts of delivering up the Town, they were not to add to that Reproach, the Crime of delivering the King's Arms to the Rebels. And, being interrogate, whether any Mention was made by himself, or others in the Company, concerning the City-Arms? depones, That he did not at that time know, that the City had any Arms properly belonging to itself, other than what served the City-Guard. And that, after he left the Goldsmiths-Hall, having still some Confidence that the Town was to be defended, he went to his House, loaded his Pistols, put them in his Pockets, and came to the Street; where, observing a Party of armed Men marching up the Street, he asked them, where they were going? They answered, To the Castle, to deliver their Arms. Upon which the Deponent went to the Goldsmiths-Hall, and, with great Difficulty, got Access, and desired of the Pannel, that he would order the *Netherbow* Port to be opened to let the Deponent out of Town; that he being an Officer of the Revenue, it was unsafe for him to stay any longer; which the Pannel ordered accordingly. And, being interrogate for the Pannel, if the Deponent heard him express his Opinion anywise for defending the City? depones, That the first Time he came to the Goldsmiths-Hall, he heard the Pannel say, That, if the Town was to be defended, he would do his Duty, if he was to leave his Bones on the Walls: And he appeared to the Deponent to be very warm for the Defence of the Town; but that there was such a Confusion, he could not hear all that the Pannel said.

XLIV. *David Lindsay*, Writer in *Edinburgh*, depones, That he served as Lieutenant in Mr. *Drummond*, now Lord Provost of *Edinburgh*, his Company of Volunteers; and, being in the *Lawn-market* with the said Company after the Resolution was taken by the different Officers of the Volunteers, the Deponent was sent by Mr. *Drummond*, as he thinks, to General *Guest*, to acquaint him, that the Volunteers were immediately to come up to the Castle, and deliver up their Arms, for that no good could be done by keeping them; for that the Town was to be delivered up. That, upon his coming to the Castle, he met with Major *Roberton* at the Castle-gate, who asked the Deponent, where he was going? To which he made Answer, that he was going to General *Guest*. The Major then said, May I ask you what may be your Business? To which the Deponent made Answer, that he was come, at the Desire of Mr. *Drummond*, to deliver the above Message. To which Mr. *Roberton* answered, That the General knew all that already; and he expected them, without Loss of Time; and desired him to go back directly, and tell Mr. *Drummond* so much; which the Deponent accordingly did; and thereafter the Volunteers marched up, and delivered in their Arms.

XLV. *John Hislop*, Store-keeper of the City of *Edinburgh*, depones, That, in the Month of *September* 1745, the Deponent was Keeper of the Town of *Edinburgh*'s Magazine, where their Arms and Ammunition were laid. That, at that Time, there was in the Magazine one Thousand two Hundred-Fifty Firelocks, besides two Hundred that were insufficient; by which he means altogether useless; and of the one Thousand two Hundred and Fifty, there was a great many that the Deponent would not give Half-a-Crown the Piece for; and the most of these were very old, but could fire: And besides, there was in the Magazine not quite two Hundred Bayonets, and about three Hundred Cartridge-Boxes in bad Case. That of Ammunition, there was about two Boxes, and a Bag with some loose Ball, and no Gun-powder; but that, in the Beginning of *September*, the Deponent got from the Powder-House four Hundred Weight of Powder. That, besides the above Arms that belonged to the Town of *Edinburgh*, there was the Arms of the City-Guard of *Edinburgh*, consisting of 75 Firelocks, Bayonets, and Cartridge-boxes. That the Powder and Ball was made up into Cartridges: And of the above Arms, there was one Hundred sent to *Leith*, but returned again to the Magazine, on *Monday* the 16th of *September*. That, by the Pannel's Orders, the Deponent gave, upon *Sunday* the 15th, betwixt forty and sixty Firelocks to each Company of the sixteen Companies of Trained-Bands, except the *Canongate-Head* Company, who got but about twenty-four; and that thirty-nine Firelocks were given to the thirty-nine additional Men of the City-Guard. And, upon *Monday* the 16th, the Deponent having got Orders from sometimes the Pannel, and sometimes the Magistrates, being all his Masters, gave accordingly Cartridges to those who came for them; and, particularly, he gave five Hundred Cartridges to each of the three Companies of the Trained-Bands who that Day kept Guard; and a good deal to the Seceders, who kept Guard at the Infirmary. That, before the 16th of *September*, all the Powder which was in the Powder-House was sent up to the Castle by Order of the Pannel; And, by the Pannel's Orders, on the said 16th, the Deponent got back from the Castle four Hundred and twenty-five Pound Weight, for the Use of the Cannon that were planted on the City-Walls, and for Cartridges; and the Deponent gave it out for charging the Cannon, and he gave Cartridges to such as called for them: And the whole Ammunition was given out, except about a fifty Pound Barrel. That, with respect to the Arms that were not given out, and the above Quantity of Powder, he received no Orders from the Provost, or any body else; and the Firelocks which he gave out, as above deponed upon, were never

never again returned to him. That upon the 16th, the Deponent laid by the Keys of the Magazine, the Armoury, and the Wardrobe, in ſome ſecret Place, which his Servant *Alexander Dryburgh* knew. And, upon the 17th, after the Rebels got Poſſeſſion of the City, he ſtepped aſide, not thinking it proper to keep his own Houſe; and the Account which his ſaid Servant gave of the Keys afterwards was, That the Rebels threatened to break open the Doors of the Magazine, Armoury, Council-Houſe, and Wardrobe; and therefore Bailie *Mansfield* came to *Alexander Dryburgh*, and adviſed him to deliver up the Keys of the above Places; which he accordingly did: And the Day thereafter the Deponent ſaw the Rebels carrying down Arms on their Shoulders along the Streets, which he apprehended to be the Arms belonging to the Town of *Edinburgh*. And depones, He got no Orders for ſecuring, or bringing back the Arms which he had given to three Companies of the Trained-Bands that were upon Duty upon *Monday* Night the 16th; and that he was ſo fatigued, by ſitting up three Nights before, that he was not able to ſit up longer. And depones, That, after the Rebels had carried off the Arms, as above deponed upon, they delivered the Deponent the Keys of the Magazine, which was about fourteen or twenty Days after they entered the City. And, upon the Deponent's going into the ſaid Magazine, he found no Arms there, except a few of the broken Guns above-mentioned; and even theſe were afterwards carried off by them. And, being interrogate for the Pannel concerning the Spades and Shovels that were brought to the Magazine on *Monday* the 16th, depones, That on that Day there were four Carts of Shovels and Spades, belonging to *William Millar*, Seedſman in the Abbey, ſent up to the Magazine; and the Carter ſaid to the Deponent, that Bailie *Hamilton* deſired that he might take them under his Care and Cuſtody; and the Deponent accordingly did ſo; And that on *Sunday*, the 29th of *September*, the Rebels came and carried them off down to the Abbey; but, upon the Proprietor's making Application for them, the Deponent heard him ſay, that he afterwards got them back.

XLVI. *Alexander Dryburgh*, Servant to *John Hiſlop*, the preceding Witneſs, depones, That in the Month of *September* 1745, upon *Monday* the 16th Day, in the Evening, he knew, that his Maſter, *John Hiſlop*, had ſecreted the Keys of the Town of *Edinburgh*'s Magazine and Storehouſes below a Form in the Council-houſe. And, upon the 17th, after the Rebels had entered the City of *Edinburgh*, and wanting Acceſs to the Council-Houſe, they threatened to break open the Door; and the Deponent by Accident meeting Bailie *Mansfield*, who knew that he had the Key of the Council-Houſe, deſired the Deponent to give the Key to the Rebels, rather than have the Door broke open; which he accordingly did: And, after the Rebels had got Acceſs to the Council-Houſe, they found out the Keys of the Magazine, Armoury, and Wardrobe, out of which they carried off all the Arms that were then to be found there; the Deponent having ſeen the very Arms carried down the Streets in Carts, and on Men's Shoulders; and that, when the Keys were again reſtored to his Maſter, and the Deponent had Occaſion to enter into the Armoury, he ſaw no Arms there.

XLVII. *Thomas Dalyell*, one of the Captains of the City-Guard of *Edinburgh*, depones, That, in *September* 1745, the Deponent was one of the Captains of the City-Guard, which then conſiſted, including Officers and Soldiers, of 126 Men. That, about Ten o'Clock of *Monday* the 16th of *September*, the Deponent, by Order of the Pannel, marched out with the whole Guard to the *Colt* Bridge, leaving only a few of the Men behind to make up Cartridges. That they remained at the *Colt* Bridge till about Three o'Clock Afternoon, when, by Order of the Commanding Officer of the Dragoons, they marched back to Town, and went to the Court of Guard; where they received Orders from the Pannel, which was brought them by Mr. *Orrock*, to march two Squads of the Guards to the *Graſs-market*, and to leave the other Squad at the Court of Guard. That the Deponent accordingly marched with the two Squads to the *Graſs-market*, and received from the Pannel the Key of the Wicket of the *Weſt-Port*, with Orders to allow Nobody to go out, or come in, but ſuch as he could be anſwerable for. That the Deponent, and his Party, remained in the *Graſs-market* till about Eight o'Clock at Night; and, about Seven o'Clock, as the Deponent thinks, he ſaw Bailie *Yetts*, Bailie *Hamilton*, and ſome others come from the Town to the *Weſt-Port*, who, he was told, were a Deputation ſent to the Rebel-Camp; but, ſome time before that, the Deponent had given the Key of the Wicket to one of the Captains of the Trained-Bands, *Alexander Hepburn*, who then kept Guard at the *Weſt-Port*. That, about Eight at Night, Capt. *Maitland*, another of the Captains of the Town-Guard, brought the Deponent Orders from the Pannel to march his Men to the Court of Guard; which the Deponent did. And it being his Turn to be upon Guard that Night, he then went to the Pannel to receive his Orders, what Guard he deſired to be kept that Night; and the Pannel ordered him to keep the ordinary Guard, which is a Squad, or a third Part of the Company, which then conſiſted of 126 Men; but the Deponent actually kept upon Guard 50 Men: And, by the Pannel's Orders, he ſent a Detachment of theſe to keep Guard at the *Netherbow* Port; the Volunteers who had kept Guard there formerly, having left it. That the Detachment he ſent firſt, conſiſted of 14 Men; but, as he was afterwards informed, that theſe had got themſelves drunk, he was forced to change them; and, at laſt, that Guard was reduced to the Number of ſix Men; which was all that the Deponent could find that were fit for doing Duty. That the Deponent received Orders from the Pannel, not to ſuffer any body to go out or come in at the Port; but, upon Recollection, ſays, That theſe Orders were not given to the Deponent, but were carried by one *Henderſon* to the Serjeant of the Guard in the Deponent's Abſence, and by him ſent with the ſaid Detachment to the *Netherbow*. That the Deponent went to his own Houſe about Four o'Clock, and did not ſee the Rebels come in at the Port; but was told by his Men at the Port, that before Five o'Clock, a Coach having come down the Street, and gone out at the Port, the Rebels took that Opportunity of ruſhing in, and ſeized the Centries, and took their Arms from them; and then marched up to the Court of Guard, and ſeized ſuch of the Men as they could lay Hands on there, and took their Arms from them. That the Deponent ſoon after went in queſt of the Pannel, to report what had happened. That he found the Pannel in a Tavern in the Writers Court, he thinks Mrs. *Clarke*'s; and in Company with him, he found a Rebel-Officer, whom he afterwards knew to be *Sullivan*; and together with them, the Deponent thinks Bailie *Yetts*, and ſeveral others of the Council; and the Deponent reported to the Pannel what had happened to his Guard. Depones, That the Guard-Soldiers had been greatly fatigued for ſeveral Days before, and had been under Arms by Four o'Clock in the Morning of *Monday* the 16th; ſo that, when, at Night, the Deponent marched his Men from the *Graſs-market* to the Court of Guard, a great many of them were unfit for doing Duty. And, being interrogate for the Pannel, depones, That he had Occaſion to obſerve the Town's Arms belonging to their Magazine, having picked out what he thought the beſt of them, in very bad Condition, ſeverals of them not fit for Uſe; many of them that would indeed fire, but of theſe, many that would not keep Priming. Depones, That, upon *Sunday* the 15th, the Deponent, with about 90 of the Town-Guard, and a Detachment of about 50 of the *Edinburgh* Regiment, marched out towards *Corſtorphin*, to ſuſtain the Dragoons; and, after they had paſſed the *Colt* Bridge in their Way to *Corſtorphin*, there came up to them firſt, one Mr. *Lindſay*, and afterwards one *Ormiſton*, who is a Copperſmith in the *Weſt-bow*, and told them, that it was the Provoſt's Orders that they ſhould halt there: But thereafter Mr. *Henderſon*, who writes in the Council-Chamber, brought them Orders from the Provoſt to march forward to *Corſtorphin*, and there to take their Orders from Col. *Gardiner*. And, being further interrogate for the Pannel, depones, That, when the Pannel, on *Sunday* Morning the 15th of *September*, ordered the Deponent to march to *Corſtorphin* to ſuſtain the Dragoons, the Deponent ſaid, If he ſent them there, he ſhould provide them in better Arms; for their Arms were not fit for Service. Upon which the Pannel deſired the Deponent to go to the Magazine, and pick out for them the beſt Arms he could find. But the Deponent anſwered, That there were no Arms in the Town's Magazine that he could depend upon. Upon which the Deponent got for his Guard the Arms that had been got for the *Edinburgh* Regiment, which were new Arms, and, as he ſuppoſes, had been got out of the Caſtle; and theſe were the ſame Arms that the Town-Guard had when the Rebels entered the Town, and were taken from them. And, upon a further Interrogatory, depones, That he did not get the whole Number of Arms himſelf from the Armoury; but, having got the Pannel's Allowance, he gave Orders to his Men, that ſuch of them as thought their Arms not ſufficient ſhould, go to the Armoury, and leave them there, and take others in place of them. That the whole of them did not change their Arms, but the Bulk of them; and he believes about four-fifths of them went to the Armoury, and changed their Arms, as he directed.

XLVIII. *James Tait*, Goldſmith in *Edinburgh*, depones, That, in *September* 1745, both before and at the Time the Rebels entered the City of *Edinburgh*, the Deponent was Keeper, and had the Keys of the *Netherbow-Port*; but the Night before the Rebels entered, that is, the *Monday*'s Night, the Deponent was obliged to go to Bed at Eleven o'Clock at Night, having been kept out of Bed the two preceding Nights with the Volunteers; and that *Monday*'s Night he committed the Charge of the Port to his Servant *James Gilleſpie*, whereby it happened that the Deponent was a-bed on the *Tueſday*'s Morning when the Rebels entered the Port; and knew nothing of them till he was raiſed out of Bed, and ſaw them in the Town. That the Deponent received no Orders, either on the *Monday* Night, or any preceding Night, about the Manner of keeping the Port; it being the ordinary Cuſtom, to open the Port as People called either going out or coming in; but upon the *Monday*'s Night, the Deponent left at the Port ſix of the Town-Guard Soldiers, beſides his above Servant *James Gilleſpie*.

XLIX. *James Gilleſpie*, Servant to *James Tait*, the preceding Witneſs, depones, That, in *September* 1745, when the Rebels entered the City of *Edinburgh*, the Deponent was Servant to the preceding Witneſs Mr. *Tait*, and Keeper of the Port under him. That, upon *Monday*'s Night, the 16th of *September*, Mr. *Tait* left the Charge of the Port to the Deponent, and gave him Orders, whatever Chairs or Coaches were entering the Town, or going out, to open the Port, and let them paſs. That the Deponent attended the Port that Night, together with ſix Centries of the Town-Guard Soldiers; and, betwixt Four and Five in the Morning, a Coach came down the Street, in order to go out at the Port; and the Deponent, agreeable to his Orders, opened the Port, and let it paſs; and after the Coach was paſt, the Deponent ſhut one of the Leaves of the Port; but as he was ſhutting the other, the Highlanders ruſhed in upon him, and beat him back, and then poſſeſſed themſelves of the Port, and entered the Town. Depones, That Nobody offered to ſtop the Coach from going out: That he knows not whether any of the Centries ſpoke with the Coachman; but he obſerved him to ſtop a little talking with one of the Waiters at the Port of his Acquaintance. And depones, That he did not ſay to any of the Soldiers that he had Orders to let out that Coach; nor could he, ſince he had no other Orders but the general Order above-mentioned; nor did any of the Soldiers ſtop him from letting out the Coach. And depones, That the Deponent had no particular Orders from the Pannel, or any of the Magiſtrates or Council concerning the Port.

L. *Alexander Corſar*, one of the Soldiers of the City-Guard of *Edinburgh*, depones, That, upon the Night of *Monday* the 16th of *September* 1745, he was upon Guard as one of the Soldiers of the City-Guard; and, at Four o'Clock on *Tueſday*'s Morning, was ordered, with five or ſeven more of his Brother-Soldiers, by the Serjeant of the Guard, to go to the *Netherbow* to guard it, and to relieve the like Number of Soldiers that were there before; and the Serjeant of the Guard ordered the Deponent not to permit any Perſon whatever to go out or come in at the Port. And the Deponent accordingly marched, and relieved the Guard at the Port: And in about Half an Hour thereafter, the Deponent, obſerving a Coach coming down the Street, ſent two Men to meet, and ſtop it at the *Fountain-well*; but, as the Coachman would be forward, the Deponent went up and ſtopped it himſelf. That the Coachman ſaid, He behoved to get out at the Port; but the Deponent ſaid, He ſhould not get out, unleſs he had an Order from Provoſt *Stewart*. The Coachman ſaid, he had no Order from Provoſt *Stewart*; but that Provoſt *Coutts* had ordered him to be let out. The Deponent anſwered, Provoſt *Coutts* had now no more Power to give ſuch Order, than any other private Gentleman; and he ſhould not get out, without Provoſt *Stewart*'s Orders. Upon which the Under-keeper of the Port who was *James Gilleſpie*, the preceding Witneſs, came

came up, and said, That he had an Order to let out that Coach; but did not say from whom he had it. Upon which the Deponent answered, O, Sir, it is very well if you have an Order to let it out; you have the Keys of the Port, you must answer for it, and I have nothing to say. And being further interrogate, depones, That the Under-keeper had no Discourse with either the Coachman or the Postilion, before he told the Deponent that he had an Order to let out the Coach. Depones, That then the Port was opened, and the Coach drove out, and was not past the Deponent two Yards, when the Highlanders rushed in, and *Lochiel* gripped the Deponent by the Arm.

Then the Lord Advocate declared his Probation to be concluded.

Follows a List of the Witnesses Names and Designations cited for Mr. Stewart.

N. B. *Only those marked thus * were examined on the Pannel's Exculpation; and such as are marked thus † were cited both by the Prosecutor and the Pannel.*

Thomas Allan, Esq. Merchant, and Dean of Guild of *Edinburgh*.
John Aitken, Bookseller there.
William Annan, Sheriff-Officer there.
Alexander Brown, Merchant there.
Charles Butter, Wright there,
Hary Barclay, of *Collerny*, Esq.
**David Baird*, Merchant in *Edinburgh*.
John Brown, Servant to *Archibald Inglis*, Pewterer there.
Charles Banks, Stabler there.
**Thomas Cochran*, Esq. one of the Commissioners of Excise in *Scotland*.
James Cleland, Vintner in *Edinburgh*.
Mr. *Patrick Cuming*, Minister of the Gospel there.
Thomas Cuming, Flesher there.
William Cramond, one of the City-Officers there.
Ralph Dundas, Merchant there.
Robert Dundas, Merchant there.
Thomas Dundas, junior, Merchant there.
John Douglas, Armourer there.
Ronald Dunbar, Writer to the Signet.
Robert Davidson, Tacksman of the Meal-market of *Edinburgh*.
John Dunsmore, Merchant in *Edinburgh*.
Charles Dickson, Goldsmith there,
Michael Elphinston, late Store-keeper to the Castle of *Edinburgh*.
Alexander Erskine, Carter in *Edinburgh*.
Simon Fraser, White-iron Smith there.
Robert Forrester, Merchant there.
John Forrest, Merchant there.
John Ferguson, Shipmaster in *Leith*.
Mr. *Francis Garden*, Advocate.
James Grierson, Merchant in *Edinburgh*.
Alexander Gray, Brewer, at the Back of the *Canongate*, *Edinburgh*.
**Walter Hamilton*, one of the Captains of the City-Guard of *Edinburgh*.
Patrick Henderson, Merchant in *Edinburgh*.
Charles Hope, Merchant, and late Bailie there.
John Hay, Wigmaker there.
Archibald Hart, Merchant there.
George Home, Town-clerk of *Leith*.
John Hastie, Gardener in *Heriot*'s Work, *Edinburgh*.
Paul Husband, Merchant in *Edinburgh*.
Archibald Inglis, Pewterer there.
David Jackson, Sadler, now Overseer of the Scavengers there.
James Ker, Esq. Jeweller, present Deacon-Conveener of the Trades of *Edinburgh*, and Representative in Parliament for the City.
**Francis Kemptie*, Merchant in *Edinburgh*.
Dr. *Thomas Dundas*, Physician, Brother to *Dundas* of *Manor*.
Capt. *Francis Kinloch*, Son to the deceased *Jacob Kinloch*, of *Stonyflat*.
**George Lindsay*, Depute Town-Clerk of *Edinburgh*.
George Langlands, Surgeon there.
Deacon *Patrick Lawson*, Weaver there.
**George Lauder*, Surgeon there.
John Learmont, Tanner there.
James Mansfield, Merchant, and late Bailie there.
Robert Montgomery, Merchant, and late Bailie of *Edinburgh*.
Charles Mack, Mason there.
William Macvey, Wright there.
James Macdouall, Waulker there.
William Mercer, Merchant there.
Ebenezer Macculloch, Merchant there.
**William Macghie*, Merchant there.
Richard Mackenzie, Vintner there.
David Murray, Stabler there.
Thomas Moor, Vintner there.
Samuel Neilson, Mason there.
William Ormiston, Coppersmith there.
*Mr. *Robert Pringle*, Advocate.
Alexander Purves, Merchant in *Edinburgh*.
James Rob, Merchant there.
John Robertson, Mason there.
Willoughby Ramsay, Merchant there.
**Archibald Stewart*, Merchant, and late Moderator of the Constables there.
James Scot, Merchant there.
Robert Smith, Surgeon there.
**Walter Scot*, Merchant, and Bailie in *Leith*.
Charles Sheriff, Merchant there.
Alexander Sheriff, Merchant there.
James Stedman, Vintner in *Edinburgh*.
David Simpson, one of the Sheriff-Officers there.
William Shiells, one of the Sheriff-Officers there.
William Scot, one of the Town-Officers there.
Richard Tod, Merchant there.
William Trotter, late Surgeon to General *Hamilton*'s Dragoons.
John Walker, Merchant in *Edinburgh*.
George Boswell, Sadler there.
William Straiton, Brewer there.
Mr. *Patrick Haldane*, Advocate, one of his Majesty's Solicitors.
†*Charles Fraser*, Merchant in *Edinburgh*.
†*Archibald Macaulay*, Esq. late Lord Provost there.
†*John Wilson*, Merchant, late one of the Bailies there.
†*Gavin Hamilton*, Merchant, late one of the Bailies there.
†*James Stewart*, Merchant, late one of the Bailies there.
†*James Nimmo*, Esq. late one of the Bailies there.
†**Hugh Hathorn*, late Dean of Guild there.
†*Robert Baillie*, Merchant, late one of the Bailies there.
†*James Grant*, Merchant, and present Town-Treasurer there.
†Sir *Robert Dickson*, Bart.
†The Honourable Mr. *James Leslie*, Advocate, one of the Commissaries of *Edinburgh*.
†*Archibald Stevenson*, Writer in *Edinburgh*.
†*Nathan Porteous*, late Deacon of the Skinners there.
†*Patrick Lindsay*, Depute-Secretary to the Forces in *North-Britain*.
†*Robert Griffith*, one of the Gunners of the Castle of *Edinburgh*.
†*John Hislop*, Store-keeper of the City of *Edinburgh*.
†*John Dalgleish*, Watchmaker there.
†*Baillie Bryden*, Lieutenant of the Royal Regiment of Artillery.
†*Andrew Alves*, Writer to the Signet.
†*Thomas Dalyell*, one of the Captains of the City-Guard, *Edinburgh*.
†*Alexander Corsar*, one of the Soldiers of the City-Guard there.
†Mr. *John Glen*, } both Ministers of the Gospel there.
†Mr. *Alexander Webster*, }
†**William Forbes*, one of the principal Clerks of the City of *Edinburgh*.
†**William Henderson*, Writer there.
†*James Murray*, Esq. Receiver-General of the Customs in *Scotland*.
†*James Paterson*, Tide-Surveyor of the Customs at the Port of *Leith*.
†Mr. *George Craigie*, of *Glendoig*, Advocate.
†Mr. *Robert Dundas*, younger, of *Arniston*, Advocate.
†*George Dunbar*, Merchant, late one of the Bailies of *Edinburgh*.
†Mr. *Joseph Williamson*, Advocate, one of the principal Clerks of the City of *Edinburgh*.
†*Robert Tennent*, Merchant there.
†*David Lindsay*, Writer there.
†**John Coutts*, Esq. late Lord Provost there.
†**John Yetts*, Merchant, and sometime one of the Bailies there.
†*John Stephen*, Merchant there.
†*David Inglis*, Merchant, and sometime one of the Bailies there.
†*Mark Sandilands*, Merchant, and late one of the Bailies there.
Charles Hay, Tide-waiter at *Dundee*.

Follows the Proof adduced for the Pannel's Exculpation.

I. *John Coutts*, Esq. late Lord Provost of *Edinburgh*, depones, That the Minutes and Orders of the Town-Council [admitted by the Lord Advocate, and Mr. *Lockhart* as Counsel for the Pannel] now shewn to him, were truly and really transacted, as therein entered, and signed by the Pannel as the Lord Provost, in Presence of the Council; and that the Minutes of the Committee [in like manner admitted by the Prosecutor and Pannel] also shewn to him, contain the true Proceedings thereof; and the Deponent was one of that Committee. Depones, That the Resolutions of the Council were reported to a Meeting of the Inhabitants, which was called about the latter End of *August*; which Meeting unanimously approved thereof, and appointed a Committee of their Number to join with the Magistrates to consult with the King's Lawyers, and such Judges as were in Town, touching the Legality of such Measures as had been under Consideration, for the Defence of the Town. In Prosecution of which, there was a Meeting of the Committee, at least part of them, in the Lord Justice-Clerk's House; where his Lordship and the Crown-Lawyers assisted. That several Proposals for the Defence of the City were under Deliberation, and particularly the raising of a Regiment of 1000 Men; which the said Judges and Lawyers thought would amount to High-Treason, without the Sovereign's Authority was first given. There was some Conversation how such a Regiment could be maintained, if raised; and such of the Committee of Inhabitants and Magistrates as were present, were desired to sound the Inclinations of the Citizens and Inhabitants, how far they would contribute to the Expence of it; and it was recommended to the Lord Advocate, to write to some of the King's Ministers at *London*, to obtain his Majesty's Royal Sign-manual for levying the said Regiment. Depones, That he knows, that the Pannel, and other Magistrates of the City, received several Proposals for putting the Town in a Posture of Defence; most of all which were complied with: And he knows, that Letters were wrote by the Pannel to the Ministers and Magistrates of neighbouring Burghs, to take particular Notice of the Motions of the Rebels, and inform the Magistrates of *Edinburgh* thereof. Depones, That, upon *Sunday* the 8th of *September*, in the Evening, or at Dinner, he heard that the King's Sign-manual was come; and a Council was held next Day, the 9th, where it was produced; and a Committee was appointed to carry it into Execution, by levying the Men, taking in Subscriptions, and, in general, doing every other Thing in relation to it. The first Meeting of which was appointed at the rising of that Council, and afterwards they were ordered to meet twice a-Day. Depones, That he subscribed for the Maintenance of the Regiment some time after the rest of the Council had subscribed; and he observed the Pannel's Subscription to be 20*l.* *per* Month, which was higher than that of any other Subscriber before the Deponent. Depones, That there was a Provision of Meal, sufficient for the said Regiment, before the Rebels entered the City of *Edinburgh*, made by the Direction of the Pannel, and other Magistrates; and Arms were furnished to the Regiment from the Arsenal in the Castle. Depones, That he heard Mr. *Joseph Williamson* complain to the Pannel, that the publick Works went slowly on. To which the Pannel answered, 'I have given Warrants to press Workmen and Carts; the 'Execution of the Work is committed to a Committee, under the In-'spection of Bailie *Robert Baillie*: What would you have me to do more?' And the Deponent knows, that Bailie *Robert Baillie* was at the Head of a Committee, who had Orders to carry on all public Works for the Defence of the City with the greatest Dispatch. Depones, That, upon the Approach of the Rebels, what Cess was owing by the City, was paid upon *Saturday* the 14th, by the Intervention of the Pannel; at whose Request the Deponent went down to the Royal Bank, to wait till such time as it was paid in; and the Deponent saw it paid; and he thinks, that the Pannel signed the Order for Payment of the Cess to the General-Receiver of the Land-Tax, directed to the Cashier of the Royal Bank, to be placed to the Debit of the Town's Cash-Account. That it consists with the Deponent's

ponent's Knowledge, that the Pannel readily embraced a Propoſal of the Lord Juſtice-Clerk's, of having Meetings and Conſultations with ſeveral Noblemen and Gentlemen in and about the Town, to concert what was proper to be done at that Juncture; that he went to his Lordſhip, and told him, that he wanted Advice much, and would be very glad of ſuch Aſſiſtance. Depones, That he knows no further of Application made for Gunners from the *Urſula* Man of War, other than that, upon *Monday* the 16th of *September*, he ſaw a Letter lying upon the Table of the Goldſmiths-Hall, which the Deponent caſually took up, and read, dated from *Leith*, ſigned by he does not remember whom, directed either to the Pannel, or one of the City-Clerks: and bearing, that the Captain of the King's Ship in the Road could ſpare no Gunners; and that he thinks, but cannot be poſitive, it was before Dinner when he ſaw this Letter. Depones, That, about Eleven o'Clock of the ſaid 16th of *September*, the Deponent went up to the Goldſmiths-Hall, where the Pannel and ſome of the Members of the Council were; or, rather, the Deponent having gone up to the Goldſmiths-Hall, the Pannel came up to him. That the Pannel took *Hugh Hathorn* and this Deponent aſide, perhaps more of them, but he does not remember, and told them of the Meſſage *Andrew Alves* had delivered to him, in Preſence of Commiſſary *Leſlie*, touching the Strength of the Rebel Army, which *Alves* repreſented as great; and that the City would be ſubject to military Execution, ſhould they perſiſt in the Defence of it; and aſked their Opinion, if it would be proper to take Notice publicly of that Meſſage? ſuggeſting his Apprehenſion, that it might intimidate the Citizens and Inhabitants. That Mr. *Hathorn* and the Deponent gave it as their Opinion, it was better to huſh the Thing, for the Reaſon already given: And, at this Time, the Pannel being called to viſit ſome Part of the Walls, he immediately went, and the Deponent and Mr. *Hathorn* attended him, and they made a Round of a conſiderable Part of the Wall, and ended at or near the *Weſt-Port*, and, when they came to the *Graſs-market*, they were told of Mr. *Alves*'s Meſſage; whereby they ſaw the ſame was made publick. Whereupon the Pannel declared his Intention to go to the Lord Advocate's Lodging, to talk with him in relation to that Matter; but, meeting with ſome Company, the Pannel walked down with the Deponent ſome way towards the *Luckenbooths*; and then parted with the Deponent; and went backwards, as he believes, to execute his Intention; nor did he obſerve any Meſſage delivered to the Pannel during this Period. He ſaw the Pannel ſoon after this, who told him he had been with the Lord Advocate; and that he had already ſigned, or was to ſign a Warrant for committing Mr. *Alves* to Priſon. Depones, That, on *Monday* Afternoon, about Three o'Clock, the Pannel went from the Goldſmiths-Hall, with Intention to go to the *Weſt-Port*; and, about this Time, he heard of the Retreat of the Dragoons with ſome Precipitancy; and, before he left the Goldſmiths-Hall, he mentioned to the Deponent, that he had received a Petition from ſeveral of the Citizens and Inhabitants, deſiring that the Town ſhould not be defended, or, at leaſt, not till a general Meeting of the Inhabitants was called to deliberate on its Defence: And the Pannel, in his Way to the *Weſt-Port*, ſtepped into the Lord Advocate's Cloſe-head, or went up to his Houſe; he thinks it was only to the Cloſe-head, he ſtaid ſo ſhort Time: The Deponent waited his Return; and in their Way to the *Weſt-Port*, he told the Deponent he had ſigned a Paper, deſiring, or conſenting, that ſome Dragoons ſhould be ſent to the Aſſiſtance of the City. That, after the Pannel had given ſuch Orders at the *Weſt-Port*, which he judged the Flight of the Dragoons rendered neceſſary, he left it: And, in his Return, was ſurrounded by a great Crowd of People, whoſe general Cry was, 'Would he continue his Deſign of defending the 'Town, and have them all murdered, now that the Dragoons were fled?' And the Deponent obſerved, among thoſe who made this Cry, *Thomas Dundas* younger of *Lethem*, who appeared to the Deponent to be full warmer on that Head than any of the reſt, though his Brother *Laurence* declared, on the contrary Side, for the Defence of the Town. To which the Pannel replied, Would they now be guilty of Cowardice in giving up the Town, after obtaining his Majeſty's Sign-manual, and doing ſo much for its Defence? and a great deal more to that Purpoſe, in Anſwer to their repeated Cries. That, when the Pannel returned from the *Weſt-Port* to the Goldſmiths-Hall, where a good Number of the Council, and many of the Inhabitants were aſſembled, it was propoſed to, and agreed by him, forthwith to ſend Deputies to the Lord Juſtice-Clerk, the Lord Advocate, and the Solicitor; and Meſſengers were ſent to each of them reſpectively, deſiring them to come and aſſiſt the Pannel with their Advice: But, ſoon after, the ſeveral Deputies returned, and reported, that all of them had left the Town. Depones, That, immediately after this, the Pannel ſent for the Officers of the Trained-Bands and Volunteers; and deſired to have their Opinion upon the Defence of the City; and addreſſed himſelf to them in Subſtance to the following Purpoſe: *That he hoped they would not now ſuffer Cowardice to poiſon their Councils; and that, after obtaining his Majeſty's Royal Sign-manual, and doing ſo much with Spirit, they would not now think of giving up the Defence of the City: That, for his own Part, he would go to the City Walls, and to the Place of greateſt Danger; and, ſo long as he could find* ten *Men to ſtand by him, he would perſevere in the Defence of it.* That ſeveral of the ſaid Officers came, and were thus ſpoke to; but few of them ſeemed to be inclined to give their Opinion, or ſpeak; but one Gentleman, Mr. *Joſeph Williamſon*, ſaid to this Purpoſe: Since he ſaw the Pannel ſo firmly reſolved upon the Defence of the City, he would attend, and ſhare Fates with him; but he feared he ſhould not be able to bring with him Five, Ten, or ſome ſuch ſmall Number of the Company wherein he ſerved. That the Deponent in particular remembers he preſſed Mr. *Drummond* to give his Opinion; which he declined; and, taking the Deponent aſide, ſaid, 'I am ſurpriſed, Sir, that you ſhould inſiſt on my giving my Opinion. You 'know I am not ſo independent a Man as you or the Pannel. I hold 'a Place of the Government, and it may be very inconvenient for me 'to deliver my Opinion in this Place.' That the Deponent deſired the Pannel to aſk Mr. *Drummond*'s Opinion; who ſtill declined to give it: And, as the Deponent had begun to relate Mr. *Drummond*'s Apology for not giving his Opinion, he interrupted the Deponent, and again took him aſide; and ſaid, 'I am ſurpriſed, Mr. *Coutts*, you ſhould inſiſt upon 'my giving my Opinion, when you know, that the Provoſt has the Ar'ticles of Capitulation of the City in his Pocket ſome Days ago;' adding, That he was told that Day at Dinner by the Earl of *Home*, that as, upon *Thurſday* preceding, he was ſhaving or dreſſing in the Lord Juſtice-Clerk's Lodging, the Window open, he overheard the Deponent, coming up the Bank-Cloſe, ſaying, What need is there to keep all this Pother or Buſtle about the Defence of the City, when the Provoſt has in his Pocket, Articles of Capitulation for ſurrendering it to the Rebels? The Deponent replied, That that Tale carried very little Credibility with it; for what a ridiculous Thing was it, to imagine, that he, the Deponent, in one of the moſt publick Cloſes in Town, under the Windows of an Officer of State, ſhould be roaring out a Story of that Kind. That he could himſelf give no Credit to the Story: For that, tho' of late there had been a Dryneſs between the Earl and him; yet he looked upon the Earl as a Man of Honour, that could not be capable of ſaying ſuch a Thing without any Foundation: ſo that certainly he, Mr. *Drummond*, muſt have miſtaken his Lordſhip. And the Deponent added, Mr. *Drummond*, let us not now be talking of theſe Things, 'till afterwards, that the Earl, you and I have Occaſion to talk about it. That, after what paſſed between the Pannel and the Officers of the Volunteers, Captain *James Murray* and Major *Thomas Cothran* came in to the Meeting; and the Pannel deſired them to give their Opinion, if, or not, the Defence of the City ſhould be continued? But both of them declined to give any, joining in Sentiment, that the Pannel, who beſt knew the Inclinations of the Citizens and the Inhabitants, was by much fitter to determine that Point than they; and that the Deciſion of it muſt ultimately land upon him. That the Pannel having again preſſed Mr. *Murray* to give his Opinion, and to figure himſelf in the Pannel's Stead, and declare what he would do if that were the Caſe; Mr. *Murray* replied, 'I do moſt heartily pity you, my Lord Provoſt. I cannot, nor 'can any Man adviſe you; you muſt yourſelf decide it; and I am afraid 'you will get very little Advice.' Depones, That, much about this Time, *Walter Groſet*, Collector of the Cuſtoms at *Alloa*, came in to the Meeting with a Meſſage, whether in Writing or verbal he cannot ſay, from the Lord Juſtice-Clerk, or the Lord Advocate, or both; deſiring the Pannel to give an Order for bringing ſome Dragoons in to the City. To which the Pannel anſwered, That he had already given his Conſent or Order for bringing in one Hundred Dragoons, at the Deſire of the Crown-Lawyers; and that he could not comprehend what the Meaning was, why an Order ſhould be aſked this Day for bringing them in, after what paſt laſt Night: But their Lordſhips were beſt Judges what was for the Service of the Government: If they ſhould judge it for it, to ſend them in, they ſhall be received, but I will not now make an Order; becauſe, if I ſhould, and if they ſhould come in, and the City and they fall into the Hands of the Rebels, I might be charged to have enſnared ſo many of his Majeſty's Troops; if I ſhould refuſe to admit them, I might be blamed for rejecting a Succour which might have relieved the City: Let their Lordſhips therefore give their Deciſion, which I ſhall obey. And, as Mr. *Groſet* was departing, the Pannel called him back, and ſaid, to prevent Miſtakes, he would ſend a written Anſwer; which accordingly he did. And the Anſwer referred to in Mr. *Craigie*'s Depoſition being ſhewn to the Deponent, depones, it is the Anſwer then ſent by the Pannel. Depones, That while Bailie *David Baird* was arguing in the Goldſmiths-Hall againſt defending the Town, becauſe it was not tenable, Principal *Wiſhart* and Bailie *John Wilſon* came in, and a great many others followed; and the Principal and Bailie averred, that no Man but a *Jacobite* would maintain ſuch an Opinion. Upon which ſuch a Hubbub aroſe, and ſo many People crowded into the Room, that the Deponent himſelf moved, that they ſhould adjourn to ſome larger Place, where thoſe who had a mind to ſpeak might be better heard; and then the Cry was, *the New Kirk Iſle*; to which the Meeting adjourned. That, in the Parliament-Cloſe, they met a great many People in their Way, inſomuch that the Deponent was carried off his Feet by the Crowd to the South-ſide of the Statue; and the Cry of the People who ſurrounded him was, praying the Deponent to prevail with the Pannel not to draw Deſtruction upon the City by a fruitleſs Oppoſition. That the Deponent followed the Pannel and a Multitude of the Inhabitants to the New Kirk Iſle; where, at firſt, there was ſuch a Noiſe, that he could hear nothing that paſt; but the Pannel at length prevailed ſo far in quelling it, that the Deponent could hear him ſay, That the Purpoſe of that Meeting was, to conſult with them touching the Defence of the City; and made to them much the ſame Expoſtulation as he made formerly to the Captains of the Volunteers, ſo far as the Deponent could hear. That he heard Principal *Wiſhart* move, that the Meeting might be purged of *Jacobites*. To which the Pannel, or Somebody, anſwered, It would not be eaſy to diſtinguiſh a *Jacobite* from a *Whig* by their Countenance. That the Reverend Mr. *George Logan* begun to ſpeak for the Defence of the City, but was ſoon interrupted by a great Noiſe, and a Cry, that That was impoſſible. Upon which he thinks the Pannel ſaid, 'It is impoſſible to col'lect the Voice of every one. Shall I put the Queſtion, whether the City 'ſhall be defended, or not?' Upon which the Cry of the Generality was, That the City could not be defended. And at this Period a Letter was brought into the Meeting, he does not know how; but he ſaw it firſt in the Hands of Deacon *Walter Orrock*, who, having broke it up, ſaid, it was ſigned *Charles P. R.* Upon hearing of which, the Pannel forthwith ſaid, 'I cannot be Witneſs to the reading of this Letter,' left the Chair, and went out of the Meeting to the Goldſmiths-Hall; whither ſeveral of the Council and of the Inhabitants followed him, and, among the reſt, the Deponent. That the Letter appeared again there, brought, as he believes, either by the ſaid Deacon, or *William Henderſon*, one of the Clerk's Servants. And it being propoſed by ſome that it ſhould be read, it was urged by others, that to read it, would be Treaſon. Upon which it was moved and agreed to, that the Opinion of the Aſſeſſors ſhould be taken; who thereupon were ſent for: But it was reported they had all left the Town, except Mr. *Patrick Haldane*, who would be with them immediately. That, when he came, his Opinion was aſked, if it was proper to read the Letter or not? and the Pannel, or ſome other Perſon, he does not remember who, told Mr. *Haldane*, it was a Letter ſigned *Charles P. R.*; upon which Mr. *Haldane* ſaid, *it was a Matter too high for him to give his Opinion in*; and immediately roſe from his Seat, and went out of the Goldſmiths-Hall: The Deponent followed him to the Door, and preſſed him to give his Opinion; but he ſtill declined. And being interrogated upon the Part of the Purſuer, if the Letter was begun to be read before Mr. *Haldane* left the Hall? depones, That ſaid *William Henderſon*, upon Mr. *Haldane*'s

Haldane's coming in, took up and began to read the Letter; but he was immediately ſtopped, and ordered to deſiſt, by ſome Perſons in the Meeting, he does not know by whom; but Mr. *Haldane* was one of thoſe who ſtopped him, as the Deponent thinks; and he believes he might have been one of them himſelf. That, upon this, the Pannel complained, that he was now alſo deſerted by his Aſſeſſors. Depones, That, after this, the Letter was begun to be read; and the Deponent, being at a little Diſtance, ſaid, What is the Meaning that this Letter is begun to be read? To which ſome one of the Meeting anſwered, that it was neceſſary it ſhould, that it might be known what Threatenings it contained againſt the City. That, a little after reading this Letter, it was propoſed by ſome one in the Meeting, who he does not remember, that a Deputation ſhould be ſent, to deſire, that until they could make a proper Anſwer to the Letter, nothing ſhould be done againſt the City; the Intention of which was, to gain Time; the Purpoſe of the Meeting being to call the Burgeſſes and Inhabitants to deliberate upon that Affair. And accordingly, Bailie *Hamilton*, Bailie *Inglis*, Bailie *Yetts*, and Conveener *Norrie*, were ſent out with the ſaid Meſſage, about Eight o'Clock. And the Paper marked Number 2, mentioned in the Liſt of Writings annexed to the Libel, being ſhewn to him, depones, That it was the Return to the firſt Deputation. Depones, That the ſaid Paper being laid before the Meeting, then in the Laigh Council-houſe, the Pannel immediately obſerved, that there was one Condition in the Paper that he would rather die as ſubmit to, namely, the receiving the Pretender's Son as Prince-Regent of *Scotland*, as he was tied by Oath to another Maſter; which appeared to be the common Opinion of the Meeting: And therefore, after a long Argument, a ſecond Deputation was agreed, and determined to be ſent out about Two o'Clock in the Morning; and five Deputies were ſent, whereof the Deponent was one, with Inſtructions, begging a Delay 'till Nine o'Clock in the Morning, to the end the Meeting might have Opportunity to converſe with the Citizens, who were then a-bed; which alſo was calculated to gain Time; which they chuſed to do, becauſe they had heard, before the Return of the firſt Deputation, that Sir *John Cope*, with the Troops under his Command, were ſeen off *Dunbar:* And the Paper marked Number 3, in the ſaid Liſt, now ſhewn to the Deponent, was the Fruit of the ſecond Deputation. That he remembers to have ſeen a Serjeant of the Caſtle, between Seven and Eight in the Evening, come in to the Meeting in Goldſmiths-Hall, who delivered a Meſſage, which the Deponent did not hear; but heard it reſtated by ſome of the Members of the Meeting to be this, That General *Gueſt* ſent him with Orders, to deſire of the Pannel an Order to ſpike up the Cannon upon the Walls of the City, and to knock off the Trunnions; and that the Deponent whiſpered to ſome of his Neighbours that, conſidering the Threatenings in the ſaid Letter, might it not do as well to make Anſwer to the Meſſage, that the Pannel could give no expreſs Order; but to acquaint the Serjeant, that the General might ſend and render the Cannon uſeleſs; which he ſhould be at full Liberty to do. And accordingly, the Deponent, and the ſaid *William Henderſon*, deſired the Serjeant to ſpike up the Cannon himſelf, or to do with them as he pleaſed. And the Adjutant of the *Edinburgh* Regiment having come in much about this Time, to aſk how he ſhould diſpoſe of their Arms, he was alſo told that he was at Liberty to diſpoſe of theſe Arms as he pleaſed, by the Deponent, who left it to *William Henderſon* to explain the Reaſon thereof to the Adjutant. Depones, That, being fatigued, he went to take a Refreſhment in Mrs. *Clarke*'s; and during his ſhort Abſence of a Quarter of an Hour, the ſaid Mr. *Groſet* came to the Council, which was then more regularly met than formerly, with only a few Inhabitants; And, upon his Return, he found them in the Laigh Council-Houſe; and a Letter, ſent by Expreſs from Mr. *Fall* to the Deponent, which had ſome-how fallen into Mr. *Groſet*'s Hands, had been juſt then laid before the Council, and read before the Deponent came in, as he is inclined to believe, becauſe the Letter gave notice of General *Cope*'s Arrival off the *May*; and he was told by ſome of the Council, that Bailie *Manſfield* had been ſent out, if poſſible, to ſtop the Deputies of the firſt Deputation from executing it. That the Letter was again read after he came in, and delivered to him. That, upon this, they begun again to conſider, if the Defence of the City might not be reſumed: And while ſome People were talking, that the Volunteers ſhould take Arms again, and others, that the Dragoons ſhould be brought in; leaving theſe Things to be determined by the Meeting, the Deponent, Mr. *Groſet*, and Mr. *Lindſay*, Secretary at War, were ſent to General *Gueſt*, to know of him, whether, if the Defence of the City ſhould be reſumed, he would deliver out Arms to the Volunteers, and recall the Dragoons? To which he anſwered, That they might put the City-Arms in the Hands of ſuch as were well-diſpoſed; and, if the Provoſt ſhould write him, that there was a good Spirit appearing in the People, and deſire him to deliver out the Volunteers Arms, probably he might do it; and that he had ſent Orders for recalling the Serjeant from rendering the Cannon uſeleſs; but that he judged it abſolutely neceſſary for his Majeſty's Service, that the Dragoons ſhould be ordered to join General *Cope*, without whoſe Aſſiſtance his ſmall Body of Men could not act. That the Deponent, Meſſ. *Groſet* and *Lindſay*, returned to the Council. That, by the Way, Mr. *Groſet* and the Deponent agreed, at Mr. *Groſet*'s Requeſt, that they ſhould mention nothing of bringing in the Dragoons to the Town, becauſe it was a clear Point they could have none of them, and it might intimidate the Inhabitants if they knew ſo much. However, the Deponent judged it his Duty to whiſper the Pannel, that for the Reaſons above aſſigned, he could not hope to have any of the Dragoons brought in. They found the Council ſtill arguing upon the ſame Subject they left them upon, ſome propoſing one Thing, ſome another, and ſome to ring the Alarm-bell. That, ſoon after this, Mr. *Webſter* ſaid, It was impoſſible to think of defending the City, without the Dragoons were brought in for its Aſſiſtance. Upon which Mr. *Groſet* roſe up, and ſaid, 'Then I will go and fetch in the Dragoons;' and going to the Door, the Deponent followed him, and ſaid, 'How can you impoſe ſo 'upon the Meeting, when you know from General *Gueſt* that you can 'have none of them?' To which he replied, He could perhaps perſuade Brigadier *Fowkes* to bring them in. Provoſt *Drummond* went along with Mr. *Groſet*, and neither of them returned. That, immediately after this, Mr. *Lindſay* propoſed to the Pannel, to get out the Arms for the Volunteers. To which he anſwered, That it was proper for him firſt to know what Diſpoſition there was among the Inhabitants to make uſe of them. That, as to the Propoſal of ringing the Alarm-bell, it was obſerved, and agreed to, it would be doing great Injuſtice to the Deputies, to ring it 'till they ſhould be returned: And Dean of Guild *Hatborn* obſerved, that if they did, they might expect to have the Deputies hanged like Rats, it being probable the Rebels were within hearing of the Bell. That the Deponent being one of the ſecond Deputation, he remembers, when they went out to the Rebel-Army, they met with the late Lord *George Murray*, whom they applied to, and prevailed upon to ſecond them in procuring the Delay propoſed. That the late Lord *George Murray* went into the Room in which the Pretender's Son was; and the Deponent could hear, though indiſtinctly, ſo much of the Converſation, as convinced him, that the ſaid Lord *George* was endeavouring to perſuade the Pretender's Son to comply with it; and that he refuſed to do it; which the ſaid Lord *George* came out, and reported to the Deputies: But, upon ſecond Converſation with them, they prevailed upon him once more, to try if he could obtain the propoſed Delay; which he accordingly attempted, but was refuſed; and the Deponent could hear the Pretender's Son ſay, 'My Lord *Elcho*, Lord *George* has not Spirit to put this Order 'in Execution; you muſt go and do it for him.' Upon which the late Lord *Elcho* came out of the Room from the Pretender's Son, and bid the Deponent, and the reſt of the Deputies, to get them gone: That the ſaid Lord *George Murray* followed the Deputies out, and whiſpered to the Deponent, *I know your Pinch; you want to have the Conſent of your principal Inhabitants: Make haſte to Town; you will have an Hour or two to obtain it.* That the Deputies made all the Haſte they could to return, and went directly to Mrs. *Clarke*'s; where they underſtood the Pannel and the Council were. The Pannel, who was aſleep, was rouſed. The Deputies reported their Anſwer, and what Lord *George Murray* had ſaid. The principal Inhabitants were ordered to be gathered together immediately. Some few of them, and particularly Mr. *James Ker*, now Member of Parliament for the City, were come, when Notice was brought, that the Rebels had broke into the Town, and made themſelves Maſters of it: Which put an End to all further Deliberation.

II. *William Forbes*, one of the principal Clerks of the City of *Edinburgh*, depones, That, on *Monday* the 16th *September* 1745, he came to the Goldſmiths-Hall about Three o'Clock in the Afternoon; where he found the Pannel, as he appeared to him, in a very great Paſſion; ſome of the Councillors were about him, and ſeveral other of the Burghers and Inhabitants of the Town. The Deponent went up to him, and aſked him the Occaſion of the Diſorder he ſeemed to be in. The Pannel anſwered, That he had got a Paper into his Hands, which he by no means reliſhed, and thought it was ſomewhat ſeditious: For that the Scope of it was, that the Town ſhould be ſurrendered; which he ſwore he would not conſent to. That, at this Time, the Crowd that was in the Room called aloud upon the Pannel, to take the Advice of the Inhabitants; but he told them, that he would liſten to no Advice in a Matter of this Kind, 'till he had taken the Opinion of abler and better Counſellors. Upon which ſeveral Perſons were ſent to all his Majeſty's Officers who uſually reſided in *Edinburgh*, humbly to beg that they would meet with them, and give their Opinion what was proper to be done in ſo critical a Juncture. That the Meſſengers ſent, returned with a Report that they were all gone out of Town. The Pannel therefore, finding, that he could not have the Happineſs of the Counſel of the Civil Officers, was reſolved to call for the Aſſiſtance of ſuch of the Military Officers as were in Town, and the Officers of the Volunteers. That, upon Meſſages ſent, Major *Thomas Cochran* and Captain *James Murray* came to the Hall, as alſo a great many of the Officers of the Volunteers. That, upon their coming in, the Pannel opened to them the difficult Circumſtances that he and the City were under at that time, and prayed their Advice. That ſuch of the Officers of the Volunteers as were preſent, declined giving any Advice, except Mr. *Joſeph Williamſon*; who ſaid, That, from the Beginning, he was determined to ſtand to the Defence of the City to the laſt Drop of his Blood; but that he was ſorry to ſay, that he found ſome Alterations upon the Spirits of the People: For that, in the Company in which he was an Officer, there was not above ſix or ſeven of the Volunteers of that Company could be found. That the Pannel did, upon this Occaſion, warmly exhort the People that were about him, to ſtand to the Defence of the City, repreſenting the Expence they had already laid out in order to the Defence of the City; and that they had lately plighted their Faith to his Majeſty, that they would, to the utmoſt, ſtand for the Support of his Perſon and Government, and for the Defence of the Town. The Pannel then addreſſed himſelf to Major *Cochran* and Captain *Murray*, who were the only two of the Military that could be found; and told them, that their Advice was neceſſary in a Matter of this kind, becauſe of their Knowledge and Experience in theſe Matters. To which Captain *Murray* replied, that he regretted extremely the unhappy Situation of Affairs in general, and the Pannel's Caſe in particular; that he pitied him, becauſe he foreſaw, that the Deciſion of this important Queſtion would chiefly lie upon him; and added, that if the Trained-Bands and Volunteers did not ſtand to their Arms in the Defence of the Town, it was a Matter of the greateſt Conſequence, that the Arms delivered out by the Government ſhould not be ſuffered to fall into the Hands of the Rebels: And then, turning about to the Deponent, ſaid, with an Oath, If they do, ſome People may come to hang for it. That Bailie *Baird* offered his Opinion; which was, that he thought the Town not tenable; as did Mr. *Thomas Dundas*, and ſeveral others: But Principal *Wiſhart*, and ſome few more, were of a different Opinion. Whereupon the Principal ſaid, None but *Jacobites* would be for ſurrendering the Town. Then enſued a loud Cry from many, that the Opinion of the Inhabitants ſhould be taken; and, for that end, it was propoſed to adjourn to the New-Church Iſle; where they accordingly went: But, in their Way to the New Kirk Iſle, there were loud Cries from all Corners, not to expoſe the City to the Fury of the Rebels. While the Pannel was in the Midſt of the Crowd, there came a Gentleman on Horſeback, who ſaid, He wanted to ſpeak to the Pannel; and accordingly ſpoke to him to this Effect: 'That 'Lieutenant-Colonel *Whitney* had ſent him back to bring away the 'Dragoons Baggage that was left in Town; for that the Dragoons were

'on

'on their Way to *Haddington*.' That the Deponent did not go in at that Time to the New Church Isle, having gone to refresh himself with a little Coffee; and, when afterwards he attempted to go in, he found the New Church Isle so chop-full of People, that he could not put in his Head. He then went towards the Cross, where he met with Bailie *James Stewart*, one of the Officers of the Volunteers, and several private Volunteers along with them. That he had in his Hands a Key, or two Keys; which made the Deponent ask him, What he meant? and where he was going? Who replied, He was going to give up his Charge with the Keys of the *Netherbow* Port; for he found that this Thing would not do. That thereafter the Deponent went to the Goldsmiths Hall, where, the Meeting in the New Church Isle having been dissolved, he found the Pannel, and a great many of the Council and Inhabitants of the Town, who were in a Dispute, Whether a Letter, that had been given in the New Church Isle, said to have been subscribed by the Leader of the Rebels, should be read, or not? The Pannel argued, That the Reading of such a Letter was at least bordering very near upon Treason; more especially if it produced an Answer. Upon the other Hand, some of the Inhabitants urged, That it was proper the Contents of it should be known, and they might afterwards consider what was proper to be done on it. That the Pannel upon this said, It was improper for them to come to any Resolution, until, at least, they had taken the Opinion of their Assessors; who were sent for; but none of them were found, excepting Mr. *Patrick Haldane*. To whom the Pannel represented, They were under a Difficulty with regard to a Letter signed *Charles P. R.*; that they wanted to be advised, Whether it should be read? and, if read, Whether it should be answered? and what Answer should be given? To which Mr. *Haldane* replied, It was a Matter of too high a Nature for him; and therefore he would give no Advice upon it. And upon an Interrogatory put to the Deponent for the Pursuer, Whether the first Mention of the Letter's being signed as aforesaid, was not on Occasion of Mr. *Haldane*'s putting a Question to *William Henderson* (in whose Hands the Letter was), Who signed it? the Deponent, on Recollection, says, That he believes it was so. Depones, That, before the Pannel went to the New Church Isle, Mr. *Groset* came to the Goldsmiths-Hall, and represented, That he had a Message from Lord Advocate, and Lord Justice-Clerk, to let the Pannel know, That, if he would give Orders for 100 Dragoons to enter the City, they should be forthwith sent. That the Pannel to this replied, That he could give no Orders, because he had no Power over them: That he was a little surprised with the Message, after what had happened in a Council of War held the other Night in Lord Justice-Clerk's House; where it was concluded not to be for his Majesty's Service that any of the Dragoons should enter the City, or Words to that Purpose; but that, if they were of Opinion, that it was for his Majesty's Service, and should order a hundred Dragoons, or more, he would receive them, and make them very welcome, and give them all the Assistance he could in Defence of the City. That Mr. *Groset* insisted the Answer should be taken down and given in Writing; which was accordingly done; and the Deponent thinks it was to the above Purpose. Depones, That, while he was in the Goldsmiths-Hall, after the Meeting had come from the New Church Isle to that Place, he thinks about the Hour of Six, or after it, a Serjeant from the Castle came in, and told the Pannel, he was sent by Gen. *Guest*, in order to nail up the Cannon, if he would permit them so to do. To which the Pannel answered, That all Authority was wrested out of his Hands; but that Gen. *Guest* might do what he thought was best for his Majesty's Interest or Service; and said, That the Town-Officers would shew them where the Cannon were. Depones, That, after the Meeting had left the Goldsmiths-Hall, and gone to the Laigh Council-House, the Deponent went in to them; where he saw two Ministers of the City, who were reasoning about the Surrender of the Town; and declared, that, as Things now stood, the Defence seemed impracticable: And, while this was the Subject of their Discourse, Mr. *Groset* came in, and produced to them one Letter signed, but directed to Nobody, and another Letter also directed to Nobody, and unsigned: The first of the Letters importing, that the Troops had that Night landed at *Dunbar*; and the other, that the Fleet had been seen off the *May*, and would land that Night at *Dunbar*. Upon which the Pannel expressed great Satisfaction; and said, That, as long as there was any Prospect for defending the Town, he would not be for giving it up: But then it occurred to him, that the Volunteers had delivered up their Arms, and it would be difficult to get them again into their Hands; and that there was no Prospect of getting any Dragoons. Upon which a Deputation was made by the Meeting to Provost *Coutts* and Mr. *Lindsay*, to go along with Mr. *Groset* to the General, to try if he would give Orders for bringing any Dragoons into the Town, and deliver Arms to the Volunteers. That, after they waited upon the General, the Report made by Mr. *Groset* was, That he would go and bring in the Dragoons; and laying hold of Provost *Drummond*, they both went out. Upon an Interrogatory, the Deponent recollects, That this Offer of Mr. *Groset*'s was immediately after the Ministers had given their Opinion as above. However, Mr. *Coutts* reported to the Meeting, that no Dragoons could be spared to enter the City, since there was a Prospect of Sir *John Cope* with his Troops landing; because they would be of much more Service joined to the Foot that was with Sir *John*: And as to the Arms, reported, That there was no Reason to hope they would be delivered out, till it appeared that the Volunteers were more stable in their Resolution of defending the City. And depones, That when Provost *Drummond*, as he thinks, had proposed to ring the Fire-bell, to convocate the Volunteers, it was opposed by Dean of Guild *Hathorn*, for this Reason, That this Signal might be understood by the Enemy, and provoke them to use the Deputies ill. Depones, That pretty late in the Evening of that Day, he was present in the Laigh Council-House; when he heard some People in that Meeting talking of a Message to be sent to Gen. *Preston*; and that Mr. *Lauder* was the Man to be named for that Purpose. What the Message was he was to be sent on, the Deponent did not then know; but heard them assign for a Reason of the Choice of Mr. *Lauder* to be sent to the Castle, That he was a near Relation of Gen. *Preston*'s. That the Pannel, and some People about him, were the Persons he observed busied about the sending of Mr. *Lauder* to the Castle: And when the Deponent was, from Curiosity, asking, What the Nature of the Message was? he was answered, That it was improper at that Time to communicate it to any Person: But, when Mr. *Lauder* returned from the Castle, upon the Deponent's asking him what Errand he went upon, he told him, That it was to prevail upon General *Preston*, to send down a Party to bring up the City-Arms; which he would not comply with. Depones, That upon *Saturday* the 14th of the foresaid Month, the Deponent, with Provost *Coutts*, and Mr. *Hathorn*, accompanied the Pannel while he went round the Walls to visit the Works that were carrying on. That, where he observed the Workmen diligent, he encouraged them, and told them, they should be very well rewarded if they were diligent; and where he observed any of them that he suspected to trifle with their Work, he chid and checked them; and told them, they should be paid accordingly. That, upon another Occasion, when Complaints were made, that Materials were wanting for carrying on the Work, (whether it was the same Day the Walls were visited as aforesaid, the Deponent cannot be positive, nor what Day it was, but that it was in the Period of Time when the City-walls and the Town were to be put in a proper Posture of Defence against the Rebels), he was present when the Lord *Somerville* and the Pannel joined as Justices of the Peace, in granting a Press-Warrant for procuring Men and Horses for carrying the Materials, and forwarding the Work. And, upon an Interrogatory by the Prosecutor, Whether the Deponent had ever related to any Person whatsomever this Circumstance of the Message sent by Mr. *Lauder*, at any Time since the Year 1745, down to this Day? and being at the same time desired to recollect himself, and name any one to whom he had told it; the Deponent says, That he verily believes he had made Mention of it to several Persons; but until it came to be a Subject to be spoken of in this Prosecution, he could not with Certainty say who the particular Persons were: But he condescends on two different Persons, Mr. *Ninian Cunningham*, Writer, and Mr. *George Dunbar*, Merchant, to whom he mentioned this, particularly about a Fortnight ago: Neither does he call to mind the Names of any of the Persons who were whispering with the Provost, when the Message was said to have been sent up by Mr. *Lauder* at this Distance of Time; but that the two Ministers he refers to in the former Part of his Deposition, were, Mr. *Alexander Webster* and Mr. *Patrick Cuming*.

III. *William Macghie*, Merchant in *Edinburgh*, depones, That he is one of those who signed the Petition or Representation which was given in to the Pannel, marked No. 8, of the List of Writings subjoined to the Criminal Letters. That he was present when the said Petition was delivered to the Pannel, which was just at the Door or Entry to the Goldsmiths-Hall: That he seemed to be in a very great Passion about it; and, turning about in an angry Manner, when he had got up to the said Hall, said to those who presented it, 'What do you mean? Do you think by Numbers to force me to grant the Desire of your Petition?' and with that forced to the Door, and turned the Deponent down the Stairs. And that this happened in the Afternoon of the 16th *September* 1745.

IV. *Francis Kemptie*, Merchant in *Edinburgh*, depones, That he was present on the Afternoon of the 16th *September* 1745, when the Representation, marked No. 8, of the List of Writings subjoined to the Criminal Letters, was presented to the Pannel in the Entry to the Goldsmiths-Hall. That the Pannel was very much offended with the said Representation, and said, 'What! do you think to cram your Petition down my Throat by Numbers?'

V. *Thomas Cochran*, Esq. one of the Commissioners of Excise, depones, That, upon the 15th of *September* 1745, he was with Brig. *Fowkes*, and several others, in the Lord Justice-Clerk's House, where the Brigadier proposed bringing in his Dragoons to the Town of *Edinburgh*: But this the Deponent argued against, as being a Thing altogether improper, considering the narrow and long Lanes that lead to all the Ports of the Town. That the Brigadier still persisted in thinking, that the Design was very right; and that he could force his Way out at any one of the Gates he pleased. However, there was no fixed Resolution of bringing the Dragoons to the Town, so long as the Deponent remained in Lord Justice-Clerk's House. Depones, That after the Deponent went from Lord Justice-Clerk's, he went to the Meeting of some Gentlemen in Mrs. *Clarke*'s House, where Captain *James Murray*, the Pannel, and a great many others were; and there they made a Disposition of the several Corps of armed Men, into the different Parts of the Town: And the Deponent heard the Pannel give his Directions or Orders agreeable to the Dispositions then made. Depones, That, upon the Afternoon of *Monday* the 16th *September*, the Deponent meeting Capt. *Murray*, he was told, That the Pannel sent for them both to come to him to the Goldsmiths-Hall; where they both accordingly went. And, upon their going in, the Pannel desired, first, That Capt. *Murray* would give his Opinion, which he accordingly did; and afterwards desired the Deponent might do the same, which he also did; and which was to this Purpose, That it was the Duty of every one to defend the City as long as they could; and if there was a Necessity for their surrendering, then they ought to take care, that the King's Arms should not fall into the Hands of the Rebels. And being interrogate, If he took any Notice of the Arms which belonged in Property to the Town? depones, He did not, for this Reason; That he knew, when the Town-Guard marched out that Day, as he thinks, the Officers would not accept of them to do Duty with, as knowing them to be altogether insufficient; and, for that Reason, they had a new Sett delivered to them. And further, he gave Advice at the above Meeting, That, in case the Town was pushed, and obliged to surrender, and those who had the King's Arms had not Time nor Access to deliver them into the Castle, that then they should break them, rather than let them fall into the Hands of the Rebels. And depones, That the Pannel, upon hearing Capt. *Murray*'s and the Deponent's Opinion, said to the Meeting, 'I want, Gentlemen, that you should also give me your Opinion; for it is by your Opinion I am to conduct myself: And if you come to a Resolution of defending the Town, I will go wherever the Danger is greatest, and defend it to the last.'

VI. *David Baird*, Merchant, and late one of the Bailies of *Edinburgh*, depones, That upon the Afternoon of *Monday* the 16th of *September* 1745, he was in the Goldsmiths-Hall with the Pannel, and a great many other Inhabitants of the Town of *Edinburgh*. That while he was there, Mr. *Groset* came in with a Message from the Lord Advocate and Lord Justice-Clerk, making Offer of 40 or 50 Dragoons to the Pannel for the Defence of the Town, in case he thought fit to accept of them. The Pannel's An-

ſwer to this Propoſal was, That he would neither deſire nor give Orders for them; but, if they came, they ſhould be welcome: For, if any Accident happened to the King's Troops, they, and not he, ſhould be anſwerable for it. And the Deponent, upon hearing of the ſmall Number that was propoſed to be ſent, ſaid, What did 40 or 50 ſignify? If they ſent the Whole, it would be ſomething; but the ſending ſuch a ſmall Number, could be to no other Purpoſe, than having their Throats cut, and the Houſes and Shops plundered. That Mr. *Groſet* inſiſted for an Anſwer in Writing, which the Pannel complied with, by giving him a Letter to the Lord Advocate and Lord Juſtice-Clerk. Depones, That, while the Deponent was in the Goldſmiths-Hall, he ſtood up, and ſpoke to the Pannel, and told, That he appeared there, not only for himſelf, but for ſeveral Hundreds of the Inhabitants, whoſe All was at Stake, and whoſe Wives and Children were in Tears; and demanded, that the Pannel would give the Inhabitants a Hearing before he came to any Reſolution for defending the Town; which, after ſome little Time, was agreed to; and that the Inhabitants were to meet in the New Church Iſle about Six o'Clock that Night; and that the Fire-bell ſhould be rung for convocating the Meeting. That the Deponent having come to that Meeting, the Pannel ſaid, That he was ſorry for the Occaſion of calling the Inhabitants together; but, as the Rebels were then come near the Town, he wanted to have their Opinion how he ſhould behave, he himſelf being willing to hazard his Life and Fortune in the Defence of the Town. To which ſeverals anſwered, That they would ſtand by his Lordſhip: But that, as the Dragoons had been ſeen running away, and the Inhabitants altogether diſpirited, they thought it more adviſeable to make the beſt Terms they could; and all agreed, with an Exception of one or two, not to defend the Town. And, being interrogate, Whether the Meeting in the New Church Iſle conſiſted of People well-affected to the Government, and of Rank and Subſtance in the Town? depones, That he thinks they were; and that Mr. *Clarkſon* and Mr. *Keir*, Baxters, Mr. *Thomas Dundas*, Merchant, and ſeveral others, ſuch as theſe, were there. And, while the Deponent was there, he ſaw Bailie *Stewart* come in, and deliver up the Keys of the *Netherbow* Port; and he was deſired by the Pannel to ſtay; but he would not. That Sir *George Preſton* came there, and told, That he and his Company had been delivering their Arms into the Caſtle; and that Mr. *Glen*, Miniſter, came there, and ſaid, He was obliged to go away; and that a fourth Gentleman came there, and ſaid, He was obliged to go and ſee to his own Safety.

VII. *Walter Hamilton* of *Weſt-Port*, one of the Captain-Lieutenants of the City-guard of *Edinburgh*, depones, That, on *Sunday* the 15th *September* 1745, he marched out with the City-guard to ſuſtain the two Regiments of Dragoons: And when the City-guard was marching betwixt *Colt* Bridge and *Bruce* Hill, he thinks, but is not poſitive, that there was ſome Stop; but does not remember by whom. However, this, upon Recollection, he remembers to have heard, That Orders were given by the Pannel to the City-guard to take their Directions and Orders from the Commanding Officer of his Majeſty's Troops. Depones, That he had no particular Acceſs to examine the Condition of the City-Arms; but he has heard, that they were of little Value, and unfit for Service: And this he has heard from the Soldiers in the Town-guard who are under the Deponent's Command. And further ſays, That when the Rebels made themſelves Maſters of the City-guard, the Soldiers had been ſo harraſſed with extraordinary Duty all the preceding Week, and by being under Arms for three Days before, alongſt and with the Dragoons, that they were hardly fit to do any Duty.

VIII. *George Lindſay*, Depute-Town-Clerk of *Edinburgh*, depones, That he commonly attends the Magiſtrates as a Clerk. That he was preſent when Application was made to the Pannel and the Magiſtrates for putting the Town in a Poſture of Defence; and was alſo preſent when particular Directions were given by the Pannel and the other Magiſtrates for carrying into Execution the general Scheme for defending the Town. And particularly knows, that Directions were given by the Pannel and the other Magiſtrates, that the Work ſhould be carried on without Intermiſſion Night and Day, *Sundays* not excepted; and Warrants were granted to impreſs Labourers and Carts: And when Complaints were made, that the Work was not going ſo ſpeedily on as the Nature of the Caſe required, ſome of the Tradeſmen were ſent for by the Pannel, and challenged for not doing out the Work they had undertaken; and ſome of them having complained, that they wanted Labourers, freſh Warrants were ſigned for impreſſing them. Depones, That, about the latter End of *Auguſt* 1745, the Pannel ſigned ſeveral Letters to the neighbouring Miniſters and Magiſtrates, and, as the Deponent thinks, about 12 or 14 in Number, deſiring that they would ſend Notice, by Expreſs on Horſeback, when they ſaw any Body or Company of armed Men marching towards the City of *Edinburgh*. Depones, That the Deponent came into the Goldſmiths-Hall on the Forenoon of *Sunday* the 15th *September* 1745, where he ſaw Mr. *Hope-Weir* talking with the Pannel. That the Deponent underſtood, that Mr. *Hope* had come from General *Gueſt*, to acquaint the Pannel, that a Propoſal had been made to him, that 250 of the Volunteers were to go to the *Colt* Bridge to ſupport the Dragoons; and to deſire the Pannel, that 50 of the Town-guard ſhould go along with them. Depones, That the Pannel, at firſt hearing of this, doubted how far he could ſend the Guard out of the City; and ſaid, That that Corps were more to be depended upon than the Trained-Bands. Upon which the Deponent told the Pannel, That, by the Act of Parliament conſtituting the Guard, he was allowed to ſend them a Mile from the City. And then Mr. *Baillie*, one of the Magiſtrates at that Time, ſaid, That if the Volunteers were willing to go out to aſſiſt the Dragoons, the City-guard could not be better employed than to go along with them, as it might have the deſired Effect of obſtructing the Rebels Paſſage to *Edinburgh*; or Words to that Purpoſe. Upon which the Pannel ſaid, 'You are in the right, Mr. *Baillie*: In place 'of 50, the whole Guard ſhall go, and ſo many of the new-raiſed Re'giment as are levied.' And Orders were given, and they marched out accordingly. Depones, That, upon the 14th, the Pannel ſigned an Order for bringing into the Town all the Ladders, Ammunition and Arms that could be found in the Suburbs; and the ſame was given to an Officer, who brought in ſeveral Arms. Depones, That when Sir *Robert Dickſon*'s Volunteers came to Town, they were ordered to one of the Kirks; and Bread and Ale was given to them by Order of ſome of the Magiſtrates. That when the Pannel came to the Goldſmiths-Hall, the Deponent acquainted him of it; who ſaid, it was very well; and he hoped, they had got it ſoon enough. Depones, That, upon *Sunday*'s Evening, the Deponent underſtood, that the Pannel was in Mrs. *Clarke*'s, with ſome of the Captains of the Volunteers, who were employed in making Diſpoſitions for thoſe who were to defend the City, in caſe of any Attack. That, about Twelve o'Clock, he came to the Goldſmiths-Hall, and ſaid, he was to go the grand Round; and returned therefrom about Four o'Clock. Depones, That Mr. *Fowkes* came in to the Pannel, upon *Monday* the 16th in the Morning, and ſaid to him, That as the Dragoons at *Corſlerphin* had been under Arms all Night, they would greatly ſtand in need of ſome Meat; and deſired it ſhould be provided. That, in conſequence thereof, ſome of the Magiſtrates ſent to a Butcher to provide Beef; which was provided, and, by Order of the Magiſtrates, boiled in the different Taverns of the Town. Depones, That, upon *Monday* Evening, the Deponent was in the Goldſmiths-Hall, when Mr. *Griffith* and a Serjeant came from the Caſtle at different Times from General *Gueſt*, deſiring the Pannel to give Orders for ſpiking the Cannon on the Walls. To which the Pannel anſwered, That he could give them no Orders; but that the General might give Orders for ſo doing, for there was Nobody to obſtruct them.

IX. *John Yetts*, Merchant, and late one of the Bailies of *Edinburgh*, depones, That, upon the Afternoon of *Monday* the 16th *September* 1745, as there was a great Stir in the Town, upon Account of the Dragoons going Eaſtward in great Haſte, the Deponent and the Pannel went to ſee the *Weſt* Port ſhut; which was accordingly done; and a Party of the City-Guard and Trained-Bands were poſted there. That the Deponent went from the *Weſt* Port to *Briſtow* Port, and found it ſhut; and afterwards went to Goldſmiths-Hall. As he came from *Briſtow* Port to Goldſmiths-Hall, the People on the Streets were calling after him, Why would the Magiſtrates pretend to defend the City, when the Dragoons had gone Eaſtward? He found in the Goldſmiths-Hall the Pannel, ſeveral of the Magiſtrates and Council, and a great Crowd of the Inhabitants, who were crying out againſt any Attempt to defend the Town, ſince the Dragoons had gone away and left them. That the Crowd and Preſs was ſo great there, that it was reſolved to remove to the New Church Iſle; and, when they came there, the Deponent obſerved a very great Crowd of the Inhabitants and Burgeſſes; to whom the Pannel addreſſed himſelf, ſaying, That, as hitherto they had made a noble Stand for the Defence of the City, he hoped they would not now give it up: And, as for himſelf, he ſhould be the firſt Man that would mount the Walls, in caſe of Danger. That, nevertheleſs, the Deponent did not obſerve, that the Pannel's Words made any great Impreſſion upon the Audience; for the Generality of them continued to declare their Sentiments againſt defending the Town; and a few only ſpoke to the contrary. And being interrogate, If the Deponent was acquainted with all, or a great many of the People he ſaw there? ſays, That he was not acquainted with them all; but that he knew a great many of them, whom he always looked upon as People well-affected; and ſome of them were People of good Credit and Subſtance in the City, and others of them not. Depones, That he knew there were two Deputations ſent to the Camp of the Rebels; and he himſelf was one of the Deputies; and that the great Scope of the Deputations was, to gain Time, among other Things, with a View of conſulting with the Inhabitants, what was proper to be done. That, as he returned with the firſt Deputation, he met with ſome one or other, whoſe Name he does not remember, who told him, That Bailie *Manſfield* had been diſpatched after him, upon an Information laid before the Pannel and Magiſtrates, by Mr. *Groſet*, That Sir *John Cope*, in all Appearance, would very ſoon land; and that Bailie *Manſfield*, if he had overtaken the Deputies, was to have ſtopped them. However, coming too late, the Deputies returned with an Anſwer; wherein, among other Things, there was this Condition, That the Pretender's Son was to be acknowledged as *Prince Regent*; and, when this Condition was mentioned, the Pannel declared, That it was ſuch a Condition as he neither would nor could ſubmit to. And depones, That, in his Opinion, no Man in Life could do more for the Defence of the City than the Pannel did.

X. *Hugh Hathorn*, Merchant, and late Dean of Guild of *Edinburgh*, a Witneſs formerly adduced in this Cauſe for the Purſuer, and now adduced and examined for the Pannel, depones, That, after the Pannel's Return from the New Church Iſle to the Goldſmiths-Hall, in the Afternoon of *Monday* the 16th of *September*, the Letter from the Pretender's Son, being the firſt in the Liſt of Writings ſubjoined to the Criminal Letters, was read publickly in the ſaid Goldſmiths-Hall: And as it was now generally thought, there was little Hopes of defending the Town, after the Volunteers had delivered up their Arms; ſo there was little ſaid there about it. Depones, That, about the ſame time, a Meſſage was brought to the Pannel by *Robert Griffith*, deſiring an Order from the Pannel for nailing up the Cannon that were mounted on the Town-walls: To which the Pannel anſwered, That he might nail them up if he pleaſed; and a Town-Officer ſhould be ſent with him, to ſhew him where they were. Depones, That, on the Evening of the ſaid 16th of *September*, after Mr. *Groſet* had brought Advice of Sir *John Cope*'s being ſeen off *Dunbar*, he and Provoſt *Drummond* went away from Goldſmiths-Hall, in order, as they ſaid, to bring back the Dragoons; but they did not return. Depones, That the two Deputations that were ſent out to the Camp of the Rebels, were, in the Deponent's Apprehenſion, intended in order to procure a Delay, and to gain Time to put the People in a better way, who were then in a great Hurry and Confuſion. And further depones, That the Pannel's Subſcription for maintaining the *Edinburgh* Regiment was £. 20 *per* Month; and the Deponent does not know that any Perſon ſubſcribed ſo much.

XI. Mr. *Robert Pringle*, Advocate, depones, That, upon *Sunday* the 15th of *September* 1745, he had been all Morning with the Volunteers in the College-yard, till about Ten or Eleven Forenoon, after the Churches were conveened; and then they ſeparated: And the Deponent and Bailie *Stewart* came up the High-Street, where they met Dean of Guild *Allan*; who informed them of a Meaſure that had been reſolved on, That 250 Volunteers, with the Town-guard, and ſome other Troops, ſhould march out with the Dragoons, to ſupport them. That Bailie *Stewart* and the Deponent were

were pretty much surprised with the Measure, believing that the Volunteers were not quite fit for such Service; and supposing that the Gentlemen who had concerted that Measure were at Gen. *Guest*'s Lodging, Bailie *Stewart* and the Deponent resolved to go down there, and lay their Difficulties before them. That, in the *Canongate*, they met the Pannel and Provost *Drummond* coming up in a Coach together; and they stopped the Coach upon seeing the Deponent and Bailie *Stewart*: And very soon the intended Measure was spoken of; and Bailie *Stewart* and the Deponent began to tell them their Difficulties; and Provost *Drummond* said, 'Gentlemen, for God's sake! do not spoil a good Measure,' and desired them to come into the Coach; which they did; and persisted in representing the Difficulties in executing that Design; and the Pannel said, 'Gentlemen, This is no Measure or Proposal of mine, but proceeded 'from a Voluntary Offer of Provost *Drummond*'s, which, he said, would 'be readily agreed to,' or Words to that Purpose: And this he repeated two or three Times in their way coming up to Town.

XII. *Walter Scot*, Merchant in *Leith*, depones, That, about two Days before the Rebels entered the City of *Edinburgh*, there came a Person to the Deponent at *Leith*, with a Letter from the Pannel, to be sent on board the Man of War lying in the Road, and desired that the Deponent would forward it. That it was a sealed Letter: but the Bearer of it told the Deponent, That the Purport of it was to get Gunners to serve the Cannon on the Town-Wall. Depones, That the Deponent forwarded the Letter, as he was desired; and the same Person who brought it to him, came to him afterwards, and told him, he had got an Answer to it; which, the Deponent thinks, was addressed to the Pannel. Depones, That, after the Return of the foresaid Letter, a second Message came to the Deponent, from the Pannel, desiring, that a Search might be made in *Leith* for Gunners to serve the said Cannon. That such a Search was made, but no Gunners found, except one *Macgill*, Commander of a Customhouse-boat; and he was sent up to Town.

XIII. *William Henderson*, Writer, a Witness formerly adduced in this Cause for the Pursuer, and now adduced and examined for the Pannel, depones, That, upon *Sunday* the 15th of *September* 1745, the Pannel concurred with Lord *Somerville*, in granting a Press-Warrant for pressing Men and Carts, to carry Materials for repairing the City-Walls. Depones, That the second Week of the said Month of *September*, the Pannel granted a Warrant for searching, seizing, and carrying into the Town, all such Arms and Ladders as should be found in the Suburbs adjoining to the Town. Depones, That, on *Sunday* Morning the 15th *September*, the Deponent was ordered by the Pannel, to go to the City-Guard, and get 24 Men of the Guard-Soldiers and *Edinburgh* Regiment, to assist *Baillie Bryden* in mounting the Cannon on the City-Walls. Depones, That, upon *Sunday* the 15th of *September*, the Pannel, at the Desire of Gen. *Guest*, upon being advised by him, that 250 Volunteers had agreed to go out with the Dragoons to *Corstorphin*, to sustain them, ordered out the whole Men of the City-Guard, and 50 Men of the *Edinburgh* Regiment, on the same Service. That, at Two o'Clock Afternoon, the Deponent heard Mr. *Forrest* and Bailie *Mansfield* report to the Provost, That they had delivered his Message to General *Guest*, who said, He was surprised that the Volunteers had not marched out with the Dragoons; and, had he known that they would not, he should not have ordered *Hamilton*'s Regiment to decamp from *Leith* to *Corstorphin*, but would have ordered *Gardiner*'s to march from *Corstorphin* to the Links of *Leith*. Upon which the Pannel said, 'The Blame shall not lie at my 'Door;' and immediately sent the Deponent, with Orders for the City-Guard, and the 50 of the *Edinburgh* Regiment, instantly to join the Dragoons, and to take their Orders from the commanding Officer of the Dragoons. That the Deponent immediately went out, and found the City-Guard and *Edinburgh* Regiment in a Field betwixt the *Colt* Bridge and *Bruce-hill*, with their Arms grounded; and the Deponent told them the Orders he had from the Pannel. Depones, That Capt. *Dalyell* then told the Deponent, That a Serjeant and 16 Men had been left at the Court of Guard; and that, if any thing should happen, it would be proper that they should be sent after them: And, upon the Deponent's reporting this to the Pannel, he immediately ordered the Serjeant and 16 Men to follow their Corps; and the Guard was supplied with 28 Constables. That, at the Deponent's Return from the *Colt* Bridge, which was about Five at Night, he found the Pannel in the Goldsmiths-Hall. That, betwixt Seven and Eight, the Deponent called at Lord Justice-Clerk's, and was there told, the Pannel was in that House. That, betwixt Nine and Ten, he sent for the Deponent to Mrs. *Clarke*'s, to write out the Orders for the several Guards. That from thence the Pannel went to Goldsmiths-Hall, and, after Twelve at Night, went the Grand Round. Depones, That, upon *Monday* about Ten o'Clock, a Message came to the Provost, signifying, that the Dragoons wanted Provisions. Upon which the Pannel immediately sent for Mr. *Steedman* Vintner, and ordered him forthwith to provide as much Beef and Cheese as should be necessary for them. That, about Eleven o'Clock, Col. *Clayton* came to the Pannel, complaining, that no Victuals had been sent them. Upon which the Pannel immediately signed Press-warrants, for impressing Carts to carry out Provisions, and to go to the Flesh-market and Cheesemongers Shops, and take as much Cheese and Beef as was necessary, and get the Beef boiled in several Taverns; and recommended it to the Deponent to see these Orders executed: Which the Deponent accordingly did; and Bailie *Gavin Hamilton* went along with him. Depones, That, after Mr. *Groset* had, on *Monday* Evening, brought the News of Sir *John Cope*'s being seen off *Dunbar*, and, as the Deponent thinks, about Seven o'Clock of that Evening, the Pannel sent the Deponent to the Guard at the *Netherbow* Port, which was then a Serjeant's Guard, Part of the City-Guard, with Orders to allow Nobody to go out or come in at the Port. That the Deponent went accordingly, and delivered his Orders to the Serjeant of the Guard, whose Name was *Riddel*.

XIV. *George Lauder*, Surgeon in *Edinburgh*, depones, That, on *Monday* Evening the 16th *September* 1745, about Seven or Eight of the Clock at Night, (he is sure it was not then quite dark,) the Provost, and a good many of the Town-Council, being then conveened in the Council-Chamber, the Provost, now Pannel, said to them, Gentlemen, I think it would be proper to take Advice of the Officers of the Castle, or to let the Officers of the Castle know the Situation we are in by the Letter we have received from the Rebels Camp, threatening military Execution in case we should put out of the Way any of our Arms or military Stores, and to see if they shall think proper to do any thing. Upon which one in the Company said, That the Deponent would be a proper Person to be sent with such a Message to Gen. *Preston*, because of his Relation to him. Upon which the Pannel directed the Deponent to go to the Castle, and acquaint Generals *Preston* or *Guest* of the Situation the Provost and Magistrates were in, in respect of the said threatening Letter, on account whereof they durst do nothing themselves with the Arms or military Stores; and to see whether these Generals would think proper to do any thing in it. That, when this Message was proposed, and agreed to, there were present in the Council-Chamber, besides the Pannel and the Deponent, Mr. Treasurer *Forrest*, as the Deponent thinks, and Mr. *Orrock*, and several other Members of the Council, whose Names the Deponent cannot recollect, and Mr. *William Forbes* one of the Principal Clerks, and Mr. *Lindsay* Depute Clerk; and the Message was proposed, and agreed to openly, and above-board. That the Deponent went immediately up to the Castle; and, in the Way, passed Ensign *Roberton*, and a Party of the Castle-Soldiers, standing a little above the Weigh-house. That, when he came to the Castle, the Deponent called first at General *Preston*, but was told, that he was gone to bed; and from thence he went to General *Guest*, and began to deliver him his Message from the Provost and Council, of the hard Situation they were in, by reason of the foresaid threatening Letter, in case they should put out of the way any of their Arms or military Stores; and then the General cut him short, and said, What then? Do you intend to deliver up your Arms to the Rebels? No, General, answered the Deponent; had that been our Intention, I had not come here; but I am sent to acquaint you of the Terror the Inhabitants are in; and that we dare not do any thing ourselves, for fear of military Execution: and therefore, if any thing occurs to you, you may do it; or Words to that Purpose. The General answered, And what would you have me to do? Will your Provost give me a written Order to send a Party for the Arms? No, replied the Deponent; that is what neither he nor the Council can do; for that would be constructed the same thing as if they did it themselves. That the General appeared to be in a Passion, and said, That is like the rest of your Provost's Conduct; I will send no Party, unless he send me a written Order. And then *Robert Griffith* came in, and told the General, that the Party with Ensign *Roberton* were in the Streets, waiting his Orders. Then, said he, recall the Party, for the Provost will give me no written Order; and, unless he give me one, I will send no Party. Depones, That he now also recollects another Expression he had to the General, to wit, That, tho' we dare give you no written Order; yet, if you will send a Party, I don't believe that any of those who are possessed of the Arms will refuse to deliver them. That the Deponent returned from the Castle to the Council-Chamber, and reported to the Pannel, and the other Persons present, openly, and above-board, the whole that had passed betwixt General *Guest* and him; and remembers, that the Pannel said, I hope you took care to hint to the General, that he might send a Party if he had a mind; or Words to that Purpose. And further depones, That Mr. *Griffith* first went away from the General, and the Deponent immediately followed him; and, just as the Deponent was coming away, the General said, What do you intend to do with your Cannon? The Deponent answered, 'I fear, General, they must run the same Fate with 'the rest.' And the General replied, I don't believe they are of much Use. And, being interrogate by the Pursuer, depones, That the Matters above deponed upon, happened, in point of Time, before the Message that Mr. *Groset* and Mr. *Coutts* were sent with to the Castle. And, being further interrogate, depones, He does not remember, whether there was any Conversation in the Council afterwards, when Mr. *Groset* and Provost *Drummond* were there, upon the Subject of the City-Arms.

XV. *Archibald Stewart*, Merchant in *Edinburgh*, depones, That he was Præses of the Society of Constables in the Year 1745. That, on *Sunday* the 15th *September*, in the Evening, the Pannel sent the Deponent, with a signed Order, addressed to Mr. *Lyon* Store-keeper of the Castle, for Matches for the Use of the Cannon mounted on the City-Walls; by virtue of which he received from him two Coils of Matches, for which he granted his Receipt on the Back of the Order; which was left in Mr. *Lyon*'s Hands; which Coils he forthwith brought down, and delivered into the Goldsmiths-Hall. That a very little while after this, by virtue of another signed Order from the Pannel, he searched a waste House in the *Lawn-market*, belonging to one Mr. *Norvel*, for Arms and treasonable Papers, which were suspected to be in it; but which, after a careful Search, was found to be a Misinformation. That, upon *Monday* Afternoon, the 16th *September*, about Three o'Clock, he attended the Pannel from the Head of *Forrester*'s Wynd to the *West* Port; at which Place he the Pannel visited the Barricadoes; and desired the Deponent to get up upon the Town-Wall, to look-out for one Hundred Dragoons, which he expected in Town, for the Defence of the City: which accordingly the Deponent did; and remained there for about a Quarter of an Hour; and when he came down, desired one of the Captains of the Guard to send up two of his Men to keep the same Look-out, that the Ports might be readily opened when the Dragoons appeared; and thereafter attended the Pannel in his Return from the *West* Port, from whence he intended to go to *Bristow* Port: But, in his Way, he was accosted by Mr. *Thomas Dundas* younger of *Lethem*; who desired to know of the Pannel, if he intended to persist in the Defence of the City? and said, That he did not ask this out of a vain Curiosity, but at the Desire of several substantial Inhabitants of the City, whose Lives and Fortunes were at Stake, and who, as well as himself, would take their Measures according to his Resolution. To which the Pannel replied, 'You know, Mr. *Dundas*, that, at the Desire of the principal 'Inhabitants of this City, I wrote to *London* for Arms to be put in the 'Hands of the Citizens for the Defence of the City; with what Grace 'then can I, without striking a Stroke, desist from defending it? No, 'Sir; I am determined I will not; and will take that Place on the 'Town-Walls which I possess at the Council-Table.' Soon after which the Pannel came up to Town.

Then the Pannel declared, that as he was of Opinion he had fully proved his Defences, he would not trouble the Court with any further Proof.

Saturday 31ſt *October* 1747, betwixt Five and Six o'Clock in the Morning.

'The Lords Commiſſioners of Juſticiary, ordain the Aſſize immediately to incloſe in this Place, and to return their Verdict againſt '*Monday* next, at Ten o'Clock Forenoon, in this Court-Houſe; and 'ordain the haill fifteen Aſſizers to be then preſent, each under the Pain 'of Law, and the Pannel alſo to be preſent ſaid Time, under the Pain 'of Law.'

Curia Juſticiaria S. D. N. *Regis, tenta in nova Seſſionis Domo Burgi de* Edinburgh, *ſecundo Die Menſis* Novembris 1747. *per honorabiles Viros Magiſtros* Alexandrum Fraſer *de* Strichen, Patricium Grant *de* Elchies, Carolum Areſkine *de* Tinwald, & Hugonem Dalrymple *de* Drummore, *Commiſſionarios Juſticiarii dict.* S. D. N. *Regis.*

Curia legitimè affirmata.

Lord *Strichen*, Præſes.

Intran.

ARCHIBALD Stewart of the City of *Edinburgh*, Merchant, and late Lord Provoſt of the ſaid City, Pannel, indicted and accuſed as in the former Sederunt.

The Perſons who paſſed upon the Aſſize of the Pannel returned their Verdict, in Preſence of the ſaid Lords; whereof the Tenor follows, *viz.*

'At *Edinburgh*, the Thirty-firſt Day of *October* one Thouſand ſeven 'Hundred and Forty-ſeven Years, the Aſſize having incloſed, did make 'Choice of Sir *Alexander Niſbet* to be their Chancellor, and *John Niſbet* 'to be their Clerk; and having conſidered the criminal Libel, purſued 'at the Inſtance of *William Grant* of *Preſtongrange*, Eſq; his Majeſty's 'Advocate, for his Majeſty's Intereſt, againſt *Archibald Stewart* of the 'City of *Edinburgh*, Merchant, and late Lord Provoſt of the ſaid City, 'Pannel, with the Lords Commiſſioners of Juſticiary their Interlocutor 'thereon, and Writs produced, and Depoſitions of the Witneſſes adduced 'for proving thereof, with the Proof adduced for the Pannel's Exculpation: they, *nemine contradicente*, find the Pannel *Not Guilty*. In Witneſs whereof, their ſaid Chancellor and Clerk have, in their Names, 'ſubſcribed theſe Preſents, Place and Date foreſaid.'

Signed,

ALEX. NISBET, *Ch.*
JO. NISBET, *Clk.*

'The Lords Commiſſioners of Juſticiary, in reſpect of the foregoing 'Verdict of Aſſize, aſſoilzie the ſaid *Archibald Stewart* SIMPLICITER, 'and diſmiſs him from the Bar.'

Signed,

ALEX. FRASER, *I. P. D.*

'The Lords taking into Conſideration, that the fifteen Aſſizers, who 'had paſſed upon the Trial of *Archibald Stewart*, Eſq; late Lord Provoſt 'of *Edinburgh* *, had undergone a great Fatigue, by no leſs Attendance 'than Ninety-four Hours; and being of Opinion, that, on this Account, 'they ſhould be exeemed from being ſummoned as Aſſizers to paſs upon 'Trials before this Court for ſome Time to come; they therefore recommend to, and appoint the Clerks of Court, that, when the Judges 'make up Liſts of Aſſize, they put them in Mind not to inſert any of 'the ſaid Fifteen their Names, in any Roll or Liſt of Aſſize for the Space 'of five Years from the Date of theſe Preſents.'

Signed,

ALEX. FRASER, *I. P. D.*

Extracted from the Books of Adjournal of the High Court of Juſticiary, by me *John Davidſon*, Principal Clerk of the ſaid Court.

Signed,

JO. DAVIDSON, *Clerk.*

* *Nota*, The Jury ſat 'till Five o'Clock *Saturday* Evening.

XLIV. The Trial of *John Matthews*, Printer, for High Treaſon, for Printing a Libel, entitled, *Ex ore tuo te judico, Vox Populi Vox Dei* *, at the Seſſions Houſe, in the *Old Bailey*, *October* 30, 1719, before the Lord Chief Juſtice *King*, Lord Chief Baron *Bury*, the Judges *Powis*, *Blencow*, *Price*, *Tracy*, *Eyre*, *Montagu*, *Forteſcue*, *Page*, and *Dormer*†.

AT the Seſſions Houſe, in the *Old Bailey*, the 14th *October* 1719, the Priſoner, *John Matthews*, was brought to the Bar, but on the Motion of the Priſoner's Counſel, and on producing an Affidavit of one *Carroll*, the Court adjourned to the 16th: When the Court met again, the Priſoner being brought to the Bar, Mr. Juſtice *Tracy*, and Mr. Baron *Price*, attending,

An Objection was made by the Priſoner's Counſel, that by the Statute of the 7th King *William*, the Priſoner, in the Caſes of High Treaſon, is to have a Copy of the Pannel duly returned by the Sheriff, two Days, at leaſt, before the Trial; and that in the Copy of the Pannel ſo delivered to the Priſoner, and returned by the Sheriffs of *London*, was inſerted the Names, without the Addition of Pariſh, Ward, or Place of Abode. And the Queſtion was, Whether this is a right Pannel, according to the Act of the 27th *Eliz.* Ch. 7. the Title of which Act is, that no Juror ſhall be returned without an Addition of his Dwelling-place, &c. And for that purpoſe the Act provides, that no Juror, whether living within or without a Liberty, ſhall be returned without an Addition of the Place of his Dwelling or Abode, or ſome other Addition, by which the Party named may be known ‡.

The Judges then preſent differed in their Opinion, and adjourned to another Day, to take the Opinion of the reſt of their Brethren, to whom the ſaid Judges that attended made their Report, and on the 30th of *October*, the Court met again, when Eleven Judges attended, (viz.) Lord Chief Juſtice *King*, Lord Chief Baron *Bury*, the Judges *Powis*, *Blencow*, *Price*, *Tracy*, *Eyre*, *Montagu*, *Forteſcue*, *Page*, and *Dormer*, (Lord Chief Juſtice *Pratt*, abſent) who all agreed, that the City of *London* was not within the Meaning of that Act, and that the Pannel was a good and legal Pannel; and the Trial ought to go on.—Accordingly the Jury were called over, and after a great many were challenged by the Priſoner,

The Jury ſworn, were

Thomas Clarke,	*Charles Fox*,
Robert Thorp,	*Nathaniel Michlethwaite*,
Elias Turner,	*John Thompſon*,
Richard Weſt,	*Morgan Atkinſon*,
William Smith,	*Richard Guy*,
Robert Smith,	*William Kent.*

Lord Chief Juſtice. Are they all ſworn?
Clerk of Arraigns. Yes, my Lord.
Lord Chief Juſtice. Then read the Indictment.

The Indictment.

LONDON. ſſ. Jur' pro Dno. Rege ſup' Sacram' ſuum p'ſentant qd. *Joh'es Matthews* de *London* Typographus exiſtens ſubdit' ſereniſſimi Dni. *Georgii* modo Regis *Magnæ Brittanniæ Franc' & Hiberniæ*, fidei Defenſor. *&c.* timorem Dei in Co. ſuo non h'ens nec debit' ligeanc' ſue ponderans ſed inſtigatione Diabolica mot' & ſeduct' ut falſus Prodit' contra dict. Dnm. Regem nunc ſuprem. verum leg' et indubitat' Dnum. ſuum cordialem amorem ac veram & debit' obedient' fidelitat' & ligeanc' quas quilibet ſubditus dict' Dni. Regis erga ipſum Dnum. Regem gereret & de jure gerere tenetur penitus ſubtrahen. poſt viceſim' quintu' diem *Martii* Anno Dom. Milles. ſeptingent'imo ſexto ſcil't Decimo die *Junii* Anno regni dict' Dni. Regis nunc Quinto apud *London* videl't in paroch' ſcti. Bothi extra *Alderſgate* in Warda de *Alderſgate* in *London* predict' in quodam falſo & proditor. libello quem ipſe predict' *Joh'es Matthews* adtunc & ibid. malitioſe adviſate & proditor' Impreſſit Intitulat. Ex ore tuo te Judico, Vox Populi Vox Dei, de & concernen. perſona in vita *Jacobi* ſe'di nuper Regis Anglie *&c.* pretend' eſſe Princip' *Wallie* & poſt dicti nup. Regis deceſſum pretenden' eſſe & ſuſcipien' ſup' ſe ſtilum & tit'lum Regis Anglie per nomen *Jacobi* tertii ac de & concernen' Jure ad Coron' Magne Brittanie malitioſe adviſate directe & proditorie per prædict' Impreſſion' declaravit manutenuit & affirmavit ſcil't in una parte inde in his Anglicanis verbis ſequent' videl't *From the Solemnity of the Chevalier's* (perſonam in vita *Jacobi* ſecundi nup' Regis Anglie *&c.* preten' eſſe Princip' *Wallie* et poſt dict' nup' Regis deceſſum pretenden' eſſe & ſuſcipien' ſup' ſe ſtilum & tit'lum Regis Anglie per no'en *Jacobi* tertii Innuendo) *Birth, the moral Impoſſibility of putting an Impoſter on the Nation* (Regnum Magne Brittanie Innuendo) *after the Manner pretended, and the Diſappointment in the Attempt of proving him* (dictam perſonam in vita *Jacobi* ſecundi nup' Regis Anglie *&c.* pretend' eſſe Princip' *Wallie* & poſt dict' nup' Regis deceſſum p'tenden' eſſe & ſuſcipiens ſup. ſe ſtilum et tit'lum Regis Anglie per no'en Jacobi tertii Innuendo) *ſo, I* (ſeipſum *Joh'em Matthews* Innuendo) *think it is Demonſtration, if Hereditary Right be any Recommendation, he* (dictam perſonam in vita Jacobi ſcdi' nup' Regis Anglie *&c.* p'tens' eſſe Princip' *Wallie* & poſt dict' nup. deceſſu' p'tenden. eſſe & ſuſcipien' ſup. ſe ſtilum & tit'lum Regis Anglie per no'en Jacobi tertii Innuendo) *hath that* (Jus hereditarium ad Coron. hujus Regni Innuendo) *to plead in his Favour; and all Aſſertors of limited Monarchy muſt allow, that ought to be preferred, if the Perſon having it is endowed with other Qualities fit to govern. And the great Opinion all Courts have of this unfortunate Prince* (dictam perſonam in vita *Jacobi* ſcdi' nup. Regis Anglie *&c.* pretenden' eſſe Princip' *Wallie* & poſt dict' nup. Regis

* By a Gentleman, who was at *Rome* in *September* 1765, we are informed that the Pretender was declining in his Health very faſt; grown Superannuated and Childiſh; was never viſited, or ſeen by any body, but thoſe immediately attending upon him. He died at *Rome*, *January* 1, 1766.—Thank God, Jacobitiſm is in a manner extinct, and all the hopes of the Pretender and his Adherents, at an end: ſo we ſhall cloſe the Trials relating to the late unnatural Rebellion in 1745-6, with the Trial of one who ſuffered for aſſerting thoſe weak Doctrines of *Hereditary Right*, and *the Rights of the Pretender*, &c. which have occaſioned the Effuſion of ſo much Blood and Treaſure in theſe Kingdoms; and we hope his preſent moſt ſacred Majeſty, King *George* III. may enjoy a long, very long, peaceable and quiet Reign, over a free and happy People; and after him, a Succeſſion of Princes ſprung from his *Illuſtrious Houſe*.

† This Trial was taken in Short-hand, with leave of the Court, by Mr. *J. Shayler*.

‡ The little Tract, entitled, "*The Method of Trial of Commoners, in Caſes of High Treaſon*," publiſh'd in the Year 1709, *by Order of the Houſe of Lords*, directeth, "that the Additions of Dwelling-places, and Profeſſions of the Jurors, be inſerted in the Copy of the Pannel:" But the Act doth not require that Exactneſs, and the Practice is otherwiſe. *Foſter's* Reports, p. 230. But V. 7 An. c. 21.

deceſſu' p'tenden. eſſe & ſuſcipien. ſup. ſe ſtilum & tit'lum Régis Anglie per no'en *Jacobi* 'tii Innuendo) *Virtues ſhew he* (dictam perſonam in vita *Jacobi* ſc'di nup. Regis Anglie pretens' eſſe Princip' *Wallie* & poſt dict. nup. Regis deceſſu' p'tenden. eſſe & ſuſcipien. ſup. ſe ſtilum & tit'lum Regis Anglie per no'en *Jacobi* tertii Innuendo) *only wants to be known by us* (popul. hujus regni Innuend') *to be admired*; *and that we* (popul. hujus rni' Innuen.) *only want the Enjoyment of him* (dictam perſonam in vita *Jacobi* ſcdi' nup. Regis Anglie *&c.* pretend. eſſe Princip. *Wallie* et poſt dict' nup. Regis deceſſu. p'tenden. eſſe ſuſcipien. ſup. ſe ſtilum & tit'lum Regis Anglie per no'en *Jacobi* tertii Innuendo) *to make us happy.* Et in altera parte inde in his Anglicanis verbis Videlt. *I* (ſeipm' *Joh'em Matthews* Innuendo) *will conclude with three Remarks. Firſt, That every Aſſertor of Hereditary Right* (Jus Hereditarium ad Coron. hujus Regni Innuendo) *muſt be a Jacobite* (Fautor perſonæ in vita *Jacobi* ſcdi' nup. Regis Anglie *&c.* p'tens. eſſe Princip. *Wallie* et poſt dict' nup. Regis deceſſu. p'tenden. eſſe & ſuſcipien. ſup. ſe ſtilum & tit'lum Regis Anglie per no'en Jacobi tertii Innuendo). *Secondly, Every Whig who makes* Vox Populi *his Rule of Government muſt be ſo* (Innuendo Jacobit. anglice, *a Jacobite*). *Thirdly, Every Aſſertor of limited Monarchy muſt be ſo* (Innuendo Jacobit. Anglice, *a Jacobite*). *The Chevalier* (dictam perſonam in vita *Jacobi* ſcdi' nup. Regis Anglie *&c.* p'tend' eſſe Princip. *Wallie* & poſt dict' nup. Regis deceſſum p'tenden' eſſe & ſuſcipien. ſup. ſe ſtilum & tit'lum Regis Anglie per no'en *Jacobi* 'tii Innuendo) *being endowed with all princely Virtues*; *ſo that all Rights* * (omnia Jur. ad Coron. hujus rni' Innuendo) *concur in him*, (dictam p'ſon. in vita *Jacobi* ſcdi' nup. Regis Anglie *&c.* p'tens eſſe Princip' *Wallie* & poſt dict' nup. Regis deceſſum p'tenden. eſſe & ſuſcipien. ſup. ſe ſtilum & tit'lum Regis Anglie per no'en *Jacobi* 'tii Innuendo) contra Ligeanc' ſue debit' contra pacem dict' D'ni Regis nunc Coron. et Dignitat. ſuas, necnon contra formam Statuti in hujuſmodi caſu nup. edit. & proviſ. Et. Jur. predict. ſup. Sacram' ſuum predict' ulterius p'ſentant qd. predict' *Joh'es Matthews* timor Dei in Corde ſuo non h'ens nec debit' Ligeanc' ſue ponderans ſed inſtigatione Diabolica mot' et ſeduct' ut falſus proditor contra dict' D'num Regem nunc ſupremum verum legalem et indubitat' D'num ſuum cordialem amorem et veram et debit' obedienc' fidelitat' & ligeanc' quas quilibet ſubditus dict. Dm'ni Regis nunc erga ip'm Dominum Regem gereret & de Jure gerere tenetur penitus ſubtrahens poſtea & poſt viceſim. quintum diem *Martii* Anno Dni' mill'imo ſeptingent'imo ſexto ſcil't eodem Decimo die *Junii* Anno Quinto ſupradicto apud London predict' in paroch. & Warda predict' in quod'm altero f'lo & proditorio libello Intitulat. Ex ore tuo te Judico, Vox Populi Vox Dei, quem ipſe predict' *Joh'es Matthews* adtunc & ibid. malitioſe adviſate & proditorie impreſſit malitioſe adviſate directe & proditor. per Impreſſion' ult. ſupradictam declaravit manutenuit & affirmavit qd. perſona in vita *Jacobi* ſcdi' nup. Regis Anglie *&c.* pretens. eſſe Princip. *Wallie* & poſt dict' nup. Regis deceſſu' p'tenden. eſſe & ſuſcipien. ſup. ſe ſtilum et tit'lum Regis Anglie per no'en *Jacobi* tertii Jus habet ad Coronam Magn. Brittanie contra ligeanc' ſuam debit. contra pacem dict' Dmni' Regis nup. Coron. et Dignitat. ſuas necnon contra formam Statut. in hujuſmodi Caſu nup. edit. & proviſ.

The Cryer makes the uſual Proclamation, O-yes, O-yes, O-yes! If any one can inform my Lords the King's Juſtices, the King's Serjeant, the King's Attorney General, or this Inqueſt, now to be taken, of the High Treaſon of which the Priſoner at the Bar ſtands indicted, let them come forth, and they ſhall be heard, for now the Priſoner ſtands at the Bar upon his Deliverance; and all others that are bound by Recognizance, to give Evidence againſt the Priſoner at the Bar, let them come forth, and give their Evidence, or elſe they forfeit their Recognizance: and all Jurymen of *London*, that have appeared, and are not ſworn, may depart the Court for this time.

Clerk of Arraigns. John Matthews, hold up your Hand. You of the Jury look upon the Priſoner, and hearken to his Cauſe: He ſtands indicted, by the Name of *John Matthews*, of *London*, Printer, for that he being a Subject of our Sovereign Lord *George*, now King of *Great Britain*, *France*, and *Ireland*, Defender of the Faith, &c. not having the Fear of God in his Heart, nor conſidering his due Allegiance, but being moved and ſeduced by the Inſtigation of the Devil, as a falſe Traytor, againſt our ſaid Lord the now King, his ſupreme, true, lawful, and indubitable Lord, altogether withdrawing that Cordial Love and true and due Obedience, Fidelity and Allegiance which every Subject of our ſaid Lord the King ſhould bear, and, of right, ought to bear towards our ſaid Lord the King, after the 25th Day of *March* in the Year of our Lord 1706, *viz.* the 10th Day of *June* in the 5th Year of the Reign of our now ſaid Lord the King, at *London* in the Pariſh of *St. Botolph* without *Alderſgate* in the Ward of *Alderſgate* at *London* aforeſaid, in a certain falſe and treaſonable Libel, which he the ſaid *John Matthews* then and there malicioufly, adviſedly, and traitorouſly printed, intitled *Ex ore tuo te judico, Vox Populi Vox Dei*, of and concerning the Perſon in the Life-time of *James* the Second, late King of *England*, *&c.* pretending to be the Prince of *Wales*, and, after the Deceaſe of the ſaid late King, pretending to be, and taking upon himſelf, the Stile and Title of King of *England*, by the Name of *James* the Third; and of and concerning his Right to the Crown of *Great Britain*, he did malicioufly, adviſedly, directly and traitorouſly, by the ſaid Printing, declare, maintain and affirm, in one Part thereof, in theſe Words following, *viz. From the Solemnity of the Chevalier's* (meaning the Perſon in the Life-time of *James* the Second, late King of *England*, *&c.* pretending to be the Prince of *Wales*, and after the Deceaſe of the ſaid late King pretending to be, and taking upon himſelf, the Stile and Title of King of *England*, by the Name of *James* the Third) *Birth, the moral Impoſſibility of putting an Impoſtor on the Nation* (meaning the Kingdom of *Great Britain*) *after the Manner pretended, and the Diſappointment in the Attempt of proving him* (meaning the ſaid Perſon in the Life-time of *James* the Second, late King of *England*, *&c.* pretending to be the Prince of *Wales*, and after the Deceaſe of the ſaid late King, pretending to be, and taking upon himſelf, the Stile and Title of King of *England*, by the Name of *James* (the Third) *ſo, I* (meaning himſelf the ſaid *John Matthews*) *think it is Demonſtration, if Hereditary Right be any Recommendation* †, *he* (meaning the ſaid Perſon in the Life-time of *James* the Second, late King of *England*, *&c.* pretending to be the Prince of *Wales*, and after the Deceaſe of the ſaid late King pretending to be, and taking upon himſelf the Stile and Title of King of *England*, by the Name of *James* the Third) *has that* (meaning an *hereditary Right* to the Crown of this Kingdom) *to plead in his Favour*; *and all Aſſertors of limited Monarchy muſt allow that ought to be preferred, if the Perſon having it is endowed with other Qualities fit to govern. And the great Opinion all Courts have of this Prince's* (meaning the ſaid Perſon in the Life-time of *James* the Second, late King of *England*, *&c.* pretending to be the Prince of *Wales*, and after the Deceaſe of the ſaid late King pretending to be, and taking upon himſelf the Stile and Title of King of *England*, by the Name of *James* the Third) *Virtues, ſhews he* (meaning the ſaid Perſon in the Life-time of *James* the Second, late King of *England*, *&c.* pretending to be the Prince of *Wales*, and after the Deceaſe of the ſaid late King pretending to be, and taking upon himſelf the Stile and Title of King of *England*, by the Name of *James* the Third) *only wants to be known by us* (meaning the People of this Kingdom) *to be admired* ‡. *And that we* (meaning the People of this Kingdom) *only want the Enjoyment of him* (meaning the ſaid Perſon in the Life-time of *James* the Second, late King of *England*, *&c.* pretending to be the Prince of *Wales*, and after the Deceaſe of the ſaid late King pretending to be, and taking upon himſelf the Stile and Title of King of *England*, by the Name of *James* the Third) *to make us happy.* And in another Part thereof in theſe Words following, *viz. I* (meaning himſelf the ſaid *John Matthews*) *will conclude with three Remarks. Firſt, That every Aſſertor of Hereditary Right* (meaning Hereditary Right to the Crown of this Kingdom) *muſt be a Jacobite* (meaning a Favourer of the Perſon in the Life-time of King *James* the Second, late King of *England*, *&c.* pretending to be the Prince of *Wales*, and after the Deceaſe of the ſaid late King pretending to be, and taking upon himſelf the Stile and Title of King of *England*, by the Name of *James* the Third). *2dly, That every Whig who makes* Vox Populi *his Rule of Government, muſt be ſo* (meaning a Jacobite). *3dly, Every Aſſertor of*

* *Rights!* He could not have any, ſuppoſing him King *James*'s Son; (which is not admitted) for his Father, under whom he muſt claim, having broke his Coronation-Oath, trampled on the Rights and Liberties of his Subjects, turned Papiſt, and abdicated the Throne, was very juſtly ſet aſide by Act of Parliament.

† This *Matthews* was a vain, weak, conceited young Fellow, buoy'd up by the Jacobites, and for ſmall Lucre printed their treaſonable Papers, and diſperſed them among the ignorant common People—Perſons of Senſe deſpiſing their nonſenſical Doctrine of *Hereditary Right*, &c. Such idle Stuff having been long ſince exploded, every one now ſeems ſtriving who ſhall appear moſt zealous in aſſerting thoſe Principles which brought about the GLORIOUS REVOLUTION and the HAPPY ESTABLISHMENT of the preſent Royal Family.—

Mich. 12 Ann. *Bedford*'s Treatiſe of *Hereditary Right* was held to be a Libel, though it contained no Reflection upon any Part of the then Government. *Strange*, Vol. II. p. 789.

Mr. *Bedford* having been found guilty at *Guildhall, London, Feb.* 13, 1713, of *writing, printing and publiſhing* a ſcandalous and ſeditious Libel, intitled, *The Hereditary Right*, &c. the Court, *May* 4, in *Eaſter* Term, gave Judgment, "That he ſhould be fined 1000 Marks, impriſoned for three Years without Bail or Mainpriſe, and upon "his Delivery, to be bound in a Recognizance with four ſufficient Sureties in the Sum of 5000*l.* for his Good Behaviour during Life; and that upon the next *Friday* he "was to be brought up, and ſhewn to all the Courts ſitting in *Weſtminſter-Hall*, with a Paper in his Hat expreſſing the Crime and the Judgment, and was committed to "the Cuſtody of the Marſhal."

Upon *Friday* Mr. *Kettleby*, (one of the Defendant's Counſel) moved the Court upon a Paper which was delivered in and read; it was under the Privy-Seal ſigned by her Majeſty, and directed to the Lord Chief Juſtice, the Juſtices of the Court, the Sheriffs of *London* and *Middleſex*, and Marſhal of the Queen's Bench, and imported a Recital of the Conviction and Judgment; and that Mr. *Bedford* had humbly repreſented to her Majeſty by Petition, *That he was a Clergyman of the Church of* England, and prayed, *that the ignominious Part of the Sentence might be remitted*; "Theſe are therefore to require you, and every of you, not to put in Execution that Part of the Judg-"ment which is, that he be brought to the Courts in *Weſtminſter-Hall*, *&c.* and for ſo doing this ſhall be your, and every of your, ſufficient Warrant."

The Court immediately made a Rule to diſcharge the Marſhal of his Attendance with him that Day, and ſaid they would conſider how the Judgment ought to be entered upon. *Gilbert*'s Caſes, 297.

This Mr. *Bedford* (formerly Rector of *Wickering*, in the Dioceſe of *Peterborough*, and Fellow of *St. John*'s, *Cambridge*,) was a nonjuring Clergyman, and though convicted as above, was thought to have had little or no Hand *in writing* the Book, he not being eſteemed equal to the Performance. It was ſuppoſed to have been wrote by Mr. *Harbin*, a Nonjuror, (a Weſt-Country Gentleman) who had been formerly Chaplain in the old Lord *Weymouth*'s Family. The Preface to it was ſaid to be wrote by Mr. *Downes*, a Nonjuror, of *Baliol* College at *Oxford*. It is imagined they had the Peruſal of Lord *Hales*'s MSS. of the Pleas of the Crown, by the Paſſages they have taken from thence. Thoſe obnoxious Paſſages were omitted by Mr. *Emlyn*, when he publiſhed that Work, by the Advice of two great Men in the Law.—

Mr. *Bedford*, by not diſcovering the Author, *&c.* was a great Gainer in the End; for ſetting up a Boarding-houſe near *Weſtminſter* School, for young Gentlemen, by the Help of the above Perſons, and others of that Party, he got a conſiderable Fortune; which he left to his Son, Dr. *Bedford*, a Phyſician in *London*, who died a few Years ago.

‡ *Only wants to be known by us to be admired.* The more he was known in *Scotland*, in the Year 1715, the more *he* was deſpiſed; being a great Bigot to the Popiſh Religion, refuſing to appear at any Place of Proteſtant Worſhip.—A great Coward, flying before the King's Troops, and making no Stand; that even the Chiefs in that Rebellion looked on him, at laſt, in a contemptible Light.—And further he ſays, *We only want the Enjoyment of him to make us happy.* What, would a Popiſh Bigot, and a Tool of *France* make us happy! would Popery and Slavery make *Engliſh-men* happy! We are now as happy under our preſent moſt gracious Sovereign King GEORGE III. as our Hearts can deſire (and were ſo at that Time); and God forbid we ſhould ever change our Happineſs for Miſery and Ruin; which muſt be the Caſe, if ever God, for our Sins, ſhould ſcourge us with a Popiſh abjur'd Pretender.

limited

limited Monarchy muſt be ſo, (meaning a Jacobite), *the Chevalier* (meaning the Perſon in the Life-time of *James* the Second, late King of *England*, pretending to be Prince of *Wales*, and ſince the Deceaſe of the ſaid late King pretending to be, and taking upon himſelf the Stile and Title of King of *England*, by the Name of *James* the Third) *being endowed with all Princely Virtues, ſo that all Rights* (meaning all Rights to the Crown of this Kingdom) *concur in him* (meaning the ſaid Perſon in the Life-time of *James* the Second, late King of *England*, &c. pretending to be Prince of *Wales*, and after the Deceaſe of the ſaid late King pretending to be, and taking upon himſelf the Stile and Title of King of *England*, by the Name of *James* the Third), againſt his due Allegiance, againſt the Peace of our Sovereign Lord the King that now is, his Crown and Dignity, and alſo againſt the Form of the Statute in that Caſe made and provided. And further, that the ſaid *John Matthews*, the Fear of God in his Heart not having, nor his due Allegiance conſidering, but being moved and ſeduced by the Inſtigation of the Devil, as a falſe Traytor, againſt our ſaid Lord the now King, his ſupreme, true, lawful, and indubitable Lord, altogether withdrawing that cordial Love, and true and due Obedience, Fidelity and Allegiance, which every Subject of our ſaid Lord the now King, towards our ſaid Lord the King ſhould bear, and of right ought to bear, afterwards and after the 25th Day of *March*, in the Year of our Lord 1706, to wit, the ſame tenth Day of *June*, in the fifth Year aforeſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, in a certain other falſe and traitorous Libel, intitled, *Ex ore tuo te judico, Vox Populi Vox Dei*, which the ſaid *John Matthews*, then and there maliciouſly, adviſedly, and traitorouſly printed; and by the laſt aboveſaid Printing, maliciouſly, adviſedly, and traitorouſly did declare, maintain, and affirm, that the Perſon in the Life-time of *James* the Second, late King of *England*, &c. pretending to be the Prince of *Wales*, and after the Deceaſe of the ſaid late King pretending to be, and taking upon himſelf the Stile and Title of King of King of *England*, by the Name of *James* the Third, hath a Right to the Crown of *Great Britain*, againſt his due Allegiance, againſt the Peace of our ſaid Lord the now King, his Crown and Dignity, and alſo againſt the Form of the Statute in ſuch Caſe made and provided.

How ſayeſt thou, *John Matthews*, art thou Guilty of this Indictment whereof thou ſtandeſt indicted, or Not Guilty?---*Priſoner.* Not Guilty.

Clerk of Arraigns. How wilt thou be tried?

Priſ. By God and my Country.

Cl. of Ar. God ſend thee a good Deliverance.

Foreman of the Jury. My Lord, we humbly pray the Court may be kept quiet, or it will be impoſſible for us to hear the Evidence.

Lord Chief Juſtice. Officer, make Proclamation for Silence.

Cryer. O-yes, O-yes, O-yes! My Lords the King's Juſtices ſtrictly charge and command all manner of Perſons to keep Silence, upon Pain of Impriſonment.

L. C. J. Gentlemen of the King's Counſel, you may proceed.

Mr. *Bootle.* [*afterwards Sir* Thomas Bootle.] May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am Counſel in this Caſe for the King. The Priſoner at the Bar ſtands indicted of High-Treaſon, upon the Statute made in the 6th Year of the late Queen *Anne*'s Reign, and it is for maliciouſly, adviſedly, and directly, by Printing, declaring, and affirming, that the Pretender hath a Right and Title to the Crown of theſe Realms.

My Lord, the Indictment ſets forth, that he being a Subject of our Sovereign Lord *George*, now King of *Great Britain*, *France*, and *Ireland*, not having the Fear of God in his Heart, nor conſidering his due Allegiance, but being moved and ſeduced by the Inſtigation of the Devil, as a falſe Traytor, againſt our ſaid Lord the now King, his ſupreme, lawful, and indubitable Lord, altogether withdrawing that cordial Love, and true and due Obedience, Fidelity and Allegiance, which every Subject of our ſaid Lord the King ſhould, and of right ought to bear towards our ſaid Lord the King, after the 25th of *March*, in the Year of our Lord 1706, (to wit, the 10th Day of *June*, in the 5th Year of his preſent Majeſty's Reign, at *London*, in the Pariſh of St. *Botolph*, without *Aldersgate*, in the Ward of *Aldersgate*, at *London* aforeſaid, in a certain falſe and treaſonable Libel, which he then and there maliciouſly, adviſedly, and traitorouſly printed, entitled, *Ex ore tuo te judico, Vox Populi Vox Dei*, of and concerning the Perſon in the Life-time of King *James* the Second, late King of *England*, &c. pretending to be the Prince of *Wales*, and after the Deceaſe of the ſaid late King pretending to be, and taking upon himſelf the Stile and Title of King of *England*, by the Name of *James* the Third, and of and concerning his Right to the Crown of *Great Britain*, he did maliciouſly, adviſedly, directly, and traitorouſly, by the ſaid Printing, declare, maintain, and affirm, in one Part thereof in theſe Words, "From the Solemnity of the Chevalier's (meaning the Pretender's) Birth, the moral Impoſſibility of putting an Impoſtor upon the Nation, (meaning the Kingdom of *Great Britain*), after the manner pretended, and the Diſappointment in the Attempt of proving him ſo, I (meaning himſelf the ſaid *John Matthews*) think its Demonſtration, if *Hereditary Right* be any Recommendation, he (meaning the Pretender) hath that (meaning an *Hereditary Right* to the Crown of this Kingdom), to plead in his Favour; and all Aſſertors of limited Monarchy muſt allow, that ought to be preferred, if the Perſon having it is endowed with other Qualities fit to govern. And the great Opinion all Courts have of this Prince's (meaning the Pretender's) Virtues, ſhews he (meaning the Pretender) only wants to be known by us to be admired, and that we (meaning the People of *England*) only want the Enjoyment of him to make us happy."

My Lord, there is laid to be likewiſe in another Part of this Libel, that he did maliciouſly, adviſedly, and traitorouſly, by the ſaid Printing, declare, maintain, and affirm, in theſe Words following, *viz.* "I (meaning himſelf the ſaid *John Matthews*) will conclude with theſe Remarks. Firſt, That every Aſſertor of *Hereditary Right* (meaning *Hereditary Right* to the Crown of this Kingdom) muſt be a Jacobite (meaning a Favourer of the Pretender). 2dly, That every Whig who makes *Vox Populi* his Rule of Government, muſt be ſo (meaning a Jacobite). And, 3dly, Every Aſſertor of limited Monarchy muſt be ſo, (meaning a Jacobite,) the Chevalier (meaning the Pretender) being endowed with all princely Virtues; ſo that all Rights (meaning all Rights to the Crown of this Kingdom) concur in him (meaning the Pretender)." This is laid to be contrary to his Allegiance, againſt the Peace of our Sovereign Lord the King that now is, his Crown and Dignity, and alſo againſt the Form of the Statute in that Caſe made and provided.

Gentlemen, the Indictment further ſets forth, That the Defendant, as a falſe Traytor againſt our ſaid Lord the now King, his ſupreme, lawful, and indubitable Lord, altogether withdrawing that cordial Love, and true and due Obedience, Fidelity and Allegiance, which every Subject of our ſaid Lord the now King, towards our ſaid Lord the King, ſhould and of right ought to bear, afterwards and after the 25th of *March*, in the Year of our Lord 1706 (to wit), the ſame 10th Day of *June*, in the fifth Year aforeſaid, at *London*, in the Pariſh and Ward aforeſaid, in another falſe and traitorous Libel, intitled, *Ex ore tuo te judico, Vox Populi Vox Dei*, which he the ſaid *John Matthews* then and there maliciouſly, adviſedly, and traitorouſly printed, and by the laſt aboveſaid Printing, maliciouſly, adviſedly, and traitorouſly did declare, maintain, and affirm, that the Pretender hath a Right to the Crown of *Great Britain*; and this is laid to be contrary to his Allegiance, againſt the Peace of our ſaid Lord the now King, his Crown and Dignity, and alſo againſt the Form of the Statute in that Caſe made and provided.

To this, Gentlemen, the Priſoner hath pleaded Not Guilty; we on the Part of the Proſecution ſhall call our Witneſſes to prove the Facts, and if we do, I don't doubt you will think it your Duty to find him Guilty.

Mr. Attorney General (Mr. *Lechmere*, afterwards Lord *Lechmere*). My Lord, and you Gentlemen of the Jury, The Indictment which hath been opened to you, is an Indictment againſt *John Matthews*, the Perſon at the Bar, for High-Treaſon. This Indictment is founded upon an Act of Parliament made in the 6th Year of the late Queen, the Title of it is, "An Act for the Security of her Majeſty's Perſon and Government, and of the Succeſſion to the Crown of *Great Britain* in the Proteſtant Line." This Act recites, there had been a former Act, made in the 4th Year of the Reign of her then preſent Majeſty, in which it is mentioned, by reaſon of the Union of *England* and *Scotland*, it became neceſſary to make divers Alterations in that Act. The firſt Proviſion made by this Law is in theſe Words, that "If any Perſon or Perſons ſhall maliciouſly, adviſedly, and directly, by Writing or Printing, maintain and affirm, that our Sovereign Lady the Queen that now is, is not the lawful and rightful Queen of theſe Realms, or that the pretended Prince of *Wales*, who now ſtiles himſelf King of *Great Britain*, or King of *England*, by the Name of *James* the Third, or King of *Scotland* by the Name of *James* the Eighth, hath any Right or Title to the Crown of theſe Realms; or that any Perſon or Perſons hath or have any Right or Title to the ſame, otherwiſe than according to an Act of Parliament made in *England*, in the firſt Year of the Reign of their late Majeſties King *William* and Queen *Mary*, of ever bleſſed and glorious Memory, intitled, "An Act declaring the Rights and Liberties of the Subject, and ſettling the Succeſſion of the Crown;" and one other Act made in *England* in the 12th Year of the Reign of his ſaid late Majeſty King *William* the Third, intitled, "An Act for the further Limitation of the Crown, and better ſecuring the Rights and Liberties of the Subject;" and the Acts lately made in *England* and *Scotland* mutually for the Union of the two Kingdoms; or that the Kings or Queens of this Realm, with and by the Authority of Parliament, are not able to make Laws and Statutes of ſufficient Force and Validity to limit and bind the Crown, and the Deſcent, Limitation, Inheritance and Government thereof; every ſuch Perſon or Perſons ſhall be guilty of High-Treaſon, and being thereof lawfully convicted ſhall be adjudged Traytors, and ſhall ſuffer Pains of Death, and Loſſes and Forfeitures as in Caſes of High-Treaſon."

Gentlemen, the Facts that are enumerated in this Clauſe of the Statute I have read to you; at the Time when this Law was made, thoſe Crimes, though Crimes of a very high Nature, yet were Crimes of a lower Degree, as Miſdemeanours, &c. But for the Security of the Perſon of the late Queen and her Government, and for the ſecuring of the Succeſſion to the Crown in the Proteſtant Line, the Wiſdom of Parliament thought it neceſſary, to deter People from ſuch Crimes, to inflict the Puniſhment due for High-Treaſon. The Charge of this Indictment read to you, is one of thoſe ſeveral Inſtances made High-Treaſon by this Act. The Subſtance of the Indictment is, that the Priſoner, the 10th of *June* laſt, did maliciouſly, adviſedly, and directly, in a certain Libel, intitled, *Ex ore tuo te judico, Vox Populi Vox Dei*, which he cauſed to be printed, he did by that Impreſſion declare, maintain, and affirm, that the Perſon deſcribed by the Act of Parliament to be the pretended Prince of *Wales*, had a Right to the Crown of theſe Realms.

Gentlemen, the Words taken out of the Libel have been read to you, and ſtated to you upon the Opening of the Indictment, and I believe no Doubt or Queſtion ariſes upon the proper Conſtruction of thoſe Words, but the Priſoner is Guilty of High-Treaſon.—The Chevalier, the Name made uſe of to deſcribe the Perſon, the Circumſtance by which he is deſcribed, are of ſuch notorious a kind, ſo well known, that it is impoſſible for any one not to underſtand them of the Perſon deſcribed in the Act of Parliament.—The Law directs, that to involve any Perſon in the Crime of High-Treaſon, that the Writing with which he is charged, ſhould be a direct declaring, maintaining, and affirming: this is what the Law preſcribes. In the firſt Sett of Words, it is not a bare Aſſertion only, but the very Words are, that it is a Demonſtration, that if Hereditary Right be any Recommendation, he hath that to plead in his favour. This is as ſtrong an Inſtance, and as full and clear affirming as Words can invent. In the latter Part, by way of Concluſion from the Arguments of his Books, he there affirms, all Rights concur in this Perſon; all Right to the Crown of theſe Realms: it muſt be ſo underſtood, it is impoſſible to put any other Conſtruction upon it. I conclude from the Premiſſes, that all Rights to the Crown of this Kingdom concur in this Perſon. The Act of Parliament makes it Treaſon to affirm, that the Perſon therein deſcribed hath any Right to the Crown of theſe Realms: in the Beginning he affirms, that he hath an Hereditary Right; in the Concluſion there is a poſitive Affirmation, that not only that, but all other Rights concur in him.

Gentlemen, It being beyond all doubt, as I apprehend, that the Words ſet forth in the Libel amount to High-Treaſon, according to this Act of Parliament; it is therefore incumbent upon us that proſecute for the Crown, to ſhew that he is the Perſon that did print the Libel ſet forth in

in this Indictment; that he did it with Malice, maliciously, is one of the Circumstances the Act of Parliament requires; that he did not do it ignorantly, or inadvertently, but advisedly; as to that, our Evidence will be thus: The Prisoner lived with his Mother in the City of *London*, who kept a Printing-house, whether he be an Apprentice or Partner is not material; he is an Inhabitant there, and belongs to that Printing-house, and lives with his Mother who keeps the Printing-house. The Government having on former Occasions had this young Man under their Notice for Practices of this Kind, the 6th of *June* last they received Information of the traitorous Libel set out in the Indictment that was dispersed much about that Time. Having received Information that the Prisoner was concerned in printing of it, a Warrant was issued for apprehending him; accordingly being taken, there was found in his Pocket one entire Libel, bearing the Title, and importing the Words set forth in the Indictment. In his Lodging-room there were found two Half Sheets; the Libel contained one whole Sheet and no more. Besides that in his Pocket, in his Lodging-room were found two first Half-sheets of this Libel; there were likewise another entire Libel found in his Lodging-room, and eight or ten Half-sheets of the latter Part of the Libel, which were superfluous Parts of the Impression, as we believe.

My Lord, on the View of these Libels when they come to be looked on, on the View of the two Half-sheets, and on the Proof we shall give you concerning them, it will appear that these two Half-sheets of the first Part of the Libel, that they are the very Proof-sheets from which the Impression of this Libel was worked off. There are other Circumstances appearing in the Papers themselves, that to your Observation I do not doubt will appear so; but especially when it comes to be explained by Masters in the Art of Printing, who are better able to give an Account of them; then it will appear that these were the very Proof-sheets of the Impression after it was wrought off. My Lord, there is, in the Language of Printers, a right and wrong Imposing; one of these Proof-sheets appears to be wrong imposed, the other is right imposed; the Impression was varied, as will appear to you by the wrong Imposition of the first Half-sheet, which occasioned another Imposition rightly imposed, and from which the Impression of the Libel was wrought off.

Gentlemen, on these two Half-sheets there are the usual Mistakes and Corrections, such as the inverting Letters, and other such literal Mistakes usual in this Trade, and in working of printed Papers.——

Gentlemen, the Types and Letters of these Proof-sheets will appear to you to be the very Types and Letters of this Printing-house, to which this young Man belonged; and, Gentlemen, upon those Proof-sheets, there is an Addition and Interlineation of the Word *sit*, which we shall prove to be the Hand-writing of the Prisoner himself.

Gentlemen, It is observable from the superfluous Half-sheets, in Point of Evidence, that arises from the Facts themselves as discovered in his Possession: If these Papers had come into his Possession as Libels dispersed, it is reasonable to imagine they would have been found not imperfect Sheets, a Part of this Libel, but entire and compleat. It is usual and common, where they print off by Reams, there may be a Superfluity or overplus Sheets: they do not always hit the same Number of the same Impression. It frequently happens there may be a Superfluity of Sheets or Half-sheets; these, with other Circumstances, as will appear to you, do concur, and in themselves carry a very high Evidence, strong, if not violent Presumption, that he was the Printer of this Libel, or at least privy and concerned, or co-operated in the printing thereof; and that is the same; for if many are concerned in printing a treasonable Libel, they are all guilty of the Treason. But it will be incumbent on the Prisoner, if he can acquit himself from the Weight of this Evidence, which must fall upon him from these Circumstances of the Papers being found upon him, being found in his Possession in the very Printing-house; it will be incumbent on him to acquit himself, and to account for these Things, to shew how he came by them; if by any other Means than as by these Circumstances, we shall endeavour to prove. My Lord, these Circumstances appearing, on the finding the Libel on the Prisoner, on his being apprehended, being under Examination—whatever his Defence may be now, let him make the best he can by Law; I am for giving him the full Liberty the Law allows—but I mention it as a Proof, when under an Examination, and disposed to a Behaviour that might have prevented this Trial, very far from denying the printing of these Papers when they were produced, if my Instructions are *true*, what he said amounted to an Acknowledgment and Confession that he printed them. He endeavoured to excuse it from his Necessity; sometimes gave Overtures and Reasons to believe that he would discover the Person that put the Manuscript into his Hands, and set him to Work. But throughout his whole Examination at that Time, it will appear on that Occasion, if my Instructions are right, so far was he from denying himself to be the Printer, that he confessed he was the Printer of those Papers.

Gentlemen, I shall not rest it on this, though if made out, I apprehend is very full; but we have the very Persons to produce to you in Evidence who were employed by the Prisoner, paid by the Prisoner for the Printing of these very Libels we shall offer to you in Evidence: That about a Month or six Weeks before he was discovered, I apprehend this might be about the latter End of *May*, he, early in the Morning, about three or four o'Clock, (the exact Time I will not undertake to prove) called up the Persons I shall offer as Witnesses, told them he had an Impression to work off; one of them will prove they saw him compose the Press from the Manuscript; they remember the Circumstance of his making the wrong Imposition of the first Part of this Impression, and the having wrong imposed it (as the Phrase is): He went out, and, on his Return, he swore he had wrong imopsed it, and he must impose it a second time; and accordingly he made the second Imposition, which is the Paper we have to produce; he directed them to work it off while the Prisoner stood by, and did the Office which Boys do, for Dispatch and Secrecy; he took the Papers from the Press; there were about a Thousand wrought off compleat of the first and second Part of the Libel; and he paid them for it, and took the Impression into his own Possession; he paid them fourteen Shillings, Part to the Witness, and the other Part to the Apprentice. Gentlemen, if we prove this, there can no Doubt remain with you, but that it will prove him fully, and to your entire Satisfaction, that he is the Printer of these Papers; that he hath done it maliciously. The Act of Parliament hath made that a Circumstance; but no other Proof is requisite by Law to be made, than by that which arises from the Nature of the Libel itself. A traitorous Libel, calculated to raise Sedition and Rebellion, imports Malice: A Libel pretending to condemn the Title of the Crown in his Majesty, and asserting it to be in the Pretender, carries Malice of the highest Nature: and if we shew he had the Direction of the Press, he composed it, afterwards corrected it, it cannot remain a Doubt with you as to the other Circumstance, but that it was done advisedly.

Gentlemen, I have stated to you the Circumstance of the Evidence, and I have done it without any Aggravation; I do not think it wants it; if the Evidence comes out as I have laid it before you, it will carry its own Force, and you will give it its due Weight. I am sorry for any one that falls under such an Accusation, but more especially for one so young; but, Gentlemen, Compassion is neither your Business or mine; that belongs to another Place, as the Case shall appear. I will call our Witnesses, and prove what I have opened to you; and if I do, you will do your Country Justice, as well as Justice to the King, to find him guilty.

Serjeant *Cheshire*. May it please your Lordship, and you Gentlemen that are sworn, I am Counsel of the same Side with the King.——*Mr. Attorney General* hath opened the Charge so very fully, that it will be unnecessary for me to spend Time in adding to it. But, Gentlemen, since this is a Prosecution on an Act of Parliament, and for aught I know this the first Instance of a Trial of one discovered and brought before you in Judgment upon this Act, it may be necessary for me to add a few Words in relation to it. And, Gentlemen, a Man cannot but be sensibly concerned in his Mind, that, after fourteen Years that this Act hath been in Force, the first Instance should be a young Boy of this Person's Age; I hope, notwithstanding, when you hear the Evidence laid before you, you will be sensible that the real Author is a Person of greater Maturity and Proficiency; and this poor Youth worked up to be an obstinate Instrument in the Hands of some greater Person; and God forbid that such People, by their Artfulness and Cunning, should get off, by making use of such as are more apt to move Compassion.

Gentlemen, you will consider, as you have this young Man in Judgement, so you have the Rights of the King of *England*, under whom we live; and that you will do fair and right between the King and his Subjects, is what we expect.

Gentlemen, this must be an Offence against an Act of Parliament, made in the fourth Year of the late Queen, and in the sixth Year, whereby it was declared, that if any Person or Persons shall, maliciously, advisedly, and directly, by Writing or Printing, maintain and affirm, that our Sovereign Lady the Queen that now is, is not the lawful and rightful Queen of these Realms, or that the pretended Prince of *Wales*, who stiled himself King of *Great Britain*, or King of *England*, by the Name of *James* the Third, or King of *Scotland*, by the Name of *James* the Eighth, hath any Right or Title to the Crown of these Realms, or that any other Person or Persons have or hath any Right or Title to the same, otherwise than according to an Act of Parliament, made in the first Year of the Reign of their late Majesties King *William* and Queen *Mary*, of ever blessed and glorious Memory, intituled, An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown; and one other Act, made in the twelfth Year of the Reign of his said late Majesty King *William* the Third, intituled, An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject; and the Acts lately made in *England* and *Scotland* mutually for the Union of the two Kingdoms; or that the Kings or Queens of this Realm, with and by the Authority of Parliament, are not able to make Laws and Statutes of sufficient Force and Validity to limit and bind the Crown, and the Descent, Limitation, Inheritance, and Government thereof: Every such Person or Persons shall be guilty of High-Treason, and being thereof lawfully convicted, shall be adjudged Traitors, and shall suffer Pains of Death, and all Losses and Forfeitures as in Cases of High-Treason. And the Offence here is the declaring, maintaining, and affirming, that the Pretender hath any Right or Title to the Crown of *England*; That, Gentlemen, give me Leave to say, is the Treason in this Act of Parliament; but, Gentlemen, as it stood on the Old Acts of Parliament, that That made the Treason must be proved by open Deeds, as we usually express it by Overt Acts.—This Treason is to be determined two Ways, that is, by Printing or Writing; it is Treason for any Person or Persons to declare, maintain, and affirm, that the Pretender hath any Right or Title to the Crown of these Realms; that Declaration must be made good by Printing or Writing; the Case before you is Printing; that Printing must have these Qualifications: It must be maliciously, it must be advisedly, and the Declaration must be directly.

Gentlemen, It is an Offence made up of these Gradations: He must do it maliciously; he must do it advisedly; he must do it directly; and that which is to be done so, is the maintaining and affirming that the Pretender hath a Right to the Crown of this Kingdom: If this be thus proved by Printing, then, Gentlemen, this is the Offence which is made High-Treason by this Act of Parliament. Gentlemen, it is necessary a little to open to you who is meant by the Chevalier, because you find by the Libel, he is called the Chevalier. Gentlemen, as it is known to you all, as here in *England*, he is called the Pretender to the Crown, very properly in many Acts of Parliament; so, on the Death of the late King *James*, he assumed the Title of *James* the Third King of *England*, and *James* the Eighth of *Scotland*. That being resented, justly resented by the Crown of *England*, to those Princes and States that seemed to favour it, they withdrew that Title, and he assumed the Name of the Chevalier de *St. George*. I believe it is as well known that the Pretender was meant by the Name of Chevalier, as any Prince whatsoever is known by his Title. As to the Person, we think it is very plain, the Person named the Chevalier in the Libel, to be the very same Person that pretended to be the Prince of *Wales* in the Life-time of King *James* the Second; and, after his Decease, that assumed to himself the Title of *James* the Third King of *England*, and the Eighth of *Scotland*. As this is the Person, so you will find a direct maintaining and affirming that he hath a Right to the Crown of these Realms; That will appear by the Libel. I would observe by the way, that this way of libelling, it well became the Legislature to guard against: because it is a sly, artful way of poisoning the Minds of People, and in such a Manner as is not easily discoverable. Here it is necessary first, to set out the Virtues of the

the Perſon; you are next, from the Conſideration of theſe Virtues, neceſſarily moved with Pity and Compaſſion, that a Perſon of thoſe Virtues ſhould be kept out of his Right. He ſays, all Rights concur in him, who, he ſays, is a Perſon endowed with all princely Virtues: If he hath all Rights concur in him, and is a Perſon of thoſe princely Virtues, is it not a pity, and doth it not move Compaſſion, that this Perſon is kept out of his Right? It is a natural Inference. Then who is the Perſon he is ſpeaking of, the Perſon whoſe Birth was ſo very ſolemn, that it was impoſſible to prove him an Impoſtor: Theſe are the Words of the Libel before you. And then, Gentlemen, which comes more to the Purpoſe, he particularly and poſitively affirms, that if Hereditary Right be any Recommendation, he hath that to plead in his Favour; this is in the firſt Part of the Libel. In the latter Part he makes three Remarks; in theſe three Remarks he ſums up all the Right any Prince can have. He ſays, Hereditary Right, that is one; the Voice or Choice of the People, that is another; and a limited Monarchy the third; he ſays he hath all theſe Rights concur in him; he being endowed with all princely Virtues, therefore all theſe Rights concur in him. Gentlemen, it hath been rightly opened by *Mr. Attorney-General*, that the Offence is to declare, that he hath any Right; but he hath maintained all Rights whatſoever concur in him; he hath an Hereditary Right, he hath a Right by the Choice of the People, he hath a Right, as it is a limited Monarchy. This, Gentlemen, is the Declaration; and we think upon the reading it, you will be ſatisfied, and I dare ſay my Lords the Judges will direct you, that this is a direct declaring that he hath a Right to the Crown of theſe Realms.

Gentlemen, it muſt be proved it was done maliciouſly and adviſedly; if we make out what *Mr. Attorney-General* hath opened, that it was done with this Deliberation, that he paid for it, that he directed it, that he was the Perſon who compoſed it, firſt took off the Sheets from the Preſs, which is uſually done by a Boy, and they call that Boy the Devil; it is the Devil's Work, as you will hear by the Witneſſes, but that was done by him for Haſte, Expedition and Secrecy too. Gentlemen, there was, as it will appear by the Witneſſes, a Thouſand of each Part printed off; it is to be feared they were diſperſed, and God knows what Miſchief they may have done; a few were found upon him, it lies upon him to account how he came by them; we will call our Witneſſes, &c.

Mr. *Lutwych.* Call *John Hutchins* and *Thomas Roberts*, the Meſſengers that ſeized theſe Things upon him.

JOHN HUTCHINS and THOMAS ROBERTS ſworn.

Mr. *Ketelbey.* My Lord, we pray in behalf of the Priſoner, that the Witneſſes may be kept out of the Hearing of one another.

[*Which was ordered accordingly.*]

Priſoner. My Lord, I deſire that the Witneſſes may be kept out of the Hearing of one another.

Lord Chief Juſtice *King.* If there are any more of the Witneſſes in Court, they muſt ſtay out 'till they are called.

JOHN HUTCHINS.

Mr. Attorney General. Shew him the Libel. Look upon the reſt of the Half-ſheets, Mr. *Hutchins:* you have the Libel in your Hands?

Hutchins. Yes.

Att. Gen. Have you looked upon them all?

Hutchins. Yes, Sir, upon moſt of them.

Att. Gen. Are not any of them marked that you know of?

Hutchins. Yes, Sir.

Att. Gen. How many are they that are marked by you?

Hutchins. They are all marked by me.

Att. Gen. Hold them in your Hand, look upon thoſe Libels, you ſay they are marked by you; do you know any thing of thoſe Libels, and where you had them?

Hutchins. Some I found in Mr. *Matthews*'s Pocket; the reſt I found in his Room.

Att. Gen. Let us know the Time when.

Hutchins. The 7th of *July* laſt.

Att. Gen. Where, Sir?

Hutchins. In his Pocket, and in his Room.

Att. Gen. Where?

Hutchins. At the Printing-houſe of his Mother in *Little Britain.*

Att. Gen. At his Mother's Printing-houſe? Which was found in his Pocket?

Hutchins. This, Sir.

Att. Gen. Is that an entire Libel that was found in his Pocket?

Hutchins. Theſe two make an entire Libel.

Att. Gen. Thoſe were found in his Pocket?—*Hutchins.* Yes, Sir.

Att. Gen. Where were the reſt found?—*Hutchins.* In his Room.

Att. Gen. Why call you it his Room?

Hutchins. In his Room where he lay, in his Bed-chamber.

Att. Gen. They were found in his Bed-chamber?

[*Now point to us thoſe that were found in his Bed-chamber.*]

Hutchins. The two Half-ſheets; two Proof-half-ſheets.

Att. Gen. There is another.

Hutchins. Yes, Sir, that is one that was found in his Pocket.

Att. Gen. Sir, can you be poſitive thoſe are the very Papers you found in his Pocket, and in his Room?

Hutchins. I am very poſitive.

Att. Gen. I think you ſay you marked them.——*Hutchins.* Yes.

Att. Gen. Did you look on thoſe Marks?——*Hutchins.* Yes, Sir.

Att. Gen. Now look upon the reſt of the Papers you have in your Hands, and let us know what they are.

Hutchins. Theſe were taken out of his Room.

Att. Gen. Look upon thoſe, that Bundle you have in your Hand.

Hutchins. Theſe are more that were taken out of his Room.

Att. Gen. Theſe are the imperfect ſuperfluous Sheets; don't put them together, keep them diſtinct.

Hutchins. Sir, I ſhall.

Att. Gen. You were ſaying, they were found in his Room?

Hutchins. Yes, Sir, in his Room.

Att. Gen. Was there any Converſation between you and the Priſoner the Day he was in your Cuſtody, or at any other Time, touching theſe Libels?

Hutchins. He owned they were all his.

Lord Chief Juſtice. How?

Hutchins. I aſked him if they were his, he told me they were.

Att. Gen. That was at the time he was taken; afterwards had you any other Diſcourſe with him at the time of ſhewing him his Papers?

Hutchins. He never denied them.

Mr. *Lutwych.* Do you know of any thing that paſſed between you, at the time of his Commitment?

Hutchins. I brought him to *Newgate.* When I came for him, I ſuppoſe, ſays he, I am going to *Newgate*, and that a Bill of High-Treaſon will be found againſt me? Yes, ſays I, that there is already.—I adviſed him to tell the Author, and it would be better for him. He ſaid, I know I ſhall be hanged; but I have nothing to do, but let the Money fly, to get a good Jury, that's all: He ſaid thoſe that ſet him to work, were a Pack of Dogs, good for nothing, but over a Bottle of Wine, or a Pot of Beer.

Mr. *Lutwych.* Repeat the firſt Words again.

Hutchins. He ſaid that he knew he ſhould be hanged, he had nothing to do, but to let the Money fly, to get a good Jury; they were a Pack of Dogs that ſet him to work, good for nothing, but over a Bottle of Wine, or a Pot of Beer.

Serjeant *Cheſhire.* Who was with you at the time of the ſeizing of theſe Papers?——*Hutchins.* Mr. *Roberts.*

Mr. *Hungerford.* You ſay you took theſe Things at the Printing-houſe?

Hutchins. Yes, Sir.

Mr. *Hungerford.* In whoſe Name was the Printing-houſe kept?

Hutchins. It was kept by his Mother, or by his Brother.

Mr. *Ketelbey.* You are ſure that theſe very Papers you deliver'd in, are the ſame numerical Papers you ſeized either in his Lodging-room, or in his Pocket?

Hutchins. Theſe are the very ſame.

Mr. *Ketelbey.* From the Day that you ſeized them, have they been in your Cuſtody, or do you only depend on the remembering of the Mark?

Hutchins. I depend on the remembering of the Mark.

Mr. *Ketelbey.* They have not been in your Cuſtody ever ſince?

Hutchins. No, Sir.

Mr. *Ketelbey.* When did you mark thoſe you found in the Room? at the ſame time you ſeized them?

Hutchins. I mark'd them after I went out of the Room, before I delivered them.

Mr. *Ketelbey.* Were they in your Cuſtody conſtantly from the time of your firſt ſeizing them, till you mark'd them? Had Nobody an Opportunity of altering them?

Hutchins. Yes, they were.——Nobody, except the other Meſſenger, meddled with them.

Mr. *Ketelbey.* And can you take upon you to ſay, the other Meſſenger never altered them?

Hutchins. I am ſure he never altered them; for he was never out of my Sight.

Priſoner. I deſire to aſk Mr. *Hutchins*, whether he took them out of my Pocket or in my Room, or no. I am ſure Mr. *Roberts* took them, I ſee him. *(Here the Priſoner behaved in a Paſſion.)*

Lord Chief Juſtice. You ſhall have a fair Trial according to the Laws of *England*, and as you expect a fair Trial, therefore it is expected that you behave yourſelf as you ought.—Who took them out of his Pocket?

Hutchins. Mr. *Roberts.*

L. C. J. Where was you?——*Hutchins.* Standing at the Door.

Att. Gen. Did you ſee them taken out of his Pocket?—*Hutchins.* Yes.

Att. Gen. Had you them in your Hand?——*Hutchins.* Yes, Sir.

Att. Gen. Did you keep them in your Hand?——*Hutchins.* Yes.

Mr. *Hungerford.* How far was you from Mr. *Roberts* when he took them out of his Pocket?

Hutchins. I was at the Door.

Mr. *Hungerford.* Could you read them at that Diſtance?

Hutchins. No.

Priſoner. You took them on the Ground?

Hutchins. He took them out of your Pocket.—He laid your Coat down, and laid the Papers upon them.

Mr. *Hungerford.* What Poſture was the Priſoner in, when you and Mr. *Roberts* came into the Room?

Hutchins. He was in Bed when *Roberts* came in, and juſt getting out of his Bed when I came in.

Mr. *Hungerford.* Had you any Candle?

Hutchins. It was Day-light, between Eight and Nine o'Clock in the Morning.

Priſoner. My Lord, I deſire to know how many Papers were found in my Pocket?

Hutchins. Two or three.

Priſoner. I deſire to know if all theſe Papers were taken in this Room?

Hutchins. Some, two or three were found in a Box in another Room? but he ſaid it was his Room and his Box.

Priſoner. Which of thoſe Papers were taken in another Room?

Hutchins. I can't tell.

Mr. *Ketelbey.* Were all thoſe Papers taken in the Room where he lodged?

Hutchins. Moſt of them where he lay.

Mr. *Ketelbey.* Where were the reſt taken?

Hutchins. In the Box in another Room.

Att. Gen. Whoſe Room was that?

Hutchins. He ſaid it belonged to him.

(The Papers ſhewn him.)

Mr. *Ketelbey.* Where were theſe Papers produced?

Hutchins. Moſt of them in his Room.

Att. Gen. Look upon them again, can't you tell which were found in his Pocket, which in the Room where he lodged, and which in the Room adjoining? Have you not marked them?

Hutchins. I can't tell which were taken in the other Room.

Att. Gen. Shew him the two Proof-ſheets. Look upon them, and recollect and tell us, if you can with Certainty, whether theſe were found in his Pocket, in his Lodging-room, or where elſe?

Hutchins. Yes, Sir——Theſe were both taken in his Room.

Attorney General. In his Lodging-room?

Lord Chief Juſtice. Or in the Box in the other Room? I aſk you, do you know certainly where theſe were taken?

Hutchins. I am not ſure whether they were taken in the one Room, or the other.

Mr. *Lutwych.* What was that Room you call the other Room?

Hutchins. He called that other Room his, and ſaid all that was there was his.

Priſoner. What Room was I taken in?

Hutchins. In your Bed-chamber.

Mr. *Hungerford.* Is there a diſtinct Door to that other Room where the Box was?

Hutchins. There is a Room, and a diſtinct Door to it.

Mr. *Hungerford.* Did that Door open into the Room that was his Bed-chamber?

Hutchins. No.—It opened in his Bed-chamber; you go through his Bed-chamber to it.

Priſoner. Was you there when Mr. *Roberts* came to my Chamber, when I was in Bed?——*Hutchins.* No.

Mr. *Hungerford.* Was there no other Opening to the Room where the Box was?——*Hutchins.* No, Sir.

Lord Chief Juſtice. You ſay it was found in his Pocket; in his Coat-Pocket, or his Breeches-Pocket?

Hutchins. In his Coat-Pocket, My Lord.

Mr. *Hungerford* Were there one and the ſame Mark to the Papers you found in his Pocket, and the other Papers?

Hutchins. There were the two firſt Letters of my Name to thoſe that were not perfect, and my whole Name to the perfect ones.

Mr. *Hungerford.* Is there not ſome of the Papers of the ſame Mark?

Hutchins. My Name is at length, not to all.

Mr. *Hungerford.* To any?——*Hutchins.* Yes, Sir.

Mr. *Hungerford.* Then if I take him right, there was the ſame Mark to ſome of the Papers taken out of his Pocket, and that were took out of his Room.

Lord Chief Juſtice. By which Mark do you diſtinguiſh between the Papers?

Hutchins. Some I mark'd with the ſame Mark.

Lord Chief Juſtice. How do you diſtinguiſh?

Hutchins. Becauſe I mark'd thoſe found in his Pocket, 'taken in his Pocket;' thoſe taken in the Room, 'taken in the Room.'

Attorney General. Read the Words you have written.

Hutchins. Taken in Mr. *Matthews*'s Room the 7th *July.*

Att. Gen. Whoſe Writing is that?——*Hutchins.* My own.

Att. Gen. Were thoſe taken out of his Pocket, or in his Room?

Hutchins. In his Room.

Att. Gen. Do you diſtinguiſh between the Room he lay in, and the other Room?——*Hutchins.* No, I can't.

Att. Gen. Look upon thoſe mark'd, 'taken out of his Pocket.'

Hutchins. Taken out of his Pocket?

Att. Gen. Read.

Hutchins. 'This taken out of his Pocket by me and *Roberts.*'

Att. Gen. Whoſe Hand-writing is that?

Hutchins. My own Name is my own Hand-writing, but the reſt not.

Att. Gen. Are you poſitive that Paper was taken out of his Pocket?

Hutchins. Yes, I am poſitive.

Att. Gen. Keep that diſtinct.

Mr. *Ketelbey.* You ſay the Name at length is your Hand-writing, but the Words not?——*Hutchins.* No, Sir.

Mr. *Ket.* Who wrote them?

Hutchins. The other Meſſenger.

Mr. *Ket.* How long after?

Hutchins. Two or three Hours.

Priſoner. My Lord, I deſire to know how far he carried them, before they were mark'd.

Hutchins. I carried them to the *Cock-Pit.*

Mr. *Ket.* Did the other Meſſenger carry none?

Hutchins. Yes, he carried ſome.

Lord Chief Juſtice. Were they taken out of the Room, before they were mark'd?—*Hutchins.* Yes, my Lord.

THOMAS ROBERTS.

Attorney General. Mr. *Roberts,* Was you preſent with *Hutchins* when any Papers were ſeized?

Roberts. I went into the Room before *Hutchins* was there. I ſecured his Sword.

Lord Chief Juſtice. Was his Sword in his Room?

Rob. Yes, my Lord. Then I ſecured his Coat, and ſecured his Papers.—Then came in Mr. *Hutchins*; ſo with that Mr. *Hutchins* turns round and goes into another Room, and brings two or three Papers, ſeveral Papers he found, ſome in one Place and ſome in another.—Now as he found them, he aſked Mr. *Matthews,* Are theſe your Papers, do you own them? Yes, ſays he, I do.

Attorney General. Did you put a Mark on the Papers?

Rob. Yes.

Att. Gen. What is the Mark?

Rob. 'The 7th *July* 1719, taken out of Mr. *Matthews*'s Pocket.'

Att. Gen. Have you put your Name to it?

Rob. Yes, this is my Name.

Att. Gen. When did you put your Mark?

Rob. The 7th *July.*

Att. Gen. What Time of the Day?

Rob. About Twelve o'Clock.

Att. Gen. How long after they were ſeized?

Rob. About two Hours.

Att. Gen. Where had the Papers been?

Rob. This Paper in *Hutchins*'s Hand, and the reſt in mine.

Att. Gen. Was *Hutchins* ever out of your Company from the time of taking them till you mark'd?

Rob. He was ſo far out of my Company, he was in one Coach, and I was in another; we had three or four Priſoners; one Coach could not carry us all.

Att. Gen. Can you be poſitive that the Paper you have in your Hand, was taken out of the individual Pocket of the Priſoner?

Rob. Yes, that I can.

Att. Gen. Shew him the reſt of the Papers.—Whoſe Mark is that?

Rob. '7th *July,* taken out of Mr. *Matthews*'s Pocket.'

Att. Gen. Is that your Hand-writing?

Rob. This is my Hand-writing.

Att. Gen. Where did you put your Hand-writing to it?

Rob. In *Downing-Street.*

Att. Gen. When?—*Rob.* About two Hours after we had ſeized them.

Att. Gen. In whoſe Cuſtody had they been?

Rob. In Mr. *Hutchins*'s.

Att. Gen. Are you poſitive that was taken out of his Pocket?

Rob. Yes, Sir, I am.

Att. Gen. Where was he when you took them out of his Pocket?

Rob. He was in Bed.

(*The firſt Proof-ſheet ſhewn to him.*)

Att. Gen. Look upon that, ſee what is written upon that.

Rob. 'Taken in Mr. *Matthews*'s Room the 7th *July, T. R.* and *J. Hutchins.*'

Att. Gen. Do you remember the taking of that?

Rob. Yes, I do.

Att. Gen. Do you remember in what Room?

Rob. I can't remember in what Room, becauſe there were ſeveral Papers.

Att. Gen. In how many Rooms did you find theſe Papers?

Rob. Moſt of them in one Room, ſome under the Bed, in the Bed-chamber where he lodged.

Att. Gen. Was there Papers in any other Room?

Rob. I can't well tell that, becauſe I kept the Door, but ſeveral Papers were taken in the Bed-chamber.

Att. Gen. Are you certain that Paper mark'd was taken in his Bed-chamber Room?

Rob. That I am poſitive of.

(*The other Papers ſhewn him.*)

Rob. 'Taken the 7th *July* in Mr. *Matthews*'s Room, *T. R.* and *J. Hutchins.*'

Att. Gen. Where did you put the Mark, and when?

Rob. In *Downing-Street,* at the ſame time.

Att. Gen. Can you be poſitive they were found in his Room?

Rob. Yes, I can.

Mr. *Ketelbey.* When you ſay his Room, do you mean his Bed-chamber?

Rob. His Bed-chamber.

Mr. *Bootle.* Look upon the reſt. Read the Marks writ upon them.

Rob. Only *John Hutchins,* and *Thomas Roberts.*

Mr. *Bootle.* Were they taken in the Room?

Rob. Yes, Sir.

Mr. *Bootle.* Look upon that laſt, look upon the Mark, (Roberts *look'd on it*) where was that taken?

Rob. All were taken in his Room.

Mr. *Bootle.* Was that in his Bed-chamber, or the other Room?

Rob. In his Bed-chamber.

Mr. *Bootle.* What did he ſay when you had ſeized his Papers?

Rob. When Mr. *Hutchins* had ſeized them, ſays he, Mr. *Matthews,* are theſe your Papers? Yes, ſays he, I own them to be my Papers.

Mr. *Bootle.* I aſk you whether the Proof-ſheet was not found in his Bed-chamber?—*Rob.* Yes, it was.

Att. Gen. You have told us what he ſaid the time the Papers were found, was there any other Converſation between you and him? Did you hear him ſay any thing while he was in your Cuſtody, going to *Newgate?*

Rob. When we brought him to *Newgate?*

Lord Chief Juſtice. How long was it after?

Rob. The 9th of *September,* my Lord.——When we came into his Room, he aſked, Where are you going with me? Are you going to carry me to *Newgate?* Yes, ſays I.---Is there a Bill found againſt me? I told him Yes, of High-Treaſon. I know, ſays he, I deſerve to be hanged, and that he had nothing in the World to do but to let his Money fly, to get a good Jury.

Att. Gen. Did he ſay any thing more?

Rob. Nothing more as I know of.

Mr. *Bootle.* Did he not ſpeak of any Perſon that ſet him to Work?

Rob. Nothing, as I remember.

Mr. *Ketelbey.* Mr. *Roberts,*---As to thoſe Papers you have produced, where were they writ upon?

Lord Chief Juſtice. That Queſtion hath been aſked, and anſwered ſeveral times.

Mr. *Ketelbey.* Were they all in your Cuſtody from the time you ſeized them till they were mark'd?——*Rob.* I gave them to Mr. *Hutchins* again.

Mr. *Ketelbey.* The other Man in the other Coach?—*Rob.* Yes, Sir.

WILLIAM HARPER ſworn.

Attorney General. *William Harper,* Do you know Mrs. *Matthews*'s Printing-Houſe?—*Harper.* Yes, Sir.

Att. Gen. Have you ever work'd there, how, and in what Capacity?

Harper. As an Apprentice,

Att. Gen. Are you now an Apprentice?

Harper. Yes, I was a Turn-over, I have been there two Years and a Half.

Att. Gen. Do you remember about the latter end of *May,* or the Beginning of *June,* when you was called up by the Priſoner to work off an Impreſſion?—*Harper.* Yes, I remember it very well.

Att. Gen. Pray give an Account what he ſaid, and when it was.

Harper. It was in the Morning about four o'Clock.

Att. Gen. In what Month was this?

Harper. The laſt was done on *Saturday* Morning the 6th Day of *June.*

Att. Gen. Tell us what he ſaid when he called you up?

Harper. He aſked me to get up, and told me if I did not get up, it would be too late to get it done.

Att. Gen. Do you know what he meant?

Harper. I heard him ſay, he had a Jobb to do.

Att. Gen. How long before?

Harper. I believe about a Day before, I can't remember how long, he ſaid he had a Jobb to do.

Att. Gen.

Att. Gen. When he called you up, what did he ſay?

Harper. He deſired I would get up and help him to work off that Jobb he had to do.

Att. Gen. What did you do?

Harp. I aroſe---he came twice to me, I believe he called twice.

Att. Gen. As ſoon as you got up, whither went you, and what did you do?

Harp. I went directly to the Preſs-room, and helped him and Mr. *Vezey* to work it off.

Att. Gen. Was the Priſoner there?---*Harp.* Yes.

Att. Gen. Do you remember the Compoſing the Preſs?

Harp. Yes, I do remember it.

Att. Gen. Was that Libel, (*ſhew him one of the Proof-ſheets*)----do you remember, was that compoſed----hold it in your Hand----was that compoſed by the Priſoner from the Manuſcript?

Harp. I remember his compoſing Part of it, but not all, becauſe I was not in the Room.

Att. Gen. Are you ſure you ſaw him compoſe Part from the Manuſcript?---*Harp.* Yes.

Att. Gen. Who had the Manuſcript?

Harp. I laid it before him on the Caſe, and he compoſed the Preſs. I can't ſay as to all of it.

Att. Gen. I aſk you, look upon the Paper, can you be poſitive whether that is the very Paper he compoſed from the Manuſcript?

Harp. I believe it is.

Att. Gen. Why?

Harp. Becauſe it was done after the ſame Manner as this is, and nothing was done in the Houſe at that Time of ſuch a Volume.

Att. Gen. Look upon the Paper. Is that right or wrong impoſed?

Harp. This is wrong impoſed.

Att. Gen. Do you remember any thing of this being wrong impoſed?

Harp. I remember he came up and ſaid, I have wrong tranſpoſed the Page, and muſt alter it.

Att. Gen. And was this after the Proof-ſheets of one of them was wrought off?

Harp. It was after one was wrought off.

Att. Gen. Then afterwards did he impoſe a ſecond right?

Harp. Yes, Sir, he did.

Att. Gen. Look upon that which is right impoſed, which is in your Hand. Was that the Paper impoſed afterwards right?

Harp. I can't ſay, this is the very next Paper that was pulled off. I do verily believe this Paper was pulled off at the ſame time.

Att. Gen. Is that right impoſed, or wrong impoſed, the ſecond Paper?

Harp. This is right impoſed.

Att. Gen. Do you remember after he ſaid he had wrong impoſed one, that there was another right impoſed afterwards?

Harp. I can't remember the Words.

Att. Gen. I don't aſk the Words.——Do you remember another that was right impoſed?

Harp. I know there was.

Att. Gen. By whom?---*Harp.* By him.

Att. Gen. Look upon thoſe two Papers in your Hand (*other Papers given to him*), whether are they Proof-ſheets?

Harp. Yes, they are in the way of Printing what we call Proof-ſheets.

Att. Gen. Why, what are the Marks?

Harp. You ſee wrong Letters, and here that mark'd *out*, and that mark'd *in*, in the Margin.

Att. Gen. Are thoſe the uſual Corrections?

Harp. As far as I have ſeen.

Att. Gen. Look upon one of thoſe Papers, and ſee if you can find the Interlineation of any Word?

Mr. *Bootle.* In written Hand----look upon it. Do you ſee it----what Word is it?---*Harp.* The Word *fit*.

Mr. *Bootle.* Do you know whoſe Hand that is?

Harp. Truly I can't ſwear to the Hand.

Mr. *Bootle.* Have you ſeen the Priſoner write?

Harp. Some ſmall Matter, but not much.

Mr. *Bootle.* Can you tell, or do you believe it to be his Hand-writing?

Harp. I can't ſwear it.

Mr. *Bootle.* Is it like his Hand-writing?---*Harp.* It is ſomething like it.

Mr. *Bootle.* I aſk you now as to the Types and Letters, do you know the Types and Letters belong to your Miſtreſs's Printing-houſe?

Harp. Nobody can tell that.

Mr. *Luwych.* You ſay, you ſaw him compoſe, what Letters did he compoſe with?---*Harp.* Mrs. *Matthews*'s.

Mr. *Bootle.* Thoſe Letters he compoſed with at that Time, what Reſemblance do they bear, compared with thoſe Letters in your Hand?

Harp. I can't tell.

Mr. *Bootle.* Don't you remember the Letters he compoſed with at that Time?

Harp. Yes, Sir, the ſame Letter as this.

Att. Gen. I aſk you as to that, whether the Letters that were compoſed with, when the Preſs was ſet, was the ſame Letter with that Impreſſion in your Hand?---*Harp.* Yes, Sir.

Att. Gen. When he called you up, and ſet you to Work, whether did he aſſiſt you himſelf, or did any Body elſe?

Harp. He took them off of the Preſs.

Att. Gen. How many were preſent?---*Harp.* I don't remember any but us.

Att. Gen. Name who.---*Harp.* We Perſons that were up.

Att. Gen. Who were thoſe?

Harp. Mr. *John Matthews*, Mr. *Vezey* and I---

Att. Gen. How many were printed off?---*Harp.* Nigh a Thouſand.

Att. Gen. Of the whole?

Harp. A Thouſand of each of the two Half-ſheets.

Att. Gen. After you had wrought off ſo many, about what Time had you finiſhed?——*Harp.* I can't tell exactly.

Att. Gen. You need not be exact.

Harp. Between eight and nine a'Clock, as I take it.

Att. Gen. What became of them?---*Harper.* He ſent them away, but whither I can't tell.

Att. Gen. How do you know that?

Harp. Becauſe he came and bundled them up, and ſaid one ſtaid for them below.

Att. Gen. Was there any Money paid?

Harp. I can't ſay any thing to that.

Att. Gen. Look upon thoſe two Proof-ſheets you have in your Hand, and I aſk you whether you can be poſitive, or to the beſt of your Belief, thoſe were the very Papers that were printed off at that Time?

Harp. To the beſt of my Belief they were.

Mr. *Lutwych.* Was there any other Paper printed in Quarto?

Harp. No.

Mr. *Reeves.* (*Afterwards Lord Chief Juſtice of the Common Pleas*) Did you ever know printed at that Printing-preſs, any Paper that bears this Title afterwards?---*Harp.* No.

Mr. *Reeves.* At the Time of the compoſing, or at any time while the Impreſſion was working off, did you read any Part of it?

Harper. I read the Title.

Mr. *Reeves.* Is that the Title?---*Harp.* Yes, this is the Title.

Mr. *Bootle.* After the firſt Proof-ſheet that was impoſed wrong, did any body elſe appear there to rectify the Miſtake beſides himſelf?

Harp. Not as I ſee.

Mr. *Bootle.* You was aſked the Queſtion of the Word *fit*, do you know of any body there to make that Correction beſides himſelf?---*Harp.* No.

Mr. *Hungerford.* In whoſe Name is this Houſe carried on?

Harp. In the Name of Mrs. *Mary Matthews.*

Mr. *Hungerf.* What is the Priſoner at the Bar, Maſter or Apprentice?

Harp. I don't know, he always carried himſelf as Maſter.

Mr. *Hungerford.* You ſay you ſaw the Writing before they compoſed it; pray, Sir, do you know whoſe Hand-writing it was?

Harp. No, Sir.

Mr. *Hungerf.* Do you take it to be the Priſoner's?--*Harp.* No, I do not.

Mr. *Ketelbey.* Have you not in your Trade one particular Perſon called the Preſs-man?---*Harp.* Yes, ſeveral.

Mr. *Ketelbey.* Who were they?

Harp. One Mr. *Vezey*, another Mr. *Wiggens.*

Mr. *Ketelbey.* Who were the Compoſers?

Harp. There were ſeveral in the Houſe.

Mr. *Ketelbey.* Who were they?

Harp. There was Mr. *Wiggens*, Mr. *Staples*, and ſeveral others.

Mr. *Ketelbey.* What is their Work?

Harp. They compoſed and made ready for the Preſs.

Mr. *Ketelbey.* That Room that is adjoining to the Priſoner's Room, who lay in that Room?---*Harper.* I lay in it.

Mr. *Ketelbey.* How many Doors are there to the Room?--*Harp.* But one.

Ketelbey. Doth it go through out of his Room?---*Harp.* Yes.

Att. Gen. The Room that adjoins to the Room wherein the Priſoner lay, had you any Papers there?

Harp. I had one that was found in my Pocket.

Att. Gen. Was that all?---*Harp.* Yes.

Att. Gen. Was there any the Priſoner had there?

Harp. I can't be poſitive.

Att. Gen. Had you any more than that one in your Pocket that belonged to you?---*Harp.* No, Sir.

LAWRENCE VEZEY, ſworn.

Att. Gen. Have you at any Time belonged to Mrs. *Matthews*'s Printing-houſe?---*Vezey.* Yes, Sir.

Att. Gen. Where is it?

Vezey. In *Little Britain*, in *Pelican Court.*

Att. Gen. Do you remember whether, about *June* laſt, you was ſent for, or called upon, by the Priſoner to come to work?

Vezey. No, I was not called for to come to work; but on *Wedneſday* the third Day of *June* laſt, I went to work, as uſual, in the Morning, between four and five o'Clock. When I came into the Court, the Apprentice lies backward, I called out, *William!* The Apprentice opened his Window up Two-pair-of-Stairs; ſays he, Old Gentleman, the Door is open. I went up into the Preſs-room. Mr. *John Matthews* came up; ſays he, Old Gentleman, I have a Jobb for you to do. Says I, Is the Work in haſte? Yes, it muſt be done ſoon. Then came up *William Harper*; I aſked him what it was. Says he, I don't know, he hath got a Jobb to do. About Nine o'Clock I went to Market, when my Companion went to Breakfaſt; in the mean time, there was a Form compoſed in Quarto, called *Vox Populi Vox Dei*, I can't ſay who compoſed it; then *John Matthews* was gone out of the Room. When I came back from Market, and my Companion had breakfaſted, I went to work again, as uſual; and Mr. *John Matthews* came up, and ſaid, Damn it, I have tranſpoſed the Pages; I ſaw no Proof-ſheet; but he takes out the Form, and lays it on the Preſs, and puts it into Order.

Att. Gen. What do you call that, Impoſing it right?

Vezey. Yes, Impoſing it right.

Att. Gen. Did you ſee what it was?

Vezey. Yes, it was the Quarto, *Vox Populi*, I remember it very well, I laid it on, and he pulled it away himſelf.

Att. Gen. This was before the Impreſſion was wrought off?

Vezey. Yes, Sir, after it was right impoſed, he pulled off a Proof, and took it all away together.

Att. Gen. What did he pull away, a Proof that was right impoſed?

Vezey. Yes.

L. C. J. Was that of the Libel?

Vezey. Yes, my Lord, he had got it off the Preſs, and corrected it.

Att. Gen. What, the Form of the Quarto, of *Vox Populi?*

Vezey. Yes. So having made it ready a Morning or two afterwards, *Harper* and I went to work, and worked off the Impreſſion, and the Priſoner took it off.

Att. Gen. Do you remember how many were wrought off?

Vezey. A Thouſand, a Ream.

Att. Gen. A Thouſand of what?

Vezey. A Thouſand of the firſt Half-ſheet, and of the ſecond.

Att. Gen. Did he give you any Money for this?

Vezey. After the Jobb was done, I had fourteen Shillings for *William Harper*'s Share and mine.

Att. Gen. The Apprentice, had he any Money?

Vezey. Yes, he had as much as I; I had let *Harper* have the Money before, ſo I ſtopt it.

Attorney General. Now ſhew him the Libel;—what came of the Libel after the Impreſſion was wrought off?

Vezey. He came up, and brought a great Hair-bag, and carried them away.

Att. Gen. Shew him the Proof-ſheets: pray look upon them two, and tell us whether they are Proof-ſheets?

Vezey. Yes, they are marked as Proof-ſheets.

Att. Gen. Upon the Marks and View of the Paper, do you believe them Proof-ſheets?—*Vezey.* Yes, I do.

Att. Gen. Do you remember the Letter?

Vezey. I remember ſuch a Sort of a Letter, to the beſt of my Knowledge; I believe we had no other thing done in the Houſe of the ſame kind before, or ſince.

Att. Gen. Look on thoſe two Papers; is any thing wrong impoſed?

Vezey. Yes, my Lord, this is wrong impoſed.

Att. Gen. Do you know the Hand-writing of the Priſoner?—*Vezey.* No.

Att. Gen. But you ſee him correct it?—*Vezey.* Yes.

Att. Gen. Do you remember, or can you by inſpecting theſe Papers, recollect any of the Corrections he made?—*Vezey.* No, I can't.

Att. Gen. Did you look on the Paper that time it was worked off?

Vezey. Yes, I did, becauſe the Title ſtood next to me; I took notice of *Vox Populi*, that is all; I never read the Paper.

Att. Gen. Do you believe thoſe to be Proof-ſheets of that Libel?

Vezey. Yes, my Lord, I believe them to be two Proof-ſheets.

Att. Gen. Do you believe That a Paper wrought from the Impreſſion?

Vezey. Yes, my Lord, I believe That to be one of them.

Att. Gen. Shew him another.—*Vezey.* Yes, I believe them to be ſome of the ſame Papers, to the beſt of my Knowledge.

Mr. *Ketelbey.* You ſay you believe theſe Papers ſhewn you, to be the Papers wrought off from that Impreſſion?—*Vezey.* Yes, Sir.

Mr. *Ketelbey.* Have you any Reaſon for your Belief, only as you ſee the Title?—*Vezey.* Yes, I have Reaſon to believe it, becauſe no Quarto or any thing was done of the ſame Form.

Mr. *Ketelbey.* Upon your Oath, was that the Title *Vox Populi Vox Dei?*

Vezey. That was the only Time I ſee it, it was *Latin*, I did not underſtand it.

Mr. *Ketelbey.* Did you look upon the whole Title-page?

Vezey. I remember nothing but *Vox Populi Vox Dei.*

Mr. *Ketelbey.* Was there any more beſide?

Vezey. Yes, there was the Head in *Latin*, and the Flower over it.

Att. Gen. Do you believe that very Paper to be one wrought off at that time?

Vezey. Yes, I do; and here is the *Latin*, I only read *Vox Populi Vox Dei.*

Mr. *Reeves.* I think you ſay there is a Flower, look upon that Flower, and ſee whether it be a Flower of the ſame kind?

Vezey. I believe it was like this Flower.

Mr. *Ketelbey.* Now you have the Paper in your Hand, pray read the other Line next to you if you can.—*Vezey.* From the Solemnity of the——

Mr. *Ketelbey.* The Line above it.

Vezey. Ex ore tuo te judico.

Mr. *Hungerford.* Do you remember any Part of the Title of the Book but *Vox Populi Vox Dei?*—*Vezey.* No, my Lord.

Mr. *Ketelbey.* Had you any Diſcourſe with Mr. *George Matthews* about this Matter, your giving Evidence on this Occaſion?

Vezey. No, my Lord, I never ſee Mr. *George Matthews* ſince the Priſoner hath been in Cuſtody; I was brought up lately from *St. Albans.*

Mr. *Hungerford.* Are you in Cuſtody now?

Vezey. Yes, my Lord.

JOHN DARBY and JAMES ROBERTS, ſworn.

Att. Gen. My Lord, theſe are Maſter-Printers; and we call theſe Gentlemen in Confirmation of the Evidence which hath been given; they will account for the Proof-ſheets, that unleſs it be upon Proof-ſheets no ſuch Marks appear.

JOHN DARBY.

[*The Sheets ſhewn him.*]

Att. Gen. Sir, you are a Printer, and much verſed in Printing, do you know what theſe are?—Mr. *Darby.* What they are, as how?

Att. Gen. In the way of Printing, are they Proof-ſheets?

Darby. This may be taken either as a Proof-ſheet, or a reviſed Sheet; a Proof-ſheet is that which is firſt pulled after the Form is compoſed, and which is read by a Corrector; and what Faults are made by the Compoſer are marked on the Side, and this appears to be of that Nature.

Att. Gen. What is a reviſed Sheet?

Darby. A reviſed Sheet is after a Proof is corrected, another Sheet is pulled and compared with that we call the Proof, to ſee whether the Faults are corrected; if not, they are marked a ſecond Time.

Att. Gen. But it is either a Proof-ſheet or reviſed Sheet?

Darby. Yes, it certainly is one or t'other.

Att. Gen. Your Reaſon?

Darby. Becauſe there are ſeveral Marks on the Side.

Att. Gen. Is that according to the Cuſtom?—*Darby.* Yes.

Att. Gen. Look upon them, are they both right impoſed; how are they in that reſpect? Look upon the firſt, are they both the ſame?

Darby. No, Sir, I think not; this former doth not ſeem to be rightly impoſed; for here the firſt Page is out of its proper Place, that is for certain.

Lord Chief Juſtice. That is what you called wrong impoſed?

Darby. Wrong impoſed, my Lord.

Att. Gen. Look on the other.

Darby. This ſeems to be right impoſed.

Att. Gen. Are they impoſed alike?—*Darby.* Certainly not.

Att. Gen. I aſk you as to both theſe, I don't confine the Queſtion to one only, whether they are Proof or reviſed Sheets?

Darby. I take them to be one or t'other, by their not appearing to me to be both Proof-ſheets; by the one being wholly impoſed wrong, and the other afterwards tranſpoſed and made right.

Att. Gen. In the Courſe of Printing, whether is it not uſual, where the Impreſſion is more than half a Sheet, that there may be a Superfluity of Sheets of one more than the other?

Darby. It is very common, if a Book conſiſts of ſeveral Sheets; it is almoſt impoſſible the Number ſhould be exactly even, ſometimes it may happen.

Mr. *Reeves.* Look on the Corrections made on thoſe Proof-ſheets; give an Account if they are made in the uſual Manner.

Darby. So far as I have obſerved, the Corrections are the ſame, they are made in the common way of correcting.

Att. Gen. Sir, you are aſked whether the Corrections are in the uſual Manner of correcting Proof-ſheets?

Darby. They are, they are not all, a Colon is marked in one, and not in another, but a Comma; that is not material, and where it is *as* inſtead of *in*, that is a plain Miſtake, but they are generally marked in both as they ought to be.

JAMES ROBERTS, ſworn.

Att. Gen. Mr. *Roberts*, are you a Maſter-Printer?

Mr. *Roberts.* Yes, Sir.

Att. Gen. Look upon theſe and tell us, in your Judgment, in the way of Printing, what theſe are; Proof-ſheets or reviſed Sheets?

Roberts. They may be either Proof-ſheets or reviſed Sheets; they are Sheets corrected after the Form is compoſed, but whether firſt or ſecond, one or t'other, I can't ſay, becauſe the Faults are marked in the Side; and that is always done, it is the uſual way.

Att. Gen. Look upon the Impoſing of thoſe two Papers.

Roberts. This is wrong impoſed, this Side-page ought to be here.

Att. Gen. Look upon the other.—*Roberts.* This is right impoſed.

Att. Gen. You ſpeak as to both of them; by the Manner of their Correction, both of them to be Proof-ſheets or reviſed Sheets?

Roberts. Moſt certainly they are one or t'other.

Att. Gen. I think now, my Lord, we are intitled to read the Libel; put in That that was found in his Pocket, if you pleaſe.

Mr. *Hungerford.* My Lord, the Act of Parliament is, If any ſhall declare, affirm and maintain, by Writing or Printing, *&c.* that is the Offence pretended to be made out by this Indictment. Now I moſt humbly ſubmit to your Lordſhip, whether any Part of this Evidence comes up to make out this Fact?

L. C. J. The Queſtion now is, whether the Libel is to be read? Have you any Objection to it?

Mr. *Hungerford.* Surely, my Lord; unleſs it be a Proof by way of Evidence, that makes out this Offence charged in the Indictment, it is not proper.

Mr. *Ketelbey.* They may perhaps give Evidence, what they call a co-operating Evidence.

L. C. J. Read that found in his Pocket.

Clerk. Ex ore tuo te judico. Vox Populi Vox Dei. To all true Lovers of Liberty, *Vox Populi Vox Dei.* From the Solemnity of the Chevalier's Birth, the moral Impoſſibility of putting an Impoſtor on the Nation after the Manner pretended, and the Diſappointment in the Attempt of proving him ſo, I think it is Demonſtration, if Hereditary Right be any Recommendation, he hath that to plead in his Favour; and all Aſſertors of limited Monarchy muſt allow, that ought to be preferred, if the Perſon having it is endowed with other Qualities fit to govern; and the great Opinion all Courts have of this unfortunate Prince's Virtues, ſhews he only wants to be known by us, to be admired; and we only want the Enjoyment of him, to make us happy. I will conclude with theſe Remarks: firſt, That every Aſſertor of Hereditary Right muſt be a Jacobite; ſecondly, That every Whig who makes *Vox Populi* his Rule of Government, muſt be ſo; and, thirdly, Every Aſſertor of limited Monarchy muſt be ſo: the Chevalier being endowed with all princely Virtues, ſo that all Rights concur in him.

Mr. *Hungerford.* Read on.

Clerk. I hope ſome Patriot will rouſe up the People to ſhake off this arbitrary Government, and animate them with the Saying of the noble *Roman*, who defended the Capitol,

Livy: quouſque tandem, &c.

How long will you be ignorant of your Strength? Count your Numbers: ſure you ought to fight with more Reſolution for Liberty than your Oppreſſors do for Dominion.

Count your Numbers *.

Att. Gen. My Lord, I did not oppoſe the Gentlemen reading this Part of the Libel, but ſince they have made it a Part of the Evidence, it is my Duty to obſerve what the Spirit of this Patriot was; it is a direct Alarm to the People to rouſe up, and throw off this arbitrary Government; the Malice plainly appears in this latter Part of the Libel; *I hope ſome Patriot will rouſe up the People to ſhake off this arbitrary Government, and animate them with the Saying of the noble* Roman, *who defended the Capitol, How long will you be ignorant of your Strength? Count your Numbers: ſure you ought to fight with more Reſolution for Liberty than your Oppreſſors do for Dominion——Count your Numbers.*——A more dangerous Attempt to alarm and rouſe up the People againſt the Government, can't well be.

Mr. *Hungerford.* *Mr. Attorney* is going on with a Clauſe that is not in the Indictment; he is well acquainted with the Nature of Proceedings, and that it is not regular.

Att. Gen. I don't mention them as Words ſet forth in the Indictment; but ſure I may make uſe of another Part of the Libel to explain this.

Mr. *Reeves.* We humbly apprehend, it is neceſſary for us to produce not only theſe Papers taken in his Pocket, but theſe Proof-ſheets taken at the ſame time.

Att. Gen. The other is the eight or ten ſuperfluous Sheets, Part of the Libel as proved by the firſt Witneſs; there are eight or ten Half-

* *Count your Numbers!*—Thank God, the Number of *Jacobites* were at that time but ſmall; but now, we have SO GLORIOUS A KING on the Throne, (one of the moſt juſtly admired, and beſt beloved Princes, that ever adorned one) whoſe chiefeſt Happineſs is to reign in the Hearts of his People, there is ſcarce ſuch a thing as a *Jacobite* to be found.

ſheets which were found in his Poſſeſſion, I inſiſt upon that as a Circumſtance, to ſhew that he is the Printer of this Libel.

Serjeant *Cheſhire.* Mr. *Darby* told your Lordſhip how it could be accounted for.

Attorney General. I deſire the Jury may have a View of them.

(*They were all accordingly given to the Jury, and being taken back again,*)

Att. Gen. The Jury ſhall have them again by and bye.

Mr. DELAFAY ſworn.

Att. Gen. Sir, pray look upon thoſe Papers.——Have you looked upon theſe printed Papers?

Mr. *Delafay.* I have, Sir.

Att. Gen. Was you ever preſent, and where, when the Priſoner was examined touching theſe Papers? If you was, what paſſed?

Dela. He was examined before Mr. *Buckley* and me, at the Secretary's Office.

Att. Gen. Touching what?

Dela. Touching theſe Papers.——The firſt Queſtion I aſked him, whether he owned them?——He did own them; the Examination was taken in Writing, and ſigned by us both. I deſire it may be read.

Att. Gen. Were the Papers there, had he them before him at the Time of that or any other Examination?

Dela. They were before him on the Table at that Time.

Att. Gen. Had he the Sight and Peruſal of them at that Time?

Dela. He owned them to be taken from him.

Att. Gen. Did he ſay any thing relating to theſe Papers, how he came by them; whether did he deny before you that they were printed by him?

Dela. I can't juſtly remember, I deſire the Examination may be read.—I remember in general he was very ſhy of owning any Thing; this Paper contains what he ſaid.

Att. Gen. That Paper can't be made uſe of.

Serj. *Cheſhire.* Did you enquire concerning the Author of theſe Papers?

Dela. I can't remember I did.

Att. Gen. Was you preſent at any Examination at any other Place?

Dela. He appeared afterwards before my Lords Juſtices, and was examined.——He was told, that he was charged, with two other Perſons then named, (I don't remember their Names) with printing ſuch a Paper; he anſwered, *So it ſeems.*——He was aſked, how came you to buſy yourſelf concerning it? *My Lords*, ſays he, *it was Neceſſity; his Brother did not give him his Allowance.*——He was aſked about the Author.——That he *refuſed* to tell. Some Time after that he writ a Letter to me, deſiring to be brought before the Lords Juſtices again, intimating ſome Diſcoveries; then he told them a Story that a Gentleman from the Secretary's Office had told him, if he could procure himſelf to be brought before the Lords Juſtices, the Secretaries would be kind to him.——By the whole of his Diſcourſe, it was taken for granted he printed it, but he would not diſcover the Author.

Serj. *Cheſhire.* Repeat then his Words before my Lords Juſtices.

Dela. He ſaid that his Brother had promiſed to make him an Allowance, and did not; Neceſſity, Want of Money, made him do this.

Serj. *Cheſhire.* I think you ſay he was charged with printing the Libel? The Anſwer he gave was, *So it ſeems.* Upon this there was a farther Queſtion, How came you to do a Thing of this Nature? He did not directly ſay, I did not do it, but he excuſed himſelf upon not having received Money from his Friends, intimating that it was Neceſſity put him upon it.

Att. Gen. Is that the Letter you received from him?

Dela. Yes.——I will tell you how I came to know I received it from him. He did not diſown it.

Att. Gen. Was it read to him as his Letter?——*Dela.* Yes.

Att. Gen. Did he deny it?——*Dela.* No.

Att. Gen. Did you enter into any Expoſtulation about it?

Dela. I told him, when you writ this Letter you was of another Mind. Truly, he ſaid, he did not know the Author, and he could not diſcover him.

Mr. *Beotle.* Did he deſcribe any Perſon that came to him?

Dela. He ſaid, a Perſon in a Tye-wig came to him, he apprehended him to come from the Secretary's Office.

Att. Gen. A Letter directed to an Under-Secretary of State relating to Mr. *Matthews*, deſiring to be brought up before the Lords Juſtices; when there, he is aſked about the Letter; he ſays he did write it, hoping he ſhould find Favour from the Secretaries.

Lord Chief Juſtice. Pray give an Account when the Letter was read to him, what Anſwer he made. Did he acknowledge That to be his Letter?

Dela. I can't directly ſay he did; but I told him, When you writ that Letter, you ſeemed to be of another Mind. He was aſked what was the Occaſion of his telling us of making Diſcoveries; this is trifling with us; when you writ that Letter, you ſeemed of another Mind.

Lord Chief Juſtice. What did he ſay to that?

Dela. He ſaid, I can't diſcover the Author.

Mr. *Hungerford.* Now, in your Lordſhips Judgment, whether any thing mentioned proves that Letter to be his?——Pray, Sir, repeat what you ſaid.

Dela. When he was brought before the Lords Juſtices, on my receiving that Letter, when he was brought in, he was told, he had written a Letter to me.

Mr. *Hungerford.* What did he ſay to that?

Dela. He told them a Perſon whom he apprehended came from the Secretary's Office, a Gentleman in a Tye-wig, had been with him, and told him, if he could procure himſelf to be brought to the Lords Juſtices, on his Submiſſion the Secretaries would be kind to him.

Att. Gen. My Lord, here is a Letter ſent in the Name of this Man, deſiring to be brought up, and he is brought up; the Letter is read to him, he is aſked the Occaſion of his ſending it, and he gives an Anſwer; tells you, that which he ſays was the Occaſion, a Gentleman, that he apprehended came from the Secretary's Office, and told him, if he could procure himſelf to be brought up to the Lords Juſtices, the Secretaries would be kind to him. Theſe are his Words; is it neceſſary a Man in direct Terms ſhould confeſs, It is my Hand-writing? But theſe are probable ſtrong Circumſtances of his acknowledging it, I think.

Mr. BUCKLEY ſworn.

Attorney General. Sir, Was you preſent when this young Man was examined? or had you any Diſcourſe about this Libel?

Mr. *Buckley.* I deſire to ſee the Examination. I find on the 7th of *July*, the Meſſenger that brought in the Papers laid them down; ſays he, Theſe were found in his Pocket, and theſe in his Room; he laid them down on Mr. *Delafay*'s Table; I aſked him if the Papers were taken in his Poſſeſſion? he ſaid they were: he was alſo aſked how he came by them.

Att. Gen. Did he ſay any thing in direct Anſwer or Excuſe?

Buckley. No.—I told him, you are charged with being concerned in printing theſe Papers, which is a great Crime.—He made no Anſwer, but took Snuff.

Att. Gen. Do you know any thing more fell from the Mouth of the Priſoner touching theſe Libels?

Buckley. No, my Lord.

Mr. *Hungerford.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Counſel in this Caſe with the Priſoner at the Bar, who (as the Counſel for the King obſerve) is a Boy, a Youth, and an Apprentice; I thank them for that Obſervation; that is an Age which is uſually exempt from Malice and Deſign, and without proving both being in the Priſoner at the Bar, he muſt be acquitted of the Offence in the Indictment. Malice and Deſign are commonly the Temper of advanced Years, and *not* of Apprentice Boys. The Accuſation againſt the Priſoner is founded on an Act of Parliament, made in the 4th Year of the late Queen, and re-enacted on the Union in the 6th Year of her Reign; the Crime made High-Treaſon by that Act of Parliament, ſo far as I remember, (for it being dark I cannot read) is, that if any Perſon or Perſons ſhall maliciouſly, adviſedly, and directly, by Writing or Printing, maintain and affirm, that our Sovereign Lady the Queen that now is, is not the lawful and rightful Queen of theſe Realms, or that the pretended Prince of *Wales*, who now ſtiles himſelf King of *Great Britain*, hath any Right or Title to the Crown of theſe Realms; or that any other Perſon or Perſons hath or have any Right or Title to the ſame, otherwiſe than according to an Act of Parliament of the firſt of King *William* and Queen *Mary*, and an Act of the twelfth of King *William*, every ſuch Perſon or Perſons ſhall be guilty of High-Treaſon.

This is the Crime the Act of Parliament makes to be High-Treaſon; the Evidence to ſupport this Indictment, and that lays this Offence to the Priſoner's Charge, are ſix Witneſſes, two Meſſengers, the Apprentice, the Journeyman, and two Gentlemen of the Secretary's Office, Mr. *Delafay*, and Mr. *Buckley*.

I ſhall, my Lord, on the behalf of the Priſoner at the Bar, humbly offer to your Lordſhip, and the Gentlemen of the Jury, ſome general, and likewiſe ſome particular Conſiderations, which I hope will plainly ſhew him, the Priſoner, to be an innocent Man, and that there is no juſt Ground for the heavy Charge he now lies under. In the general, my Lord, as to the Act of Parliament upon which this Indictment is founded, I humbly offer it to your Lordſhip's Conſideration, whether it was calculated for ſuch a Caſe as the Priſoner's is ſuppoſed to be.

The Words of the Act which deſcribe the Offence are—I juſt now repeated them; and the next Paragraph in the Act gives Direction for proclaiming the next in Succeſſion of the Houſe of *Hanover*, immediately upon the Queen's Death; and it makes it High-Treaſon in the Privy Councillors and others who ſhould neglect their Duty in that Matter; and we all know that the Matter under the Conſideration of the Parliament at that Time was, that ſince upon the Queen's Death, the next Succeſſor was like to be beyond Sea, to ſecure that the Proteſtant Succeſſion ſhould take place (as now, God be praiſed, to all our Comforts, it hath), for this Reaſon it is, that upon the Queen's Deeath a Regency is appointed, the proclaiming the Proteſtant Succeſſion ſecured by a Law which makes it Treaſon in all Perſons of all Degrees who neglect doing it; for this Reaſon likewiſe, I humbly preſume it is, that denying the Title of any of the Succeſſors in the Proteſtant Line, is not made Treaſon as denying the Queen's is; for can any Man think why otherwiſe denying his preſent Majeſty's Title to the Crown when he is in Poſſeſſion, ſhould be a leſs Offence than denying the Queen's, when ſhe was alive? The only Reaſon which occurs to me for this Difference is (I ſpeak it with all Submiſſion), that the Parliament did look upon it, that when the Proteſtant Succeſſion had taken place, that Act had attained its End, and was in effect to determine; for ſurely as to the Nature of the Thing, he who oppugns his preſent moſt gracious Majeſty's Title, is as great a Criminal as he who ſhould oppugn the Queen's, or the Title of former Kings or Queens of this Realm, and yet ſuch oppugning or denying the King's Title to the Crown is not (as I think it at leaſt) made Treaſon by this Act. But ſuppoſing (though not admitting) that the Act of Parliament was intended to operate upon ſuch a Caſe as the Priſoner's is ſuppoſed to be, yet the Witneſſes do not prove that the Priſoner did maliciouſly, adviſedly, and directly, by Writing or Printing, affirm or maintain, that our Sovereign Lady the Queen is not the lawful and rightful Queen of theſe Realms, or that the pretended Prince of *Wales* hath any Right or Title to the Crown of theſe Realms. And yet further, if it ſhould be ſuppoſed that the Priſoner did affirm and maintain the Words in the Indictment, yet with humble Submiſſion the Words don't amount to an Affirmation that the Pretender hath any Right or Title to the Crown of this Realm, which is the Offence he is charged with.——The Criminal deſcribed by this Act muſt maliciouſly, adviſedly, and directly, maintain and affirm; what he doth muſt be malicious: ſurely his Youth, and the Inoffenſiveneſs of his Carriage, and Courſe of his Life hitherto, will make the Imputation of Malice groundleſs; beſides, there is no Malice proved. The Word *adviſedly*, which muſt likewiſe be an Ingredient in this Offence, is mentioned in Oppoſition to a raſh and inconſiderate Act; and in this Caſe the Proof is ſo far from charging the Priſoner with having done it adviſedly, that he doth not appear ſo much as to have read it. And it is not pretended that he was the Author, Contriver, or Publiſher of it. The Word *directly*, is likewiſe inſerted in the Act, in Oppoſition to

Innuendos

Innuendoes or forced Conſtructions.—As to the Evidence, the two firſt Witneſſes, they manifeſtly contradict one another. Each of them contend for the Honour of picking the Boy's Pocket.——*Hutchins* ſwears he took the Papers out of the Priſoner's Pocket; and *Roberts*, that he took them out of his Pocket, and *Hutchins* only peeped in at the Door. And as to the Papers found in the Room next to the Bed-chamber, it doth not appear who put them there; and ſince every probable thing is to be preſumed in favour of a Man's Life, the Meſſenger may be as well preſumed to put them there as the Priſoner. And it muſt be remarked too, that the Papers ſworn to be taken out of his Pocket, are not taken upon the Priſoner's Perſon, but ſaid to be found in his Coat Pocket lying in the Room; and it is no neceſſary Inference that the Priſoner did put them there, ſome other Perſon may have done that. As to what one of theſe two Witneſſes (the Meſſengers) ſwears, about a Diſcourſe betwixt the Priſoner and him in the Coach, as he brought him to *Newgate*, relating to the Priſoner's getting to be acquitted, by Bribing the Jury; it is ſo improbable, that I can hardly think any one can believe it; that Evidence ſeems rather to be calculated to inflame the preſent Jury than to relate a Truth; but the preſent Jury are too wiſe to be impoſed upon, eſpecially in the Caſe of a Man's Life; upon the whole, theſe two Witneſſes have contradicted each other upon their Oaths, and little or no Credit is to be given to them.

The next Witneſſes are *Harper* the Apprentice, and *Vezey* the Journeyman, and by the Notes I have taken of their Evidence, it doth not amount to make out a criminal Charge upon the Priſoner. The Priſoner is not thereby made the Author, Contriver, Printer, or Publiſher, of this Libel. One of the Witneſſes indeed ſays, that he was called up to aſſiſt the Priſoner to do a Jobb, and that the Priſoner did overlook ſome of the Proof-ſheets; but it doth not appear that he over-looked all the Proof-ſheets, or that the Sheets he did look over, were thoſe ſuppoſed to be criminal.

We are, my Lord, in the Caſe of a new Law, upon which none hath been yet tried, I think none accuſed, till the unfortunate young Man at the Bar; and we hope we are intituled to a favourable Conſtruction of any inadvertent Thing the Priſoner may have done; ſurely to co-operate in ſome little Part of Printing a Side or Part of this Libel, cannot be Treaſon. Printing itſelf is but a Mechanical Art, and one may print a whole Volume, and not know one Jot of the Contents, Drift, or Tendency of the Book; and in the preſent Caſe, the Priſoner is not the Maſter Printer; he is but an Apprentice, and the Trade is carried on by his Mother, and elder Brother. And I hope it will always, in an *Engliſh* Judicature, be deemed a ſevere Conſtruction of a Law, that a Man ſhould be judged guilty of a capital Offence, for a Fact in committing of which he did not know that he ſinned or offended againſt his own Life.——As to what the Gentlemen, Mr. *Delafay* and Mr. *Buckley*, ſay, they ſay nothing which can affect the Priſoner; they could not prove the Letter for which they were called, tho' *Mr. Attorney* ſeemed to preſs them hard upon that Head; what Mr. *Delafay* ſays makes for the Priſoner. He ſays, the Priſoner told him, that what he had done was done out of Want and Neceſſity; how then can it be ſaid to be done maliciouſly, adviſedly, and directly? without which it cannot be the Offence contended for. And now, my Lord, having remarked upon the Evidence, all that my Memory or Notes could enable me, I humbly crave leave to inſiſt, that the Words laid in the Indictment do not amount to any affirming, or maintaining, that the Pretender hath any Right or Title to the Crown of this Realm. I neither have, nor ever had, this ſilly as well as wicked Libel; and I have therefore taken the Words as they are laid in the Indictment, omitting the Innuendoes only, and I have compared them with the Book, when read by the King's Counſel, in the Courſe of their Evidence; and they are theſe: *From the Solemnity of the Chevalier's Birth, the moral Impoſſibility of putting an Impoſtor on the Nation, after the manner pretended, and the Diſappointment in the Attempt of proving him ſo; I think it is Demonſtration, if Hereditary Right be any Recommendation, he hath that to plead in his favour.* Is there in that Paragraph any affirming, and maintaining, that the Pretender hath a Right to the Crown of theſe Realms? The Words are, if Hereditary Right be any Recommendation, he hath that to plead in his favour; the Sentence begins with an *if*, and is no Affirmation at all, and but a looſe way of talking, as we call it, with *ifs* and *ands*; it can never amount to an Affirmation that the Pretender hath a Right to the Crown of theſe Realms.—The Libel goes on and ſays, *that all Aſſertors of limited Monarchy muſt allow that ought to be preferred, if the Perſon having it is endowed with other Qualities fit to govern; and the great Opinion all Courts have of this unfortunate Prince's Virtues, ſhews he only wants to be known by us to be admired, and that we only want the Enjoyment of him to make us happy.* Surely, my Lord, this Part of the Libel, tho' aſſiſted with ſeveral unnatural Innuendoes, neither affirms, nor maintains any thing at all.

The other Words are theſe: *I will conclude with theſe Remarks. Firſt, That every Aſſertor of Hereditary Right muſt be a Jacobite. Secondly, Every Whig, who makes* Vox Populi *his Rule of Government, muſt be ſo. Thirdly, Every Aſſertor of limited Monarchy muſt be ſo.——The Chevalier being endowed with all Princely Virtues, ſo that all Rights concur in him.* This, my Lord, I think is the only Paragraph in which the Word *Right* is mentioned; and yet, with humble Submiſſion, it doth not amount to an affirming, that the Pretender hath a Right to the Crown of this Realm. The Author ſeems to pleaſe himſelf with mixing of Companies, he puts Whig and Jacobite together, and ſo let them continue; for my Part, I believe there will be no High-Treaſon in that; ſurely the Words that all Princely Virtues concur in him, gives no Colour for the Inference: he may paint or deſcribe him with the Perfections of an Angel, if he pleaſes; but if he doth not affirm, and maintain, that he hath a Right to the Crown of this Realm, it is not Treaſon. I ſay, affirm and maintain, for the Words are in the Conjunctive, ſo that a bare Aſſertion, or Affirmation, that the Pretender hath a Right, is not ſufficient, unleſs he ſupport ſuch Aſſertion by Reaſon or Argument; and for my Part, I think there is not one Word of Argument in the whole Book.

Your Lordſhip obſerves how many Innuendoes this Indictment is ſupported with, and how foreign and unnatural ſome of them are, even the chief of them; *Chevalier*, Innuendo the Perſon lately called the Prince of *Wales*, &c. is, with humble Submiſſion, in a Caſe of Life and Death, not to be tolerated becauſe of the Uncertainty, there being more Knights than one, and more Orders of Knighthood than one in all Kingdoms and Countries. It is ſaid by all the Judges in *Griffith*'s Caſe, third *Modern*, fol. 202, that an Indictment is the Declaration of the King againſt the Life of a Subject, and ought therefore to ſet forth a ſufficient Certainty of the Facts, which ſhall not be ſupplied by Arguments or any Intendment whatſoever. This, my Lord, was the Opinion of the Judges; and I will be bold to ſay, let any one read over this Indictment without the Innuendoes, and they can make nothing of it as to the preſent Accuſation. Upon the Revolution, the higheſt Court of Juſtice in the Kingdom, the Houſe of Peers did brand this Practice of Innuendoes, which were but too familiar in the preceding Reigns. It is in the Caſe of Sir *Samuel Barnardiſton*, which being quoted in Dr. *Sacheverell*'s Trial, *Mr. Attorney* can be no Stranger to it. Sir *Samuel* was accuſed for a Paragraph of a Letter that was intercepted at the Poſt-houſe; the Offence was deſcribed or aſcertained by five or ſix Innuendoes in the Information, upon which Sir *Samuel* was convicted and fined; and the Record being removed by Writ of Error before the Houſe of Lords, the Lords reverſed the Judgment; and the Reaſon aſſigned for the Reverſal is, that Innuendoes, or ſuppoſed and forced Conſtructions, ought not to be allowed, but that all Accuſations ought to be plain.

I muſt therefore humbly ſubmit it to your Lordſhip, whether this Liberty of ſupporting Accuſations by Innuendoes, ought to receive any Countenance from a Court of Juſtice, or from a Jury of ſubſtantial Freeholders of the City of *London*; ſure it is hard that any Subject ſhould be made guilty of a capital Offence by a laboured or forced Conſtruction of doubtful Words; we therefore, upon the whole, humbly hope that the Priſoner will be acquitted.

Mr. *Ketelbey*. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am likewiſe aſſigned Counſel for the Priſoner at the Bar; and indeed, my Lord, I muſt own, that from the time I firſt ſaw this Indictment, I have been ſomewhat at a loſs to know upon what Statute it was grounded; what Act of Parliament had made the Facts therein charged to be High Treaſon. But ſince *Mr. Attorney* hath been pleaſed to inſiſt upon the Sixth of the Queen, Chapter the 7th, as the Foundation of this Indictment, I ſhall beg leave to conſider that Statute, and ſubmit it to your Lordſhip's Determination, ſuppoſing this Fact as laid in the Indictment to be true, whether it amounts to High-Treaſon within that Statute or not.

My Lord, I would obſerve, that this Statute is introductive of a new Law, penal in the higheſt degree, making that High-Treaſon which was never High-Treaſon before, but was an Offence of a lower Species; and the Priſoner is the firſt Inſtance, the firſt Precedent againſt whom this Act has been endeavoured to be put in execution.

That Clauſe of the Act which makes it High-Treaſon to deny the Power and Authority of the Parliament to limit the Succeſſion of the Crown, does not, as I take it, at all relate to the preſent Queſtion; and therefore, I ſhall only trouble your Lordſhip with ſome Obſervations upon the other three Caſes which the Statute has made High-Treaſon. To each of theſe the Act hath annexed, that it muſt be by Writing or Printing directly; I beg leave to lay what Weight I can upon this Word *directly*: the Words of the Act are, That if any Perſon or Perſons ſhall maliciouſly, adviſedly, and directly, by writing or printing, maintain and affirm, that our Sovereign Lady the Queen, that now is, is not the lawful and rightful Queen of theſe Realms; or that the pretended Prince of *Wales*, who now ſtiles himſelf King of *Great Britain*, or King of *England*, by the Name of *James* the Third, or King of *Scotland*, by the Name of *James* the Eighth, hath any Right or Title to the Crown of theſe Realms; or that any other Perſon or Perſons hath or have any Right or Title to the ſame, except the Perſons to whom it is limited by the ſeveral Acts of Parliament, every ſuch Perſon or Perſons ſhall be guilty of High-Treaſon. The Word *directly* goes to all theſe three Caſes; there muſt be a direct Affirmation of the Truth of one of theſe three Propoſitions, or elſe it cannot be High-Treaſon within this Statute. I deſire to know if, in the Libel that hath been read to you, there is any ſuch Expreſſion as the Crown of theſe Realms, the Pretender, King *James* the Third, the Prince of *Wales*, or any other of the Periphraſes or Deſcriptions mentioned in the Statute; I admit there is ſomething ſaid in the Libel about the Chevalier, but who this Chevalier is, or who is meant by that Name, I will not take upon me to determine. But ſure I am there is no ſuch Word in the Statute; it is a general, a common Appellation, a meer *individuum vagum*, and without ſome particular Addition, ſome explanatory Reſtriction, cannot properly be applicable to one Man more than another; how then the Priſoner came to be charged with affirming directly, that the Pretender had a Right to the Crown of theſe Realms, when there is no ſuch Word in the whole Book, when the Statute expreſsly confines the Offence to ſuch particular Propoſitions in the Words there ſet down, without ſaying to that or the like Effect, I cannot conceive.

The Reaſon why we deſired to have the whole Book read, was to ſee whether there were any ſuch Words there; and we had no other Way of being ſatisfied in that Point, ſince *Mr. Attorney*, upon the Application of our Solicitor, was pleaſed to deny us an Opportunity of ſeeing the Libel; and by the Tenor of the Indictment, the Gentlemen who drew it, were conſcious, or at leaſt ſeemed to be, that there is no direct Affirmation of this Nature in the Libel. If they were not of this Opinion, why have they put in their Innuendoes? If the ſenſe had been plain, full and direct, what Occaſion was there for propping and ſupporting it with auxiliary Clauſes and Explanations? They have inſerted one Innuendo: If hereditary Right be any Recommendation, he hath that, *Jus hereditarium ad coronam hujus regni, Innuendo*; and in another Place, All Rights concur in him, Innuendo all Rights to the Crown of theſe Realms; is there any thing of the Crown of theſe Realms preceding? All Rights concur in him; Rights to what? Is it directly affirmed, or doth it neceſſarily follow, it muſt be Right to the Crown of theſe Realms? Are not theſe moſt ſtrange and ſtrained Innuendoes? It may as well be underſtood to be a Right to any Part of *Africa*, or any thing elſe, as to the Crown of theſe Realms.

In my Lord *Coke*'s fourth Report, Folio 17, *adverſus Rutleth*, it is reſolved, That an Innuendo cannot alter the Matter or Senſe of the Words themſelves,

themſelves, nor extend the general Words by an Imagination of an Intent, which is not apparent by the preceding Words to which the Innuendo refers, and in effect it ſtands in the Place of a *Prædict*. I ſhall mention but one other Caſe, which ſeveral of your Lordſhips well remember when it was in Agitation, and ſome of the Gentlemen of the other Side were concerned as Counſel in it. It was *Michaelmas* the 9th of King *William*, the King againſt *Gripe* (Lord *Raymond*'s Reports, Vol. I. p. 256.) an Information for Perjury; and laid, that the Defendant ſwore that Mr. *Stroud* was not at *Newnham*, Innuendo *Newnham* in *Devonſhire*. The Court, in giving Judgment, laid it down as a Rule, that no Innuendo could ſupply the Defect of a ſufficient Certainty; and that the only Uſe of it was to denote ſome Perſon or Thing before-mentioned.

My Lord, I could offer ſeveral other Caſes which explain the Doctrine of Innuendoes; and would ſhew the Abſurdity of the Innuendoes in this Indictment; but I ſhall not trouble your Lordſhip with them at preſent, relying upon the Caſes already cited; and therefore we humbly inſiſt upon it, that the Priſoner is not guilty of directly affirming that the Pretender hath any Right or Title to the Crown of theſe Realms; neither is he, as we apprehend, within the reach of either of the other two Clauſes; the firſt relates only to the Queen, her late glorious Majeſty, now dead; whether the whole Act was temporary, and determined upon the Demiſe of the late Queen, and the eſtabliſhing the Succeſſion in the Houſe of *Hanover*, I ſhall not at preſent debate, ſubmitting that Point to your Lordſhip's Determination, upon the Weight of what Mr. *Hungerford* hath offered on that Head; but this I think I may humbly inſiſt upon, that this firſt Clauſe at leaſt was temporary; and ſince the Statute expreſſes it in Words of the preſent Tenſe, Whoever ſhall affirm, that our Sovereign Lady the Queen, that now is, is not the lawful and rightful Queen of theſe Realms, no Perſon at this Time, by the Efficacy of this Clauſe, can be guilty of High-Treaſon.

As to the third Clauſe, Whoever ſhall affirm, that any other Perſon or Perſons hath or have any Right or Title to the Crown of theſe Realms, otherwiſe than according to an Act of Parliament made Firſt *Gulielmi & Mariæ*, intituled, *An Act declaring the Rights and Liberties of the Subject, and ſettling the Succeſſion of the Crown*; and one other Act, made the Twelfth *Gulielmi Tertii*, intituled, *An Act for the Limitation of the Crown, and better ſecuring the Rights and Liberties of the Subject*, and the ſeveral Acts made for the Union of the Two Kingdoms, *&c.* ſurely it will not be contended, that the Priſoner is guilty of the Offence charged in this Clauſe; for then this Indictment can never maintain the Charge; proper Clauſes of thoſe ſeveral Statutes ſhould, in ſuch Caſe, have been ſet forth in the Indictment, and proper Averments to bring the Priſoner's Caſe within this Clauſe.

I muſt admit, that if it was done adviſedly and directly, the Law will imply it to be maliciouſly; I ſhall therefore only beg Leave to add one further Obſervation upon one other ſingle Word of this Statute, and that is upon the Word *adviſedly*: Whoever ſhall adviſedly maintain, affirm, *&c.* Adviſedly here muſt neceſſarily import, not only a competent Capacity, but the actual Exerciſe of that Power of thinking, and, in ſome Degree, Maturity of Judgment and due Premeditation; it ſtands in Contradiſtinction to a raſh, heedleſs, and inconſiderate Act. Some of the Gentlemen of the other Side have been pleaſed, with a laudable and generous Compaſſion, to take Notice of the Priſoner's Youth; can a Boy of Seventeen be ſaid adviſedly to maintain an Aſſertion contrary to one of the three recited Clauſes, when the Matter is ſo far from being plain and clear to much older Heads; and at the moſt is ſo dubious, that your Lordſhip, in your great Juſtice, hath permitted it to be debated for ſeveral Hours, and perhaps the Debate may hold ſome Hours longer, Whether the Paragraphs of the Libel, ſet forth in the Indictment, are a direct Affirmation of what is made criminal by either of thoſe Clauſes in the Statute? I hope the Gentlemen of the Jury will likewiſe have a compaſſionate Regard to the tender Years and Unadviſedneſs of the Priſoner.

My Lord, the next thing we are to ſubmit to your Lordſhip's Conſideration is, whether the Evidence that hath been given be ſufficient to convict the Priſoner of the Fact, ſuppoſing it to be High-Treaſon. Upon a Trial for High-Treaſon, the greateſt Crime, the Strength ought to be adequate, in ſome meaſure, to the Nature of the Offence; for a Perſon that is indicted for High-Treaſon to be found guilty upon dubious Evidence, ſtrained Conſtructions, Implications, or far-fetched Innuendoes, never was yet thought juſt, nor will be by your Lordſhip.

My Lord *Coke*, in his third *Inſtitutes*, fol. 12, hath laid down the Rule of Evidence, in Caſes of High-Treaſon, where he comments upon the Words of the Statute of the Twenty-fifth of *Edward* the Third, *proveably*, that is, upon direct and manifeſt Proof, not upon conjectural Preſumptions or Inferences, or Strains of Wit, but upon good and ſufficient Proof; and ſeveral Statutes have provided, that there ſhall be, at leaſt, two credible Witneſſes to every Species of Treaſon, and each Overt Act laid in the Indictment.

Whether the Evidence, that hath been offered in this Caſe, comes up to my Lord *Coke*'s Rule, or be ſufficient to convict the Priſoner of the Crimes laid to his Charge, I muſt ſubmit to your Lordſhip's Judgment, when I have made ſome few general Remarks, without repeating or going into the Particulars thereof. They have examined the two Meſſengers, the two Servants in the Houſe, two Gentlemen belonging to the Secretary's Office, and ſome Maſter-Printers.

What the Printers have ſaid, in relation to the Method of printing, compoſing, correcting and impoſing right or wrong, we have no Reaſon to controvert, not apprehending that the Priſoner is the leaſt affected thereby.

As to thoſe worthy Gentlemen, Mr. *Delafay* and Mr. *Buckley*, they delivered their Evidence with ſuch a tender Regard to Truth, without ſtretching one Tittle beyond what they certainly remembered to be exact matter of Fact, that I ſhould do an Injury to myſelf as well as to them, if I ſuſpected in the leaſt of the Reality of what they ſaid; but the utmoſt that can be collected from their Evidence, as I apprehend, amounts only to ſome youthful Imprudences in the Perſon's Behaviour upon his Examination and not to any Confeſſion of the Fact charged upon him in the Indictment.

I appeal to your Lordſhip's Obſervation, whether *John Hutchins* and *Thomas Roberts*, the two Meſſengers, did not directly contradict one another; and *Hutchins*, that was firſt examined, directly contradict himſelf? *Hutchins* ſwore he found two of the Libels, now produced, in the Priſoner's Pocket, and ſome more in his Bed-chamber; but upon his being croſs-examined, he acknowledged that *Roberts* went firſt into his Room, and took them out of the Priſoner's Pocket; and when he aſk'd him ſtrictly to the Room where the other Libels were taken, he could not be ſure whether it was in the Priſoner's Room, or in the inner Room, where the Apprentice lay. *Hutchins* ſwore, they were never out of each other's Company, till they came to the Secretary's Office; and *Roberts* owned that he and *Hutchins* went in two different Coaches from the Priſoner's Houſe.

William Harper the Apprentice, and *Lawrence Vezey* the Journeyman, were next examined, and ſaid indeed the Priſoner corrected one of the Sheets that was wrong impoſed; and *Vezey* ſaid, he took off the Proof-ſheet; but is this Printing? Is correcting, or right impoſing a Proof-ſheet, the Overt Act that is made High-Treaſon by this Statute? *Mr. Attorney* is pleaſed to call it, Co-operating; but, my Lord, there are ſeveral preparatory Acts in this Art, the diſtinct Offices and Employments of different Perſons, before it can be properly called Printing, and in the Courſe of our Evidence, we ſhall endeavour to explain its previous Parts and Gradations; and if it had been unqueſtionably proved that the Priſoner had a hand in preparing Sheets for the Preſs, yet we hope your Lordſhip will not conſtrue that to be Co-operating, much leſs Printing; the moſt that can be made of it is, that he cauſed it to be printed; but cauſing or procuring ſuch a Libel to be printed is not, as we apprehend, the Offence laid in the Indictment; it muſt be nothing leſs than actual Printing. In other Indictments for publiſhing Libels, you ſay, *publicavit et publicari cauſavit*, and thereby you are let in to give Evidence of either. But in a penal Law, and eſpecially in Caſes of High-Treaſon, your Lordſhip will in the ſtricteſt Manner conſtrue that only to be the Offence, which the expreſs Words of the Act of Parliament have made ſo, and not extend or give any equitable Latitude to it. However, if your Lordſhip ſhould be of Opinion, that this Part of the King's Evidence any ways affects the Priſoner upon this Indictment, we ſhall, according to our Inſtructions, be able to produce a great Number of Witneſſes to contradict what theſe Witneſſes have ſworn, and to give ſuch an Account of *Vezey*, that if we had no other Anſwer to his Evidence, his own Character would cut him down, and utterly deprive him of any Credit with your Lordſhip and the Jury.

We will call our Witneſſes, and hope the Priſoner's Caſe will appear to be ſuch, that we ſhall have your Lordſhip's Directions for his Acquittance.

WALTER HUTCHINSON, and GEORGE MATTHEWS, ſworn.

Mr. *Hungerford*. Mr. *Matthews*, Pray give my Lord and the Jury an account what you heard Mr. *Harper* and Mr. *Vezey* declare concerning this Accuſation.

Mr. *Matthews*. All I can give an account of is this. About the 5th or 6th of *June*, the 6th particularly, it being my own Birth-day, I came to my Mother's Houſe about Eleven o'Clock in the Morning, the Time I generally do, becauſe I do not live in the Houſe; a Perſon met me coming along in the Blue-coat Hoſpital, and told me there was ſomething Printing in our Houſe, in my Mother's Houſe, and deſired I would ſearch the Houſe; upon this I was very uneaſy, and directly went home and made all the Search I could; the Perſons they gave me Information of were *Vezey* and *Harper*, the Apprentice and Journeyman.

Lord Chief Juſtice. Who gave you this Information?

Matthews. A young Woman that met me.

L. C. J. What was her Name?

Matthews. It was my own Siſter; ſhe told me ſhe was afraid there was ſomething doing in our Houſe, becauſe they were up earlier than uſual. I made a ſtrict Enquiry, and could find nothing at all that was doing. Upon this, having a great Suſpicion, I took *Vezey* into my Cloſet, and aſked him, Have you printed any thing? Nothing, he told me, of any particular Title had been printed, but ſomething had been printed; and being done at an unſeaſonable Time, gave me a Suſpicion it was contrary to my Orders and Directions. Mr. *Vezey*, ſays I, hath there been any thing printed in this Houſe concerning or againſt the Government? No, there hath not. You know, ſays I, Mr. *Vezey*, that as my Brother happened to be under Misfortunes before, and through the Favour of the Government ſhewn to him he was diſcharged; therefore when he came into the Houſe again, I publickly gave Orders, that if ever they found he did, or talk'd any thing againſt the Government, they would come and give me Information, that I might take a proper Method to prevent it. Upon this *Vezey* owned I had given that publick Notice; but alſo, when my Brother came home——

Mr. *Ketelbey*. I believe, Mr. *Matthews*, you are going foreign to the Matter; I would have you go on with the thing in Queſtion, and come to the Matter in hand.

Matthews. Upon that, my Lord, I ordered a Lock to be put upon the Preſs-room Door.

Mr. *Ketelbey*. When was this done? now?

Matthews. No---a Twelvemonth ago.---I ordered a Lock, the Key of which Lock was always in the Cuſtody of the Preſs-man, never any thing was done then. But now to ſpeak to the Matter I am to ſpeak of---After this Information, I took *Vezey* into the Cloſet, and tax'd him with it; he there told me, and made a great many Imprecations, that he knew nothing of any thing done directly or indirectly, in my Mother's Printing-houſe, againſt the Government; and then *Harper* I interrogated, and he did publickly in the Printing-houſe, firſt in the Cloſet, then publickly in the whole Houſe, declare the ſame. I aſked them publickly, ſeverally and both together, whether they knew any thing printed in the Houſe directly or indirectly, againſt the Government, or no? They declared, they knew nothing directly or indirectly printed againſt the Government.

Mr. *Ketelbey*. How old is your Brother?

Matthews. I cannot exactly tell —— I was twenty-four Years of Age laſt *June*, and my Brother I take it is ſix Years younger than I.

Mr. *Ketelbey*. Is he an Apprentice ſtill?

Matthews. My Brother is an Apprentice ſtill, he was bound in *September* 1715.—He hath three Years yet to ſerve.

Mr. *Ketelbey*. Who is the Owner of the Printing-preſs?

Matthews. My Mother; but I have the Direction of it, and ſome ſmall Concern in it.

Mr. *Ketelbey*. What Servants are employed under you? Put them in Order and Degree, as I take it they are in the ſame Nature as in other Buſineſſes.

Matthews.

Matthews. There is the Maſter or Miſtreſs, and a Journeyman, the eldeſt ——— is generally looked upon to be the Head in that Way of Buſineſs.

Mr. *Ketelbey.* What Office hath he?

Matthews. That is as it happens.—The Compoſers; the Preſſmen, they are ignorant, ſilly Fellows, only made uſe of to take off the Sheets. Theſe are the Horſes, as they call them.

Mr. *Ketelbey.* The Compoſers, who are thoſe?

Matthews. They are Men generally better learnt.

Mr. *Ketelbey.* Who was the Head Compoſer in your Houſe?

Matthews. Mr. *Thomas Wiggens.*

Mr. *Ketelbey.* Who were the other?

Matthews. Mr. *Thomas Wiggens*, Mr. *Robert Staples*, and *John Smith.*

Mr. *Ketelbey.* What Share had your Brother in the Houſe?

Matthews. My Brother had no manner of Share or Right in the Printing-houſe.

Mr. *Ketelbey.* I think there is another buſy Officer, what is he?

Matthews. They generally have Boys, and ſometimes Men to be Runners, and Meſſengers to the Preſs. The Devil is generally the Boy, and ſometimes they dirty his Face, and by a metaphorical way of ſpeaking, they call him the Devil.

Mr. *Ketelbey.* I pray, what Character generally ſpeaking is *Harper* of?

Matthews. I deſire to be excuſed.

Att. Gen. Shew Mr. *George Matthews* that Paper. Look upon the Name ſubſcribed. Do you ſee it?——*Matthews.* I do.

Att. Gen. Whoſe Hand-writing is that?—*Matthews.* To give a direct and poſitive Anſwer to that is very difficult, you yourſelf muſt judge.

Att. Gen. Give me an Anſwer. I aſk you, Whether you know who writ that Name, *John Matthews?*—*Matthews.* No, I cannot take upon me to ſwear that, becauſe I did not ſee *John Matthews* write it.

Att. Gen. You are acquainted with your Brother's Hand-writing?

Matthews. I cannot ſay I am.

Att. Gen. Conſider, can you ſay you are acquainted with your Brother's Hand-writing, or you are not? Do you believe it to be his Hand-writing?—*Matthews.* I cannot directly ſay as to believing it, but I am not able to ſwear it.

Att. Gen. Have you never ſeen him write?

Matthews. I cannot ſay but I have.

Att. Gen. You have frequently ſeen him write.—I aſk you (mine is a direct Queſtion), Do you, or do you not, believe the Name *John Matthews* to be your Brother's Hand-writing, upon the Oath you have taken?

Matthews. Really I declare upon the Oath I have taken—according to the beſt of my Knowledge, I poſitively declare, I cannot take upon me directly to ſwear it is his Hand.

Att. Gen. I aſk you, upon your Oath, do you, or do you not, believe it to be his Hand-writing?

Matthews. I anſwered you the Queſtion before, very plain.

Att. Gen. That is no Anſwer to my Queſtion, Whether you believe it, or not believe it?—*Matthews.* Really, I cannot be poſitive.

Att. Gen. Why do you trifle with the Court? Cannot you ſay, whether you believe it, or not believe it?

Matthews. I ſay, if you pleaſe to give me leave to introduce what I have to ſay, I believe it is ſomething like it.

Att. Gen. You are to give an Anſwer, as well for the King as your Brother: Do you believe That to be his Hand-writing? or do you not believe it to be your Brother's Hand-writing?

L. C. J. Come, you muſt give an Anſwer, whether you do, or do not believe it.——*Matthews.* At the Time of this Paper being writ I did believe it; I cannot ſay but I do believe it now.

Att. Gen. I think you ſay, when this Paper was firſt writ, you believed it was; and you now believe it to be your Brother's Hand-writing.—When I aſked you whether you believed it or not, your Anſwer was, you believe it is ſomething like it. I aſk you, do you now believe it to be your Brother's Hand-writing or not, upon your Oath?

Matthews. I do not know what Anſwer to make.

Att. Gen. Cannot you ſay Ay, or No?

L. C. J. Let the Conſequence be what it will, you muſt give a direct Anſwer to the Queſtion; the Queſtion is not, whether it is your Brother's Hand-writing; but whether you believe it to be his Hand-writing?

Matthews. I have ſome reaſon to believe it.

Att. Gen. Don't let me miſtake you, I think you ſay you do believe it? Do you believe it is not your Brother's Hand-writing?

Matthews. Give me leave, let me ſtate the Queſtion; what you aſk me is, Whether I believe it is my Brother's Hand-writing? I do believe it.

Att. Gen. Then I aſk you now as to the Subſtance and Body of the Paper. Do you believe That to be your Brother's Hand-writing, or not?

Matthews. No, it is not, it is my Hand-writing.

Att. Gen. You believe the Name to be your Brother's, and the Subſtance is yours?——*Matthews.* Yes.

Att. Gen. Was you preſent when the Name *John Matthews* was ſubſcribed?——*Matthews.* No, I was not.

Att. Gen. I aſk you, whether you did not carry this Letter to Mr. Secretary *Craggs?*——*Matthews.* Yes, I did.

Att Gen. Did you not declare you brought it from your Brother?

Matthews. Yes, I did.

Att. Gen. Did you not then ſay, it was ſubſcribed by your Brother?

Matthews. No, I did not.

Att. Gen. Then who ſent you with this Paper, to Mr. Secretary *Craggs?*

Matthews. I might ſay I came from my Brother. I went firſt of all to the Secretary's Office, it was, I think, on a *Thurſday*, or a *Tueſday*, and the Regency was broke up; and upon this I aſked, Where Mr. Secretary *Craggs* was? Somebody ſaid he was gone to dine at my Lord *St. John*'s, at *Batterſea*. I went there, and deſired to ſpeak with Mr. *Craggs*. He ſent out Word, he would wait on me when he had dined; and he came out to me in the Garden. I told him, Sir, I have gotten a Paper from my Brother.

Att. Gen. Did you not bring this Paper from your Brother?

Matthews. How bring it from him?

Att. Gen. Did your Brother ever ſee it or read it?

Matthews. I cannot ſay my Brother read it, becauſe I never ſaw him read it.—Give me leave, my Brother was in *Newgate*, and lock'd up there; to ſay I ſee him read or ſign the Paper, I cannot.

Att. Gen. Did you not receive it from your Brother?

Matthews. I received it from him as I took it; there was a Paper brought to me, ſomething of this kind contained in it.

Att. Gen. What Paper are you ſpeaking of? I aſk you as to that Paper; Did you receive that Paper from your Brother, or did you not?

Matthews. I tell you, Sir, it was put thro' the Grate at *Newgate.*

Att. Gen. By whom?---*Matthews.* By my Brother.

Att. Gen. Into whoſe Hands?

Matthews. It was put into my Hands.

Att. Gen. That very Paper in your Hand was put into your Hands thro' the Grate, by your Brother?

Matthews. I believe it was ſo. I will tell you, if neceſſary I ſhould, any thing of that kind.——When we had read the Paper——

Mr. *Hungerford.* Prove it---you have not proved it.

Serj. *Cheſhire.* Mr. *Matthews*, I aſk you if you have ever had any Talk with your Brother about the Matters he was charged withal?

Matthews. What, about this Libel? I remember I have had ſome Diſcourſe with him about it.

Serj. *Cheſhire.* By the Oath you have taken, did he never own to you he aſſiſted in printing of it?

Matthews. I never troubled myſelf one way, nor the other.

Att. Gen. Let me not miſtake one Paſſage. At the Time your Brother delivered this Paper to you out of the Grate at *Newgate*, did he not deſire you to carry it to the Secretary of State?

Matthews. If you would give me leave——

Att. Gen. What did he ſay to you at that Time?

Matthews. I cannot remember any particular Words.

Mr. *Hungerford.* I did not obſerve that he ſaid the Letter was put thro' the Grate by his Brother into his Hand.———Do you ſay your Brother gave it you thro' the Grate?

Matthews. If I might have the Liberty of telling the Connexion of Circumſtances——

Att. Gen. I have not done with him, you break in upon us; I think you own the Body, the Subſtance of this Paper, is your Hand writing?

Matthews. Yes, Sir.

Att. Gen. How long was it after you writ the Subſtance of this Paper, before the Time your Brother put it into your Hands out of *Newgate?*

Matthews. I writ it in my Mother's Houſe; from thence I went to *Newgate*; I aſked for my Brother, he was locked up, and there was the Man called Mr. *Matthews*, and he came down; it was very dark, I could not ſee my Hand. I put the Paper thro', and he gave it me again, I believe in ſeven or eight Minutes Time.

L. C. J. Did you give it him?

Matthews. I put it thro' the Grate.

Att. Gen. Did you put it down in Writing of your own Head? or by whoſe Inſtructions?

Matthews. The Paper was brought to me by a Meſſenger; the Words to this Effect, that I will recollect, if I can. The Copy of the Paper intitled ſo and ſo, *Ex ore tuo te judico, Vox Populi Vox Dei*, &c. The Papers entituled by that Title were given to me by one *John Broderick*; one of them he gave me in *Cock-pit-alley*, *Drury-lane*; and the other he gave me at the *Black-boy*, ſomewhere by *Drury-lane.* Now in my Account as it ſeemed a very confuſed Paper, I drew it in a Hurry, with a little ſort of Addreſs, that I thought civil and handſome. Pleaſe to let me ſee the Paper.

Att. Gen. Ay, ſee the Paper. You ſay a Paper was brought to you, wherein *John Broderick* is mentioned to you as the Author of this Libel; that the Papers were given your Brother by one *John Broderick.*

Matthews. This Meſſage was brought to me in Writing.

Att. Gen. By whom?---*Matthews.* By one Mr. *Plunkett.*

Att. Gen. Whether did you form this Paper upon that?

Matthews. I tell you, I did form it ſo far as this; ſomething,---I made an Addition to it.------It was the current Opinion my Brother was the Printer of it.

Mr. *Bootle.* I would aſk you this, you ſay you had Intimation that the Copy from which this Libel was printed, was delivered by one *Broderick*; to whom was it delivered?

Matthews. I took it to be delivered to my Brother.

Att. Gen. My Lord, I am in your Lordſhip's Direction, whether it is not a proper Time to deſire this Paper to be read; with great Submiſſion, this ariſes upon the Evidence of Mr. *George Matthews*; he pretends to have added ſomething by way of Explanation.---I deſire this Paper, which he hath ſufficiently proved to be his Brother's Paper, and ſubſcribed by him, may be read.

L. C. J. You don't oppoſe the Reading of it?

Mr. *Hungerford.* Yes, my Lord, we do: if this Paper is read at all, it muſt be read to make out the Indictment: it is a Paper, as by what appears, is neither writ nor ſubſcribed by him.---The Gentleman ſays he gueſſes at it, and he ſays he doth not know that his Brother ever ſubſcribed or underwrit ſuch a Paper: ſo that it ſtands as a meer Cypher, and is no Manner of Evidence, therefore we hope it ſhall not be read.

Mr. *Ketelbey.* My Lord, we humbly conceive, there is not ſufficient Evidence for the Reading of this Paper. As to the Body, he writ it; as to the Subſcribing of it, he is not well acquainted with his Brother's Hand-writing, and cannot ſay he writ it. Then, my Lord, as to the

Buſineſs, of having the Paper from his Hands; he brought it to *Newgate*, he cannot be poſitive he delivered it into his Brother's Hands, or that he had it from his Brother. Therefore we muſt ſubmit it to your Lordſhip, whether they have produced any Evidence ſufficient to entitle them to read this Paper.

Attorney General. Notwithſtanding this Objection, I humbly inſiſt, that we are certainly entitled to the Reading of this Paper, on the Evidence given by this Mr. *George Matthews*. I beg leave to open the Paper. The Paper amounts to a Confeſſion of the Priſoner.

Mr. *Hungerford*, and Mr. *Ketelbey*. We pray, we may have your Lordſhip's Judgment.

Lord Chief Juſtice. The Queſtion now is, whether this Paper muſt be read?

Att. Gen. My Lord, let the Contents of this Paper be what it will, and a Paper proved in the manner as this is, we are to be ſure entitled to read it; what hath been ſworn, I dare ſay they cannot, as I humbly apprehend, controvert: Here is one Brother ſwears to the Hand-writing of another: That ſpeaks itſelf. Nobody can doubt who he ſwears it to, who believes it to be his Hand-writing; this alone entitles us to the Reading of this Paper, the Evidence of ſo near a Relation, who is, and muſt be acquainted with his Hand-writing, who ſwears poſitively to it. In all the Courſe of Experience I have ſeen, there cannot be a fuller Evidence to entitle us to read this Paper, than hath been given; there are other Circumſtances carry it ſo far, no Doubt can remain with your Lordſhip. This Paper is not only ſubſcribed by *John Matthews*, but dictated by *John Matthews*; how much leſs doth what he ſwears amount to? He ſays, he received a Paper from one Mr. *Plunkett*, who came from his Brother; he formed this Paper by that, ſomething he added; afterwards he delivered the Paper ſo formed into the Hands of his Brother; the Brother had it in his Cuſtody, after it was ſo delivered, ſix or eight Minutes, and it can't be ſuppoſed but he ſhould read it in that Time, and afterwards delivered it to him again with his own Hand, with Directions to carry it to the Secretary of State; this makes it as much his Paper as if he had written the whole Paper himſelf; the whole Paper had his Approbation, and it was made with a Deſign to carry it to the Secretary of State; with theſe Circumſtances, which are the Truth of the Fact, I inſiſt upon it, with great Submiſſion to the Judgment of the Court, that we are entitled to read it.

Lord Chief Juſtice. I take it, it is a common Caſe. Suppoſe a Trial between Party and Party, the common Method of proving a Man's Hand is, a Perſon is called who hath ſeen the Party write. He is aſked, whether do you believe it to be his Hand-writing, or no? Nothing more is expected, than that he hath ſeen him write, and believes it to be his Hand-writing. Mr. *Matthews* ſwears he hath ſeen him write, and he believes it to be his Hand-writing. He goes on further and ſwears, he received a Meſſage brought to him by *Plunkett*; upon which he went to *Newgate*, his Brother was called down to him, he delivered him the Paper, and in ſix or eight Minutes he came to him again, and delivered it him with his own Name to it, which he believes to be his Hand-writing.

Judge *Tracey*. We muſt have never an end of things, at this rate.

Lord Chief Juſtice. I think the Paper ought to be read; if my Brothers are of another Opinion, they will tell you ſo.

(*Then the Paper was read.*)

Clerk of Arraigns. Signed *John Matthews*—"I *John Matthews*, now "in the Maſters-ſide of *Newgate*, being heartily ſorry for the Crimes I "have been guilty of againſt his moſt ſacred Majeſty King *George*, and "his Adminiſtration; and from a thorough Conviction of my Errors, "an unfeigned Contrition for them, and out of a Deſire to ſerve his "Majeſty, do hereby make the following Declaration and Confeſſion, "*(viz.)* That the Papers, (entitled, *Ex ore tuo te judico, Vox Populi* "*Vox Dei*; to all true Lovers of Liberty, *Vox Populi Vox Dei*) were "both given to me, by one *John Broderick*, as alſo the Money for print-"ing them.

"And further I do declare, that the ſaid *John Broderick* took the foul "Proofs of the Papers aforeſaid from me, in order to correct them; and "when they were printed, fetched them away.

"And further I do declare, that the Place where the aforeſaid *John* "*Broderick* gave the Copy of the Paper, entituled, To all true Lovers of "Liberty, &c. was in *Cock-pit-alley*; and he the aforeſaid *John Broderick* "gave me the Copy of the other, entituled, *Ex ore tuo te judico, Vox* "*Populi Vox Dei*, &c. at the *Black-boy*, in *Stanhope-ſtreet*, both near "*Drury-lane*; the Place of his Abode, to the beſt of my Knowledge, is "in *Shire-lane*.

"Of all and every the Premiſſes herein contained, I am ready to make "Oath, when called thereto by the Government. I had three Guineas "*June* the 6th, and ſeven more the 19th, of the aforeſaid *Broderick*."

Priſoner. I aſk my Brother whether he can diſtinguiſh my Hand from another?

Lord Chief Juſtice. He hath ſworn already that he believes it to be your Hand.

Mr. *Hungerford.* I am not diſpleaſed that this Paper comes to light. Here is a Witneſs bound to do Service to a Brother in Priſon. Moved with Compaſſion, he forms a Paper of this Nature, not by any Inſtructions from the Priſoner at the Bar.

Att. Gen. My Lord, I hope they are not at Liberty to go on in this manner.

Mr. *Hungerford.* The Inſtruction is handed from *Plunkett*, not immediately from his Brother. There is nothing in this matter brings an Offence home againſt the Priſoner at the Bar, within the Statute.—— Pleaſe to call *Walter Hutchinſon*, and *Thomas Tovie*.

THOMAS TOVIE ſworn.

Mr. *Hungerford.* Mr. *Tovie*, what Account do you give of Mr. *Vezey*? How long have you known him?

Tovie. About a Year and Half.

Mr. *Hungerford.* What Character can you give of him?

Tovie. I can give him no Character at all, good or bad.

Mr. *Hungerford.* Hath he the Character of an honeſt Man?

Tovie. No.—Not about his Printing.

Lord Chief Juſtice. What Reputation and Character hath he among his Neighbours?

Tovie. I know none of his Neighbours, I am little acquainted with any but he himſelf, and I have not known him above a Year and a Half.

Mr. MOTT, and WILLIAM BODEN, ſworn.

Mr. *Ketelbey.* Mr. *Mott*, how long have you known *Vezey*?

Mott. I was never in his Company but once.

Mr. *Ketelbey.* What do you know about his Character? this general Character.—*Mott.* I know nothing of his general Character.

Mr. *Ketelbey. Boden*, Do you know *Vezey*?——*Boden.* Yes.

Mr. *Ketelbey.* What have you heard him declare?

Boden. I came here laſt *Monday* was Se'nnight to hear this Trial; he was got here, and he told me he was an Evidence in this Cauſe, and that after the Publiſhing of the Book, he bethought himſelf that he ſhould get into ſome Danger; ſo he went to the Mother of this *Matthews*, and told her, if ſhe would give him Money, he would keep out of the way; accordingly he went to *St. Albans*, and ſtaid there nine Days; but no Money coming, he could not ſtay out of the way, but muſt come to his Buſineſs.

Mr. *Ketelbey.* I don't know why we ſhould trouble your Lordſhip with any more Witneſſes; I ſhall therefore only beg leave to obſerve from the Purport of that Paper, which hath now been read, whether there is any thing contained therein, that could prove the Confeſſion of this Fact, that is now criminally objected to him?—There are ſome Particulars; he confeſſes in this Paper, he received a Copy, and delivered Copies back; but what we inſiſt on in behalf of the Priſoner is, that nothing in this Paper amounts to charge him with High-Treaſon, nor can properly be made uſe of againſt him on this Indictment.

Mr. *Hungerford.* The Offence he is charged with is, that he maliciouſly, adviſedly, and directly, did maintain and affirm, that the Pretender had a Right to the Crown of theſe Realms. Now, my Lord, with humble Submiſſion, this Paper, be it what it will, take it in the utmoſt Latitude, cannot be conſtrued to come up to this Indictment. As it ſtood before we called our Witneſs, it could not be read; but we are ſo unfortunate, by plowing with our Heifer, they've got it to be read; but then there is no Confeſſion of a Treaſon, or that he printed this Libel; there is a Story told that he received it of ſomebody, but there is nothing at all of the Confeſſion of the Offence, and therefore we ſtand, with reſpect to the Priſoner at the Bar, in the ſame Circumſtances we were in antecedent to the Reading of that Paper; and as to the Libel, it doth not contain ſuch a Treaſon as the Act of Parliament requires, and they have laid in the Indictment.

Att. Gen. My Lord, before I reply, I deſire to call a Witneſs or two to ſupport the Credit of the Evidence we have given.

ROBERT BENTLEY ſworn.

Att. Gen. Mr. *Bentley*, Do you know *Lawrence Vezey*?

Bentley. Yes, Sir, I have known him ſome time.

Att. Gen. How long?

Bentley. About ſix or ſeven Years, I don't ſee him perhaps once in a Twelve-month.

Att. Gen. Are you acquainted with his Character?

Bentley. I don't know but he works honeſtly for his living.

ROBERT PROCTER ſworn.

Att. Gen. Do you know Mr. *Vezey*?——*Procter.* Yes, Sir.

Att. Gen. How long have you known him?—*Procter.* Four or five Years.

Att. Gen. What is his Character?

Procter. I never heard any thing ill of him.

Att. Gen. Hath he the Character of an honeſt Man?

Procter. I never heard nothing but that he is an honeſt Man.

Att. Gen. My Lord, I won't trouble your Lordſhip to call any more Witneſſes to ſupport the Credit of *Vezey*; it would have been neceſſary if they had affected him, but I think the little Imputation thrown upon him is ſufficiently anſwered.

My Lord, I am ſure I ought to have a principal Regard to your Lordſhip, conſidering how much Time hath been already ſpent, and ſome Conſideration to myſelf, therefore ſhall trouble your Lordſhip as little as may be by way of Reply.

My Lord, as to the Evidence that hath been offered on the behalf of the Crown: My Lord, I muſt ſay, that even no Occaſion hath been given, in my Opinion, by any Obſervation I have heard made by the Counſel for the Priſoner, to make any Anſwer by way of Reply, had nothing been miſrecited. But I ſhall leave that to your Lordſhip's ſtating to the Jury, which I am ſure your Lordſhip will do with the utmoſt Juſtice, and more I neither aſk nor deſire.

As to this ſupplemental Evidence I have offered, I muſt beg leave to anſwer, that they would have it that nothing collected from this Paper in particular amounts to the Offence, much leſs confirms what I have offered to prove, that he was the Printer of this Libel.

I think it impoſſible for any that hath heard and conſiders this Evidence, to underſtand this Paper any otherwiſe than a Confeſſion by the Defendant, that he printed this Libel; that is the Fact to be tried; what elſe is the amount of thoſe Words? *I* John Matthews, *out of a Deſire to ſerve his Majeſty, do hereby make the following Declaration and Confeſſion, That the Papers, intituled*, Ex ore tuo te judico, Vox Populi Vox Dei, *were both given to me by one* John Broderick, *as alſo the Money for printing them*; certainly this is a Confeſſion that they were delivered to him; the Papers from whence the Impreſſion was taken, that is the Manuſcript, that is delivered to him by *John Broderick*, in order to have it printed, and at the time he gave him Money for the printing them; doth not this neceſſarily imply, that he received the Papers and the Money, either to print it himſelf, or procure them to be printed? Is not this a neceſſary Implication without any forced Conſtruction? And in the Concluſion he ſays, *I had three Guineas given me the Day the Impreſſion was wrought off, ſeven more the 19th, of the aforeſaid* Broderick. The very Day it was wrought off, the very Day that he paid fourteen Shillings to the Men that aſſiſted him, he confeſſes that he had three Guineas from *John Broderick*.

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My Lord, if this doth not amount to a Confeſſion that he received a Paper in order to have it printed, that he did actually print this Paper, it muſt amount to that or to nothing. But take it in Conjunction with the reſt of the Evidence given, when he ſhall confeſs that he received the Papers ſo entituled from *Broderick*, with the Money for printing them; when it is proved that this very Libel is ſo entitled, as deſcribed in this Paper; that he directed the printing that Libel with the ſame Title; that he paid for printing it the very ſame Day, he ſays in his Confeſſion, he received Three Guineas from *John Broderick*. Whatever Import this may have, taken ſeparately, in Concurrence with what hath been offered in Evidence, it muſt amount to an abſolute and direct Confeſſion, that he was the Printer of this Libel in Judgment before your Lordſhip.—— I ſhall ſay no more in Anſwer to this Paper.

The Evidence of *George Matthews* is ſo far from being doubtful, that it is confirmed by the Evidence given by the Witneſſes for the Crown. Mr. *Matthews* had heard, by his Siſter, that ſomething was done that very Day againſt the Government; he went directly to the Printing-Houſe, called for *Vezey* and *Harper*, examines them firſt in his Cloſet, then afterwards makes a Declaration in publick, intimating (as it comes out) this very Man had received Information, that ſomething of that Nature was doing.

What is to be inferred from the reſt of his Evidence, becauſe *Vezey* and *Harper* did not think fit to own they were concerned in printing it, therefore it is to be inferred the Fact is not ſo? So far from any ſuch Concluſion, *Vezey* doth not pretend to know any more of the Paper than Part of the Title, therefore he might juſtly anſwer the Queſtion; when the Man tells you, upon his Oath, he read nothing but Part of the Title, therefore ſo much of the Evidence given by him, goes in Confirmation of what *Vezey* ſwears; nothing he hath ſworn throws any Imputation, nor carries any Inconſiſtency with what *Vezey* ſays.

I ſhall trouble your Lordſhip no further as to the Evidence.

There are ſome Things of which I am obliged to take Notice: My Lord, I think both the Gentlemen of the other Side inſinuate as if this was a temporary Act. Mr. *Hungerford* would not ſay, that the Law, on which this Proſecution is founded, is a temporary Law; but the Inſinuation came from him, and is followed by Mr. *Ketelbey*, as if that Branch of the Statute, on which this Proſecution is founded, had not, at this Time, an Exiſtence. Mr. *Hungerford* ſays, it was calculated not to be determined with the Demiſe of the Queen, but if it operated ſo far as to bring the King to the Throne, it had its Effect. My Lord, there is not the leaſt Colour or Foundation ariſing from the Words or Nature of the Act of Parliament for ſuch an Objection.——

There are four diſtinct Proviſions: The firſt is the Perſon of the Queen; that if any Perſon or Perſons ſhall, maliciouſly, adviſedly, and directly maintain and affirm, that our Sovereign Lady the Queen, that now is, is not the lawful or rightful Queen of theſe Realms, *&c* The whole Tenour following relates to the Title on which the Settlement of the Crown is founded; and it is penned, not in Words perſonally, but in Words that carry a Perpetuity. That Branch on which the Proſecution is founded, is in theſe Words: Or that the pretended Prince of *Wales*, who now ſtiles himſelf King of *Great Britain*, or King of *England*, by the Name of *James* the Third, or King of *Scotland*, by the Name of *James* the Eighth, hath any Right or Title to the Crown of theſe Realms. This the Law hath provided againſt, and made it High-Treaſon, and it is fit it ſhould be ſo. The next Proviſion was for ſecuring the Succeſſion: Or that any other Perſon or Perſons hath or have any Right or Title to the ſame, otherwiſe than according to an Act of Parliament, made in *England*, in the firſt Year of the Reign of their late Majeſties King *William* and Queen *Mary*, of ever bleſſed and glorious Memory, intituled, *An Act declaring the Rights and Liberties of the Subject, and ſettling the Succeſſion of the Crown*; and one other Act made in the twelfth Year of his ſaid late Majeſty, King *William* the Third, intituled, *An Act for the further Limitation of the Crown, and better ſecuring the Rights and Liberties of the Subject*; and the Acts lately made in *England* and *Scotland* mutually for the Union of the two Kingdoms. It is plain by the Connection, Or that any other Perſon or Perſons, *&c.* which ſhews that the Proviſion here was intended to go along with the Settlement, much leſs to determine with the happy Acceſſion of his Majeſty to the Crown, that Minute of Time which placed his Majeſty on the Throne. So the fourth Part: Or whoſoever ſhall deny the Right or Power of Parliament, to make Laws and Statutes of ſufficient Force and Validity to limit and bind the Crown, and the Deſcent, Limitation, Inheritance, and Government thereof. This is one Foundation of his Majeſty's Title to the Crown; this is a Principle will remain as long as the Government itſelf.

My Lord, I would not have ſaid ſo much, if it had not been from the Nature of the Objection. This is a Law, ſay they, that hath not been put in Execution ſince it was made; in the Courſe of fourteen Years Time, there hath been Nobody found guilty on it, not one Proſecution. There is no Inſtance of any Law neceſſary to be enforced but as far as Juſtice will admit, no ſuch Inſinuation as this ſhould paſs in the World, for the Encouragement of People to offend; but it muſt do it in an effectual Manner, if they are perſuaded that the Law is not in Being. My Lord, a great deal hath been ſaid on the Learning and Doctrine of Innuendoes; there hath not been a ſolemn Caſe of the Learning of Innuendoes as was thought material, but hath been quoted, as though ſome Occaſion was given for it by this Proſecution. The Gentlemen have thought themſelves intitled to draw in all that hath been ſaid on this Head, tho' there is not the leaſt Foundation, on this Proſecution, to take any Notice of any Thing that hath, in former Times, been condemned on the Account of Innuendoes; the Office of an Innuendo is no more than to explain, no more than a Predict; but if in an expreſs Averment in the Body of the Indictment, the Innuendo is put there to explain that Averment; in ſuch a Caſe, there never was a Time or Inſtance that any Hardſhip was imputed to make an Innuendo, nor any ill Conſequence; now, my Lord, there are two Averments, that he the Priſoner by printing the Libel in the Indictment *de & concernen'* the Perſon deſcribed by the Statute to be the Prince of *Wales*, and of and concerning the Crown of theſe Realms; the Innuendoes following relate to theſe two Facts expreſly averred: Will theſe Gentlemen ſay, this is making a wrong Uſe of an Innuendo? No, it is not; this Uſe of Innuendoes hath been juſtified by the ſame Authority that condemns them.

It lies upon this; and what the Jury are to try, is, whether upon the Evidence, they are not neceſſary and fully proved by the Libel itſelf. As to the firſt, who is this Chevalier, how then comes it by an Innuendo? I believe, my Lord, it won't be pretended in any Caſe (the Caſe of any Civil Action), that the Perſon to be found guilty of High-Treaſon on this Act of Parliament, cannot be convicted unleſs he made uſe of the ſame Terms, the ſame Words, as are in the Act of Parliament. My Lords, there is no Colour, no Pretence to ſay it; if there be ſuch a Deſcription of the Perſon in the Libel; that the Jury on their Oaths, who are to conſider on it, cannot but neceſſarily believe, cannot otherwiſe believe but to be the Perſon, that is ſufficient.

That this is ſo is moſt apparent, from the *Solemnity of the Chevalier's Birth, the moral Impoſſibility of putting an Impoſter on the Nation, and the Diſappointment in the Attempt of proving him ſo, I think is Demonſtration*, &c. If this doth not mean the Pretender, I would be glad if they had told us, who it is. Is it not notorious, that theſe are Circumſtances that relate to the Perſon pretending to a Right to the Crown of theſe Realms? That thus to deſcribe him doth not amount to a ſufficient Deſcription, Nobody that reads it can doubt, though the Name uſed in the Act of Parliament is not followed; it goes on, *And the great Opinion all Courts have of this unfortunate Prince's Virtues, ſhews he only wants to be known by us to be admired, that we only want the Enjoyment of him to make us happy.* What other Prince is it? Who is it? Can it be ſuggeſted to be any body elſe here meant but the Pretender? What is the Concluſion of the Libel? The maintaining that ſuch and ſuch Perſons are *Jacobites*, and an Innuendo to that, that was not objected to; but if the Subject of this Libel be true, that he hath an hereditary Right, a Right by the Voice of the People, and as it is a limited Monarchy, then they muſt own his Title: The Title of whom? Of the Perſon that ſtiles himſelf King *James* the Third. That plainly ſhews who it is that is meant in the former Part of the Libel; and that this hath relation to the Crown of theſe Realms. I muſt ſay, it can relate to nothing elſe; the Buſineſs is to prove the Right: Whether it be hereditary, by the Voice of the People, or a limited Monarchy. The Concluſion of the Libel is to admoniſh the People to throw off this arbitrary Government, and not be ignorant of their Strength; theſe are Averments the Jury are to enquire into, and the Innuendoes are not ſtrained, but plain, and ſuch as ariſe on the reading of the Libel; and ſuch as the Gentlemen themſelves have not been able to invent any other Conſtruction for. They ſay, here is no direct Averment. Mr. *Hungerford* hath endeavoured to make ſome Difference between maintaining and affirming; he is proving Arguments and drawing Concluſions; is this maintaining and affirming? Here is maintaining by Arguments, by Proof, by ſuch as the Libel ſays amounts to a Demonſtration: Say they, here is no poſitive affirming? What is the firſt Part of the Libel? If hereditary Right be any Recommendation, he has that to plead in his Favour. Mr. *Hungerford* ſays the Sentence begins with an *If*, and is no Affirmation at all; and he ſays it cannot amount to an Affirmation, that the Pretender hath a Right to the Crown of theſe Realms; but I apprehend the neceſſary Senſe muſt be, he hath that, he hath ſuch a Right to plead in his Favour. The Aſſertion is, *If hereditary Right be any Recommendation, he hath that to plead in his Favour*; ſo here is more than a plain Aſſertion, he hath that to plead to convince others, that he hath this Right.

My Lord, if that won't do, what is the Concluſion? *The Chevalier being endowed with all princely Virtues, ſo that all Rights concur in him*; Is not that an affirming, the ſtrongeſt Way of affirming by Concluſions from Premiſſes? So that all Rights concur in him, as well all other Rights as a Right to the Crown; they would have it relate to princely Virtues; that all Rights, that is, all princely Virtues concur in him.

My Lord, it is impoſſible there can be more full, direct, poſitive affirming of ſuch a Right in this Libel, than both theſe Aſſertions import.

My Lord, I don't remember any Thing elſe I think neceſſary to trouble your Lordſhip with. My Lord, I ſay, theſe are all, at leaſt the moſt material Objections that have been made by the Gentlemen of the other Side, to the Proof we have given in order to bring this Crime within the Act of Parliament. Whether this Act was temporary, and determined upon the Death of the late Queen, and the Eſtabliſhment of the Succeſſion in the Houſe of *Hanover*, I am willing to go into that Queſtion now, if your Lordſhip and the Court think fit to give your Opinion: if not, I am ſure the Gentlemen that ſpeak after me, will ſupply any Thing that I have omitted.——

My Lord, I apprehend this is a concluſive Evidence againſt the Priſoner, as to the Fact charged, that he by printing, maliciouſly, adviſedly, and directly maintained and affirmed, that the Pretender hath a Right to the Crown of theſe Realms; not in the very expreſs Words of the Act of Parliament, no more was it neceſſary to make uſe of the Word *Pretender*, but in Terms that amounted to that, and can bear no other Conſtruction than that he hath maintained and affirmed, that the Pretender hath a Right to the Crown of theſe Realms.

Mr. Serjeant *Cheſhire*. My Lord, I beg Leave to make ſome few Obſervations on what the Gentlemen on the other Side have ſaid; and the firſt Objection that they make is, that this is a Proſecution on a Law, which is determined on the Demiſe of the late Queen, and by his Majeſty's happy Acceſſion to the Throne, and the Government taking place in the Houſe of *Hanover*; the Reaſon of the Act hath taken Effect, and therefore the Act ceaſes. For my Part, I think it was very becoming *Mr. Attorney General* to take notice of it; but to dwell on that Matter, as if it deſerved an Anſwer, I think will be unbecoming me. What would be the Conſequence, but to let any villainous Libeller be at Liberty to treat his Majeſty as an Uſurper? To call out on the People, how long will they be ignorant of their Strength? To ſuppoſe this, is to ſuppoſe the Act of Parliament ſo very weak, that it doth not become me any farther to debate it.——Therefore I forbear to purſue it any farther.

There ſeems to be three other Things I beg Leave to take Notice of: They ſay we have not proved the Charge, there is an Inconſiſtency in the Evidence, and the Facts are not proved. I ſubmit to your Lordſhip, if poſſible, if the Evidence that hath been given in this Caſe won't ſerve, what Evidence can? Can it be expected when a Man is guilty of High-Treaſon, if he prints ſuch a Libel, will call Witneſſes to it, tell them the Contents of it? It is not to be expected, but in a clandeſtine Way to be ſtolen into People's Pockets, and read in Corners; and to expect ſtronger Evidence, is to expect an Evidence of which

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the Nature of the thing is not capable; if there is the leaſt Weakneſs in the Evidence, they have taken care to ſupply it. As to the calling *George Matthews* for a Witneſs, if I had been a Friend to the Priſoner, I ſhould have reckoned myſelf very unhappy in ſo doing; can it be otherwiſe, than that natural Inclination ſhould prevail upon him to be very tender in this Point? But this Man hath given the ſtrongeſt Evidence, that if we had not half the Evidence, that would have ſupplied it; doth he not come to the very Day? "The 6th of *June*, my Birth-day, I met my "Siſter." Firſt he was met by a Woman, ſhe had a great Suſpicion of it; and it was he, that is the Brother, was to deliver the Brother. "My Siſter bid me take care, there was ſomething doing in our Houſe, againſt the Government; I myſelf, upon Examination, had great Reaſon to ſuſpect it." If this was known in the Family, if the Siſter told of it, the Brother examines into it; doth this weaken the King's Evidence, or doth it not ſtrengthen it? Then what he hath written and his Brother hath ſigned, that hath determined it, in the Priſoner's owning and confeſſing it; and what he would verify with his Oath, if required.

But ſuppoſing (ſay they) this Charge is believed to be true, yet the Evidence doth not come up to a Charge of printing. If I took Mr. *Hungerford* right, he ſaid, a Charge of printing muſt not be on the Man that actually ſerves as an Inſtrument in the Art of Printing; will you ſay this Man is guilty? Yes, every one of them. But ſurely that Man will be ſo that riſes out of his Bed to call theſe Perſons up early, and tells them he hath a Jobb to do, and takes upon him the Office of the black Boy for Expedition, and corrects it with his Pen, bags it up and ſends it away. Is not this Man guilty? I would not have every Compoſer in this caſe be guilty of printing, if it could be ſuppoſed that a Compoſer did not know what it was, which it would be hard to ſuppoſe, becauſe they are Men of Letters; but ſure the Man that from the Original Manuſcript ſet it in the Form, corrects it; it is once wrong, and he makes it right; doth of the one Part one Thouſand, of the other Part one Thouſand; bears ſuch a Share in the Printing as is within this Act of Parliament, or elſe you will have no Offender upon it.

My Lord, in relation to this Indictment, they ſay there muſt be a direct Charge, that he maintained and affirmed that the Pretender hath a Right and Title to the Crown of *England*; they ſay true; and if there be that Term uſed, by which it is commonly allowed is meant and underſtood the Pretender, we aſked no forced Conſtructions or ſtrained Explanation and unnatural Innuendoes, God forbid we ſhould; we hope and expect, in Juſtice, there will be the ſame Conſtruction of thoſe Words as is uſually given to them, when uſed in Speech in all other Caſes.

I think that what they went upon here, is *hereditary Right*; and Right to the Crown of this Kingdom is not mentioned in this Libel; there is an Innuendo (Innuendo, *jus hereditarium ad coronam hujus regni)*; be pleaſed to conſider what the Nature of this Thing is; I don't know what the Uſe of Speech is, but to be underſtood.

I don't doubt but every body takes the Chevalier and the Pretender to be the ſame Perſon; then this Perſon, this Chevalier, whoſe Birth was ſo ſolemn that it was a moral Impoſſibility of putting an Impoſtor on the Nation, and hath perſonal Virtues and Endowments, that we only want an Opportunity to know him to admire him, and only want the Enjoyment of him to make us happy; Now what one Perſon in the World can make the People of *England* happy but the King?

But pleaſe to conſider, when they ſpeak of Right, the Subject-matter muſt needs be a Right and Title to the Government and Crown of *England*. Say they, in three Remarks, whether it be hereditary Right, the Voice of the People, what Right the Voice of the People gives; and the third Remark is, limited Monarchy; what can that be applied to, but a Kingdom, when it is affirmed that the Pretender hath all theſe Rights? That, Gentlemen, I do rely upon, is an expreſs affirming and atteſting, that he hath all theſe Rights, and conſequently a Right to the Crown of theſe Realms.

Mr. *Lutwych*. My Lord, I ſhall trouble your Lordſhip with ſaying but very little: The Priſoner hath been ſo unfortunate, by his Defence, to ſtrengthen and confirm our Evidence. I ſhall only mention two or three Things inſiſted upon by the Gentlemen of the other Side, by way of Objection; the one was, and particularly by Mr. *Hungerford*, that it is not every mechanical Writing or Printing which is an Offence againſt this Act of Parliament: The Perſon, ſays he, is a Servant, an Apprentice, employed in this Trade of Printing, and is not as a Printer within this Act of Parliament: Surely a Printer may be within this Act of Parliament: But I muſt ſubmit it, on the Nature of the Caſe, it doth not appear he acted as a Servant, but as a Maſter; acted ſo throughout the whole Affair; paid the other People their Wages; received the Copy himſelf, and undertook the whole Buſineſs, tranſacting it all. This is what the Evidence prove, that he aſſiſted in every Act of printing; therefore, as to the Art of Printing, if that is an Excuſe becauſe it is a Trade, and ſo not within this Act of Parliament, if the Printer won't diſcover the Author, Nobody can be convicted on this Act. As to the Caſe of the Innuendoes, we muſt ſubmit that to your Lordſhip, whether there is not a poſitive Aſſertion, which the Jury are to try, whether the printing *de & concernen'* the Perſon mentioned in the Indictment, is not printing *de & concernen'* the Pretender; this being left to the Jury, you have a fair and equal Trial, whether this Perſon in the Indictment, is intended by him or no. I don't know how any Indictment can be framed, unleſs a Man takes this Method; it is impoſſible that any Libel ſhould be formed ſo, to have every Word of the Act of Parliament in it: Then it is proper to bring it in, in this uſual Method, by Innuendoes; I take it, without theſe Innuendoes; and if he hath printed *de & concernen'* a Right to the Crown of theſe Realms; and that is brought in by an Innuendo a Right to the Crown of theſe Realms; and that Matter being found by the Jury, that this Paper is printed *de & concernen'* ſuch a Right, that Matter of Fact being ſo found, and we apprehend there is ſufficient Evidence for it, nothing ſo poſitively aſſerted; where is there any forced Conſtructions occaſioned by the Innuendoes? as to ſay, when all Rights concur in him, is to ſay he hath a Right to thoſe Virtues; that is very unintelligible to me, and ſeems to be a ſtrained Conſtruction indeed: We ſubmit it to your Lordſhip on the whole Matter, whether we have not plainly proved the Priſoner at the Bar to be guilty of this Indictment; the reſt of the Matters we muſt ſubmit to your Lordſhip's Direction.

Lord Chief Juſtice. One thing I muſt mention to you, whether or no this Clauſe of the Act of Parliament is in force? You ſay, the Act is temporary, and determined upon the Demiſe of the late Queen, and the Eſtabliſhment of the Succeſſion in the Houſe of *Hanover*.

Mr. *Hungerford*. I did not ſay it was temporary, I did ſubmit it whether it was calculated for ſuch a Caſe as the Priſoner's is ſuppoſed to be.

Lord Chief Juſtice. If one Part is calculated for the Queen during her Life, ſo the other Part is calculated for the Pretender as long as he lives; there is as much reaſon to calculate the one for the Life of the Pretender, as the other for the Life of the Queen: If you think there is any Doubt in it, I muſt deſire the Opinion of my Brethren.

Mr. *Hungerford*, and Mr. *Ketelbey*. No, my Lord, we had never any ſuch Thought of it, nor don't inſiſt upon it.

Lord Chief Juſtice *King*. Gentlemen of the Jury, this hath been a long Evidence; I will endeavour to ſtate the Matter as well as I can. I hope I ſhall not miſtake; if I do, my Brothers will ſet me right.

Gentlemen, This is an Indictment upon a Statute made in the Time of the late Queen. It is an Act intituled, *An Act for the Security of her Majeſty's Perſon and Government, and of the Succeſſion to the Crown of* Great Britain *in the Proteſtant Line*. By that Act it is enacted, "That if any "Perſon or Perſons from and after the 25th Day of *March* 1706, ſhould "maliciouſly, adviſedly, and directly, by Writing or Printing, maintain "and affirm, that our Sovereign Lady the Queen, that now is, is not "the lawful and rightful Queen of theſe Realms; or that the pretended "Prince of *Wales*, who now ſtiles himſelf King of *Great Britain*, or "King of *England*, by the Name of *James* the IIId, or King of *Scotland* by "the Name of *James* the VIIIth, hath any Right or Title to the Crown "of theſe Realms; or that any other Perſon or Perſons hath or have any "Right or Title to the ſame, otherwiſe than according to an Act of Par-"liament made in *England*, in the firſt Year of the Reign of their late "Majeſties King *William* and Queen *Mary*, of ever bleſſed and glorious "Memory, intituled, *An Act declaring the Rights and Liberties of the Subject, "and ſettling the Succeſſion of the Crown*; and one other Act made in *England* "in the 12th Year of the Reign of his ſaid late Majeſty King *William* "the IIId, intituled, *An Act for the further Limitation of the Crown and better "ſecuring the Rights and Liberties of the Subject*; and the Acts lately made "in *England* and *Scotland* mutually for the Union of the two Kingdoms; "or that the Kings or Queens of the Realm with and by the Authority "of Parliament are not able to make Laws and Statutes of ſufficient Force "and Validity to limit and bind the Crown, and the Deſcent, Limita-"tion, Inheritance, and Government thereof; every ſuch Perſon or "Perſons ſhall be guilty of High-Treaſon, and being thereof lawfully "convicted, ſhall be adjudged Traytors, and ſhall ſuffer Pains of Death, "and all Loſſes and Forfeitures as in Caſes of High-Treaſon."

I mention only that Branch of the Statute, becauſe the Indictment is only on that Branch.

Gentlemen, this Indictment ſets forth, That the Priſoner at the Bar, that he, as a falſe Traytor to our Sovereign Lord the King, after this 25th *March* 1706, to wit, the 10th Day of *June* in the 5th Year of the Reign of our now Lord the King, at *London*, in the Pariſh of *St. Botolph* without *Aldersgate*, in a certain falſe and treaſonable Libel, which he the ſaid *John Matthews* then and there maliciouſly, adviſedly and traitorouſly printed, intituled, *Ex ore tuo te judico, Vox Populi Vox Dei*, of and concerning the Perſon in the Life-time of King *James* the Second, late King of *England*, &c. pretending to be the Prince of *Wales*, and after the Deceaſe of the ſaid late King pretending to be, and taking upon himſelf, the Stile and Title of King of *England*, by the Name of *James* the Third, and of and concerning his Right to the Crown of *Great Britain*, he did maliciouſly, adviſedly, directly and traitorouſly declare, maintain and affirm, in one Part thereof, in theſe Words, *That from the Solemnity of the Chevalier's (meaning the Pretender's) Birth, the moral Impoſſibility of putting an Impoſtor upon the Nation after the manner pretended, and the Diſappointment in the Attempt of proving him ſo, I think it's Demonſtration, if* Hereditary Right *be any Recommendation, he has that to plead in his Favour; and all Aſſertors of limited Monarchy muſt allow, that ought to be preferred, if the Perſon having it is endowed with other Qualities fit to govern; and the great Opinion all Courts have of this Prince's Virtues ſhews, he only wants to be known by us to be admired; and we only want the Enjoyment of him to make us happy*; and in another Part thereof, in theſe Words, *I* (meaning himſelf the ſaid *John Matthews) will conclude with three Remark. Firſt, That every Aſſertor of Hereditary Right muſt be a Jacobite.* Secondly, *That every Whig that makes* Vox Populi *his Rule of Government muſt be ſo.* Thirdly, *Every Aſſertor of limited Monarchy muſt be ſo; the Chevalier* (meaning the Pretender) *being endowed with all princely Virtues, ſo that all Rights concur in him.* There is another part of the Indictment generally, that he, the ſaid *John Matthews*, the ſame Day and Year, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, in the ſame Libel, maliciouſly, adviſedly and traitorouſly did declare, maintain and affirm, that the Perſon in the Life-time of *James* the Second, late King of *England*, pretending to be the Prince of *Wales*, and after the Deceaſe of the ſaid late King pretending to be, and taking upon himſelf the Stile and Title of King of *England* by the Name of *James* the Third, hath a Right to the Crown of *Great Britain*.

This is the Indictment wherewith the Priſoner is charged: Now whether he be guilty or no, that you are to inquire on the Evidence that hath been given. In order to make out this Charge, the firſt Witneſs that is called was *John Hutchins*; the Subſtance of his Evidence was, That in the Morning he came to the Printing-houſe of his Mother Mrs. *Matthews*; he ſays, one *Thomas Roberts* went with him; that the Priſoner at the Bar was in Bed; that *Thomas Roberts* ſeized his Pockets, and he ſee him take out two Papers, which he delivered to him; he ſays, there were other Papers in the ſame Room, and likewiſe in another Room, and he went into that Room, and in a Box there he found other Papers; ſome were found in the Room where he lay, others in another Room, but which were in the one

and which in the other, that he can't positively say; they were found in the one or in the other; and he asked the Prisoner at the Bar, whether they were his?——He says, he owned them all to be his. He says, within two Hours after he put his Mark upon them, and he is sure these are the self-same Papers. Afterwards, when he was sent to *Newgate*, a pretty while afterwards he says to him, You must go to *Newgate*. What, says he, must I go to *Newgate?* Upon that he advised him to tell who was the Author of the Libel. The Answer he made was, I know I shall be hanged; I have nothing to do but let my Money fly to get a good Jury.—— This is the Substance of that Evidence, both upon the Examination and the Gross-examination. The next Witness is *Thomas Roberts*; he swears he was with *Hutchins*; and he says, he went into the Room before *Hutchins*, and he secured the Sword which laid upon the Coat, and then he secured the Pockets, and *Hutchins* went into another Room and brought out some Papers: He says, afterwards they took up the other People, the Prisoners: They could not go all in one Coach; he went in one, and *Hutchins* in another. Then you have it from him that they marked them; and he is positive they are those Papers that were found upon him. As for these Papers, what they are, I will give you an Account when the Papers come to be read. He was asked about the Papers taken out of his Pocket; he says he gave them to *Hutchins:* As for those two Libels taken out of his Pocket, he swears positively when he came into the Room he was in Bed, and he took them out of his Pocket. He was asked as to the Proof-sheets, and the several Papers produced, and he swears to them all. He says, the 9th *September* afterwards, when they had Orders to carry him to *Newgate*, when he came into his Room, the Prisoner asked him if he was going to *Newgate?* Says he, Is there a Bill found against me? He told him there was a Bill found against him of High-Treason. He said he deserved to be hanged, and he had nothing to do but to let the Money fly to get a good Jury; but as for those who set him to Work, they were ungrateful Dogs, and good for nothing except over a Bottle of Wine or a Pot of Beer.——These are the Witnesses that prove the finding of these Libels and the other Papers in the Custody of the Prisoner, and the Prisoner's owning them.

The next Witnesses were to prove the Printing of them. There are two Witnesses called, *William Harper* and *Lawrence Vezey*. *William Harper* is an Apprentice to Mrs. *Matthews*. He says, on a *Saturday* Morning, which was the 6th of *June*, about four o'Clock in the Morning, the Prisoner called him up; he knew he called him up for printing this Paper, because, he said, the Day before he heard him say he had a Jobb to do: When he came up, he found *Lawrence Vezey* there, and he saw the Prisoner, and he helped the Prisoner and *Vezey* to work off this Libel. He remembers the Composing Part of the Paper, and he saw the Prisoner at the Bar compose Part of the Paper now produced, and the Manuscript did lie before him; and that he composed Part of it, but whether all he cannot tell; but says, he composed Part, the Manuscript lying before him; and he believes the Papers now produced are the same.

There is likewise another Paper produced, which is wrong imposed: Now the wrong imposed Paper was found upon him. He says, there was a Sheet wrong imposed, and the Prisoner at the Bar came up and told him he had transposed the Pages, and he must alter it; afterwards it was right imposed; he saw it when it was wrong, and afterwards when it was right imposed, and the Prisoner at the Bar did it; he says, that as they printed them, the Prisoner at the Bar took them off the Press, and there was nigh a Thousand printed, and they had done about eight or nine o'Clock in the Morning; and then the Prisoner bundled them up, and carried them out of the Printing-Room, and said one staid for them. He says, to the best of his Belief, the Paper now produced was printed off at that Time; he knows no other Paper printed then; he says, he at that Time read the Title, and that is all.

Gentlemen, He was asked upon his Cross-examination, whose this Printing-House was? He says, it is Mrs. *Matthews*'s; but the Prisoner, who is her Son, always carries himself as Master; and he doth not know whose Hand-writing this Manuscript is.

Then there is another, the next Witness, *Lawrence Vezey*; he swears, That he belonged to Mrs. *Matthews*'s Printing-House; he came there in *June* last, in order to go to Work: When he was in the Court-Yard, he called out, *William*, who was the Apprentice; who opened his Window and told him the Door was open: Upon that he went into the Press-Room, and while he was there his Master the Prisoner came up and told him, he had a Jobb to do; that he afterwards went to Market; that in the mean time, when he came back, there was a Form composed of *Vox Populi Vox Dei*; who composed it he can't tell; but the Prisoner told him, he had transposed the Pages, and he took it out of the Form, and lays it on the Stone, and transposed it right. He laid it on the Press, and the Prisoner pulled it off himself, the Proof that was right.——That a Morning or two afterwards he came again, and then they worked off the Impression, and they printed about a Thousand of each; and after the Jobb was done, he received fourteen Shillings for *Harper*'s Share and his own; *Harper* owed him Money, and so he kept all upon his own Account. The Proof-sheets are produced, and he upon the View of them says, they are the same. He says, one of the Papers is wrong imposed; he never read the Book; but, on his Cross-examination, he says, there is a Line at the Top, and a Flower over that. He was asked, whether he knew *George Matthews?* He says he doth, but he never saw him since he was taken and carried up by the Messengers.

There are two other Witnesses called to give their Opinion of Printing: You hear from both of them, that these are the Proof-sheets, or revised Sheets, which are in effect the same; and that appears from the Amendments upon them; and one of them is right imposed, and the other of them is wrong imposed. Having made this Way for the Reading this Libel, and the Papers found in his Pocket, they are produced; and the Libel that was found in his Pocket hath been read, and I believe they will consent on both Sides, that you shall have the Libel with you, when you go out to consider of your Verdict. There are two of them produced, and in those Libels all these Words as laid in the Indictment are there; the Beginning of the Libel is laid in the Indictment, and the latter Part: There is a Clause in the latter End not laid in the Indictment. There are likewise produced two Proof-sheets, of which, all the Witnesses say, there is a Sheet right imposed, and a Sheet wrong imposed, which they think to be the same the Prisoner worked off: Then there are eight or ten superfluous Half-sheets. Mr. *Darby* says, it is impossible to make the Half-sheets agree, so as that there must be superfluous Half-sheets. In these Libels there are contained all these Words that are in the Indictment.

Now to fix this Fact on the Prisoner, they have produced Mr. *Delafay* and Mr. *Buckley*. Mr. *Delafay*, he says, that these Papers now produced are the Papers which the Messengers swore they took upon him; and when he was examined touching these Papers, he owned them to be his, and the Papers then lay before him on a Table, and he owned that these Papers were taken from him; and as to answering any other Questions, he was shy. Afterwards he was brought before the Lords Justices; the Brother gives you an Account how that happened. When he was brought before the Lords Justices he was told, that he was charged, with two other Persons then named, with printing such a Paper; the Answer he gave was, *So it seems*. He was asked, how he came to be concerned in such a Business? He said, it was Necessity. He was asked, who was the Author? but he would not tell. This was the first Time. He says some time afterwards, upon a Letter received from the Prisoner, he was brought before the Lords Justices again; he told them a foolish Story, but would not tell who was the Author: On the Evidence of Mr. *Delafay*, I did not think it Ground sufficient to read the Letter, though it was afterwards sufficiently proved by an Evidence he called himself.—— Mr. *Buckley*, all he says is, that he was present at the first Examination; he says, when the Messengers brought these Papers, and laid them down on Mr. *Delafay*'s Table, he asked him whether these Papers were his? He said they were. I asked him how he came by them? He refused to tell me. He says he told him, You are charged with printing these Papers, which is a great Crime; he made no Answer, but took Snuff. This is the Substance of the Evidence given for the King against the Prisoner at the Bar. Now, on the other Side, what is insisted on by him and the Counsel for him are several Things; some Points in Law, and several Points of Fact. The first is, that this Law was temporary; that is over, and is so plain they did not think fit to insist upon it. The other is, that supposing the Matter contained in the Indictment to be proved upon him, it is not High-Treason within this Act of Parliament; that it is not to be supported against him, but by these Innuendoes.

Now, Gentlemen, as to that, I do agree with what the Counsel for the Prisoner say, that by an Innuendo you shall not put a Meaning upon a Man which is not his. This is not the Case: The Case here is a positive Charge, that the Book he wrote relates to the pretended Prince of *Wales*; and the Matter of Fact you are to try is, whether it is so or no.

Now as to that the Objection is, you can't understand what is meant by the Chevalier to relate to him, from the Solemnity of the Chevalier's Birth, and the other Things which follow.

I take it as to that, we are to understand it as all Mankind do. You are to consider, whether that Book is written concerning the pretended Prince of *Wales*, and his Right to the Crown; therefore the first Consideration is, whether this Libel is written concerning the Pretender, and his Right and Title to the Crown of *England*, then all these Innuendoes signify nothing; for the Innuendo relates to a Thing that is proved. Now, Gentlemen, it is not said, nor the Counsel for the Prisoner don't any way shew who else it is applicable to, or whose Right it is concerning.

That is the Matter of Fact you are to consider: Is it possible for Men of common Understanding and Sense to imagine, that this Right is concerning any body else but the Pretender? If so, then the Defendant will be acquitted.

Therefore the first Part of your Consideration will be, whether this Libel relates to the Pretender, and his Title to the Crown of *England*; as to the Words themselves, they do not appear in the Indictment; the Treason is, to affirm that the Pretender hath any Right whatsoever to the Crown of these Realms; and therefore, as to the affirming that, say they, it doth not appear in the Indictment.

Then the next Consideration will be, whether or no the Prisoner at the Bar hath printed it. It is Printing, and declaring by Printing, that the Pretender hath a Right to the Crown of these Realms.——They say, Printing is a mechanical Art; but if nobody else appears to you to be the Printer, and if People will use dangerous Arts, they must use them lawfully, how mechanical soever; or if he caused it to be printed, that makes no Odds.

The first Witness they call is *George Matthews*. Brother to the Prisoner at the Bar. He says, he remembers very well, the more exact because it was his Birth-day, as he was going to his Mother's House, his Sister met him, and told him something was printing in his Mother's House; that he examined *Vezey* and *Harper* both in his Closet privately, and publickly before the rest of the People, and asked them, whether they or his Brother had printed any Libel against the Government? They told him, No, they had not; this is what they told him. He says, his Brother is a young Man, that you see he is; he was an Apprentice to his Mother. Then he gives you an Account of the Manner of their Printing.

He was cross-examined concerning this Letter, which Mr. *Delafay* did speak to, but could not prove: He says, he went Home and drew a Letter, and after he had drawn it, he made some Amendments of his own. It was the common Vogue that his Brother was the Printer. Upon this he went to *Newgate* to carry this to his Brother; his Brother came to the Grate, and he gave it to him thro' the Grate, and in six or eight Minutes Time he brought it, and delivered it to him again, with his Name signed to it; and he believes this is his Brother's Hand-writing: That proves the Letter to be his, and makes it Evidence. The Letter being read, the Purport of the Letter is this: "I *John Matthews*, being heartily sorry "for the Crime I have been guilty of against his most Sacred Majesty "King *George*, and his Administration, and from a thorough Conviction "of my Errors, and unfeigned Contrition for them:" There he professes his hearty Sorrow for his Errors and Offence; then it follows, "I do "hereby make the following Declaration and Confession, that the Libel "now in Question was given me by one *John Broderick*, as also "the Money for printing of it; and further I declare, that the said "*John Broderick* took the foul Proofs of the Paper aforesaid from me "in

"in order to correct them; and when they were printed fetched them "away."——

This Mr. *George Matthews*, though produced as an Evidence for the Prisoner at the Bar, they now make use of him as a further Evidence, that the Prisoner at the Bar was the Printer of this Libel, as he acknowledges that he received it from *Broderick*, and received of him Money for printing of it; he acknowledges likewise, that he had three Guineas the Day he printed it, and seven Guineas afterwards of the said *Broderick*.——

Then as to *Vezey*'s Character---they call *Thomas Tovie*: he hath known him a Year and a Half, and can give him no Character good or bad. Then they call Mr. *Mott*; he says, he never was but once in his Company; he knows nothing of his Character. Then they call *William Boden*; he says, last *Monday* was Se'nnight he saw *Vezey*, and he told him he was an Evidence in this Cause, and he had been with the Mother of the Prisoner at the Bar, and told her, if she would give him Money he would keep out of the way; that he went to *St. Albans*, and staid there nine Days, and no Money coming, he came in; and was a Witness on the other Side.

By way of Reply, they call two Witnesses to support *Vezey*'s Character, *Robert Bentley* and *Robert Procter*: They believe him to be an honest Man, and never heard any Ill of him.

This is the Substance of the Evidence that hath been given on both Sides.

Gentlemen, you are upon this to consider, whether the Prisoner at the Bar hath maliciously, advisedly, and directly declared, maintained, and affirmed, by Printing, that the Pretender hath a Right to the Crown of *Great Britain*.

The Words in the Indictment seem very sufficient, supposing it relates to that Matter, that he hath a Right, and all Rights do concur in him.

Now, in the first Place, you are to consider, whether, by the Words contained in the Libel, is meant the Pretender, and that he hath a Right to the Crown of *England*: you are to consider, it is not necessary to have the same Name in the Indictment as in the Act of Parliament; but you are to consider, whether the Person in the Libel, that is called the *Chevalier*, and is the Person spoken of in the Libel, and the Person called the *Pretender* in the Act of Parliament, be not the same, and the Person commonly called the *Pretender*; and whether that Libel doth declare, that he hath a Right and Title to the Crown of *England*. This is the first thing for your Consideration.

In the next place, supposing that to be so, the next Thing is, whether he hath done it maliciously and advisedly. The Fact implies Malice; and the doing of a Thing advisedly, is doing it with thinking. The Witnesses say, for several Days they were desired to assist him.——

Upon the whole, if it shall appear to you, that the Prisoner at the Bar hath printed this Libel, or caused it to be printed; and that by this Libel, he hath maliciously, advisedly and directly maintained and affirmed, that the Pretender hath any Right or Title to the Crown of these Realms; then he is guilty of the Indictment, otherwise you must acquit him.

[*The Jury withdrew, and after a short Stay, returned and brought in the Prisoner* GUILTY.]

Attorney General. My Lord, I humbly pray the Judgment of the Court against the Prisoner at the Bar.

Mr. *Hungerford.* My Lord, I humbly hope that your Lordship will not proceed to give Judgment upon this Indictment, but that Judgment shall be arrested.

If it shall appear to your Lordship, that the Offence made High-Treason by this Act is not described in the Indictment with such a Certainty as the Law doth require, then in consequence there is no Offence; and if so, there can be no Offender. I take it to be a Rule in Law, that where a *Latin* Word hath several Meanings, or doth denote several Things, and in the Indictment or Declaration it is intended that it shall import one single Sense or Meaning only; in order to restrain it to that single Meaning, it must be assisted with an *Anglicè*; this was the Rule the Judges went by in the case of *Hexam* and *Coniers*, four *Jacobi* secundi, 3 *Modern*, *Folio* 238. where an Ejectment was brought *de uno Tenemento*. This was adjudged naught, though after a Verdict; because the Word *Tenementum* signified several Things, in truth every thing that can be held, as Titles, Advowson, an Office, an House, and under that Head, any Sort of Houses, a Brewhouse, &c.

And now, to apply this to the present Case: The Thing made Treason by the Act is Writing or Printing; the Charge upon the unfortunate Youth at the Bar is, that he *impressit* such a Libel; which Word, with humble Submission, doth not necessarily import Printing, unless explained by an *Anglicè*, for the Word *impressit* may signify several Things besides Printing; as Sealing, Stamping, and is usually made use of to signify these things. If I were to say that such a one stamped a Book, I should say he *impressit Libellum*; and the common Language of Attorneys in their Bills, where they charge the Stamp-duty is, *pro Impressione regali*, &c. And as to the original Meaning of the Word, it could never be taken to express Printing: The *Romans* had no Printing; and where they had not the Thing, they could not have the Appellation proper for it; for Things were before Words, which are but the Signs of them: wherefore I humbly hope, that Judgment will be arrested in this Case, and the rather, for the Reason that was given by the Judges in *Griffith*'s Case, that an Indictment being a Declaration at the Suit of the King, against the Life of a Subject, ought to set forth a sufficient Certainty of the Fact.

Mr. *Ketelbey*. My Lord, the last Service we can do for our unfortunate Client is, to move in Arrest of Judgment; and if the Words inserted in the Indictment to set forth the Substance, the very Gist of the Treason, are uncertain, and do not sufficiently denote the Offence intended to be charged; this is the proper Time, as we apprehend, to take advantage of that Defect.

My Lord, this Word *impressit* is an equivocal Word, of different Significations, imports several Senses in *English*; and though we should admit that it likewise signifies to print, yet if it equally signifies other Things, if no *Latin* Word be added to it to restrain, nor any *Anglicè* to explain the Sense of it, we hope your Lordship will not proceed to Judgment upon this Indictment; and in this Case more especially, since Printing is essential to the Offence of which the Prisoner is found Guilty; and some of the Significations of this Word *impressit* are criminal, and others not criminal within this Act of Parliament: And for this I shall only cite the common known Case of an Action of Trover *de uno Pullo* without any *Latin* Adjective or *Anglicè*; there the Declaration has been held to be naught, for the Uncertainty, even after a Verdict; and we apprehend the Objection will hold much stronger in an Indictment for High-Treason, and that an *Anglicè*, or some other proper *Latin* Word, ought to have been annexed, to pin down the Word *impressit* to that Sense only, which the Act of Parliament hath made criminal.

But, my Lord, I shall beg leave to go a little further, and to observe upon the Word *imprimo*, that it doth not, nor can signify Printing at all: *Imprimo* is a classical Word, and as such cannot properly signify Printing, which is a modern Invention, never known in the World 'till many hundred Years after the Word *Imprimo* had obtained its just and determinate Sense; but if they will have a *Latin* Word for Printing, without the Assistance of an *Anglicè*, it must be by such Phrases as will import that, and that only; such as the best modern *Latinists* have made use of to express their Sentiments, when they treat of that Subject.

This is what we have to offer to your Lordship against the Word *Impressit*, and hope it will be thought sufficient to arrest the Judgment.

Attorney General. My Lord, I do not know how this Motion comes to be made now, after the Opinion given by your Lordship. If this be any thing, it is improper *Latin*; that is, it is not a Word proper to denote what is intended to be expressed in this Indictment; that is the Meaning of this Objection, which should have been made before Plea pleaded and Evidence given, and not moved in arrest of Judgment, according to the Statute for regulating of Trials in Cases of High-Treason: That if the Word *impressit* or *impressione* is not a proper Word to denote Printing, which is the Amount of this Objection, they are not entitled to take Advantage of this as improper *Latin* now after Plea pleaded and Issue joined. What I shall say (still denying they are right in Time, but to satisfy the Gentlemen and Mankind) in answer to this Objection, is, if it had been made before Plea pleaded, there is not the least Colour in it, whatsoever Signification the Word may have, taken abstractedly; if it be a classical Word, and was before the Invention of Printing, which was but four or five hundred Years ago, I believe Nobody that is acquainted with the *Latin* Language, but will allow that the Usage of two or three hundred Years will give a Sanction and Signification to any Word, though it hath been applied to a Fact not at that Time used; therefore *imprimatur liber* is as much known of all Men of Literature, all Bodies of Literature, to mean that that Book shall be printed, as any *Latin* Word whatsoever is known what it means. Let them look into any Books licensed by any of the Universities, what is it but *imprimatur* by the Archbishop? what is it but *imprimatur* by the Secretaries of State, or any other Person? Is there any other Word made use of but *imprimatur*, when any Trial hath been printed by the Authority of your Lordships the Judges, the Word is used there; look into a Law-book, have they not seen it signed with the Word *imprimatur* under the Authority of all your Lordships the Judges? What can give more Sanction than the Opinion of all the Judges to the proper Use of this Word? What other Word is there for the denoting of Printing? Why, my Lord, *imprimatur libellum*, it is the joining of it to *libellum*, diversifies it from any other Meaning, however indefinite, or, as they say, equivocal, the Word is; it is according to the Subject-matter to which it is applied: If to a Book, it is to be applied to the printing of that Book. Is this the first Time this Word *impressit* was ever used in an Indictment? I appeal to every Record, whether ever any other Word was used, or *Anglicè* put to it, but the Subject-matter it was applied to? I say still, they are in the right to do every good Office to serve their Client; but they have mistaken their Season; they are excluded by the Words of the Act of Parliament, and the Opinion of your Lordship. But still I insist, this is the constant Opinion of the Use and Application of this Word, by Men of the Law, without making Use of any *Anglicè*, by all Men of Literature and Bodies of Literature; if all these Experiences can give a Sanction to the Use of that Word, we have that to justify us in making use of the Word here.

Serjeant *Cheshire*. I perceive the Gentlemen don't say this is an improper *Latin* Word, because they know then this is not a proper Time to offer it in arrest of Judgment: But, be that as it will, I beg leave to insist upon it that it is a proper *Latin* Word, and properly applied; and I would beg leave to consider, whether Words that may be capable of several Significations, when applied to Particulars, may not be understood what they mean, without any *Anglicè*? If I mistake not, *Liber*, that very Word may be capable of four Significations: It signifies *Bacchus*, it signifies *free*, it signifies *a Book*, and it signifies the *Bark of a Tree*. Now, *imprimere hunc librum*, would any body think this improper without saying *imprimere hunc librum, anglicè* this Book? Therefore, admitting *impressit* could be capable of other Significations to many Purposes, yet when it is *impressit libellum*, it must be understood to be Printing; as when it is *imprimere hunc librum*, they should say they don't mean a Book, but *impressit* the Bark of a Tree ——I think this Objection is so contemptible, that it ought not to have a further Answer.

Mr. *Lutwych*. My Lord, as to the Time, I only beg leave to mention the Clause in the Act of Parliament; that gives him the Liberty of having Counsel, and Copy of the Indictment, and several other Privileges; therefore, as this Law hath given him these Privileges, which they had not before, it comes in by way of Proviso, and takes away this Part of the Advantage they had before, that they shall not take Advantage of any Miswriting, Mis-spelling, false or improper *Latin*, after Plea pleaded and Evidence given: So that they are out of Time, as they have had the Advantage of this Act of Parliament, if it depended singly on that Matter. As to the Notion of the Word *impressit* being improper, I believe somebody would have lit on this Objection before, if any thing in it; for it hath been the constant Method to use this Word *impressit*, to signify *printed*, without an *Anglicè*, or any thing like it. I believe the Precedents are all so. We apprehend it is a very vain Objection, and no Weight in it; and therefore we hope no Regard will be had to it.

Mr. *Reeves*. I must agree, that when *imprimo* was a *Latin* Word, it was long before Printing was; but when Printing came to be in use, that *Latin* Words we see have been improved; and tho' they have signified other things, yet when they come to be applied to particular Circumstances, are improved thereby. Every body knows what that is, when it determines the

the Signification of the Word according to the Subject-matter. Nothing is more plain than to determine it not to signify any thing but Printing, to say *per prædict' impressionem*, he declared and affirmed by Printing; no other Sense can be put on the Word but by Printing; and since it hath gained that use, no other Word is made use of either in legal Proceedings or otherwise; and what other Word can be applicable to this *Impressit libellum*, but Printing? We humbly hope this is as clear a Case as can be. They admit, if we had added an *Anglicè*, it would have been proper; I don't know any *Anglicè* that would have help'd it, taking it to be an improper Word: though, as we apprehend, they are not in proper time to make this Objection; it should have been before Plea pleaded.

Mr. *Bootle.* Admitting they are in proper Season to make this Objection (which we apprehend they are not), there is nothing in the Objection. This is the new Light that hath sprung up in this Cause. The first Objection was equally of consequence with this; they don't pretend that any other proper Word was used by the *Romans*; altho' they have used this ever since the use of Printing was found out, as the proper Word to signify Printing.

I believe there is not one Instance to be shewn, wherever any other Word was used to signify the printing of a Libel. They say, it is of an equivocal Sense, and may mean Stamping as well as Printing. In this Case, as the Word *impressit* is coupled with other Words, it can't mean Stamping—*impressit libellum*—Is it possible for any Press or Stamp to signify *in his Anglicanis verbis?* Therefore, to shew how groundless this Objection is, that it is impossible it should have any such Meaning, can a Stamp set forth all these *English* Words in the Indictment? That he *impressit*, therefore, must signify that he printed. My Lord, with great Submission, we think it is an Objection taken merely for the sake of Objecting, because driven to the last Extremity. As for the Instance of *uno tenemento*, and *uno pullo*, it is not to the purpose; *pullo* signifies any young, and *tenementum* is well known in the Law for a very universal Term; therefore it becomes necessary to be explained. This Word can't want any Explanation. Therefore we hope no Regard will be given to this Objection; and pray your Lordship's Judgment against the Prisoner at the Bar.

Mr. *Hungerford.* My Lord, they object to us, in the first Place, that we are improper in point of time as to this Objection; that it ought to have been made before the Prisoner pleaded or Evidence given.—And it is further said, that tho' we were proper in point of time, yet there is nothing in the Objection itself. As to the time of making this Objection, surely, considering the Nature of it, it may be made at any time. The Offence made Treason by the Act of Parliament, is Printing: we say, there is no Word in the Indictment which imports (at least necessarily imports) Printing; and, if so, then consequently there is no Charge of Treason before the Court: and surely, it may be at any time urged, that the Proceeding is null and void, if there be any fatal Error in it whereby to make it so. But the King's Counsel seem to have waived this Objection as to the Impropriety of the Time, by going into the Nature of the Objection itself; and I shall therefore apply myself to what they have said upon that Head.

Mr. Attorney observed, that the Word used in Licensing of Books is *Imprimatur*, and that *Impressit* (which is the same Verb in the Active Mood) is the Word used in the Indictment. I will admit it, that *Imprimatur* is used for licensing the Printing of Books, particularly when Books are licensed by the Universities (and for my Part I wish all Books were licensed by them, I am sure there would then be no Heresy or Treason in them); but generally Licences for Printing are in *English*: But that which I offer to your Lordship's Consideration in this Matter is, that tho' in an University *Imprimatur*, a loose or allegorical Word, which may have several Meanings, may be made use of, yet we are now in a Court of Justice, in a criminal Case, in a Case of Life and Death, where if the chief Word which describes the Offence hath various Significations, it shall not be taken in the worst Sense or Meaning, unless restrained to that Sense by an *Anglicè*.

Mr. Serj. *Cheshire*, by way of Illustration of what he hath said in this Matter, was pleased to be very critical upon the Word *Liber*: It signifies, says he, a *Book*, it signifies *Bacchus*, it signifies *free*, and it signifies the *Bark of a Tree*.

Give me leave, my Lord, to follow him a little in this Criticism. I believe the Word *Liber* doth not denote so many different things as the very learned Serjeant would seem to intimate. In the very early Ages of the World, before Writing was a common Accomplishment, before Vellum, Parchment, or Paper were found out, People writ upon the inward Rinds or Barks of Trees, which Bark was called *Liber*; and, from thence, when Parchment or Paper was, in After-ages, writ upon, that was called *Liber* too: The same Practice hath likewise given Occasion that *Codex* signifies both the Bark of a Tree, and a Book: As for *liber*, *free*, it is always used in an adjective Sense, and a Noun Substantive is always expressed or understood. And as for *Liber* signifying *Bacchus*, the Serjeant hath been at Dinner, he hath eat and drank plentifully, I dined with him, and I find he hath forgot part of the Name of *Bacchus*, for he is called *Liber Pater*, and not *Liber* only, that I remember.

But what I insist upon in this Matter, my Lord, is, if a Man were to be charged with Stamping of a Book or Paper; it would be said that he *Impressit* the Book or Paper; and the Charge against Mr. *Dyett* for forging the Law-duty-Stamp was in those Words; and since, by the Charge of *Impressit Libellum*, Stamping (which is not High-Treason) may be as well meant as Printing, unless explained by an *Anglicè*; I humbly hope Judgment shall be reversed in this Case.

Mr. *Ketelbey.* My Lord, I shall be very short in what I am going to say. It hath been insisted on, that the common Form of licensing Books to be printed, by the Judges, Archbishops and Universities, is by using the Words *Imprimatur Liber cui titulus*, &c. If any one Instance could have been produced where my Lords the Judges had used that Word in allowing the Printing of any Books, such a Precedent would have stopp'd our Mouths as to this Objection; but I have here in my Hand a large Volume of Trials and other Tracts, that have been licensed, some of them by the Judges, and others by the Secretaries of State, and Lord Mayors; yet the said *Imprimatur* is not used in any one of them.——All these Licences are in *English*, and I don't remember any one Law-book that was ever licensed by the Judges in *Latin*.

I pay all the Respect imaginable to the Archbishops and Bishops, and to what they do; but, as I take it, their Licences are generally signed by their Secretaries or Chaplains: Whether they have any legal Authority for the licensing of Books, or if it amounts to any thing more than a bare Recommendation of the Goodness of a Book, under the Protection of a great Name, I cannot tell; and therefore with the utmost Deference submit it to your Lordship's Judgment, whether any Weight can be laid on those Instances.

The Universities have certainly, at this time, a Right to license Books printed within their respective Jurisdictions, and I believe they generally use the Word *Imprimatur*, and it is signed by the Chancellor; but this Privilege is of a very late date, it being not many Years since Books were first printed there. I pray God bless the Universities, continue to them their present Authority, and increase it: But we must not admit that the modern Use of a Word, tho' by those learned Bodies, can give such a Sanction to the Sense of it, as to make it a conclusive Answer to our Objection.

Mr. *Bootle* says, it hath been a Word used ever since Printing was found out, to signify Printing; and that no Information hath been brought for printing a Libel, where that Word hath not been made use of; but he is not pleased to mention any ancient Precedent, nor any Case where this Point hath been judicially determined; Indictments for printing Libels were very rare in former times, and are scarcely to be met with in the old Law-books; lately indeed they have been more frequent, but I believe have not always been drawn by the most skilful Hands; and if some Mistakes in them have been past over in Silence and without an Exception taken to them, we hope a faulty modern Precedent, upon the Rolls in the Crown-Office, shall not have more Weight with it than the Universities.

They are pleased to insist, that we have not the liberty now of making this Objection, as being out of time; because, in the point of false and improper *Latin*, it ought to have been offered before Plea pleaded: But, my Lord, we must beg leave to put this on a right foot; we don't object it as false and improper *Latin*; we say there is no Offence charged in the Indictment; the Act of Parliament says it must be by Printing; if they have used a Word that doth not signify Printing, the Indictment cannot be good, this cannot be High Treason; my Lord, we submit it to your Lordship.

The Judges were all of Opinion, that the Objection did not come out of time, because they did not take it for false and improper *Latin*. But all agreed, the Word *Impressit* was very proper to signify Printing, as used in the Indictment, and that there was nothing in the Objection.

Mr. *Hungerford.* My Lord, there is another Objection, which I humbly take the liberty to make: It is this; the Offence made Treason by this Act of Parliament is, that if any Person shall maliciously, advisedly and directly, by Writing or Printing, maintain and affirm that our Sovereign Lady the Queen, that now is, is not the lawful and rightful Queen of these Realms, or that the pretended Prince of *Wales*, who now stiles himself King of *Great Britain*, &c. hath any Right or Title thereto; the Language of the Act of Parliament is, "and now" (that is, at the time of the making of the Act) "stiles himself" so and so: But the Indictment doth not pursue the Words of the Act of Parliament, in describing the Person of the Pretender; for the Words in the Indictment are these; *Persona in vita Jacobi secundi nuper Regis Angliæ, &c. pretend. esse princip. Wallie, et post dicti nuper Regis decessum pretenden. esse, & suscipien. sup. se stilum & titulum Regis Angliæ per nomen Jacobi tertii*; so that *who now stiles himself*, &c. is not mentioned in any Part of the Indictment, and consequently the Person described or intended by the Act of Parliament, and the Person described in the Indictment, may be two different Persons; for if a Person doth now, or five or six Months ago, stile himself King of *Great Britain*, it answers the Description in the Indictment of Stiling himself King of *Great Britain post dicti nuper Regis decessum*, for it is not said——*immediately after his Death*, and yet that Person may not be the Person who at the Time of the Act took upon himself the Title of King, *&c.* and since; by the wording of the Indictment, it doth not appear that the Person there described is the same Person with him in the Act of Parliament, the Indictment ought to be assisted with an Averment, that the Person described in the Indictment is *una & eadem Persona* with him described by the Act of Parliament, whereby the Identity of the Person would appear; and, for want of this Averment or following of the exact Words of the Act of Parliament, we hope this Offence is not sufficiently laid, whereby to affect the Prisoner at the Bar.

Mr. *Ketelbey.* If they had said *immediatè post decessum*, they had taken in a greater Length of Time, than now they have done; and having only laid it *post decessum*, generally, it may, or it may not, be immediately after the Death of the late King *James*; and then that intermediate Space of Time is not accounted for or ascertained in the Indictment, without such Averment as we contend for. The Indictment ought to have been certain, in all respects, and to all Intents and Purposes whatever; but here, since the late King *James* died before the passing this Act, it doth not necessarily appear, 'tis no natural Consequence, that the Person who in the Life-time of King *James* the Second pretended to be the Prince of *Wales*, is the same Person that after his Decease pretended to be and took upon himself the Stile and Title of King of *Great Britain*.

Attorney General. My Lord, we are not bound, with Submission, to pursue the very Terms of the Act of Parliament. If, upon the Face of the Indictment, it appears the same Person is described in the Indictment as in the Act of Parliament, it is sufficient. There are two Descriptions of this Person in the Act of Parliament; the one is, that the pretended Prince of *Wales*, who now stiles himself King of *Great Britain*; the one is the pretended Prince of *Wales*, and the other King of *Great Britain*. If Mr. *Hungerford* may be allowed to mean there may be many Pretenders, tho' I believe he won't suppose that there were any before the Pretender himself, that called himself the Prince of *Wales*; so that that is plain who is meant by the Pretender. The second part of the Description, "who now "stiles himself King of *Great Britain*," *post decessum Jacobi secundi nuper Regis Angliæ*, is not that *semper post decessum*; was not the *decessum* of King *James* the Second before the making of the Act of Parliament; and is it not the pretended Prince of *Wales* who, immediately *post* and *semper post decessum*, stiles himself King of *Great Britain*, that brings it down to the Time of the Act of Parliament, and continues it to the Time of the Indictment.

Indictment laid? The *poſt deceſſum*, as it ſtands here, over-reaches the Act of Parliament in point of Time, goes along with it, and continues with it till the Indictment preferred.

Serjeant *Cheſhire*. My Lord, the Expreſſion in this Indictment ſays, who in the Life-time of King *James* the Second pretended to be the Prince of *Wales*, and after his Death pretended to be, and took upon himſelf the Stile and Title of King of *England*. The Expreſſion in this Indictment ſays it more plain than as they would have it; the late King *James* was dead before any of the Acts of Parliament, and that which they would have us have ſaid, is a much leſs Aſſertion, and not ſo proper and pertinent; for when he died before the Act of Parliament, he aſſumed now, (he that in the Life-time of King *James* the Second pretended to be Prince of *Wales*, he aſſumed now) and ever hath, the Stile and Title of King of *England*; ſo that we have taken in both the Times of theſe Acts of Parliament, in the Life-time of King *James* the Second, and after his Deceaſe.

Mr. *Hungerford*. My Lord, I will crave Leave to offer a few Words by way of Reply. The Deſcription in the Act of Parliament, as *Mr. Attorney* truly obſerves, conſiſts of two Parts, *(viz.)* ſuch a Perſon as in the Life of the late King *James* pretended to be Prince of *Wales*, and who, *(viz.)* at the Time of the Act, took upon himſelf the Title of King, *&c.* The Words are in the Conjunctive, and therefore, if the Deſcription in the Indictment takes but one Part of the Deſcription in the Act, it is an imperfect Deſcription, and conſequently the High-Treaſon not perfectly laid. If it had been, as *Mr. Attorney* ſeems to hint, that the Perſon deſcribed did *ſemper poſt deceſſum* of King *James*, or immediately *poſt* his *deceſſum*, take upon himſelf the Title of King, *&c.* it would have been well enough, becauſe it would have amounted to an Averment, that the Perſon in the Act, and the Perſon in the Indictment, was the ſame individual Perſon; and for want of ſuch a Certainty, we humbly inſiſt, they have failed in a material Part of this Accuſation.

Lord Chief Juſtice. This Act of Parliament makes it High-Treaſon only with reſpect to this individual Perſon, who is here called the pretended Prince of *Wales*: Now, if the Perſon hath no where any Chriſtian Name, or Sirname, muſt we not take Notice of the Deſcription of him, and how he is called in almoſt all the Acts of Parliament? In one Act of Parliament he is called the pretended Prince of *Wales*: In the Act on which this Indictment is founded, he is called the pretended Prince of *Wales*, and that now takes upon himſelf the Stile and Title of King of *England*: In the Abjuration Act, he is called by the Name in the Indictment; if it be the ſame Perſon, muſt not we take notice, this is one and the ſame Perſon? and if ſo, no matter which of the Names he is deſcribed by.

Mr. *Ketelbey*. My Lord, I beg Leave to mention one Word more. The Act of Parliament ſays (any Right to the Crown of theſe Realms), and ſo it goes through in the Plural Number (hath any Right or Title to the Crown of theſe Realms); it relates to the Union of the two Realms of *England* and *Scotland*, and from one End to the other mentions them plurally; they have expreſſed it in the Indictment only in the ſingular Number *(hujus Regni)*, and afterwards, *Innuendo*, *Coronam hujus Regni*.

Attorney General. The Words are *Magnæ Britanniæ*.

Mr. *Ketelbey*. With Submiſſion, the Words are, *Innuendo*, *jus hereditarium ad Coronam hujus Regni*, without *Magnæ Britanniæ*.

Attorney General. The Words in the Beginning of the Indictment are, *de & concernen. Coron. Magnæ Britanniæ*; you have got upon Innuendoes again.

Mr. *Ketelbey*. Why if you do not like the Innuendoes, you may leave them out of the Caſe, and ſee how it will ſtand then; if the laſt Innuendo—*(jus hereditarium ad Coronam hujus Regni)* be laid aſide, the Words of the Indictment will be barely, "he hath that to plead in his favour," without any thing more, and then it doth not appear, if you go thro' without the Innuendoes, that it is any Offence againſt the Statute.

Mr. *Hungerford*. My Lord, the Objection is this, the Act of Parliament makes it High-Treaſon to affirm, *&c.* that any Perſon hath a Right to the Crown of theſe Realms; which Expreſſion comprehends *Great Britain* and *Ireland*; in the Indictment they have not mentioned *Ireland*, it is only *ad Coronam hujus Regni*; it is indeed *Magnæ Britanniæ* in the Beginning; though *England* and *Scotland* make one united Kingdom, *Ireland* is not included.

Attorney General. My Lord, we have done, and pray your Lordſhip's Judgment.

Then the Recorder paſſed Sentence, as uſual in Caſes of High-Treaſon; and he was executed at *Tyburn*, *November* 6th, 1720, aged Nineteen. I don't find he made any Speech, or left any Paper behind him.

XLV. The whole Proceedings on the Special Commiſſions of Oyer and Terminer and Gaol Delivery, for the County of *Suſſex*, held at *Chicheſter*, the 16th, 17th, and 18th Days of *January*, 1748-9, before the Honourable Mr. Juſtice *Foſter*, Mr. Baron *Clive*, and Mr. Juſtice *Birch*; containing the Trials of *William Jackſon*, *William Carter*, *Benjamin Tapner*, *John Cobby*, *John Hammond*, *Richard Mills*, Sen. and *Richard Mills*, Jun. his Son, for the Murder of *William Gally* and *Daniel Chater*.

ON *Monday* the 16th of *January*, 1748-9, the Commiſſion was opened, and the Commiſſioners Names called over, of whom were preſent,

His Grace the Duke of *Richmond*,
The Honourable { Mr. Juſtice *Foſter*, Mr. Baron *Clive*, Mr. Juſtice *Birch*,
Sir *Richard Mill*, Sir *Cecil Biſhop*, Sir *Hutchins Williams*, } Barts.
John Butler, *Robert Bull*, } Eſqrs.

The Grand Jury.

Sir *John Miller*, Bart. Foreman.
Sir *Mathew Fetherſtonhaugh*, Bart.
Sir *Thomas Ridge*, Knt.
John Page, *George Bramſtone*, *William Battine*, *John Wicker*, *Edward Tredcroft*, *William Wicker*, *Samuel Blunt*, *William Pool*, *Peckham Williams*, *Thomas Betteſworth Bilſon*, *Thomas Phipps*, *William Mitford*, *James Goble*, *John Cheal*, *William Leeves*, *Richard Naſh*, *Thomas Fowler*, *William Perkham*, *Waller Bartlett*, *John Holliſt*, } Eſqrs.
Francis Peachey, *John Laker*, *William Peachey*, *John Pay*, } Gents.

Being ſworn of the Grand Jury,

Mr. Juſtice *Foſter*, ſpoke to them as follows:

Gentlemen of the Grand Inqueſt,

It muſt certainly give great Satisfaction to every Man, who has a due Concern for the Peace of the Kingdom, and the Honour of his Majeſty's Government, to ſee ſo numerous an Appearance of Perſons of great Rank and Fortune attending the preſent Service. For without a vigorous, ſteady, and impartial Adminiſtration of Juſtice, the Ends of Government will be totally defeated.

And what are the Ends of Government? They undoubtedly are, the Welfare of the whole Community, and the Happineſs of every ſingle Man in it; as far as the Happineſs of Individuals is conſiſtent with the Welfare of the whole.

Theſe are the great Ends of Government. And it is very certain they cannot be obtained without a due Execution of the Law upon Offenders of all Kinds.

And it is no inconſiderable Inſtance of the Wiſdom of our Law, that the Opportunities of bringing Offenders to Juſtice are as frequent, as the Nature of the Caſe, in the ordinary Courſe of Things, ſeems to require. Juſtice is, as it were, brought home to every Man's Door twice in the Year, at the ſtated Returns of the Circuits.

By this Meaſure, two very wiſe and ſalutary Purpoſes are at once ſerved. The Proſecution is ordinarily commenced and finiſhed while Things are recent, while Facts and Circumſtances are freſh in Memory, and while Witneſſes may be preſumed to remain under a proper Impreſſion. And, on the other hand, the Perſon who is the Object of the Proſecution, hath an early Opportunity given to him of clearing up his Innocence, if it ſhall happen to be his Caſe.

It were to be wiſhed, that theſe ſtated Seaſons had been at all Times found ſufficient to ſatisfy the Demands of publick Juſtice. But the Hiſtory of former Times informs us, that they have not; and our own Experience convinces us, that they are not at preſent ſufficient for that Purpoſe.

For what has been the Caſe of this, and of ſome of the neighbouring Counties

Counties for many, too many, Years paſt? Dangerous Confederacies have been form'd, for very unwarrantable, very wicked Purpoſes; for robbing the Publick of that Revenue which is abſolutely neceſſary to its Support; and for defeating the fair Trader in his juſt Expectations of Profit. Theſe, to mention no more, are the neceſſary unavoidable Conſequences of the Practice, which now goes under the general Name of Smuggling.

And however Perſons may palliate the Matter to themſelves or others, I wiſh every Man who hath been directly or indirectly concern'd in this Practice, would lay his Hand on his Heart, and put this Queſtion to himſelf, Wherein lies the real Difference, (I ſpeak now of a Difference in *Foro Conſcientiæ*) wherein lies the real Difference, between this ſort of Robbery, and the Crime which uſually goes under that Denomination?

But this is not all; this wicked Practice hath been ſupported by an armed Force: By Numbers of diſſolute People aſſembled together, and acting in open Day-light; in Defiance of all the Law, and all the Juſtice of their Country; and to the Terror of his Majeſty's peaceable Subjects.

And the Miſchief has not ended here. In ſome late Inſtances, deliberate Murders, attended with Circumſtances of great Aggravation, have been committed in conſequence, as 'tis to be fear'd, of theſe Combinations.

Theſe Things louldly call for the Animadverſion of the Publick. They have been humbly repreſented to his Majeſty. And his Majeſty, out of his Royal Concern for the Welfare of his People, *the ruling Principle which guides and animates his whole Conduct*, hath been pleas'd to intruſt us, with his ſpecial Commiſſions of *Oyer* and *Terminer* and Gaol Delivery for this County.

Our Commiſſions do not extend to all the Crimes which are cognizable under the general Commiſſions which are executed in the Circuit. They are confined to the Offences of Murder, Manſlaughter, and other Felonies, and to the Acceſſaries to thoſe Offences: But as far as they do extend, they are juſt of the ſame Nature as the Circuit-Commiſſions. The ſame Law, the ſame Method of Trial, and the ſame Rules of Evidence, are to take place in theſe as do in thoſe.

Gentlemen, I ſhall have no occaſion to enter into the ſeveral Diſtinctions between the Offences of Murder, and what we commonly call Manſlaughter; becauſe thoſe Diſtinctions are grounded on Circumſtances, which poſſibly may have no Place in your preſent Inquiry.

It is ſufficient to ſay, that wherever it appears that the Fact was committed with any Degree of Deliberation, and eſpecially where it is attended with Circumſtances of Cruelty, the uſual Diſtinctions between Murder and Manſlaughter can never take place. The Fact is, in the Eye of the Law, wilful Murder of Malice prepenſe. And it involves every Perſon concern'd, as well thoſe who are barely preſent, aiding and abetting, as thoſe who actually commit the Fact, in the ſame Degree of Guilt.

For where Numbers of People engage in any felonious Deſign, either for Murder, Robbery, or any other Felony, every Perſon ſo engaged, and preſent, aiding and abetting the Fact, is conſider'd as a Principal in the Felony. And the Reaſon the Law goes upon is this, that the Preſence of every one of the Accomplices gives Countenance, Encouragement, and Security to all the reſt. And conſequently the Fact is conſidered in the Eye of the Law, and of ſound Reaſon too, as the Act of the whole Party, tho' it be perpetrated perhaps by the Hands of one. He is conſider'd as the Inſtrument by which the others act.

And when we ſay, that the Preſence of a Perſon at the Commiſſion of a Felony, will involve him in the Guilt of the reſt, we muſt not confine ourſelves to a ſtrict, actual Preſence, ſuch a Preſence as would make him an Eye or an Ear Witneſs of what paſſes.

For an Accomplice may be involv'd in the Guilt of the reſt, tho' he may happen to be ſo far diſtant from the Scene of Action, as to be utterly out of ſight or hearing of what paſſes.

For Inſtance, If ſeveral Perſons agree to commit a Murder or other Felony, and each Man takes his Part: Some are appointed to commit the Fact, others to watch at a Diſtance, to prevent a Surprize, or to favour the Eſcape of thoſe who are more immediately engaged; the Law ſays, that if the Felony be committed, it is the Act of all of them. For each Man operated in his Station towards the Commiſſion of it, at one and the ſame Inſtant.

And ſo much doth the Law abhor Combinations of this Kind, eſpecially where innocent Blood is ſhed, that a Man may, in Judgment of Law, be involv'd in the Guilt of Murder, when poſſibly his Heart abhorred the Thoughts of it.

For if Numbers of People aſſemble in Proſecution of any unlawful Deſign, with a Reſolution to ſtand by each other againſt all Oppoſers, and a Murder is committed by one of the Party in Proſecution of that Deſign, every Man ſo engaged at the Time of the Murder, is, in the Eye of the Law, equally guilty with him that gave the Stroke.

Many Caſes might be put which come under this Rule. I will confine myſelf to a few which the preſent Solemnity naturally ſuggeſts.

For Inſtance, Numbers of People aſſemble for the Purpoſe of running uncuſtomed Goods, or for any of the Purpoſes which now go under the general Term of Smuggling, with a Reſolution to reſiſt all Oppoſers (and the riding with Fire-Arms and other offenſive Weapons is certainly an Evidence of that Reſolution), Numbers of People, I ſay, aſſemble in this Manner, and for this Purpoſe. They are met by the Officers of the Revenue: One of the Party, in Proſecution of this unlawful Deſign, fires on the King's Officer, and kills him or any of his Aſſiſtants: The whole Party is, in the Eye of the Law, guilty of Murder, though their original Intention went no farther than Smuggling. For that Intention being unlawful, the killing, in Proſecution of that Intent, is Murder. And every Man engaged in it, partakes of the Guilt. The Act of one, in Proſecution of their common Engagement, is conſidered as the Act of all.

I will go one Step further, the Party aſſembled in the Manner and for the Purpoſes I have mentioned, is met by the King's Officers, and an Affray happens between them. During the Affray one of the Party fires at the King's Officers, but miſſes his Aim and kills one of his own Party, perhaps his neareſt Relation or Boſom-friend (if People of that Character are capable of true Friendſhip), this is Murder in him, and in the whole Party too. For if a Man upon Malice againſt another ſtrikes at him, and by Accident kills a third Perſon, the Law, as it were, transfers the Circumſtance of Malice from him that was aimed at, to him that received the Blow and died by it. And conſequently, in the Caſe I have juſt put, the Perſon who diſcharged the Gun being guilty of Murder, all his Accomplices are involved in his Guilt; becauſe the Gun was diſcharged in Proſecution of their common Engagement, and it is therefore conſidered as the Act of the whole Party.

What I have hitherto ſaid regards thoſe who are preſent in the Senſe I have mentioned, and abetting the Fact at the Time of the Commiſſion of it. But there are others who may be involved in the ſame Guilt, I mean the Acceſſaries before the Fact.

Theſe are all People who, by Advice, Perſuaſion, or any other Means, procure the Fact to be done, but cannot be ſaid, in any Senſe, to be preſent at the actual Perpetration of it. See Vol. X. *Mac Daniel*'s Caſe.

Theſe Perſons are involved in the Guilt, and liable in the Caſe of wilful Murder, to the ſame Puniſhment as the principal Offenders are.

I am very ſenſible, Gentlemen, that I have been ſomething longer than I needed to have been, if I had ſpoken barely for your Information: But in this Place, and upon this Occaſion, I thought it not improper to enlarge on ſome Points, that People may ſee, and conſider in time, the infinite Hazard they run, by engaging in the wicked Combinations I have mentioned; and how ſuddenly and fatally they may, being ſo engaged, be involved in the Guilt of Murder itſelf, while perhaps their principal View might fall very far ſhort of that Crime.

[*After which the Bills being delivered to the Grand Jury, the Court adjourned.*]

Tueſday, 17 January, 1748-9.

The Grand Jury returned the Bills found into Court, upon which *Benjamin Tapner*, *John Cobby*, *John Hammond*, *William Jackſon*, *Richard Mills* the elder, *Richard Mills* the younger, and *William Carter*, were ſet to the Bar, and arraigned upon an Indictment for the Murder of *Daniel Chater*; the three firſt named as Principals in the Murder, and the four laſt as Acceſſaries before the Fact.

The Indictment ſets forth in Subſtance, That *Benjamin Tapner*, *John Cobby*, and *John Hammond*, together with *Thomas Stringer* and *Daniel Perryer*, not yet taken, not having the Fear of God before their Eyes, but being moved and ſeduced by the Inſtigation of the Devil, upon the 19th Day of *February*, in the twenty-firſt Year of his preſent Majeſty's Reign, with Force and Arms at the Pariſh of *Harting*, in the County of *Suſſex*, in and upon one *Daniel Chater*, being then and there in the Peace of God and his ſaid Majeſty, felonioufly, wilfully, and out of their Malice aforethought, did make an Aſſault; and that he the ſaid *Benjamin Tapner*, a certain Cord or Rope made of Hemp, of the Value of Sixpence, which he the ſaid *Benjamin Tapner* had then and there in his Hands, about the Neck of him the ſaid *Daniel Chater*, then and there with Force and Arms, felonioufly, wilfully, and out of his Malice aforethought, did put, bind, and faſten; and that he the ſaid *Benjamin Tapner*, with the Rope aforeſaid by him, about the Neck of the ſaid *Chater*, ſo put, bound, and faſtened as aforeſaid, him the ſaid *Chater*, then and there with Force and Arms, felonioufly, wilfully, and out of his Malice aforethought, did choak and ſtrangle, of which ſaid choaking and ſtrangling of him the ſaid *Chater*, in Manner aforeſaid, he the ſaid *Chater* did then and there inſtantly die. And that they the ſaid *John Cobby*, *John Hammond*, *&c.* at the Time of the Felony and Murder aforeſaid, by him the ſaid *Benjamin Tapner*, ſo felonioufly, wilfully, and out of his Malice aforethought, done, perpetrated, and committed, as aforeſaid, then and there felonioufly, wilfully, and out of their Malice aforethought, were preſent, aiding, abetting, comforting, aſſiſting, and maintaining the ſaid *Benjamin Tapner*, the ſaid *Daniel Chater* in Manner and Form aforeſaid, felonioufly, wilfully, and out of his Malice aforethought, to kill and murder. And ſo that the ſaid *Benjamin Tapner*, *John Cobby*, *John Hammond*, *Stringer* and *Perryer*, the ſaid *Daniel Chater* in Manner and Form aforeſaid, then and there with Force and Arms, felonioufly, wilfully, and out of their Malice aforethought, did kill and murder, againſt his Majeſty's Peace, his Crown and Dignity. Further ſets forth, That *Richard Mills* the elder, *Richard Mills* the younger, *William Jackſon*, and *William Carter*, together with *John Mills*, *Thomas Willis*, and *Edmund Richards*, not yet taken, before the Felony and Murder aforeſaid, by them the ſaid *Benjamin Tapner*, *John Cobby*, *John Hammond*, *Stringer* and *Perryer*, in Manner and Form aforeſaid, felonioufly, wilfully, and out of their Malice aforethought, done, perpetrated, and committed, (to wit) upon the ſaid 19th Day of *February*, in the twenty-firſt Year aforeſaid, at the Pariſh of *Harting* aforeſaid, in the County of *Suſſex* aforeſaid, them the ſaid *Benjamin Tapner*, *John Cobby*, *John Hammond*, *Stringer* and *Perryer*, the Felony and Murder aforeſaid, in Manner and Form aforeſaid, felonioufly, wilfully, maliciouſly, and out of their Malice aforethought to do, perpetrate, and commit, felonioufly, wilfully, and out of their Malice aforethought, did incite, move, inſtigate, ſtir up, counſel, perſuade, and procure, againſt his Majeſty's Peace, his Crown and Dignity.

[*To which Indictment they ſeverally pleaded* Not Guilty.]

William Jackſon and *William Carter* were alſo arraigned upon another Indictment, as Principals in the Murder of *William Gally*, otherwiſe called *William Galley*.

The Indictment ſets forth in Subſtance, That *William Jackſon* and *William Carter*, (together with *Samuel Downer*, alias *Heward*, alias *Little Sam*, *Edmund Richards* and *Henry Sheerman*, alias *Little Harry*, not yet taken), not having the Fear of God before their Eyes, but being moved and ſeduced by the Inſtigation of the Devil, upon the 15th of *February*, in the twenty-firſt Year of his preſent Majeſty's Reign, with Force and Arms, at *Rowland's* Caſtle in the County of *Southampton*, in and upon one *William Gally*, otherwiſe called *William Galley*, being then and there in the Peace of God and his ſaid Majeſty, felonioufly, wilfully, and out of their Malice aforethought, did make an Aſſault, and him the ſaid *William Gally*, upon the Back of a certain Horſe, then and there with Force and Arms, felonioufly, wilfully, and out of their Malice aforethought, did put and ſet, and the Legs of him the ſaid *William Gally*, being ſo put and ſet upon the Back of the ſaid Horſe as aforeſaid, with a certain Rope or Cord made of Hemp, under the Belly of the ſaid Horſe, then and there with Force and Arms, felonioufly, wilfully, and out of their Malice aforethought, did bind, tie, and faſten; and him the ſaid *William Gally*, being ſo put and ſet upon Horſeback as aforeſaid, with his Legs ſo bound, tied, and faſtened under the Horſe's Belly as aforeſaid, with certain large Whips, which they had then and there in their right Hands, in and upon the Head, Face, Neck, Shoulders, Arms, Back, Belly, Sides,

Sides, and ſeveral other Parts of the Body of him the ſaid *William Gally*, then and there with Force and Arms, feloniouſly, wilfully, and out of their Malice aforethought, for the Space of one Mile, did whip, laſh, beat, and ſtrike; by reaſon whereof, the ſaid *William Gally* was then and there very much wounded, bruiſed, and hurt; and not being able to endure or bear the Miſery, Pain, and Anguiſh, occaſioned by his having been ſo whipped, laſhed, beat, and ſtruck as aforeſaid; and by his being ſo wounded, bruiſed, and hurt as aforeſaid, then and there dropped down the left Side of the ſaid Horſe, on which he then and there rode, with his Head under the Horſe's Belly, and his Legs and Feet acroſs the Saddle upon the Back of the ſaid Horſe, upon which they the ſaid *Jackſon*, *Carter*, *Downer*, *Richards*, and *Sheerman*, then and there untied the Legs of the ſaid *William Gally*; and him the ſaid *Gally*, in and upon the ſame Horſe, then and there with Force and Arms, feloniouſly, wilfully, and out of their Malice aforethought, did again put and ſet, and the Legs of him the ſaid *Gally* being again ſo put and ſet upon the ſaid Horſe as laſt aforeſaid, with the ſame Rope or Cord under the Belly of the ſaid Horſe, they then and there with Force and Arms, feloniouſly, wilfully, and out of their Malice aforethought, under the Horſe's Belly, did again bind, tie, and faſten; and him the ſaid *Gally*, being again ſo put and ſet upon the ſaid Horſe as laſt aforeſaid, with his Legs ſo bound, tied, and faſtened under the Horſe's Belly, as laſt aforeſaid, with the ſaid Whips which they had then and there in their Right Hands as aforeſaid, in and upon the Head, Face, Neck, Arms, Shoulders, Back, Belly, Sides, and ſeveral other Parts of the Body of him the ſaid *William Gally*, they then and there with Force and Arms, feloniouſly, wilfully, and out of their Malice aforethought, for the Space of half a Mile further, did again whip, laſh, beat, and ſtrike; by reaſon whereof he the ſaid *William Gally* was then and there much more wounded, bruiſed, and hurt; and not being able to endure or bear the Miſery, Pain, and Anguiſh, occaſioned by his having been ſo whipped, laſhed, beat, and ſtruck, in Manner as aforeſaid; and by his being ſo wounded, bruiſed, and hurt, in Manner aforeſaid, did then and there drop a ſecond Time from off the ſaid Horſe, with his Head under the Horſe's Belly, and his Legs and Feet acroſs the Saddle. Upon which they, the ſaid *Jackſon*, *Carter*, *Downer*, *Richards*, and *Sheerman*, then and there again untied the Legs of him the ſaid *William Gally*, and him, in and upon another Horſe, behind a certain other Perſon, did then and there with Force and Arms, feloniouſly, wilfully, and out of their Malice aforethought, put and ſet; and the ſaid *William Gally*, being ſo put and ſet upon Horſeback, as laſt aforeſaid, with the ſame Whips which they had then and there in their Right Hands as aforeſaid, in and upon the Head, Face, Neck, Arms, Shoulders, Back, Belly, Sides, and ſeveral other Parts of the Body of the ſaid *William Gally*, did then and there with Force and Arms, feloniouſly, wilfully, and out of their Malice aforethought, for the Space of two Miles further, until they came into the Pariſh of *Harting*, in the County of *Suſſex* aforeſaid, again whip, laſh, beat, and ſtrike, by reaſon whereof the ſaid *William Gally* was then and there much more wounded, bruiſed, and hurt; and not being able to endure or bear the Miſery, Pain, and Anguiſh, occaſioned by his having been ſo wounded, bruiſed, and hurt, in manner as aforeſaid, then and there in the Pariſh of *Harting* aforeſaid, got off the ſaid Horſe; upon which they the ſaid *Jackſon*, *Carter*, *Downer*, *Richards*, and *Sheerman*, him the ſaid *William Gally*, in and upon another Horſe, whereon the ſaid *Edmund Richards* then and there rode with the Belly of him the ſaid *William Gally* acroſs the Pummel of the Saddle, on which the ſaid *Richards* then and there rode, then and there with Force and Arms, feloniouſly, wilfully, and out of their Malice aforethought, did put and lay; but before they had gone the Space of eighty Yards further, the ſaid *William Gally* not being able to bear the Motion of the ſaid Horſe, on which he was ſo put and laid as laſt aforeſaid, by reaſon of his having been ſo whipped, laſhed, beat, and ſtruck as aforeſaid; and by reaſon of his being ſo wounded, bruiſed, and hurt, in manner as aforeſaid, then and there tumbled off the ſaid Horſe, and fell upon the Ground in the common Highway there, by which Fall he the ſaid *William Gally* was then and there much more wounded, bruiſed, and hurt; whereupon they the ſaid *Jackſon*, *Carter*, *Downer*, *Richards* and *Sheerman*, him the ſaid *William Gally*, in and upon another Horſe by himſelf, then and there with Force and Arms, feloniouſly, wilfully, and out of their Malice aforethought, did put and ſet; but the ſaid *Gally* not being able to ſit upright upon the ſaid laſt-mentioned Horſe, he the ſaid *Sheerman*, otherwiſe *Little Harry*, did then and there get up upon the ſame Horſe, behind him the ſaid *Gally*, in order to hold him on; but after they the ſaid *Jackſon*, *Carter*, *Downer*, *Richards* and *Sheerman*, and the ſaid *Gally* had rode on a Quarter of a Mile further together, in manner aforeſaid, he the ſaid *William Gally*, not being able to ſit upon the ſaid Horſe, or ride any further upon the ſame, through the great Miſery, Pain, and Anguiſh, occaſioned by his having been ſo whipped, laſhed, beat, and ſtruck, as aforeſaid, and by his being ſo wounded, bruiſed and hurt, in manner as aforeſaid, then and there tumbled off the ſaid Horſe, on which he was ſo put and ſet as laſt aforeſaid, and again fell to the Ground; and as he ſo tumbled and fell, the ſaid *Henry Sheerman*, otherwiſe *Little Harry*, who rode behind the ſaid *Gally*, and upon the ſame Horſe with him, in manner aforeſaid, then and there with Force and Arms, feloniouſly, wilfully, and out of his Malice aforethought, gave to him the ſaid *Gally* a moſt violent Thruſt and Puſh; by Reaſon whereof, the ſaid *Gally* then and there fell, with much more Weight and Force to the Ground, than otherwiſe he would have done; and was thereby then and there much more wounded, bruiſed, and hurt. And that by reaſon of the ſaid binding, tying, and faſtening, of him the ſaid *William Gally*, by them the ſaid *Jackſon*, *Carter*, *Downer*, *Richards* and *Sheerman*, in Manner and Form aforeſaid; and of the whipping, laſhing, beating, and ſtriking, of him the ſaid *Gally*, by them, in Manner and Form aforeſaid; and of the ſeveral Wounds, Bruiſes, and Hurts, which he the ſaid *William Gally* received, from ſuch whipping, laſhing, beating, and ſtriking, in Manner aforeſaid, and other Wounds, Bruiſes, and Hurts, which he the ſaid *William Gally* ſo received from the ſeveral Falls, which he ſo had from off the ſaid ſeveral Horſes, on which he was ſo by them put, ſet, and laid, in Manner and Form aforeſaid; and of the ſaid Thruſt and Puſh, which he the ſaid *Henry Sheerman*, otherwiſe *Little Harry*, ſo as aforeſaid, gave him the ſaid *Gally*, as he the ſaid *Gally* ſo tumbled and fell from off the ſaid Horſe, as laſt aforeſaid, he the ſaid *William Gally*, at the Pariſh of *Harting* aforeſaid, in the County of *Suſſex* aforeſaid, did inſtantly die. And further, That they the ſaid *William Jackſon*, *William Carter*, *Samuel Downer*, alias *Howard*, alias *Little Sam*, *Edmund Richards*, and *Henry Sheerman*, alias *Little Harry*, him the ſaid *William Gally*, with Force and Arms, in Manner and Form aforeſaid, feloniouſly, wilfully, and out of their Malice aforethought, did Kill and Murder, againſt his Majeſty's Peace, his Crown and Dignity.

Petty Jury.

John Burnand, Foreman,	*Henry Halſted*,	*John Shotter*,
William Faulkner,	*John Woods*,	*Thomas Sturt*,
Richard North,	*John Hipkin*,	*William Poe*,
William Halſted,	*William Hobbs*,	*Chriſtopher Wilſon.*

The Counſel for the Crown, were Mr. *Banks*, Mr. *Smith*, Mr. *Pureas*, Mr. *Burrell*, and Mr. *Steele*.

Mr. Juſtice *Foſter*, before the Jury were ſworn, acquainted the Priſoners they might each of them challenge twenty of the Pannel, without ſhewing Cauſe; but if they challenged more, they muſt ſhew a reaſonable Cauſe for ſo doing; and that if they agreed to join in their Challenges they might be tried together, but if they did not, they would be tried ſeparately; and left them to act in that behalf, as they ſhould ſee proper.

The Priſoners conſulted among themſelves, and agreed to join and be tried together. And then the Jury being ſworn, and charg'd by the Clerk of the Arraignments,

Mr. *Steele* opened the Indictment againſt the ſeven Priſoners, for the Murder of *Daniel Chater*. After which,

Mr. *Banks*, the King's Counſel, ſpoke as follows, *viz.* This is an Indictment againſt the ſeven Priſoners at the Bar, for the Murder of *Daniel Chater*. It is againſt the three firſt, *viz. Benjamin Tapner*, *John Cobby*, and *John Hammond*, as Principals in that Murder, by being preſent, aiding, abetting and aſſiſting therein; and againſt *Thomas Stringer*, and *Daniel Perryer*, as Principals alſo, and who are not yet apprehended. And it is againſt the four laſt Priſoners, *viz. William Jackſon*, *William Carter*, *Richard Mills* the elder, and *Richard Mills* the younger, as Acceſſaries before the Murder; and alſo againſt three others as Acceſſaries before the Fact, *viz. John Mills*, another Son of *Richard Mills* the elder, *Thomas Willis*, and *Edmund Richards*, not yet taken and brought to Juſtice.

Although this Indictment hath made a Diſtinction between the ſeveral Priſoners, and divided them into two Claſſes, of Principals and Acceſſaries; yet the Law makes no Diſtinction in the Crime. And in caſe all the Priſoners are guilty of the Charge in this Indictment, they will be all equally liable to the ſame Judgment and Puniſhment.

In the outſet of this Trial I ſhall not enlarge upon the Heinouſneſs of Murder in general; nor ſhall I dwell upon thoſe many Circumſtances of Aggravation, attending this Murder in particular. When I come to mention thoſe aggravating Circumſtances of Cruelty and Barbarity, in the courſe of this Trial, I doubt not but they will have all that Effect upon the Gentlemen of the Jury, which they ought to have; to awaken and fix your Attention to every Part of this bloody Tranſaction; and to balance that Compaſſion which you feel for the Priſoners, though they felt none for others. The Effect I mean theſe Circumſtances ſhould and ought to have, is, to clear the way for that Juſtice, which the Nation expects and calls for from your Determination and Verdict.

To comply with this general Demand of Juſtice upon the Priſoners, his Majeſty (ever attentive to the Good and Welfare of the Kingdom, the Preſervation of his Subjects, the Protection of the Innocent, and the Puniſhment of the Guilty,) in order to give the Priſoners the earlieſt Opportunity of proving their Innocence, and of wiping off this foul Suſpicion of Murder they now lie under; or if guilty of a Breach of the Laws of God and Man, that they may ſuffer the Puniſhment due to their Guilt; his Majeſty has been pleaſed by a Special Commiſſion, to appoint this Trial to be before their Lordſhips, not leſs knowing in the Laws, than tender and compaſſionate in the Execution thereof.

I cannot here omit taking notice of the unhappy Cauſe of this fatal Effect, now under your Conſideration. Every one here preſent, will in his own Thoughts anticipate my Words; and knows, I mean Smuggling. Smuggling is not only highly injurious to Trade, a Violation of the Laws, and the Diſturber of the Peace and Quiet of all the Maritime Counties in the Kingdom; But it is a Nurſery of all Sorts of Vice and Wickedneſs; a Temptation to commit Offences at firſt unthought-of; an Encouragement to perpetrate the blackeſt of Crimes without Provocation or Remorſe; and is in general productive of Cruelty, Robbery, and Murder.

It is greatly to be wiſhed, both for the Sake of the Smugglers themſelves, and for the Peace of this County, that the dangerous and armed manner now uſed of running uncuſtomed Goods, was leſs known, and leſs practiſed here.

It is a melancholy Conſideration to obſerve, that the beſt and wiſeſt Meaſures of Government, calculated to put a Stop to this growing Miſchief, have been perverted and abuſed to the worſt of Purpoſes. And what was intended to be a Cure to this Diſorder, has been made the Means to increaſe and heighten the Diſeaſe.

Every Expedient of Lenity and Mercy was at firſt made uſe of, to reclaim this abandoned Sett of Men. His Majeſty, by repeated Proclamations of Pardon, invited them to their Duty and to their own Safety. But inſtead of laying hold of ſo gracious an Offer, they have ſet the Laws at Defiance, have made the Execution of Juſtice dangerous in the Hands of Magiſtracy, and have become almoſt a Terror to Government itſelf.

The Number of the Priſoners at the Bar, and of others involved in the Suſpicion of the ſame Guilt, the Variety of Circumſtances attending this whole Tranſaction, the Length of Time in the Completion thereof, and the general Expectation of Mankind to be informed of every minute Circumſtance leading and tending to finiſh this Scene of Horror, will neceſſarily lay me under an Obligation of taking up more Time, than will be either agreeable to the Court, or to myſelf.

To avoid Confuſion in ſtating ſuch a Variety of Facts, with the Evidence and Proofs thereof; and to fix and guide the Attention of the

Gentlemen of the Jury to the ſeveral particular Parts of this bloody Tragedy, at laſt compleated in the Murder of *Chater*; I ſhall divide the Facts into four diſtinct Periods of Time.

1*ſt*. What happened precedent to *Chater*'s coming to a publick Houſe, the Sign of the *White Hart*, at *Rowland*'s Caſtle, in *Hampſhire*, kept by *Elizabeth Paine*, Widow, upon *Sunday* the 14th of *February*, 1747-8.

And this Period of Time will take in the Occaſion and Grounds of the Priſoners wicked Malice to the Deceaſed, and the Cauſe and Motive to his Murder.

2*d*. What happened after *Chater*'s Arrival at the Widow *Paine*'s, to the Time of his being carried away from thence by ſome of the Priſoners, to the Houſe of *Richard Mills* the elder, at *Trotten* in *Suſſex*.

This will diſcloſe a Scene of Cruelty and Barbarity, previous to *Chater*'s Murder; and ſhew how active and inſtrumental the Priſoners *Jackſon* and *Carter* were therein.

3*d*. What happened after *Chater* was brought to the Houſe of *Richard Mills* the elder, to the Time of his Murder, upon *Wedneſday* Night the 17th of that *February*.

This will take in that barbarous Uſage of *Chater* at *Mills*'s Houſe; a Conſultation of ſixteen Smugglers in what Manner to diſpoſe of *Chater*, and their unanimous Reſolution to murder him; and will ſhew *Tapner*, *Cobby*, and *Hammond*, to be Principals therein; and the other four Priſoners to be Acceſſaries.

4*th*, And laſt Period takes in the Diſcovery of *Chater*'s Body in a Well, where he was hung, with the Proofs that it was the Body of *Chater*.

In the opening of this Caſe, it will be impoſſible for me to avoid the frequent Mention of one *William Gally*, alſo ſuſpected to have been murdered; and for whoſe Murder, two of the Priſoners, *viz*. *Jackſon* and *Carter*, are indicted, and are to be tried upon another Indictment.

But the Murder of *Gally* is not the Object of your preſent Conſideration, nor do I mention his Name, either to aggravate this Crime, by taking Notice of his Murder alſo; nor to inflame the Jury againſt the Priſoners at the Bar. But I do it for the Sake of Method, and for the Purpoſe only of laying the whole Caſe before the Jury; for the Story of *Chater*'s Murder cannot be told, without diſcloſing alſo what happened to *Gally*, his Companion and Fellow-ſufferer.

To begin with the firſt Period of Time. Some-time in *September* 1747, a large Quantity of uncuſtomed Tea had been duly ſeized by one Captain *Johnſon*, out of a Smuggling Cutter, and by him lodged in the Cuſtom-houſe of *Poole*, in the County of *Dorſet*.

In the Night of the ſixth of *October* following, the Cuſtom-houſe of *Poole* was broke open by a numerous and armed Gang of Smugglers; and the Tea which had been ſeized and there lodged, was by them taken and carried away.

This Body of Smugglers, in their Return from *Poole*, paſſed through *Fordingbridge*, in *Hants*; where *Dimer*, one of that Company, was ſeen and known by *Chater*. *Dimer* was afterwards taken up, upon Suſpicion of being one of thoſe who had broke open the Cuſtom-houſe of *Poole*, and was in Cuſtody at *Chicheſter* for further Examination, and for further Proof that he was one of that Gang.

And in order to prove the Identity of *Dimer*, and that he was one of that Gang, *Daniel Chater*, a Shoemaker at *Fordingbridge*, (the Perſon murdered) was ſent in Company with, and under the Care of *William Gally*, a Tidewaiter of *Southampton*, by Mr. *Sheerer*, Collector of the Cuſtoms there, with a Letter to Major *Battine*, a Juſtice of Peace for *Suſſex*, and Surveyor-General of the Cuſtoms for that County. *Sunday* Morning, the 14th of *February*, 1747-8, *Gally* and *Chater* ſet out from *Southampton*, with Mr. *Sheerer*'s Letter, on their Journey to Major *Battine*'s Houſe, at *Eaſt-Marden*, in the Neighbourhood of *Chicheſter*.

At the New Inn at *Leigh*, in *Havant* Pariſh in *Hants*, *Chater* and *Gally* met with *Robert Jenkes*, *George Auſten*, and *Thomas Auſten*, and having ſhewed them the Direction of the Letter to Major *Battine*, they told them they were going towards *Stanſtead*, where *Chater* and *Gally* were informed Major *Battine* then was; and ſaid they would go with them, and ſhew them the Road. Their direct Way to *Stanſtead* lay near to *Rowland*'s Caſtle; but *Jenkes* and the two *Auſtens* carried them to *Rowland*'s Caſtle, that *Sunday* about Noon; where this cruel Plot was firſt contrived, and in part carried into Execution.

The Malice conceived by the Priſoners againſt *Chater*, from what I have already mentioned, appears not to have ariſen from any Injury or Suſpicion of Injury done by the deceaſed to the Priſoners; but becauſe *Chater* dared to give Information againſt a Smuggler, and to do his Duty in aſſiſting to bring a notorious and deſperate Offender to Juſtice, he was to be treated with the utmoſt Cruelty, his Perſon was to be tortured, and his Life at laſt deſtroyed. What avail the Laws of Society, where no Man dares to carry them into Execution? Where is the Protection of Liberty and Life, if Criminals aſſume to themſelves a Power of reſtraining the one, and deſtroying the other?

Having mentioned the Motive of the Priſoners to this Murder, I ſhall now open to you (what I propoſed in the ſecond Period of Time) a Scene of Cruelty and Barbarity, tending to the Murder of *Chater*, begun at *Rowland*'s Caſtle, by the two Priſoners *Jackſon* and *Carter*, in Company with others; and from thence continued, until *Chater* was brought to the Houſe of *Richard Mills* the elder, at *Trotten*, upon *Monday* Morning the 15th of *February*, before it was light.

And here you will obſerve, how cruelly and wickedly in general the Gang aſſembled at *Rowland*'s Caſtle behaved; and in particular how active *Jackſon* and *Carter* appeared in every Step of this fatal Conſpiracy.

Soon after *Chater* and *Gally*, and the three others, had arrived at *Rowland*'s Caſtle, the Widow *Paine* ſuſpected *Chater* and *Gally* intended ſome Miſchief againſt the Smugglers; and for that Purpoſe enquired of *George Auſten* who the two Strangers were, and what their Buſineſs was? He privately informed her, they were going to Major *Battine* with a Letter. She deſired he would either direct the two Strangers to go a different Way from Major *Battine*'s, or would detain them a ſhort Time at her Houſe, until ſhe could ſend for *Jackſon*, *Carter*, and others. And ſhe immediately ſent her Son *William* for the Priſoner *Jackſon*; and ſoon afterwards ordered her other Son *Edmund* to ſummon the other Priſoners, *Carter*, *Edmund Richards*, *Samuel Heward*, *Henry Sheerman*, *William Steel*, and *John Raiſs*, who all lived near *Rowland*'s Caſtle; and accordingly they all came; as alſo did *Jackſon*'s and *Carter*'s Wives. They were immediately informed by the Widow *Paine* of what ſhe ſuſpected, and had been informed concerning the two Strangers. *Jackſon* and *Carter* being very deſirous of ſeeing the Letter to Major *Battine*, got *Chater* out of the Houſe, and endeavoured to perſuade him to let them ſee the Letter, and to inform them of the Errand to Major *Battine*. But upon *Gally*'s coming out to them, and interpoſing to prevent *Chater*'s making any Diſcovery, they quarrelled with *Gally*, and beat him to the Ground; *Gaily* complained of this ill Uſage, and ſaid he was the King's Officer, and to convince them, ſhewed his Deputation.

Chater and *Gally* were very uneaſy at this Treatment, and wanted to be gone; but the Gang inſiſted upon their ſtaying; and in order to ſecure and get them entirely into their own Power, they plied them with ſtrong Liquors, and made them drunk, and then carried them into another Room to ſleep.

During the two Hours *Chater* and *Gally* ſlept, the Letter was taken out of *Chater*'s Pocket; whereby it appeared that *Chater* was going to give Information againſt *Dimer*. The Secret being thus diſcloſed to the Gang, the next thing to be conſidered of by the Smugglers, was how to ſave their Accomplice *Dimer*, and to puniſh *Chater* and *Gally*, for daring to give Information againſt him. For that Purpoſe, whilſt *Chater* and *Gally* were aſleep, ſeveral Conſultations were held.

It was firſt propoſed ſecretly to convey *Chater* and *Gally* into *France*; at that Time at War with *England*.

The ſecond Scheme was, for all preſent to contribute Three-Pence a Week for the Maintenance of *Chater* and *Gally*, who were to be confined in ſome private Place, and there ſubſiſted until *Dimer* ſhould be tried. And as *Dimer* was done unto, ſo *Chater* and *Gally* were to be dealt with.

The third and laſt Propoſal was, to murder both.

With a View and Intention to execute this laſt, and the moſt cruel Propoſal, *Jackſon* went into the Room about Seven of that Evening, where *Chater* and *Gally* lay aſleep, and awaked them. They both came out very bloody, and cut in their Faces; but by what Means, or what *Jackſon* had there done to them, does not appear. They were immediately afterwards forced out of the Houſe by *Jackſon* and *Carter*; the others preſent and conſenting and aſſiſting: *Richards*, one of the Company, with a cocked Piſtol in his Hand, ſwore he would ſhoot any Perſon through the Head, who ſhould make the leaſt Diſcovery of what had paſſed there.

Chater and *Gally* were put upon one Horſe; and, to prevent their Eſcape, their Legs were tied under the Horſe's Belly; and both their Legs tied together; and the Horſe was led by *William Steel*. After they had been thus carried about an hundred Yards from *Rowland*'s Caſtle, *Jackſon* cried out to *Carter* and the Company, Lick them, damn them, cut them, ſlaſh them, whip them. Upon which they whipped and beat them over their Heads, Faces, Shoulders, and other Parts of their Bodies, for the Space of a Mile. With this cruel Treatment, they both fell down under the Horſe' Belly, with their Heads dragging upon the Ground. They were again put upon the Horſe, and tied as before, and whipped and beat with the like Severity along the Road for about another Mile. And when they cried out through the Agony of their Pain, Piſtols were held to their Heads, and they were threatened to be ſhot, if they made the leaſt Noiſe or Cry. Being unable to endure this continued and exquiſite Pain, and to ſit on Horſe-back any longer, they fell a ſecond Time to the Ground. By this inhuman Uſage, they were rendered incapable of ſupporting themſelves any longer on Horſeback. *Gally* was afterwards carried behind *Steel*, and *Chater* behind *Heward*. The Priſoners, *Jackſon* and *Carter*, with the reſt of the Company, ſtill continued their mercileſs Treatment of *Chater* and *Gally*; but inſtead of whipping, they now began to beat them on their Heads and Faces, with the Butt End of their Whips, loaded with Lead. When they came to Lady *Holt* Park in *Suſſex*, *Gally* almoſt expiring with the Torture he had underwent, got down from behind *Steel*; and it was propoſed to throw him alive into a Well adjoining to that Park; in which Well *Chater* was three Days after hanged by the ſame Gang. *Gally* was then thrown acroſs the Pummel of the Saddle, and carried before *Richards*. He was afterwards laid along alone upon a Horſe, and ſupported by *Jackſon*, who walked by him; and was at laſt carried before *Sheerman*, who ſupported him by a Cord tied round his Breaſt. When they came to a Lane called *Conduit Lane*, in *Rogate* Pariſh in this County, *Gally*, in the Extremity of Anguiſh, cried out, *I ſhall fall, I ſhall fall.* Upon which *Sheerman* ſwore, *Damn you, if you will fall, do then*; and as *Gally* was falling he gave him a Thruſt to the Ground; after which *Gally* was never ſeen to move, or heard to ſpeak more.

Jackſon, *Carter*, and the others, in order to prevent a Diſcovery of the Murder of *Gally*, went about one of the Clock on the *Monday* Morning to the *Red Lion* at *Rake*, in *Suſſex*, a Publick-houſe kept by *William Stardefield*, whither they carried *Chater* all over Blood, and with his Eyes almoſt beat out; and alſo brought the Body of *Gally*. They obliged *Stardefield* to ſhew them a proper Place for the Burial of *Gally*; and accordingly he went with *Carter*, *Heward*, and *Steel*, to an old Fox Earth, on the Side of a Hill near *Raike*, at a Place called *Harting Combe*, where they dug a Hole, and buried *Gally*.

The ſame Morning, and long before it was light, whilſt ſome were employed in the Burial of *Gally*, *Jackſon* and *Sheerman* carried *Chater* to the Houſe of *Richard Mills* the elder, at *Trotten*.

I am now come to the third Period of Time; from *Chater*'s Arrival at the Houſe of *Richard Mills* the elder, to his Murder upon *Wedneſday* Night the 17th of *February*.

And here it is, that *Richard Mills* the elder, firſt appears to be privy, and conſenting to the intended Murder of *Chater*. A private Houſe was thought much more proper and ſafe for the Confinement of *Chater*, than a Publick-houſe, at all Times open to every Man; and therefore *Chater* was to be removed from *Scardefield*'s. The Priſoners and their Companions being no Strangers to old *Mills*, but his intimate Acquaintance, and Confederates in Smuggling, where could *Chater* be ſo ſecretly impriſoned, as at the Private-houſe of the elder *Mills*? And where could he be more ſecurely guarded, than under the Roof of one of their own Gang? With theſe Hopes and Reliance, and in full Confidence of the Secrecy and Aſſiſtance of old *Mills*, *Chater* was brought to his Houſe by *Jackſon* and *Sheerman*;

Sheerman; when they came there, they told old *Mills* they had got a Priſoner; he muſt get up, and let them in. Old *Mills* got up, and received *Chater* his Priſoner; whoſe Face was then a Gore of Blood, many of his Teeth beat out, his Eyes ſwelled, and one almoſt deſtroyed. I ſhall here omit one or two particular Circumſtances, which the Witneſſes will give an Account of; which ſhew that old *Mills* alſo was void of all Tenderneſs and Compaſſion.

Chater was received by him as a Priſoner, and a Criminal; and therefore was to be treated as ſuch. Old *Mills*'s Houſe itſelf, was thought too good a Priſon for him; and therefore he was ſoon dragged into a Skeeling or Out-houſe, adjoining to the Houſe; wherein Lumber and Fuel were kept. And though *Chater* was in ſo weak and deplorable a Condition, as to be ſcarce able to ſtand: yet to prevent all Chance and Poſſibility of his Eſcape, he was chained by the Leg with an Iron Chain, faſtened to a Beam of the Out-houſe. He was guarded Night and Day; ſometimes by *Sheerman*, and ſometimes by *Heward*, who came there that *Monday* Evening. Thus he continued in Chains, until he was looſened for his Execution. But leſt he ſhould die for want of Suſtenance, and diſappoint their wicked Deſigns; he was to be fed, and juſt kept alive, until the Time and Manner of his Death was determined. During the whole Time of this Impriſonment, old *Mills* was at home, and in his Buſineſs as uſual. He betrayed not the Truſt repoſed in him; he acquainted nobody with what had happened, nor with whom he was intruſted; but like a Gaoler, took care to produce his Priſoner for Execution.

On *Wedneſday* the 17th of *February*, there was a general Summons of all the Smugglers then in the Neighbourhood of *Scardefield*'s Houſe, who had been concerned in breaking open the Cuſtom-Houſe at *Poole*, to meet that Day at *Scardefield*'s. Upon which Notice, all the Priſoners (except old *Mills*) came that Day to *Scardefield*'s. And there were alſo preſent, *John Mills*, another Son of old *Mills*, *Edmund Richards*, *Thomas Willis*, *Thomas Stranger*, *Daniel Perryer*, *William Steel* and *John Raiſs*; *Heward* and *Sheerman* ſtill continuing at old *Mills*'s, and there guarding *Chater*. It was at this Conſultation at *Scardefield*'s, unanimouſly agreed by all preſent, that *Chater* ſhould be murdered.

This was a deliberate, ſerious, and determinate Act, of Minds wickedly and cruelly diſpoſed, and executed with all the imaginable Circumſtances of Barbarity.

At this Meeting *Tapner*, *Cobby*, and *Hammond* were firſt concerned in, and became privy and conſenting to this Murder. And there alſo *Richard Mills* the younger, firſt became an Acceſſary to this Murder: But he was ſo eager in the Purſuit of it, that he particularly adviſed and recommended it; and ſaid, he would go with them to the Execution, but he had no Horſe. And when he was told, that the old Man (meaning *Chater*) was carried by a ſteep Place in the Road to *Rake*, he ſaid—"If I had been "there, I ſhould have called a Council of War, and he ſhould have come "no farther."

About Eight of the Clock of that *Wedneſday* Evening, all who were preſent at the Conſultation at *Scardefield*'s (except *Richard Mills* the younger, *John Mills*, and *Thomas Willis*) went from *Scardefield*'s to the Houſe of old *Mills*, where they found *Chater* chained, and guarded by *Heward* and *Sheerman*.

They told him he muſt die, and ordered him to ſay his Prayers. And whilſt he was upon his Knees, at Prayers, *Cobby* kicked him; and *Tapner*, impatient of *Chater*'s Blood, pulled out a large Claſp-knife, and ſwore he would be his Butcher, and cut him twice or thrice down the Face, and acroſs his Eyes and Noſe. But old *Mills*, in hopes of avoiding the Puniſhment due to his Guilt, by ſhifting *Chater*'s Execution to another Place, ſaid,—"Don't murder him here, but carry him ſomewhere elſe firſt."

He was then looſened from his Chains, and was by all the Priſoners (except *Mills* the Father and the Son), and by all the Gang that came from *Scardefield*'s, carried back to that Well, wherein *Gally* had before been threatened to be thrown alive. *Jackſon* and *Carter* left the Company ſome ſmall Diſtance before the others came to the Well; but deſcribed the Well to be fenced round with Pales, and directed them where to find it; and ſaid, We have done our Parts, meaning, we have murdered *Gally*: And you ſhall do your Parts, meaning, you ſhall murder *Chater*.

Tapner, in order to make good what he had before ſaid (and happy had it been for him, had he ſhewn more Regard to his Actions and leſs to his Words), after *Chater* had been forced over the Pales which fenced the Well, pulled a Rope out of his Pocket, put it about *Chater*'s Neck, faſtened the other End to the Pales, and there he hung *Chater* in the Well until he was dead.

But ſoon after the Body was let looſe, and had fallen to the Bottom of this Well, which was dry, one of the Accomplices imagined he heard *Chater* breathe, and that there were ſtill ſome Remains of Life in him.

To put an End to a Life ſo miſerable and wretched, they threw Pales and Stones upon him. This was the only Act, that had any Appearance of Mercy and Compaſſion; and it brings to my Remembrance the Saying of the wiſeſt of Men, fully verified in this fatal Inſtance of *Chater*'s Murder——*The Mercies of the Wicked are Cruelty.*

I am now come to the fourth and laſt Period of Time.

And here it is obſervable, that although Providence had for many Months permitted this Murder to remain undiſcovered, yet it was then diſcloſed and brought to light, when the appointed Time was come, and an Opportunity given, to apprehend and bring to Juſtice many of the principal Offenders.

Upon the 17th of *September* laſt, Search was made in purſuance of Information given, for the Body of *Chater*. And the Body was found with a Rope about its Neck, covered with Pales, Stones, and Earth, in that Well I before mentioned, cloſe by Lady *Holt* Park, in a Wood called *Harraſs-Wood*, belonging to Mr. *Carryll*.

By the Length of Time, from *February* to *September*, the Body was too much emaciated to be known with any Certainty. But by his Boots, Cloaths, and Belt, there alſo found, it evidently appeared to be the Body of the unfortunate *Chater*.

I have now opened to you the Subſtance of all the moſt material Facts; and ſhould the Proofs ſupport the Truth of thoſe Facts, no Man can doubt the Conſequence thereof, that *Chater* was murdered, and that the Priſoners were his Murderers.

Mr. *Smyth*, another of the King's Counſel, alſo ſpoke as follows, *viz.* May it pleaſe your Lordſhips and Gentlemen of the Jury, I am likewiſe of Counſel againſt the Priſoners at the Bar, three of whom are indicted as Principals for the Murder of *Daniel Chater*, the other four as Acceſſaries before the Fact to that Murder.

The Crime they are charged with is one of the greateſt that can be committed againſt the Laws of God and Man, and in this particular Caſe attended with the moſt aggravating Circumſtances.

It was not done in the Heat of Paſſion, and on Provocation, but in cold Blood, deliberately, on the fulleſt Conſideration, in the moſt cruel Manner, and without any Provocation: The Occaſion being as you have heard, only becauſe he dared to ſpeak the Truth, he had ſeen *Dimer* paſſing through *Fordingbridge*, and had made Oath of it before a Magiſtrate, being required ſo to do.

This Proſecution therefore is of the utmoſt Importance to the publick Juſtice of the Nation, and to the Safety and Security of every Perſon; not only in this County, but in the Kingdom; for if ſuch Offenders ſhould eſcape with Impunity, the Conſequence would be, that no Crime could be puniſhed. It would teach Highwaymen, Houſebreakers, and all other Criminals, to unite in the Manner thoſe Men have done, and whoever received Injuries from them, would not dare complain, or take any Steps towards bringing them to Juſtice, for fear of expoſing themſelves to the Reſentment and Revenge of their Companions.

Our Conſtitution, therefore, which muſt be ſupported by a regular Adminiſtration of Juſtice, and a due Execution of our Laws, depends in ſome Meaſure, on bringing ſuch Offenders to condign Puniſhment; and 'tis to be hoped a few Examples of this Kind will reſtore the Peace and Tranquillity of this Country.

In ſhortly ſtating the Facts, I ſhall endeavour to point out to you the Share, which every one of the Perſons at the Bar had in this Murder.

In *October* 1747, the Cuſtom-Houſe at *Poole* was broke open; the Smugglers who did it, in their Return paſſed through *Fordingbridge*, a Town in *Hampſhire*, where *Chater* ſaw *Dimer* among them; and having declared ſo, was obliged to make Oath of it before a Magiſtrate; on which Information *Dimer* was taken up and committed to *Chicheſter* Goal for further Examination; and on the 14th of *February*, *Chater* was ſent by the Collector of *Southampton*, in Company with *Gally*, with a Letter to Mr. *Battine*, Surveyor-General of the Cuſtoms, in order that *Chater* might ſee if the Man in *Chicheſter* Gaol was the ſame Perſon he ſaw at *Fordingbrige*.

Theſe two Men having enquired their Way at the New Inn at *Leigh*, one *Jenkes* undertook to direct them, and carried them to the Widow *Paine*'s at *Rowland's* Caſtle, who ſaying ſhe feared they were going to do the Smugglers ſome Miſchief, ſent for *Carter* and *Jackſon*, *Steel*, *Raiſs*, *Richards*, *Sheerman*, and *Heward*, who having made *Chater* and *Gally* drunk, and ſeen the Letter to Mr. *Battine*, conſulted what to do with them. Some propoſed to murder them, others to ſend them Priſoners to *France*, and others to confine them, till they ſaw what became of *Dimer*, and to treat them as he was dealt with.

Carter and *Jackſon* having ſent *Jenkes* away, this poor Man and *Gally* were left abſolutely in the Power of them and the other Smugglers; and indeed into worſe Hands he could not have fallen: had he been taken Priſoner in Battle by our Enemies, he would have had Quarter, and been treated with Humanity: had he fallen into the Hands of Enemies of thoſe Nations who give no Quarter, his Lot would have been immediate Death: but as it was his hard Fate to fall into the Hands of Smugglers, he was to have neither Quarter or immediate Death, but was reſerved to ſuffer the moſt cruel Uſage for ſeveral Days, and afterwards murdered.

Theſe poor Wretches, after having been beat and abuſed at *Paine*'s by *Carter* and *Jackſon*, and the reſt of the Gang, were carried away by Force, both ſet on one Horſe, with their Legs tied under the Horſe's Belly, and whipp'd and beat by Direction of *Carter* and *Jackſon*, till they fell; then were ſet up again in the ſame Manner, and whipp'd and beat again 'till they fell a ſecond time; and were then ſet on ſeparate Horſes, and uſed in the ſame Manner, 'till *Gally* had the good Fortune to be delivered by Death from their Cruelty; after which they carried *Chater*, who was bloody and mangled with the Blows and Falls he had received, to *Scardefield*'s, at the *Red Lion* at *Raike*, who obſerved *Jackſon*'s Coat and Hands to be bloody; and while *Carter* and the reſt buried *Gally*, *Jackſon* and *Sheerman* carried *Chater* to old *Mills*'s in the Night, between the 14th and 15th of *February*, where he was chained by the Leg in the Skeeling, or Out-houſe, 'till the *Wedneſday* Night following, and *Sheerman* and *Heward* guarded him.

Imagine to yourſelves the Condition of this unhappy Man, certain to die by their Hands, uncertain only as to the Time, and the cruel Manner of it; ſuffering for three Days and three Nights, Pain, Cold, and Hunger; and what was infinitely worſe, that Terror and Anxiety of Mind, which one in his Situation muſt continually labour under; he muſt doubtleſs envy the Condition of his Companion *Gally*, who by an early Death was delivered from the Miſery he then endured.

On *Wedneſday* following, being the 17th of *February*, all the Priſoners at the Bar (except old *Mills*) met at *Scardefield*'s, and there were preſent alſo ſeven more; at which Meeting they conſulted what to do with *Chater*; and it was unanimouſly agreed by all the Thirteen then preſent, to murder *Chater*; and young *Mills*, the Priſoner at the Bar, particularly adviſed it; and ſaid, if he had a Horſe, he would go with them to do it; and either then, or at another Meeting at *Scardefield*'s, when *Carter* and *Jackſon* ſaid, that as they came along, they brought *Chater* by a ſteep Place thirty Feet deep, young *Mills* ſaid, If I had been there, I would have called a Council of War, and he ſhould have come no further.

This being determined, the Priſoners *Tapner*, *Cobby*, *Hammond*, *Carter*, and *Jackſon*, together with five more of that Company, went to old *Mills*'s, where they found *Chater* chained, and guarded by *Sheerman* and *Heward*, and told him he muſt die; he ſaid he expected no other; *Tapner* then ſaid he would be his Butcher, and taking out a Knife, cut him twice acroſs the Face; on which old *Mills* ſaid, Don't murder him here, but take him ſomewhere elſe firſt.

Tapner, *Cobby*, *Hammond*, *Carter*, *Jackſon*, and the reſt, who came there together with *Sheerman* and *Heward*, then carried him away to murder him; *Sheerman*, *Heward*, and *Richards*, having been concerned in *Gally*'s Murder, ſaid, the reſt ſhould kill *Chater*, and therefore went away at *Hurting*; *Carter* and *Jackſon* having been likewiſe concerned in *Gally*'s Murder, when they came to Lady *Holt* Park-gate, turned in there, and left the

the others; having firſt told them, the Well is a little Way off, you can't miſs it, 'tis fenced round with Pales, to keep the Cattle from falling in.

Tapner, *Cobly*, and *Hammond*, and the reſt, went then to the Well, where *Tapner* put a Rope about *Chater*'s Neck to hang him; and ſome of the Pales being broken down, *Chater* would have crept through. *Tapner* would not let him, but made him climb over the Pales, weak as he was, and then hanged him in the Well about a Quarter of an Hour, till they thought him dead; then having drawn him up till they could take hold of his Legs, they threw him headlong into the Well; and fancying they heard him breathe or groan, threw Poſts and Stones in upon him, and went their Way.

The Terror this Act of Cruelty had ſpread through the Country, ſtopt every Perſon's Mouth, who had it in their Power to give any Information; ſo that the Body was not found till *September* laſt, when it was ſo putrified and conſumed, as not to be known, but by the Belt which was about it, and which *Chater*'s Wife will prove to be her Huſband's. If there was any Doubt as to the Identity of the Man, we could ſhew likewiſe, that being examined by the Smugglers juſt before he was murdered, he ſaid his Name was *Daniel Chater*.

It appears therefore from this State of the Caſe, that all the Priſoners are guilty of the Indictment. *Tapner* was preſent at the Conſultation at *Scardefield*'s, and was the Perſon who hanged him. *Cobby* and *Hammond* were preſent at the Conſultation, helped to carry him to the Well, and were preſent at the Murder, and therefore equally guilty with *Tapner*, as Principals. *Carter* and *Jackſon* took him away by Force from *Paine*'s, and by the Treatment of him there and on the Road, ſhewed an Intention from the firſt to murder him, though perhaps the particular Death he was to ſuffer, was not then agreed on; they were afterwards preſent at the Conſultation at *Scardefield*'s, where it was reſolved to murder him, and went almoſt to the Well with him; and when they parted, gave thoſe who murdered him particular Directions to the Well. Young *Mills* was alſo at the Conſultation, and particularly adviſed and directed the Murder, in which he declared he would have joined, if he had a Horſe. Old *Mills*, though he kept no Publick-houſe, and therefore was not obliged to receive Gueſts, receives this Man brought in the Night, in a bloody and deplorable Condition; *Chater* is chained in his Outhouſe from *Sunday* Night till *Wedneſday*; yet *Mills* never diſcovers it to any Perſon, or uſes any Means to deliver him, which is a ſtrong Evidence of his Knowledge and Approbation of their Deſign; and when *Tapner* declared he would be his Butcher and cut him, old *Mills* expreſſes no Diſapprobation of the Murder, does not diſſuade him from it, but deſires him not to do it there, but carry him ſomewhere elſe firſt, which ſhews his Approbation of the Fact; though to ſecure himſelf, as he thought, from Puniſhment, he would have had it committed at ſome other Place.

This, *Gentlemen*, is the Fact, which ſhews, that ſecuring themſelves and their Companions, was not their principal Aim; were it ſo, they would have murdered this Man as ſoon as they had him in their Power; but their Motive ſeems to have been Revenge, and a Diſpoſition to torture one, who ſhould dare to give any Information, which might bring them or their Friends into Danger.

After hearing the whole Evidence, if theſe Men appear innocent, God forbid they ſhould be found guilty; and I would not have the cruel Circumſtances of the Fact incline you to believe any thing we ſuggeſt, that is not ſupported by the ſtrongeſt Proof: But if the Fact is proved beyond a Poſſibility of Doubt, to be in the Manner we have ſtated, I am ſure you will do your Duty, and by a juſt and honeſt Verdict, deliver your Country from Men ſo void of Humanity.

The following Witneſſes were then called for the Crown.

Mr. *Milner*, Collector of the Cuſtoms at the Port of *Poole*, depoſed, That about the 7th of *October* 1747, he had Advice that the Cuſtom-houſe at *Poole* was broke open; upon which he haſten'd thither, and found the outer Door burſt open, and the other Door broke in Pieces; that the Room wherein ſome Run Tea was lodged, was broke open, and all the Tea carried away, excepting a little Bag, containing about four or five Pounds *.

Mr. *Sheerer*, Collector of the Cuſtoms at *Southampton*, depoſed, That in *February* laſt he received a Letter from the Commiſſioners of the Cuſtoms, acquainting him, that one *John Dimer* was committed to *Chicheſter* Jail, for breaking open the Cuſtom-houſe at *Poole*, with Directions to ſend the deceas'd *Daniel Chater*, who could give ſome Information againſt *Dimer*, to Mr. *Battine* the Surveyor-General, and to acquaint Mr. *Battine* with the Occaſion of his ſending *Chater*; that he accordingly ſent *Chater* with a Letter addreſſed to Mr. *Battine*, under the Care of one *William Galley*, a Tideſman in the Port of *Southampton*; that they ſet out on *Sunday* Morning the 14th of *February* laſt; he could not take upon him to ſay how *Chater* was dreſs'd, but he remembered he rode upon a dark brown Horſe, and had a Great-coat on, with another Coat under it, and upon the under Coat a Belt; he could not recollect how *Galley* was dreſs'd, but remembered that he was mounted on a grey Horſe.

William Galley, the Son of *William Galley*, depoſed, That he remembered his Father's ſetting out upon this Journey to Mr. *Battine*, in *February* laſt; that he ſaw the Letter to Mr. *Battine* the Night before his Father ſet out, and ſaw the Directions; he remembered the Dreſs his Father had on; it was a blue Great-coat, with Braſs Buttons covered with blue, a cloſe-bodied Coat, of a light brown Colour, lined with blue, with a Waiſtcoat and Breeches of the ſame, and that he rode on a grey Horſe; he remembered that *Daniel Chater* ſet out at the ſame Time with his Father, and had on a light Surtout Coat, with red Breeches and a Belt round him, and rode upon a brown Horſe: that this was the laſt Time he ever ſaw his Father alive, and that he never ſaw *Chater* ſince.

Edward Helton depoſed, That on the 14th of *February* laſt he ſaw *Daniel Chater* and another Perſon, whom he took to be Mr. *Galley*, at his own Houſe, at *Havant*, in the County of *Hants*; he knew *Chater* very well, and had ſome Converſation with him; that *Chater* told him he was going to *Chicheſter* upon a little Buſineſs, and then went out to *Galley*, and brought in a Letter, which was directed to *William Battine*, Eſq. at *Eaſt-Marden*; upon which he (the Witneſs) told him, he was going out of his Way; that *Galley* wiſhed he would direct them the Way; that he directed them to go through *Stanſtead*, near *Rowland's* Caſtle; and that they ſaid they ſhould be back again the next Day.

George Auſten depoſed, That on *Sunday* the 14th of *February* laſt he ſaw two Men, one mounted upon a brown Horſe, and the other upon a grey, at the New Inn at *Leigh*, in the Pariſh of *Havant*; that they came to the New Inn when he was there, and inquired the Way to *Eaſt-Meon*; to which Place he was going to direct them, when one of the Men, who had a blue Coat on, pulled a Letter out of his Pocket, which he (the Witneſs) looked at, and ſeeing it was directed to *Eaſt-Marden*, he told them they were going Ten Miles out of the Way; and that he and his Brother *Thomas Auſten*, and his Brother in-law *Robert Jenkes*, were going Part of their Road, and would conduct them the beſt they could; that they went no farther together than to a Place called *Rowland*'s Caſtle, to a Public-houſe which was kept by the Widow *Paine*; the two Strangers call'd for Rum at Widow *Paine*'s. This was about the Middle of the Day, or ſomething after. That the Widow *Paine* aſked him if he knew theſe Men, or whether they belonged to his Company; he told her they were going to Mr. *Battine*'s, and that he was going to ſhew them the Way; ſhe then ſaid ſhe thought they were going to do Harm to the Smugglers, and deſired him to ſet them out of the Way, which he refuſed to do; ſhe then ſeemed uneaſy, and ſhe and her Son conſulted together; that her Son went out, and the Priſoner *Jackſon* came in in a little Time; that the Priſoner *Carter*, and ſeveral more, came thither ſoon afterwards. He knew none but *Jackſon* and *Carter*. That *Jackſon* inquired where the two Men were bound for; and the Man in the light Coat anſwered, they were going to Mr. *Battine*'s, and from thence to *Chicheſter*; but *Carter* was not by at that Time; that the two Strangers had ſome Rum, and *Jackſon* called for a Mug of Hot, which was Gin and Beer mixed, or ſomething of that Kind, and to the beſt of his Knowledge they all drank together; he did not ſee any ill Treatment, nor either of the Men bloody, whilſt he was there; that he went away between one and two, and left the two Men there; the Widow *Paine* called him out of Doors, and told him his Brother *Jenkes* wanted to ſpeak to him; when he came out, his Horſe was at the Hedge by the back Door, and his Brother ſaid he wondered why the two Men did not go away; upon which he went back again into the Houſe, and his Brother was uneaſy becauſe he did ſo; that the Widow *Paine* adviſed him to go home, and ſaid the two Men would be directed the Way; he was uneaſy at going without them, becauſe he ſaw ſo many Men come in, and imagined they had a Deſign to do ſome Harm to them; that when he went away, *Jackſon* and *Carter* were left with the two Men, to the beſt of his Knowledge; and *Jackſon*, as well as the Widow *Paine*, perſuaded him to go home. He was poſitive that *Jackſon* and *Carter* were there, for he knew them very well.

The Court aſked *Jackſon* and *Carter*, if they would aſk this Witneſs any Queſtions?

To which they both anſwered in the Negative.

Thomas Auſten was then called: depoſed, That he was at the New Inn at *Leigh* on *Valentine*'s Day laſt, with his Brother *George*; he ſaw two Men there who inquired the Way to Mr. *Battine*'s; he went from thence with them to *Rowland's* Caſtle; they went to the Widow *Paine*'s at that Place, and called for a Dram of Rum; the Priſoners were not there at firſt, but in a little Time *Jackſon* came; and ſoon afterwards the Priſoner *Carter*. That the Widow *Paine* ſpoke to him at the outer Door before either of the Priſoners came, and aſked him if he knew the two Men, and ſaid ſhe was afraid they were come to do the Smugglers ſome Miſchief, and that ſhe would ſend for *William Jackſon*; her Son went for him, and he ſoon came, and another little Man and his Servant; he ſaw one *Joſeph Southern* there and the Priſoner *Carter*, but *Carter* did not come ſo ſoon as *Jackſon*; he (the Witneſs) ſtayed there till ſeven o'Clock in the Evening, and about that Time *William Jackſon* ſtruck one of the Men in the Face, who to the beſt of his Remembrance had a blue Coat on; they all drank pretty freely from one o'Clock, and he was drunk and went to Sleep, and the two Men were fuddled and went to Sleep in the little Room; that about ſeven o'Clock *Jackſon* went into the Room and waked the two Men, and when they came out of the Room, it was that *Jackſon* ſtruck one of them; after they came out, the two Men went away with *Jackſon* and *Carter*, and one *William Steele*, and *Edmund Richards*; he did not remember that they were forced away, and did not ſee them upon the Horſes, nor did he ever ſee them any more; this was between ſeven and eight o'Clock.

Being aſked, whether he ſaw either of the Men produce his Deputation, or heard any high Words?

Said he did not; that he was aſleep the beſt Part of the Afternoon; and did not ſee any ill Treatment, but that one Blow which he had mentioned, and did not obſerve any Blood about them when they went away.

Being croſs-examined at the Requeſt of the Priſoners,

Said, he did not know who the two Strangers were, but they were the ſame Perſons that his Brother *George* ſpoke of, and had a Letter for Mr. *Battine*; that one of them had a blue Coat on, and rode upon a grey Horſe, and the other Man rode upon a browniſh Horſe; he did not ſee the Direction of the Letter, but he heard it read by *Robert Jenkes*.

Robert Jenkes depoſed, That he ſaw two Men upon the 14th of *February* laſt, at the New Inn at *Leigh*, one of them upon a blackiſh Horſe, the other upon a grey, and dreſſed in riding Coats; they were the ſame Men that the Witneſſes *George* and *Thomas Auſten* had ſpoke of; they went together to *Rowland's* Caſtle, and got there about twelve o'Clock or ſomething after, and went into a Houſe there which was kept by the Widow *Paine*; he did not hear her give any Directions to ſend for any body; but the Priſoners *Jackſon* and *Carter* ſoon came thither; he ſtaid

* The Short-Hand Writer having omitted to take the ſeveral Queſtions put to the Witneſſes, with their Anſwers in the Words they were delivered, that Defect cannot now be ſupplied.

But we having peruſed the following Trials do certify, that the Subſtance of the Evidence given by the ſeveral Witneſſes is faithfully taken. And that upon the whole, this Account of the Proceedings under the Commiſſions is in Subſtance true.

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there about an Hour and a half, and whilſt he was there he did not ſee any Abuſe, or obſerve that either of the Men was bloody; he had no Converſation with *Jackſon*, further than that *Jackſon* ſaid he would ſee the Letter which was going to Major *Battine*, and *Carter* he believes might ſay ſo too; when he wanted to go away, *Jackſon* would not ſuffer him to go thro' the Room where the two Men were; that *Jackſon* told him if he had a mind to go, he might go through the Garden to the back Part of the Houſe; he did ſo, and found his Horſe there, and went away; he could not ſay why *Jackſon* refuſed to let him go through the Room, but believed it was for fear the two Men ſhould go away with him; that he did not order his Horſe to be led round to the Garden himſelf; that *George Auſten* and he went away together upon his Horſe, and that *Jackſon* would ſee the Letter one of the Men had in his Pocket, and the Witneſs ſaw the Direction of it, which was to *William Battine*, Eſq. at *Eaſt Marden*.

Being croſs-examined by the Priſoner *Carter*, whether *Carter* ſaid he would ſee the Letter? anſwered, both *Carter* and *Jackſon* ſaid ſo, and that *Carter* did ſay he would ſee the Letter that was going to Mr. *Battine*; that he (the Witneſs) did not order his Horſe to be carried to the back Part of the Houſe; and that *Carter* was by when he was told by *Jackſon*, that if he had a mind to go, his Horſe ſhould be led to the back Part of the Houſe.

Joſeph Southern ſwore, That on *Sunday* the 14th of *February* laſt, he ſaw *Jenkes*, the two *Auſtens*, and two other Men on the Road coming from *Havant* towards *Rowland's* Caſtle, one of them had a blue Coat on and rode a grey Horſe; that he went to *Rowland's* Caſtle himſelf that Day, and ſaw *Jenkes*, *Auſten*, and the ſame two Men ſitting on Horſeback drinking at the Widow *Paine*'s Door; he ſtaid there beſt Part of an Hour, and ſaw them and ſeveral other Perſons in the Houſe; that he ſaw the Priſoners *Carter* and *Jackſon* in the Houſe whilſt he ſtaid there; he ſat down and drank a Pint of Beer by the Kitchen Fire, but the other Perſons were in another Room; that he ſaw the two Men come out to the Door and go in again, and one of them had an Handkerchief over his Eye, and there was Blood upon it; that he met this Man as he was going in, and heard him ſay to *Jackſon*, "I am the King's Officer, and I will take Notice of you "that ſtruck me." That *Carter* was not preſent when this was ſaid, but was in the Houſe; the Man who ſpoke thus to *Jackſon* had a Parchment in his Hand when he met him at the Door, he likewiſe ſaw a Letter in his Hand, and heard him ſay he was going to Mr. *Battine* with it; that he (the Witneſs) went away between two and three o'Clock, and did not know what became of the Letter, nor had he heard either *Jackſon* or *Carter* ſay what became of it.

The Priſoners *Jackſon* and *Carter* ſaid they would not aſk him any Queſtions.

William Garret ſwore, he was at the Widow *Paine*'s on the 14th of *February* laſt, about four o'Clock in the Afternoon, and ſaw the Priſoners *Jackſon* and *Carter* and two Strangers there; that one of them who had a blue Coat on had received a Stroke upon his Cheek, and the Blood ran down it; that juſt as he came in, this Man was ſtanding up by the Back of a Chair, and *Jackſon* ſtood by him, and he heard *Jackſon* ſay, "That "for a Quartern of Gin he would ſerve him ſo again," by which the Witneſs underſtood that *Jackſon* had ſtruck him before; he did not hear the Man ſay he was the King's Officer, but he heard *Jackſon* ſay, "You a "King's Officer! I'll make you a King's Officer, and that you ſhall "know." That when he went away, he left them all there.

The Priſoners would not aſk him any Queſtions.

William Lamb depoſed, That he went to the Widow *Paine*'s, at *Rowland's* Caſtle, on the 14th of *February* laſt, about four in the Afternoon, and found *Jackſon* and *Carter* there; that before he went, he ſaw one of the Widow *Paine*'s Sons call *Carter* aſide, at his Houſe at *Weſt-Bourne*; that there were ſeveral other People there in another Room, amongſt whom were *Thomas Auſten*, and two Men that were Strangers to him, one of whom had on a blue Gaberdine; the two Men, he underſtood, were going with a Letter to Mr. *Battine*; he ſaw no ill Treatment during the little Time he ſtaid there; that *Edmund Richards*, one of the Company, pull'd out a Piſtol, and ſaid, "That whoever ſhould diſcover any thing that paſſed at "that Houſe, he would blow his Brains out." *Jackſon* and *Carter* were not in the Room when theſe Words were ſpoken, as he believes. He ſaw the Man in the blue Gaberdine pull a Parchment out of his Pocket, and heard him tell the People he was the King's Officer; his Wig was then off, and there was Blood upon his Cheek; that he ſaw a Letter, which he underſtood to be going to Mr. *Battine*; one *Kelly*, and the Priſoner *Carter*, had it in their Hands, but he did not know how they came by it; he did not ſee the Directions of the Letter; he obſerv'd it was broke open, when he ſaw it in the Hands of *Carter* and *Kelly*; and he underſtood, by the Diſcourſe of the Company, that it was a Letter which the two Strangers were to carry to Mr. *Battine*, but he never heard it read.

The Priſoners, *Carter* and *Jackſon*, would not aſk him any Queſtions.

Richard Kent depoſed, That he was at the Widow *Paine*'s on the 14th of *February* laſt; and that *Edmund Richards* told him, that if he ſpoke a Word of what he had heard or ſeen there, he would ſhoot him thro' the Body; but *Jackſon* and *Carter* were not in the Room when *Richards* ſaid this.

George Peate depoſed, That he was at *Rowland's* Caſtle, on *Sunday* the 14th of *February* laſt, about ſeven o'Clock in the Evening, or after, and ſaw nine Men there, and that the Priſoners, *Jackſon* and *Carter*, were two of them; he ſtaid there about half an Hour, and as ſoon as he came in, he ſaw four or five Men with great Coats and Boots on, moſt of them upon their Legs, as if they were juſt going; he went and warmed himſelf by the Kitchen Fire, and ſat down by *Thomas Auſten*, who was then aſleep; he called for a Pint of Beer, and ſoon after he heard the Stroke of a Whip repeated three or four Times, in a little Room that was at the Corner of the Kitchen, but did not ſee who gave the Blows, nor who received them; that he afterwards heard a ſtrange Ruſtling of People, more than before, and ſaw ſeven or eight Men come into the Kitchen; that he knew the Priſoners *Jackſon* and *Carter*, and *William Steele*, *Edmund Richards*, and two that went by the Names of *Sam* and *Harry*; there were two other Perſons there, whom, to his Knowledge, he had never ſeen before nor ſince; and could give no Account of them, nor did he obſerve how they were dreſs'd; that ſoon after he thought he heard a Blow, and he ſaw *Jackſon* in a moving Poſture, as if he had juſt given a Blow, and was drawing up his Arm in a proper Form, as if he was going to give another; but *William Paine* ſtepp'd up, and called him Fool and Blockhead for ſo doing; upon which he ſunk his Arm, and did not behave in the like Manner any more, in his Sight; that juſt as they were going out of Doors, *Jackſon* turned round, with a Piſtol in his Hand, and aſked for a Belt, Strap, or String, but Nobody give him either, and he put his Piſtol into his Great-coat Pocket, and went away with the reſt; that by the trampling of Horſes, he ſuppoſed they all went on Horſeback, but which Way he knew not; it was between ſeven and eight o'Clock, as nigh as he could gueſs, when they went off; he did not hear any Converſation about one of the Strangers being the King's Officer, nor did ſee the Blow given, nor the Perſon to whom the other Blow was going to be given.

The Priſoners would not aſk him any Queſtions.

John Raiſs depoſed, That on *Sunday*, the 14th of *February*, he was at *Rowland's* Caſtle, between twelve and one o'Clock at Noon; that when he came there he found *Edmund Richards*, *William Steele*, the Priſoners *Carter* and *Jackſon*, and *Little Sam*, *Richard Kelly*, *Jackſon*'s Wife, and *Galley* and *Chater*; he ſaw *Jackſon* take *Chater* to the Door, and heard him aſk him if he knew any Thing of *Dimer*; and *Chater* anſwer'd he did, and was obliged to go and ſpeak againſt him; that *Galley* then went out to keep *Chater* from talking to *Jackſon*; whereupon *Jackſon* knocked *Galley* down with his Fiſt; that *Galley* came in again, and ſoon after *Jackſon* and *Carter*. When they were all come in, he (the Witneſs) with the Priſoners *Jackſon* and *Carter*, and *Edmund Richards*, went into the back Room; that there they enquir'd of *Jackſon* what he had got out of the Shoemaker (meaning *Daniel Chater*); that *Jackſon* informed them, that *Chater* ſaid he knew *Dimer*, and was obliged to come in as a Witneſs againſt him; that then they conſulted what to do with them (*Chater* and *Galley*); this was about three o'Clock in the Afternoon: They firſt propoſed to carry them to ſome ſecure Place, where they might be taken care of till they had an Opportunity of carrying them over to *France*; that when this Propoſition was made, the Priſoners, *Jackſon* and *Carter*, and *Richards*, and himſelf were preſent; and this Reſolution was taken to ſend them out of the way, that *Chater* ſhould not appear againſt *Dimer*; and afterwards it was agreed to fetch a Horſe, and carry them away: That *Galley* and *Chater* appeared very uneaſy, and wanted to be gone; and thereupon *Jackſon*'s Wife, to pacify them, told them that ſhe lived at Major *Battine*'s, and her Horſe was gone for, and as ſoon as it came ſhe would ſhew them the Way to Mr. *Battine*'s; that he (the Witneſs) then went to *Chicheſter*, and ſaw no more of them that Night.

Being croſs-examined, at the Requeſt of the Defendants Counſel, ſaid, At this Conſultation there was nothing mentioned but the ſecuring them, in order to carry them to *France*.

This Witneſs having gone thus far in his Evidence, was ſet by for the preſent; the Counſel for the Crown declaring that they would call him again, to give an Account of what paſs'd on the 17th, after they had examined the next Witneſs.

William Steele depoſed, That he was at the Widow *Paine*'s on *Sunday* the 14th of *February*; that the Priſoner *Jackſon*, *Little Sam*, one *Kelly*, and two Men more, and *Jackſon*'s Wife, were there when he came, which was about two o'Clock in the Afternoon, and ſoon afterwards *Little Harry*, the Priſoner *Carter*, *Edmund Richards*, *John Raiſs*, and *Carter*'s Wife, came thither; he did not know how *Carter* or *Jackſon* came to be there, but the Widow *Paine*'s Son came and called him (the Witneſs) out, and ſaid he muſt go to the *Caſtle*, for there were two Men come to ſwear againſt the Shepherd, meaning *John Dimer*; that when he came in they were in general ſober, as far as he ſaw, but they ſat drinking together about two Hours; that *Jackſon* took *Chater* out of the Houſe, to examine him about *Dimer*, and after they had been out ſome Time, *Galley* went out to them, but ſoon return'd, and ſaid *Jackſon* had knocked him down; the Witneſs ſaw he was bloody all down the left Cheek; that *Jackſon* was not in the Room when *Galley* came in, but came in with *Carter* a little Time afterwards; that then *Galley*, addreſſing himſelf to *Jackſon*, ſaid he did not know any Occaſion *Jackſon* had to uſe him in that Manner, and that he ſhould remember it, and took down his Name in *Jackſon*'s Preſence. *Galley* likewiſe ſaid he was an Officer, and ſhewed his Deputation to the People that were in the Room; the Company continued drinking till *Galley* and *Chater* were quite fuddled, and went into a little inner Room to ſleep; this was about four or five o'Clock, and they continued in the little Room two or three Hours; the reſt of the Company ſat drinking all the while, conſulting what to do with *Galley* and *Chater*. The Priſoners, *Jackſon* and *Carter*, and *Little Sam*, *Little Harry*, *Richards*, and the Witneſs, were at this Conſultation. It was propoſed to put them (*Galley* and *Chater*) out of the way, becauſe they ſhould not appear againſt the Shepherd, meaning *Dimer*, and it was propoſed to throw them into the Well, in the Horſe-paſture, about half a Mile from *Rowland's* Caſtle, but it was thought not convenient to put them into a Well ſo near, for fear of a Diſcovery; it was then propoſed to join, and each Man to allow them Three-Pence a Week, and to keep them in ſome ſecret Place 'till they ſaw what became of *Dimer*, and as *Dimer* was ſerved, ſo theſe two People (*Chater* and *Galley*) were to be ſerved; this was talked of while *Chater* and *Galley* were aſleep, and there was no other Propoſal made, as he heard. But while they were talking theſe Things, the Wives of *Carter* and *Jackſon* ſaid it was no Matter what became of them (*Galley* and *Chater*), or what was done to them; they ought to be hang'd, for they were come to ruin them, meaning the Smugglers: That about Seven o'Clock *Carter* and *Jackſon* went into the inner Room, and waked *Galley* and *Chater*, and brought them out of the Room, very bloody and very drunk; he did not ſee what paſſed in the Room, but was ſure they did not go in ſo bloody; and he believed *Jackſon* and *Carter* had kicked and ſpurr'd them; they ſet *Galley* the Officer upon a brown or black Horſe, and *Chater* up behind him; *Jackſon*, *Carter*, and *Richards*, put them on Horſe-back and tied their Legs under the Horſe's Belly, and alſo tied their Legs together; they then tied a Line to the Bridle, and he (the Witneſs) got upon a grey Horſe and led them along; that juſt after they turned round the Corner about twenty or thirty Yards from the Houſe, *Jackſon* cried out, Whip them,

them, lick them Dogs, cut them; it was then dark, and the Company whipped and laſhed them with their Horſe-whips, ſome on one Side and ſome on the other, with great Violence on the Face and Head and other Parts of the Body, and continued doing ſo while they rode about half a Mile to a Place called *Wood's Aſhes*; that there they alighted, and *Little Sam* gave all the Company a Dram or two, but none to *Galley* and *Chater*; that as ſoon as they were mounted again *Jackſon* and *Carter* cried out, Damn them, lick them, whip them; and they were whipped as before for about a Mile further, and then they fell down under the Horſe's Belly with their Heads upon the Ground, and their Legs over the Saddle; they were immediately ſet up again, and their Legs tied together in the ſame Poſture; and the Company went on whipping them as before, 'till they came to a Place called *Goodthrough Dean*, which was about half a Mile further; they were beat very much, and in the Judgment of the Witneſs, it was almoſt impoſſible they ſhould ſit their Horſes; when they came to *Dean*, ſomebody of the Company pulled out a Piſtol, and ſaid, He would ſhoot them (*Galley* and *Chater*) through the Head if they made any Noiſe whilſt they went through the Village; he could not tell who it was that threatened to ſhoot them, but apprehends it was done for fear the People in the Village ſhould hear them; they went on but a Foot Pace, and after they got through *Dean*, they were whipped again as before; and when they came near a Place called *Idſworth*, they fell down again under the Horſe's Belly, and then ſome of the Company looſed them, and ſet up the Officer (*Galley*) behind him (the Witneſs), and *Chater* behind *Little Sam*, and in this Manner they proceeded towards Lady *Holt* Park, which is near three Miles from *Idſworth*, whipping *Galley* and *Chater* as before; but the Laſhes of their Whips falling upon the Witneſs, as he ſat before *Galley*, he (the Witneſs) could not bear the Strokes, and therefore they left off whipping *Galley* in that Manner; *Galley* ſat upon the Horſe 'till they got to Lady *Holt* Park, and then being faint and tired with riding, he got down, and *Carter* and *Jackſon* took him one by the Arms and the other by the Legs, and carried him towards a Well by the Side of Lady *Holt* Park; that *Jackſon* ſaid to *Carter*, "We'll throw him into the Well;" to which *Carter* replied, with all his Heart, and *Galley* ſeemed indifferent what they did with him; but ſome of the Company ſaying it was Pity to throw him into the Well, *Jackſon* and *Carter* ſet him up behind the Witneſs again, and *Chater* was ſtill behind *Little Sam*; they went on in this Manner 'till they came to go down a Hill, when *Galley* was faint and tired, and could not ride any further, and got down there; upon which *Carter* and *Jackſon* laid him on a Horſe before *Edmund Richards*, with his Belly upon the Pummel of the Saddle, they laid him acroſs the Horſe, becauſe he was ſo bad that they could not contrive to carry him in any other Manner, and they carried him ſo for about a Mile and a Half from the Well; that then *Richards* being tired of holding him, let him down by the Side of the Horſe; and *Carter* and *Jackſon* put him upon the grey Horſe that he (the Witneſs) was upon, and the Witneſs got off; they ſet him up, his Legs acroſs the Saddle, and his Body lay over the Horſe's Mane; that in this Poſture, *Jackſon* held him on; he did not remember that any body elſe held him at that Time; that they went on for about half a Mile in this Manner, *Galley* crying out vehemently all the Time, "Barbarous Uſage, for God's ſake ſhoot me through the Head or through "the Body;" he (the Witneſs) thought *Jackſon* was at this Time pinching him by the privy Parts, for there were no Blows given when he cried ſo; that *Chater* was ſtill with the Company behind *Little Sam*, and they went on for about two Miles and a half further, the Company holding *Galley* by Turns on the Horſe, 'till they came to a dirty Lane; at this Place, *Carter* and *Jackſon* rode forwards, and bid the reſt of the Company ſtop at the Swing-gate beyond the Water, 'till they ſhould return; *Jackſon* and *Carter* came to them again at the Swing-gate, and told them, that the Man of the Houſe, whither they went, was ill, and that they could not go thither; by which he underſtood that they had been in the Neighbourhood to get Entertainment. It was then propoſed to go forward to the Houſe of one *Scardefield*; and *Little Harry* tied *Galley* with a Cord, and got up on Horſeback behind him, in order to hold him up on the Horſe, and they went on 'till they came to a gravelly Knap in the Road; at this Place *Galley* cried out, "I ſhall fall, I ſhall fall;" whereupon *Little Harry* ſaid, "D———n you, then fall," and gave him a Puſh, and *Galley* fell down and gave a Spirt, and never ſpoke a Word more; he (the Witneſs) believed his Neck was broke by the Fall; that then they put him upon the Horſe again, and went away for *Raike*, to the Sign of the *Red-Lion*, which was kept by *William Scardefield*; that *Chater* was behind *Little Sam*, and was carried to *Scardefield*'s Houſe, and was very bloody when they came to *Scardefield*'s; that *Jackſon* and *Little Harry* went from *Scardefield*'s with *Chater* about three o'Clock in the Morning; and *Jackſon* afterwards returned to *Scardefield*'s, and ſaid he had left *Chater* at old *Mills*'s Houſe, and that *Little Harry* was left to look after him that he might not eſcape; this was *Monday* the 15th of *February*, and they remained all that Day at *Scardefield*'s Houſe; that the Priſoner, *Richard Mills* the younger, was there on that Day; and upon hearing from *Carter* and *Jackſon* that they had paſſed by a Precipice of about thirty Feet deep, when they had *Chater* with them, he ſaid, "If I had been there, I would have "called a Council of War on the Spot, and he (*Chater*) ſhould have gone "no further;" or to that Effect. That two or three Days afterwards the Company met at *Scardefield*'s again, to conſult what to do with *Chater*; that the Priſoners *John Raiſs*, *Carter*, and *Jackſon*, the Priſoner *Richard Mills* the younger, a Son of the Priſoner *Richard Mills* the elder, *Thomas Willis*, *John Mills*, another Son of old *Mills*, the Priſoners *Tapner*, *Cobby*, and *Hammond*, and *Thomas Stringer*, *Edmund Richards*, and *Daniel Perrier*, and he, (the Witneſs) were there conſulting what to do with *Chater*; and *John Mills* propoſed to take him out, and load a Gun, and tie a String to the Trigger, and place him (*Chater*) againſt the Gun, and that they ſhould all of them pull the String, to involve every one of them in the ſame Degree of Guilt; but this Propoſal was not agreed to. Then *Jackſon* and *Carter* propoſed to carry him back to the Well, and to murder him there, which was agreed to by all the Company; but *Richard Mills* the younger and *John Mills* ſaid, they could not go with them to the Well becauſe they had no Horſes; and as it was in their (the other Perſons) way home, they might do it as well without them; and ſo it was concluded to murder *Chater*, and then to throw him into the Well; that in the Evening they went away from *Raike* to the Houſe of the Priſoner *Richard Mills* the elder, and found *Chater* in a back Skeeling, or Out-houſe, run up at the Back of *Mills*'s Houſe, a Place they uſually put Turf in; he was chained with an Iron Chain, about three Yards long, to a Beam that went acroſs the Skeeling, about as high as his Head; that *Chater* was bloody about the Head, and had a Cut upon one of his Eyes, but he could ſee with it; that the Priſoner, *Richard Mills* the elder, was at home himſelf, and fetched out Bread and Cheeſe for them to eat, and gave them Drink, and received them, and made them welcome; that the Houſe is a private Houſe, no Inn or Ale-houſe; that they all of them went to and again between the Houſe and the Skeeling, and that the Priſoner, *Richard Mills* the elder, was at home all the while; that the Priſoner *Tapner* pulled out a claſp Knife and opened it, and ſwore to *Chater* "that Knife ſhould be his Butcher," and cut him over both his Eyes, and down his Forehead, ſo that he bled to a great Degree. He was ordered by ſome of the Company to ſay his Prayers, for they were come to kill him, and kill him they would; that *Tapner* ſaid this, and ſome of the Company were then in the Skeeling, and the reſt of them were in the Houſe, but no one interpoſed to ſave his Life; that he (the Witneſs) was in the Skeeling, when *Chater* was adviſed to ſay his Prayers, and was cut, and that *Chater* was chained by the Leg at that Time. When they had kept him there as long as they thought fit, ſomebody of the Company unlocked the Chain, and ſet him on Horſeback, and *John Raiſs*, *Edmund Richards*, *Little Harry*, *Little Sam*, the Priſoner *Tapner*, *Thomas Stringer*, the Priſoners *Cobby* and *Hammond*, *Little Daniel*, the Priſoners *Jackſon*, *Carter*, and the Witneſs, ſet out with him for Lady *Holt* Park, to carry him down to the Well; that when they came to a Place called *Harting*, *Richards*, *Little Harry*, and *Little Sam*, went back; and when the reſt came to the white Gate by Lady *Holt* Park, *Carter* and *Jackſon* left them, but firſt told them they muſt keep along a little further, and they could not miſs the Well; that it was about two Hundred Yards further, and that there were ſome Pales on the right Hand of it; that there were Pales round the Well. They went on, found the Well by the Direction *Carter* and *Jackſon* had given them, and carried *Chater* with them; that then *Tapner*, *Stringer*, and *Cobby* got off their Horſes, and *Tapner* pulled a Cord out of his Pocket, and put it about *Chater*'s Neck, and led him towards the Well. *Chater* ſeeing two or three Pales down, ſaid he could get through, but *Tapner* ſaid, "No, you ſhall get over," and he did ſo, with the Rope about his Neck; they then put him into the Well, and hanged him, winding the Rope round the Rails, and his Body hung down in the Mouth of the Well for about a Quarter of an Hour; and then *Stringer* took hold of his Legs to pull him aſide, and let his Head fall firſt into the Well, and *Tapner* let the Rope go, and down fell the Body into the Well headforemoſt; that they ſtaid there ſome Time, and one of the Company ſaid he thought he heard him breathe in the Well; upon which they got a Poſt or two, and threw them into the Well upon him, and there they left him.

The Priſoner, *Richard Mills* the elder, ſaid, he never heard any Talk about the Man's being to be killed, and that he deſired the People would take him away, and ſaid he would not have him murdered.

Steele, the Witneſs, being croſs-examined as to this, ſaid, He never heard the Priſoner ſay he would not have them murder the Man; and added, to be ſure he muſt hear them talk of murdering him, while they were at his Houſe.

John Raiſs, being called again, ſaid, That after he had left the Company at the Widow *Paine*'s, on the 14th of *February*, as mentioned in the former Part of his Evidence, he met ſome of the ſame Company, and others, on the *Wedneſday* Evening following, being the 17th of *February*, at *Scardefield*'s, at *Raike*; that the Priſoners, *Richard Mills* the younger, *Carter*, *Jackſon*, *Tapner*, *Cobby*, and *Hammond*, with *Steele*, *Richards*, *Little Sam*, *Daniel Perrier*, *John Mills*, and *Thomas Willis*, were there; and it was propoſed at that Meeting to murder *Chater*. He could not ſay who firſt made the Propoſal, but, to the beſt of his Knowledge, it was either *Carter* or *Jackſon*, and it was agreed to by all the Company; it was not then reſolved how it was to be done, but only in general, that he was to be murdered, and thrown into a Well; that they went to the Houſe of the Priſoner, *Richard Mills* the elder, to join *Little Harry*, who was left there to take Care of *Chater*, and found *Chater* chained by the Leg upon ſome Turf in a Skeeling, at the Backſide of the Houſe; that the Priſoner, *Richard Mills* the elder, was at Home, and ordered his Houſekeeper to fetch Bread and Cheeſe, and ſome Houſehold Beer, for any of them to eat and drink that would, and believes *Mills* knew that they came for *Chater*; that *Tapner* and *Cobby* were very earneſt to go and ſee *Chater*; and *Tapner* having his Knife in his Hand ſaid, "This Knife ſhall be his Butcher;" that thereupon the Priſoner, *Richard Mills* the elder, ſaid, "Pray do not murder him here, but carry "him ſomewhere elſe before you do it;" that old *Mills* ſaid this, upon ſeeing that *Tapner* had his Knife in his Hand, and hearing him declare it ſhould be his (*Chater*'s) Butcher; that they then went out into the Skeeling, and found *Chater* ſitting upon ſome Heath or Turf, and *Tapner* ordered him to ſay his Prayers: While he was repeating the Lord's Prayer, *Tapner* cut him over the Face with his Knife, and *Cobby* ſtood by, kicking him and damning him. This too was whilſt the poor Man was ſaying the Lord's Prayer. That *Chater* aſked them what was become of *Galley*? and they told him he was murdered, and that they were come to murder him. Upon which *Chater* earneſtly begg'd to live another Day. That *Cobby* aſked him his Name, and whether he had not formerly done Harveſt-work at *Selſea*? To which he anſwered, That his Name was *Daniel Chater*, and that he had harveſted at *Selſea*, and there he became acquainted with *Dimer*. *Cobby* and *Tapner* aſked him what they had fed him with at old *Mills*'s, and he ſaid Peaſe Pottage; that *Little Harry* unlocked the Horſe-lock, that was on his (*Chater*'s) Legs, and *Tapner*, *Cobby*, and *Stringer*, brought him out of the Skeeling, and ſet him upon *Tapner*'s Mare, in order to carry him to the Well, to be there murdered, and thrown in; and that all the Company knew, at that Time, what was to be done with him; that they rid about three Miles towards the Well, and ſometimes whipp'd *Chater* with their Horſewhips; and *Tapner* obſerving that he bled, ſwore, if he blooded his (*Tapner*'s) Saddle, he would whip him again. When they came to *Harting*, *Carter*, *Jackſon*, *Richards*, *Little Sam*, *Little Harry*, and *Steele*, ſaid, "We have done our "Parts,

" Parts, and you (meaning the reſt of the Company) ſhall do yours." By which they meant, as he took it, that they had murdered *Galley*, and that the reſt ſhould murder *Chater*; and *Richards*, *Little Sam*, and *Little Harry*, ſtopp'd there, and did not accompany them any further; the reſt went on towards the Well; but *Carter* and *Jackſon* ſtopp'd before they came to it, and told them the Well was a little further off, deſcribing it to them, and told them they could not miſs finding it, and there left them; that he (the Witneſs) and *Tapner*, *Cobby*, *Stringer*, *Hammond*, *Perryer*, and *Steele*, came to the Well, got off their Horſes, and took *Chater* off his Horſe, the Witneſs was not certain which, and either *Tapner* or *Cobby* put a Cord round his Neck; that there was a Shord in the Pales about the Well; and he heard *Chater* ſay he could get through there; but *Cobby* ſaid, " Damn you, no, you ſhall not, you ſhall get over;" that *Tapner* wound the Cord round the Pales, and *Chater* being put into the Mouth of the Well, hung by the Neck for about a Quarter of an Hour, and then they looſened the Rope, and turned the Body, that it fell into the Well head-foremoſt. They ſtaid there till ſome of the Company thought they heard him breathe, and then went to get a Rope at Lady *Holt* Park, to go down into the Well to murder him quite, but met *Jackſon* and *Carter* at Lady *Holt* Park, who told them there was a long Ladder; but they could not rear the Ladder, and ſo got ſome Poſts, and threw them down into the Well.

The Priſoner *Hammond* deſired the Witneſs might be aſked, Whether, when they were at old *Mills*'s, he did not offer to ride away, and make a Diſcovery; but was prevented by the Company?

Raiſs ſaid he never heard him ſay any Thing about it; but ſome of the Company did threaten any of the reſt who ſhould refuſe to go to the Murder of *Chater*.

Ann Peſcod depoſed, That two Men came to her Father's on the 15th of *February*, about one or two o'Clock in the Morning, and called for *Thomas Peſcod* her Father; that ſhe aſked one of them his Name, and he ſaid it was *William Jackſon*: Her Father, who was then very ill, ſaid they might come in if they would; that *Jackſon* did come in, and aſked if they could not abide in the Houſe ſome Time; to which ſhe anſwered No, becauſe her Father was ill; and thereupon *Jackſon* turned to the other Man, and ſaid, We cannot think of abiding here, as the Man is ſo ill, and ſo they went away. She ſaw that *Jackſon*'s Hand was bloody.

William Scardefield depoſed, That he kept the *Red Lyon* at *Raike*, in the Pariſh of *Rogate*, and that in the Night, between the 14th and 15th of *February* laſt, the Priſoners *Jackſon* and *Carter*, with *Steele* and *Richards*, came to his Houſe, and called out to him, " For God's Sake get up, and " let us in!" That he let them in, and lighted a Candle, and ſaw they were bloody; he aſked them how they came to be ſo, and they ſaid they had had an Engagement with ſome Officers, and had loſt their Goods, and ſome of their Men they feared were dead, and ſome were wounded; that they ſaid they would go and call them that were at the other Publick Houſe; and while he was gone down into the Cellar, he heard Horſes come to the Door, and ſome of the Men went into the Kitchen, ſome into the Brewhouſe, and ſome into the Parlour; that he ſaw two or three Men in the Brewhouſe, and there lay ſomething like a Man before them by the Brewhouſe Door, and he heard them ſay he was dead; that ſome of them calling for Liquor, he carried a Glaſs of Gin into the Parlour, and ſaw a Man ſtanding upright in the Parlour, with his Face bloody, and one Eye ſwelled very much; that *Richards* was in the Parlour with the Man, and objected to his coming in; and the Priſoners *Carter* and *Jackſon*, and three others were then in the Brewhouſe, and *Steele* was with them; after they had drank three Mugs of Hot, they got their Horſes out, and ſent him down for ſome Brandy and Rum; but when he came up with it, all the Company were gone twenty Yards below the Houſe, tho' ſeveral of them came back to drink, one or two at a time; that he did not know what became of the Man that he ſaw ſtanding in the Parlour, but he obſerved they ſeparated into two Companies; that one of the Company, a little Man, aſked him if he did not know the Place where they laid up ſome Goods a Year and an half ago; and the Priſoner *Carter* came back, and ſaid they muſt have a Lanthorn; that *Richards* fell in a Paſſion becauſe he refuſed to go along with them; and upon ſeeing him coming towards them with a Light, the Company parted; that he ſaw a Horſe ſtand at a little Diſtance, and there ſeemed to him to be a Man lying acroſs the Horſe, and two Men holding him on, and he believed that the Perſon he ſaw lying acroſs the Horſe was dead, but he was not nigh enough to ſee whether he was or not.

That on the *Wedneſday* or *Thurſday* following, about twelve or one at Noon, the Priſoners *Jackſon* and *Carter*, and all the reſt of the Company came again to his Houſe: that the Priſoner *Richard Mills* the younger, and his Brother *John* were ſent for, and came to them.

Edward Sones proved, that on the 16th or 17th of *September* laſt, he found the Body of a dead Man in a Well in *Harras Wood*, within 200 Yards of Lady *Holt* Houſe, and that there were two Pieces of Timber over the Body: that he went immediately to get the Coroner's Inqueſt; and when he came back, he ſaw the Man had Boots on, and there was a Rope about his Neck; and that the Well is by Lady *Holt* Park, in the County of *Suſſex*.

Mr. *Brackſtone* produced the Boots and a Belt that were taken off the Body, and given to him by the Coroner.

Mrs. *Chater*, the Widow of *Daniel Chater*, depoſed, That ſhe remembered her late Huſband ſet out from *Southampton* on the 14th of *February* laſt, and that ſhe had never ſeen him ſince that time; ſhe looked upon the Belt produced by Mr. *Brackſtone*, and ſaid ſhe knew it was the ſame Belt her Huſband had on when he ſet out from home, by a particular Mark in it; and ſhe believed that the Boots produced were likewiſe her Huſband's.

Mr. *Sones* proved alſo, that the Horſe, which *Chater* ſet out upon, was found about a Month afterwards, and delivered to the Owner.

The King's Counſel ſubmitted it here.

Mr. Juſtice *Foſter* acquainted the Priſoners, that the King's Counſel having gone through their Evidence, it was now their Time to offer what they could in their own Defence.

He repeated to each of the Priſoners the particular Facts the Evidence had charged him with, and aſked them ſeverally what they had to ſay to clear themſelves of that Charge.

To which the Priſoner *Tapner* ſaid, he did not know that they were going to murder the Man; but *Jackſon* and *Richards* threatened to kill him if he would not go with them, and he received three or four Cuts from *Hammond* or *Daniel Perryer*, but he did not know which; that *Richards* and another Man tied the Rope; and he denied that he drew a Knife, or cut *Chater* acroſs the Face.

Mr. Juſtice *Foſter* told him, that ſuppoſing he was threatened in the Manner he inſiſted on, yet that would be no legal Defence in the preſent Caſe; and that in every poſſible View of the Caſe, it was infinitely more eligible for a Man to die by the Hands of wicked Men, than to go to his Grave with the Guilt of innocent Blood on his own Head.

Cobby ſaid, he did not know what they were going to do with the Man, that he never touched him, and knew nothing of the Murder.

Hammond ſaid, when he underſtood what they were going to do, he wanted to go off and make a Diſcovery: But the Company prevented him; and that by the Company he meant all the Priſoners.

Richard Mills the elder ſaid, he did not know what they were at, and did not think they would have hurt the Man, and did not know he was chained till after they were gone away.

Richard Mills the younger ſaid, he knew nothing of the Matter, and never ſaw either of the Men (*Galley* and *Chater*) in his Life; he acknowledged he was at *Scardefield*'s Houſe, but ſaid he knew nothing of the Murder, and denied the Charge; that *Scardefield* was the only Witneſs he had, for he (*Scardefield*) knew when he came, and how long he ſtaid there.

Jackſon ſaid, the Man who ſaid he would be *Chater*'s Butcher, was his Butcher, and nobody elſe; that he (*Jackſon*) was not by when he was murdered, and was not guilty of it.

Mr. Juſtice *Foſter* cautioned him not to deceive himſelf, and told him, that with regard to the preſent Charge, it was not neceſſary that he ſhould have been preſent at the Murder; he was not charged with being preſent, but as an Acceſſary before the Fact, in adviſing and procuring the Murder to be done; and that was the Fact he was called upon to anſwer.

Carter ſaid, when he went to the Widow *Paine*'s, he only thought they were going to carry the Men out of the way till they ſaw what ſhould become of *Dimer*, and that he never laid Hands upon them; and went along with the Company to prevent Miſchief.

Scardefield the Witneſs was then called again, and *Richard Mills* the younger being aſked whether he would aſk him any Queſtions, only deſired he might be aſked what time he came to his Houſe, and how long he ſtaid there; to which *Scardefield* anſwered, That *Mills* came to his Houſe about half an Hour after One, ſtaid there about an Hour and an half, and went away on Foot.

The reſt of the Priſoners ſaid they had not any Witneſſes.

Upon which, Mr. Juſtice *Foſter* opened to the Jury the Subſtance of the Indictment, as before ſet forth; and told them, that whether the Priſoners, or any of them, were guilty in Manner as therein they are ſeverally charged, muſt be left to their Conſideration, upon the Evidence that had been laid before them.

That in order to enable them to apply the Evidence to the ſeveral Parts of the Charge, it would be proper for him firſt to acquaint them how the Law determines in Caſes of this Nature; that with regard to the Perſons charged as Principals, wherever ſeveral Perſons agree together to commit a Murder or any other Felony, and the Murder or Felony is actually committed, every Perſon preſent, aiding and abetting, is, in the Eye of the Law, guilty in the ſame Degree, and liable to the ſame Puniſhment as he who actually committed the Fact. And the Reaſon the Law goes upon is this, that the Preſence of the Accomplices gives Encouragement, Support, and Protection to the Perſon who actually commits the Fact; and at the ſame time contributes to his Security.

That it is not neceſſary that the Proof of the Fact, in Caſes of this Nature, ſhould come up to the preciſe Form of the Indictment. For if the Indictment charges that *A* did the Fact, and that *B* and *C* were preſent, aiding and abetting, if it be proved that *B* did the Fact, and that *A* and *C* were preſent, aiding and abetting, they will be all guilty within the Indictment.

That Acceſſaries before the Fact, are thoſe who not being preſent in any Senſe of the Law at the time the Fact is committed, have adviſed or otherwiſe procured the Fact to be done. Theſe Perſons, in the Caſe of wilful Murder, will be liable to the ſame Puniſhment as thoſe who committed the Murder, by their Inſtigation, Advice or Procurement.

* He then ſummed up the Evidence very largely, and applied it to the Caſe of the ſeveral Priſoners; and concluded, that if upon the whole, the Jury ſhould be of Opinion that either of the Principals (*Tapner*, *Cobby*, *Hammond*, or the others charged as Principals in the Indictment) did ſtrangle the Deceaſed, and that the Priſoners, *Tapner*, *Cobby*, and *Hammond*, were preſent, aiding and abetting, they will be within this Indictment.

And if they ſhould be of Opinion, that the Priſoners, charged as Acceſſaries before the Fact, did adviſe, conſent to, or procure the Murder, they likewiſe will be guilty within this Indictment, tho' they were not preſent when the Fact was committed.

The Jury, after ſome little Conſideration, gave their Verdict, that *Tapner*, *Cobby*, and *Hammond*, were guilty of the Murder, as laid in the Indictment:

And *Richard Mills* the elder, *Richard Mills* the younger, *William Jackſon*, and *William Carter*, were guilty, as Acceſſaries before the Fact.

Wedneſday, 18 *Jan.* 1748-9.

William Jackſon and *William Carter* were tried upon the other Indictment, on the which they had been arraigned the Day before, as Principals in the Murder of *William Galley*, and to which they had pleaded, Not Guilty.

Mr. *Steele* opened the Indictment to the Jury, and Mr. *Banks*, the King's Counſel, ſpoke to much the ſame Purport as the Day before.

Mr. *Smyth*, another of the King's Counſel, ſpoke as follows, *viz.* I ſhall only add a Word or two, to explain to you why theſe two Men, who were convicted Yeſterday as Acceſſaries before the Fact to the Murder

* *Note.* The Particulars of the Judge's Charge to the Jury in ſumming up the Evidence, are omitted, thro' the Miſtake of the Short-hand Writer, which is mentioned in the Advertiſement in the Note; and the State of the Evidence is now reduced to ſo narrow a Compaſs, that the inſerting the Judge's Charge, would have been little more than a Repetition of the Evidence, in the ſame Order as it ſtands in the Trial.

of

of *Chater*, and thereby liable to ſuffer Death, ſhould be tried a ſecond time, as Principals, for the Murder of *Galley*.

The Reaſons for it are; in the firſt place, it will be neceſſary to convict them as Principals for the Murder of *Galley*, otherwiſe the Acceſſaries to that Murder, either before or after the Fact, cannot be convicted.

Another Reaſon is, as the Intention of all Proſecutions, as well as Puniſhments, is not ſo much to revenge and puniſh what is paſt, as to deter others from committing the like Crimes; it may be of Service to the Publick to have every Circumſtance of this cruel Tranſaction diſcloſed, to ſhew how dangerous to their Neighbours, and to the Country in general, thoſe Perſons are who are concerned in Smuggling, and how much it concerns every Man to uſe his utmoſt Endeavours to ſuppreſs, and bring them to Juſtice; and it may have another good Effect, in preventing Perſons from engaging in that lawleſs Practice, when they ſee it conſequentially engages them in Crimes, which at firſt they might never intend; for I believe, if theſe unhappy Men had been told, when they firſt began Smuggling, that the Time would come when they would coolly bathe their Hands in the Blood of two innocent Men, (bad as they now are) they would then have been ſhocked, and ſtartled at the very Imagination of it; yet Men are ſo naturally led from one Vice to another, that having once tranſgreſſed the Laws of their Country, they have inſenſibly arrived at ſuch an Height of Wickedneſs, as to commit this heinous Crime without the leaſt Heſitation or Remorſe. [*After which the following Witneſſes were called for the Crown*, viz.

Mr. *Milner*, Mr. *Sheerer*, *William Galley*, and *Edward Holton*, whoſe Evidence upon this Trial was to the ſame Effect as it was upon the former.

Robert Jenkes alſo proved the ſame upon this Trial, as he did upon the former, with this Addition:

That when they were at the Widow *Paine*'s, *Jackſon* and *Carter* both ſaid they would ſee the Letter for Mr. *Battine*, *becauſe they thought the Men were going to ſwear againſt the Smugglers*; that both *Jackſon* and *Carter* hindered him from going thro' the Room where the two Men were; and that one of the Men had on a blue Great-coat.

Being croſs-examined, at the Requeſt of *Carter*, whether he hindered him from going through the Room?

Anſwered, That both did.

Joſeph Southern, *William Lamb*, *William Garnet*, and *George Poat*, proved the ſame, as upon the former Trial.

John Raiſs, to the firſt Part of his Evidence relating to the Tranſactions at the Widow *Paine*'s, added, that the Blood ran down from *Galley*'s Head and Face, on *Jackſon*'s knocking him down; and that *Galley* and *Chater* were not fuddled when he went away.

William Steele, to his former Evidence, added, That whilſt they were at the Widow *Paine*'s, *Jackſon* ſaid, "That if any of the Gang went "away from them, he would ſhoot them through the Head, or through "the Body, or ſerve them as bad as the two Men ſhould be ſerved." That he ſuppoſed *Jackſon* meant by this, that he would murder any of their own Company, or uſe any of them as ill as they did the Officer and *Chater*, if they left them; that when the Company left off whipping *Galley* with their Thongs, and Laſhes of their Whips, as mention'd in the former Trial, becauſe the Laſhes of the Whip reached this Witneſs, they beat him with the Butt-end of their Whips, which were very heavy, 'till one of their Whips was beat all to Pieces; that the Gravelly Knap, where *Galley* was puſhed off the Horſe, when he died, was in *Conduit-Lane*, in *Rogate* Pariſh; and that *Little Harry* puſhed him in the Back, and ſhoved him down; and that the Priſoners, *Jackſon* and *Carter*, *Little Sam*, and *Richards*, were in Company when he died; that they laid his Body upon a Horſe, and one Man held him on one Side, and another on the other Side, and ſo they led the Horſe along; that *Carter* and another went before to call *Scardefield* up; and when they came there, they laid *Galley*'s Body down in the Kitchen at *Scardefield*'s, and carried *Chater* into another Room; they drank every one a Dram, and *Jackſon* and *Carter* aſked *Scardefield* if he knew any Place to bury that Man in, and he ſaid No; but they ſaid he muſt go with them; and they got a Spade, and a Candle and Lanthorn, and they laid *Galley* on Horſeback again, and he (the Witneſs) *Carter*, *Little Sam*, and *Scardefield*, went back for about a Mile, and he held the Horſe whilſt *Scardefield*, *Carter*, and *Little Sam*, went to find the Place to bury him in; and when they had found it, *Carter* and *Sam* came back to him, and left *Scardefield* to dig the Grave; they went and buried him there, and returned back to *Scardefield*'s again; that *Jackſon* told them, that whilſt they were burying *Galley*, he and *Little Harry* went to carry *Chater* to old *Mills*'s; that they buried *Galley* two or three Feet deep, in the Heart of a Sand-Pit, about three or four, or five o'Clock in the Morning.

Being croſs-examined, and aſked by *Carter*, whether he (*Carter*) ſtruck *Galley*? anſwered, That they all ſtruck him.

Being aſked, at the Requeſt of the Priſoners Counſel, what was the Conſequence of that Thruſt that *Little Harry* gave *Galley*, when he fell the laſt Time? anſwered, That he thought by the Fall *Galley*'s Neck was broke, becauſe as ſoon as he was down, he gave himſelf a Turn, and ſtretched out his Hands and Legs, and never ſtirred or ſpoke afterwards; that *Galley* was not falling, 'till *Little Harry* gave him the Puſh: Said he did not know the Pariſh of *Rogate*, or that the Place where *Galley* died was within that Pariſh, any otherwiſe than that he had been there ſince, and ſeveral People ſaid it was the Pariſh of *Rogate*.

He was then aſked, whether the Gravelly Knap was in the County of *Southampton* or County of *Suſſex*? anſwered, That he could not tell; that he had never heard, as he remembered, what County that Place was in, but he was carried thither laſt *Friday*, to ſee the Place, and he ſhewed to ſome People, then preſent, the Spot of Ground where *Galley* fell off the Horſe, and he believed he ſhould know one of the Men that were with him.

John Aſſlett being called up, *Steele* ſaid, he was one of the Men that was there.

Aſſlett was then ſworn, and proved that he was with *Steele* and ſome Dragoons on *Friday* laſt; that *Steele* pointed down to the Ground with a Stick, and ſaid, "There the Man died!" That he (the Witneſs) took particular notice of that Place, and is ſure it was in *Suſſex*; that he now lives at *Harting*, and was born and bred juſt by, and had lived there ever ſince he was a Lad, and borne the Offices of Surveyor and Conſtable,

Steele, on Croſs-examination, ſaid, he knew the Place very well again, by the little gravelly riſing of the Ground.

William Scardefield proved the ſame as in the former Trial, with the following Facts relating to the Burial of *Galley*; that one of the Gang aſked him if he knew the Place where they laid up ſome Goods about a Year and a half ago, and he told him he did; upon which the Man ſaid, "You "muſt go along with us;" but the Witneſs told him his Wife was ill, and he could not leave the Houſe; and then *Carter* came in and aſked for a Lanthorn, and *Edmund Richards* told him he muſt go with them; to which he replied, If he muſt go, he muſt; that when he came down the Hill a little way from his own Houſe, he ſaw two Companies, one on the right and the other on the left; that *Carter*, *Steele*, and a ſhort Man he did not know, went on to the Place, which was about three Quarters of a Mile back again; he found the Place, and one of them came up after him, and he told him where it was; upon which they brought the Horſe up to a rough kind of a Dell, and the ſhort Man fell a-digging, and it being a very cold Night, he (the Witneſs) took the Spitter and dug to keep himſelf warm; there ſeemed to him to be a Man upon the Horſe, and it fell like a Man into the Pit, and they covered it up; he believed it to be the Body of a Man, but he did not help to put it in, and was about three or four Yards from it; he never went nigh the Ground afterwards, and did not ſee the Body of a Man upon the Horſe afterwards, or any where elſe; that the Earth was thrown over the Pit, and the ſhort Man did moſt of the Work; and he did not enquire, or chooſe to aſk any Queſtions about it.

Edward Sones proved the finding the Body of a dead Man, about the 15th of *September*, in a Fox Earth, within three Quarters of a Mile of *Raike*; that there were Boots upon the Legs, and a Glove upon one Hand; that the Body was very much periſhed, and had a Waiſtcoat and Breeches on.

John Greentree produced a Coat, which he took up beyond *Harting* Pond in the publick Road, on the 15th of *February* laſt; and ſwore that there were ſome Writings and a Letter-Caſe in the Pocket, which he ſaid he ſhould know if he was to ſee them again.

Upon this, a Parchment was delivered into Court by Mr. *Battine*, a Juſtice of the Peace, in whoſe Cuſtody it had been left, and ſhewn to the Witneſs, who ſaid it was the ſame that he found in the Coat Pocket.

It was then read in Court, and appeared to be a Deputation under the Hands of the Commiſſioners of the Cuſtoms, dated the 1ſt of *April* 1731, appointing *William Galley* to be a Tideſman in the Port of *Southampton*.

William Galley, the Son of the Deceaſed, looked at the Coat which the other Witneſs produced, and proved it to be his Father's Coat.

John Greentree ſaid, the Coat was bloody when he found it.

The King's Counſel ſubmitted it here, upon which the Priſoners being called upon to make their Defence,

The Priſoner *Carter* ſaid, he never intended to hurt the Man, and never ſtruck him, and only intended to carry him away to take Care of him, 'till they knew what became of *Dimer*; and that he had not any Witneſſes.

The Priſoner *Jackſon* had nothing to ſay.

Mr. Juſtice *Foſter* opened to the Jury the Subſtance of the Indictment, as before ſet forth, and told them, that where ſeveral People join to do an Act, in itſelf unlawful, and Death enſues from any thing done in Proſecution of that unlawful Deſign, they will be all conſidered as Principals in Murder, if they were all preſent, aiding or abetting therein; that it was not neceſſary that each of the Priſoners at the Bar ſhould be guilty of every ſingle Abuſe that was offered to the Deceaſed, in the long Series of Barbarities the Witneſſes for the Crown had laid before them; if all or any of thoſe Abuſes contributed to his Death, and the Priſoners at the Bar were engaged in the ſeveral Deſigns againſt him, and preſent, aiding and abetting the others, they will be guilty within this Indictment.

He then ſummed up the Evidence, and applied it to the Caſe of the Priſoners.

The Jury, after ſome little Conſultation together, gave their Verdict, That *William Jackſon* and *William Carter* were both Guilty.

The Counſel for the Crown then moved for Judgment; and the Priſoners being ſet to the Bar, and ſeverally aſked what they had to ſay why Judgment of Death ſhould not paſs on them, and none of them offering any thing in Arreſt of Judgment, Mr. Juſtice *Foſter*, ſpoke to them as follows:

Benjamin Tapner, *John Cobby*, *John Hammond*, *William Jackſon*, *William Carter*, *Richard Mills* the elder, and *Richard Mills* the younger; you have been convicted upon very full and ſatisfactory Evidence of the Murder of *Daniel Chater*; three of you as Principals, and the reſt as Acceſſaries before the Fact.

And you *William Jackſon* and *William Carter* ſtand farther convicted, as Principals in the Murder of *William Galley*.

Deliberate Murder is moſt juſtly ranked among the higheſt Crimes human Nature is capable of; but thoſe you have reſpectively been convicted of, have been attended with Circumſtances of very high and uncommon Aggravation.

The Perſons who have been the Objects of your Fury, were travelling on a very laudable Deſign, the Advancement of publick Juſtice. For this they were beſet in their Inn, tempted to drink to Exceſs, and then laid aſleep in an inner Room, while a Conſultation was held in what Manner to diſpoſe of them; and in the end a Reſolution was taken to carry them to ſome diſtant Place, and to diſpatch them by ſome Means or other.

In conſequence of this Reſolution they were ſet on Horſeback, and exerciſed with various Kinds of Cruelty for five Hours together, 'till one of them ſunk under the Hardſhips he ſuffered, and died upon the Road.

The other was carried to a Place of ſafe Cuſtody, there kept chained on a Heap of Turf, expecting his Doom, for three Days. During this dreadful Interval, a ſecond Conſultation was held, and a Reſolution taken to diſpatch him too: Not a ſingle Man, of thirteen who were preſent, offering one Word in his Behalf.

He was accordingly hurried to his Death; and though he begged earneſtly to live but one Day longer, that ſmall Reſpite was denied him. I will not repeat every Circumſtance; but I cannot forbear putting you in

mind of one. When the poor Man was told he muſt die that very Night, ſome of you adviſed him to ſay his Prayers, and accordingly he did addreſs himſelf to Prayer.

One would have hoped that this Circumſtance ſhould have ſoftened your Hearts, and turned you from the evil Purpoſe you were bent upon. Happy had it been for you, if you had then reflected, that God Almighty was Witneſs to every thing that paſſed among you, and to all the Intention of your Hearts!

But while the Man, under great Diſtraction of Thought, was recommending his Soul to Mercy, he was interrupted in his Devotion by two of you, in a Manner I ſcarce know how to repeat.

I hope your Hearts have been long ſince ſoftened to a proper Degree of Contrition for theſe Things; and that you have already made a due Preparation for the Sentence I am now to paſs upon you.

If you have not, pray loſe not one Moment more. Let not Company, or the Habit of Drinking, or the Hopes of Life, divert you from it; for Chriſtian Charity obliges me to tell you, that your Time in this World will be very ſhort.

Nothing now remains but that I paſs the Sentence upon you which the Law of your Country, in Conformity to the Law of God, and to the Practice of all Ages and Nations, has already pronounced upon the Crime you have been guilty of. This Court doth therefore award that you *Benjamin Tapner*, *William Carter*, *John Hammond*, *John Cobby*, *Richard Mills* the elder, *Richard Mills* the younger, and *William Jackſon*, and each of you, ſhall be conveyed from hence to the Priſon from whence you came, and from thence you ſhall be led to the Place of Execution, where you ſhall be ſeverally hanged by the Neck, until you ſhall be dead, and the Lord have Mercy upon your Souls!

After Sentence the Priſoners were carried back to *Chicheſter* Jail. The Court were pleaſed to order them all for Execution the very next Day, and that the Bodies of *Jackſon*, *Carter*, *Tapner*, *Cobby*, and *Hammond*, the five Principals, ſhould be hung in Chains. Accordingly they were carried from the Jail, to a Place called the *Broyle*, near *Chicheſter*; where, in the Preſence of great Numbers of Spectators on *Thurſday* the 19th Day of *January* 1748-9, about Two o'Clock in the Afternoon, all of them were executed except *Jackſon*, who died in Jail ſome few Hours after Sentence of Death was pronounced upon him.

The Heinouſneſs of the Crimes of ſo notorious Offenders may poſſibly excite in the Reader a Deſire to be informed of their reſpective Behaviour, whilſt under Sentence of Death, and at the Place of Execution; to ſatisfy which is ſubjoined the following authentick Account, under the Hands of the ſeveral Clergymen who attended them alternately in Jail, and together at the Place of Execution.

" The firſt Time I went to the Malefactors under Condemnation, being the Evening after Sentence was paſſed upon them, I prayed with " them all; *viz. Carter*, *Tapner*, *Cobby*, *Hammond*, and the two *Mills*'s " (*Jackſon* being dead juſt before I went to the Jail); but many Perſons " being preſent, I had no Opportunity of ſaying any thing material, and " therefore told them I would viſit them early the next Morning, which " I did accordingly.

" After Prayers, I talked with them about their unhappy Condition, " and the heinous Crimes that brought them into it. I aſked them, if " they deſired to receive the Sacrament; they all and each of them begged " that I would adminiſter it to them; accordingly I attended them again " about Ten o'Clock for that Purpoſe, and during the whole Time of " my performing that Office, they all behaved with great Decency and " Devotion, eſpecially *Carter* and *Tapner*.

" Afterwards I put the following Queſtions to them, and deſired they " would be ſincere in their Anſwers as dying Men; Firſt, Whether they " did not acknowledge the Sentence that was paſſed upon them to be juſt, " and what they highly deſerved? *Carter*, the moſt ſenſible and penitent " amongſt them, firſt anſwered, Yes; as did afterwards *Tapner*, *Cobby*, " and *Hammond*; but the two *Mills*'s did not.

" 2*dly*, I aſked them whether they forgave every Body? They all and " each anſwered, They forgave all the World. *Tapner* then owned, that " *Edmund Richards* and another were the Cauſe of his Ruin, but yet he " forgave them.

" *Carter* laid his Ruin to *Jackſon*. " JOHN SMYTH,
" Curate of *St. Pancraſs*, in *Chicheſter*."

" Both *Carter* and *Tapner*, a few Hours before their Execution, confeſs'd " to me, that they, with ſeveral others, aſſembled together, with a Deſign " to reſcue *Dimer* out of *Chicheſter* Jail; that the only Perſon amongſt " them, who had Arms, was *Edmund Richards*; but that being diſappointed by a Number of Perſons who had promiſed to join them from " the Eaſt, their Scheme was fruſtrated, and their Purpoſe carried no " farther into Execution; that one *Stringer* was at the Head of this Confederacy, but not preſent with them at the Time of their aſſembling " together.

" SIMON HUGHS,
Vicar of *Donnington* in *Suſſex*."

" *Benjamin Tapner*, of *Weſt Stoke* in *Suſſex*, Labourer, aged Twenty-ſeven, before he was turned off, owned the Juſtice of his Sentence, and " deſired all young Perſons to take Warning by his untimely End, and " avoid bad Company, which was his Ruin. When in Jail, before he was " brought out for Execution, he ſaid, he did not remember he put the " Rope about *Chater*'s Neck.

" *William Carter*, of *Rowland*'s Caſtle, in *Hampſhire*, Thatcher, aged " Thirty-nine, both at the Place of Execution, and in the Jail, confeſt " the Juſtice of the Sentence paſſed upon him, and in both Places acted " more ſuitably to a Perſon in ſuch unhappy Circumſtances than any of " them. He likewiſe at the Gallows, in the ſame Manner as *Tapner* " did, cautioned every one againſt thoſe Courſes, that had brought him " to ſo ſhameful an End. *Tapner* and *Carter*, when all the Ropes were " fixed, ſhook Hands, but what, or whether any Words then paſſed " between them, was not heard.

" *Richard Mills* the elder, of *Tretton* in *Suſſex*, Colt-Breaker, aged 63, " was unwilling to own himſelf guilty of the Fact for which he died, " and ſaid, he never ſaw *Chater*; but being aſked whether he never heard " him, as he was confined ſo long, and in ſo terrible a Condition, in the " next Room to that in which he generally ſat? made no Anſwer.

" *Richard Mills* the younger, of *Stedham* in *Suſſex*, Colt-Breaker, Son " of the aforeſaid *Richard Mills*, aged 37, would willingly have been " thought innocent; and it being put to him, whether he made that " Speech about the Council of War, &c. and whether he was not at the " Conſultation? denied both; but in the latter, *Tapner* confronted him, " and ſaid, "Yes, Major, you was there." To which *Mills* replied, "Ay, " for a Quarter of an Hour, or ſo," or to that Purpoſe. It ſo happened " that his Rope was firſt fixed to the Gallows, and a conſiderable Space of " Time was taken up in fixing the reſt; which Interim he might have " much better employed, than he did, gazing one while at the Spectators, and then at the Hangman (who was on the Gallows, tying the " Ropes of the other Malefactors), till the Cart was almoſt ready to drive " away.

" *John Cobby*, of *Sidleſham* in *Suſſex*, Labourer, aged 30, appeared to " be very much dejected, and ſaid little in Jail, and nothing at the Gallows.

" *John Hammond*, of *Berſted* in *Suſſex*, Labourer, aged 40, ſeemed likewiſe very much dejected, and had little to ſay for himſelf, excepting " his pretending that the Threats of *Jackſon*, *Carter*, and the reſt, were " the Occaſion of his being concerned in the Murder.

" *Cobby*'s Excuſe was much the ſame.

" They all, except the two *Mills*'s, ſeemed ſenſible of the heinous Nature of the Crime for which they died, and behaved as became Men in " their unhappy Condition, more particularly *Carter*; but *Mills*, the Father and Son, appeared hardened and unaffected, both in the Jail and at " the Gallows; eſpecially the Son, who was moſt inſenſible, and ſeemed " by his Behaviour, which has been mentioned before, even when his " Rope was fixed to the Gallows, to be as little moved at what he was " about to ſuffer, as the moſt unconcerned Spectator. However, juſt before the Cart drove away, he and his Father ſeemed to offer up ſome " Prayers to God.

" *R. Sandham*, Vicar of *Subdeanry* in *Chicheſter*.
" *John Smyth*, Curate of *St. Pancraſs*."

As *Jackſon* died ſo ſoon after Condemnation, no other Account can be given of him, than that he was of *Welſworth*, near *Rowland*'s Caſtle, in *Hampſhire*, Labourer, aged about fifty Years; and that being very ill, all the Time of his Trial, as he had been for a conſiderable Time before, was ſhocked at the Sentence of Death, and the Apprehenſion of being hung in Chains, to ſuch a Degree, as haſtened and brought on his Death, before he could pay the Forfeit of his Life, in that Ignominy to which he was moſt deſervedly doomed, and more peculiarly due to him as a Ring-leader in theſe moſt cruel and horrid Barbarities and Murders.

He profeſſed the *Romiſh* Religion ſome Years before his Death, and that he died a *Roman* Catholick may very reaſonably be preſumed from a printed Paper which was found carefully ſewed up in a Linnen Purſe in his Waiſtcoat Pocket, immediately after his Death, ſuppoſed to be a Popiſh Relique, and containing the following Words, *viz.*

Sancti tres Reges
Gaſpar, Melchior, Balthaſar,
Orate pro Nobis nunc & in Hora
Mortis Noſtræ.

Ces Billets ont touché aux Trois Teſtes de S. S. Rois à Cologne. Ils ſont pour Les Voyagers, contre Les Mal-Heurs de Chemins, Maux de Teſte, Mal-caduque, Fievres, Sorcellerie, toute ſorte de Malefice, Mort ſubite.

In Engliſh *thus:*

Ye Three Holy Kings,
Gaſpar, *Melchior*, *Balthaſar*,
Pray for us now, and in the Hour of Death.

Theſe Papers have touch'd the Three Heads of the Holy Kings at *Cologne*. They are to preſerve Travellers from Accidents on the Road, Head-Achs, Falling-Sickneſs, Fevers, Witch-craft, all Kinds of Miſchief, and ſudden Death.

The Body of *William Carter* was hung in Chains, in the *Portſmouth* Road, near *Raike* in *Suſſex*; the Body of *Benjamin Tapner*, on *Rook*'s Hill, near *Chicheſter*; and the Bodies of *John Cobby* and *John Hammond* upon the Sea-Coaſt, near a Place called *Selſey Bill*, in *Suſſex*, where they are ſeen at a great Diſtance, both Eaſt and Weſt.

The Bodies of *Mills*, the Father and Son, having neither Friend or Relation to take them away, were thrown into a Hole, dug for that Purpoſe, very near the Gallows, into which was likewiſe thrown the Body of *Jackſon*. Juſt by is now erected a Stone, having the following Inſcription, *viz.*

" Near this Place was buried the Body of *William Jackſon*, a proſcribed " Smuggler, who, upon a ſpecial Commiſſion of Oyer and Terminer, held " at *Chicheſter*, on the 16th Day of *January* 1748-9, was, with *William* " *Carter*, attainted for the Murder of *William Galley*, a Cuſtom-houſe Officer; and who likewiſe was, together with *Benjamin Tapner*, *John Cobby*, " *John Hammond*, *Richard Mills* the elder, and *Richard Mills* the younger, " his Son, attainted for the Murder of *Daniel Chater*; but dying in a few " Hours after Sentence of Death was pronounced upon him, he thereby " eſcap'd the Puniſhment which the Heinouſneſs of his complicated " Crimes deſerved, and which was the next Day moſt juſtly inflicted upon his Accomplices.

" As a *Memorial* to Poſterity, and a *Warning*
" to this and ſucceeding Generations,
" This Stone is erected,
" *A. D.* 1749."

END of the NINTH VOLUME.

BIBLIOTHECA
REGIA
MONACHENSIS.

BSB Bayerische StaatsBibliothek
MDZ Münchener DigitalisierungsZentrum Digitale Bibliothek

Hargrave, Francis, 1741-1821 [Verfasser eines Vorworts] [Zusammenstellender]

A Complete Collection Of State-Trials And Proceedings For High-Treason And Other Crimes and Misdemeanours Commencing With The Eleventh Year of the Reign of King Richard II. And Ending With The Sixteenth Year of the Reign of King George III. ; With Two Alphabetical Tables To The Whole
Bd.: 9

London (1778)

2 Crim. 52 h-9
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